~~have subsequently been added to the account balance. New comment 56(j)-5 includes this additional guidance and illustrative examples.~~

Section 226.57 Reporting and Marketing Rules for College Student Open-End Credit

New TILA Section 140(f), as added by Section 304 of the Credit Card Act, requires the public disclosure of contracts or other agreements between card issuers and institutions of higher education for the purpose of marketing a credit card and imposes new restrictions related to marketing open-end credit to college students. 15 U.S.C. 1650(f). The Board proposed to implement these provisions in new § 226.57.

The Board also proposed to implement provisions related to new TILA Section 127(r) in § 226.57. TILA Section 127(r), which was added by Section 305 of the Credit Card Act, requires card issuers to submit an annual report to the Board containing the terms and conditions of business, marketing, promotional agreements, and college affinity card agreements with an institution of higher education, or other related entities, with respect to any college student credit card issued to a college student at such institution. 15 U.S.C. 1637(r).

57(a) Definitions

New TILA Section 127(r) provides definitions for terms that are also used in new TILA Section 140(f). See 15 U.S.C. 1650(f). To ensure the use of these terms is consistent throughout these sections, the Board proposed to incorporate the definitions set forth in TILA Section 127(r) in § 226.57(a) and apply them to regulations implementing both TILA Sections 127(r) and 140(f).

Proposed § 226.57(a)(1) defined "college student credit card" as a credit card issued under a credit card account under an open-end (not home-secured) consumer credit plan to any college student. This definition is similar to TILA Section 127(r)(1)(B), which defines "college student credit card account" as a credit card account under an open-end consumer credit plan established or maintained for or on behalf of any college student. The Board received no comments on this definition, and the definition is adopted as proposed with one non-substantive wording change. As proposed, § 226.57(a)(1) defines "college student credit card" rather than "college student credit card account" because the statute and regulation use the former term but not the latter. Consistent with the approach the Board is implementing for other sections of the Credit Card Act, the definition uses the proposed term "credit card account under an open-end (not home-secured) consumer credit plan," as defined in § 226.2(a)(15). The term "college student credit card" therefore excludes home-equity lines of credit accessed by credit cards and overdraft lines of credit accessed by debit cards, which the Board believes are not typical types of college student credit cards.

TILA Section 127(r)(1)(A) defines "college affinity card" as a credit card issued under an open end consumer credit plan in conjunction with an agreement between the issuer and an institution of higher education or an alumni organization or a foundation affiliated with or related to an institution of higher education under which cards are issued to college students having an affinity with the institution, organization or foundation where at least one of three criteria also is met. These three criteria are: (1) the creditor has agreed to donate a portion of the proceeds of the credit card to the institution, organization, or foundation (including a lump-sum or one-time payment of

money for access); (2) the creditor has agreed to offer discounted terms to the consumer; or (3) the credit card bears the name, emblem, mascot, or logo of such institution, organization, or foundation, or other words, pictures or symbols readily identified with such institution or affiliated organization. In connection with the proposed rule, the Board solicited comment on whether § 226.57 should include a regulatory definition of "college affinity card." One card issuer commenter requested that the Board include such a definition in the final rule. . The Board continues to believe, however, that the definition of "college student credit card," discussed above, is broad enough to encompass any "college affinity card" as defined in TILA Section 127(r)(1)(A), and that a definition of "college affinity card" therefore is unnecessary. As proposed, the Board is not adopting a regulatory definition comparable to this definition in the statute.

Comment 57(a)(1)-1 is adopted as proposed. Comment 57(a)(1)-1 clarifies that a college student credit card includes a college affinity card, as discussed above, and that, 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.

Proposed § 226.57(a)(2) defined "college student" as an individual who is a full-time or a part-time student attending an institution of higher education. This definition is consistent with the definition of "college student" in TILA Section 127(r)(1)(C). An industry commenter suggested that the Board limit the definition to students who are under the age of 21. As the Board discussed in the October 2009 Regulation Z Proposal, the definition is intended to be broad and would apply to students of any age attending an institution of higher education and applies to all students, including those enrolled in graduate programs or joint degree programs. The Board believes that it was Congress's

intent to apply this term broadly, and is adopting § 226.57(a)(2) as proposed with one non-substantive wording change.

As discussed in the October 2009 Regulation Z Proposal, the Board proposed to adopt a definition of "institution of higher education" in § 226.57(a)(3) that would be consistent with the definition of the term in TILA Section 127(r)(1)(D) and in § 226.46(b)(2) for private education loans. The proposed definition provided that the term has the same meaning as in sections 101 and 102 of the Higher Education Act of 1965. 20 U.S.C. 1001 and 1002. In proposing the definition, the Board proposed to use its authority under TILA Section 105(a) to apply the definition in TILA Section 127(r)(1)(D) to TILA Section 140(f) in order to have a consistent definition of the term for all sections added by the Credit Card Act and to facilitate compliance. 15 U.S.C. 1604(a). The Board received no comment on the proposed definition, and § 226.57(a)(3) is adopted as proposed.

Proposed § 226.57(a)(4) defined "affiliated organization" as an alumni organization or foundation affiliated with or related to an institution of higher education, to provide a conveniently shorter term to be used to refer to such organizations and foundations in various provisions of the proposed regulations. The Board received no comment regarding this definition, and § 226.57(a)(4) is adopted as proposed with one non-substantive wording change.

Proposed § 226.57(a)(5) delineated the types of agreements for which creditors must provide annual reports to the Board, under the defined term "college credit card agreement." The term was defined to include 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. In connection with the proposed rule, the Board noted that the proposed definition did not incorporate the concept of a college affinity card agreement used in TILA Section 127(r)(1)(A) and solicited comment on whether language referring to college affinity card agreements also should be included in the regulations. The Board received no comments on this issue. The Board continues to believe that the definition of "college credit card agreement" is broad enough to include agreements concerning college affinity cards. Section 226.57(a)(5) therefore is adopted as proposed with one non-substantive wording change.

Comment 57(a)(5)-1 is adopted as proposed. Comment 57(a)(5)-1 clarifies that business, marketing and promotional agreements may include a broad range of arrangements between a creditor and an institution of higher education or affiliated organization, including arrangements that do not fall within the concept of a college affinity card agreement 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 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.

57(b) Public Disclosure of Agreements

In the October 2009 Regulation Z Proposal the Board proposed to implement new TILA Section 140(f)(1) in § 226.57(b). Consistent with the statute, proposed § 226.57(b) requires an institution of higher education to publicly disclose any credit card marketing contract or other agreement made with a card issuer or creditor. The Board also proposed comment 57(b)-1 to specify that an institution of higher education may fulfill its duty to publicly disclose any contract or other agreement made with a card issuer or creditor for the purposes of marketing a credit card by posting such contract or agreement on its Web site. Comment 57(b)-1 also provided that the institution of higher education may alternatively make such contract or agreement available upon request, provided the procedures for requesting the documents are reasonable and free of cost to the requestor, and the contract or agreement is provided within a reasonable time frame. As discussed in the October 2009 Regulation Z Proposal the list in proposed comment 57(b)-1 was not meant to be exhaustive, and the Board noted that an institution of higher education may publicly disclose these contracts or agreements in other ways.

Consumer group commenters suggested that the Board clarify that the term "any contracts or agreements" includes a memorandum of understanding or other amendment, interpretation or understanding between the parties that directly or indirectly relates to a college credit agreement. The Board does not believe such amendments are necessary. If, as a matter of contract law, any amendment or memorandum of understanding constitutes a part of a contract, the Board believes that the language in the regulation

would require its disclosure. As a result, the Board is adopting comment 57(b)-1 as proposed.

The Board also proposed comment 57(b)-2 in the October 2009 Regulation Z Proposal to bar institutions of higher education from redacting any contracts or agreements they are required to publicly disclose under proposed § 226.57(b). As a result, any clauses in existing contract or agreements addressing the confidentiality of such contracts or agreements would be invalid to the extent they prevent institutions of higher education from publicly disclosing such contracts or agreements in accordance with proposed § 226.57(b). The Board did not receive any significant comments on comment 57(b)-2. Furthermore, the Board continues to believe that it is important that all provisions of these contracts or agreements be available to college students and other interested parties, and comment 57(b)-2 is adopted as proposed.

57(c) Prohibited Inducements

TILA Section 140(f)(2) prohibits card issuers and creditors from offering to a student at an institution of higher education any tangible item to induce such student to apply for or participate in an open-end consumer credit plan offered by such card issuer or creditor, if such offer is made on the campus of an institution of higher education, near the campus of an institution of higher education, or at an event sponsored by or related to an institution of higher education. Proposed § 226.57(c) generally followed the statutory language. As the Board noted in the October 2009 Regulation Z Proposal, TILA Section 140(f)(2) applies not only to credit card accounts, but also other open-end consumer credit plans, such as lines of credit. The Board received comment from some industry commenters requesting that the Board limit this provision to credit card accounts only.

The statute specifically includes other open-end consumer credit plans other than credit card accounts, and the Board believes Congress intended to cover all open-end consumer credit plans. Therefore, the Board is adopting § 226.57(c) as proposed.

One industry commenter requested an exception to the restrictions on offering a tangible item in exchange for introducing a wide range of financial services to a college student. The Board notes that the restriction in § 226.57(c) applies to inducements to apply for or participate in an open-end consumer credit plan only. Consequently, if a financial institution were to offer a tangible item to induce a college student to open a deposit account, for example, such item would not be prohibited because a deposit account is not an open-end credit plan. However, if a financial institution were to offer a tangible item to induce a college student to apply for or participate in a package of financial services that includes any open-end consumer credit plans, such items would be prohibited under § 226.57(c).

Proposed comment 57(c)-1 in the October 2009 Regulation Z Proposal clarified that a tangible item under § 226.57(c) 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. The proposed comment also provided some examples of non-physical inducements that would not be considered tangible items, such as discounts, rewards points, or promotional credit terms.

Consumer group commenters suggested that while the Board's interpretation of "tangible" item was valid, there is an alternate definition of "tangible" item as an item that is real, as opposed to visionary or imagined. The Board believes interpreting the

term "tangible" as these commenters' suggest would be inappropriate. Since it would be impossible for a creditor to offer an imagined item, defining "tangible" as something real would render the term superfluous. The Board believes that Congress meant to limit this prohibition to a certain class of items; otherwise, the statute would have prohibited the offering any kind of inducement, rather than a "tangible" one. Proposed comment 57(c)-1 is therefore adopted as proposed.

Under TILA Section 140(f)(2), offering tangible items to college students is prohibited only if the items are offered to induce the student to apply for or open an open-end consumer credit plan. As a result, the Board proposed comment 57(c)-2 to clarify that if a tangible item is offered to a college student whether or not that student applies for or opens an open-end consumer credit plan, the item is not an inducement. Consumer group commenters opposed the Board's interpretation and stated that any tangible item offered to a college student, even if it is not conditioned on the college student applying for or opening an open-end consumer credit plan, is an inducement. The Board disagrees with this interpretation. In addition, the Board believes the approach suggested by consumer group commenters could produce unintended consequences and practical complications. For example, under the interpretation suggested by commenters, even a simple candy dish in the lobby of a bank branch or at a retailer that has a retail credit card program could be prohibited because of the possibility a college student may walk into the branch or the store and take a piece of candy. Therefore, the Board is adopting comment 57(c)-2 as proposed.

TILA Section 140(f)(2)(B) requires the Board to determine what is considered near the campus of an institution of higher education. As discussed in the October 2009

Regulation Z Proposal, the Board proposed comment 57(c)-3 to provide that 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, be considered near the campus of an institution of higher education. The Board based its proposal on the distances used in state and federal laws for other restricted activities near a school[73], and solicited comment on other appropriate ways to determine a location that is considered near the campus of an institution of higher education.

The Board received support for its proposal from various types of commenters, but many industry commenters thought the Board's definition for what is considered near campus to be too broad. Several of these commenters suggested that the Board provide exceptions from the prohibition in § 226.57(c) for either retailer-creditors or bank branches on or near campus. Another industry commenter requested that the Board provide guidance on defining the campus of an institution of higher education. One industry commenter also suggested that the Board exempt on-line universities to avoid interpretations that a student's home might constitute a part of the "campus."

The Board is adopting comment 57(c)-3 as proposed. The statute provides that creditors are subject to the restrictions on offering tangible items to college students in particular locations and makes no exceptions for creditors that may already be established in such locations. Furthermore, the Board believes that institutions of higher education would be the proper entities to determine the borders of their respective campuses. In

[73] See, e.g., 18 U.S.C. 922(q)(2) (making it unlawful for an individual to possess an unlicensed firearm in a school zone, defined in 18 U.S.C. 921(a)(25) as within 1,000 feet of the school); the Family Smoking Prevention and Tobacco Control Act (Pub. L. 111-31, June 22, 2009) (requiring regulations to ban outdoor tobacco advertisements within 1,000 feet of a school or playground); and Mass. Gen. Laws ch. 94C, § 32J (requiring mandatory minimum term of imprisonment for drug violations committed within 1,000 feet of a school).

addition, it is the Board's understanding that on-line universities do not define their campuses as inclusive of a student's home. Therefore, the Board believes it would be unnecessary to provide an exemption for such institutions.

Proposed comment 57(c)-4 clarified that offers of tangible items mailed to a college student at an address on or near the campus of an institution of higher education would be subject to the restrictions in § 226.57(c). Proposed comment 57(c)-4 clarified that offers of tangible items made on or near the campus of an institution of higher education for purposes of § 226.57(c) include offers of tangible items that are sent to those locations through the mail. Some industry commenters opposed the Board's proposed comment to include offers of tangible items that are mailed to a college student at an address on or near campus. Another industry commenter requested the Board clarify whether e-mailed offers constituted offers mailed to an address on or near campus.

Comment 57(c)-4 is adopted as proposed. As the Board discussed in the October 2009 Regulation Z Proposal, the statute does not distinguish between different methods of making offers of tangible items, but clearly delineates the locations where such offers may not be made. The Board notes that the prohibition in § 226.57(c) focuses on offering a tangible item. Therefore, creditors are not prohibited by the rule from mailing applications and solicitations to college students at an address that is on or near campus. Such mailings may even advertise the possibility of a tangible item for any applicant who is not a college student, so long as the credit has reasonable procedures for determining whether an applicant is a college student, consistent with comment 57(c)-6. Moreover, the Board does not believe that comment 57(c)-4 as adopted would include mailings to an e-mail address as it encompasses only mailings to an address that is on or near campus.

An e-mail address does not physically exist anywhere, and therefore, cannot be considered an address on or near campus.

Furthermore, under § 226.57(c), an offer of a tangible item to induce a college student to apply for or open an open-end consumer credit plan may not be made at an event sponsored by or related to an institution of higher education. The Board proposed comment 57(c)-5 to provide that 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, or 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. The proposed comment was adapted from guidance the Board recently adopted in § 226.48 regarding co-branding restrictions for certain private education loans.

A credit union commenter suggested that the Board's proposal was too broad, particularly for credit unions that may share a similar name to an institution of higher education. While the Board understands the difficulty in complying with § 226.57(c) for such creditors, the Board believes that the potential for confusion that a particular event or function is endorsed by the institution of higher education is too great. The Board, however, notes that comment 57(c)-6, as discussed below, provides guidance for procedures such creditors can put in place to mitigate the impact of the rule.

Proposed comment 57(c)-6 requires creditors to have reasonable procedures for determining whether an applicant is a college student. Since the prohibition in § 226.57(c) applies solely to offering a tangible item to a college student at specified locations, a card issuer or creditor would be permitted to 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 at such locations. Proposed comment 57(c)-6 illustrated one way in which a card issuer or creditor might meet this standard and provided that the card issuer or creditor may rely on the representations made by the applicant.

The Board did not receive significant comment on this provision, and the proposed comment is adopted in final. As the Board discussed in the October 2009 Regulation Z Proposal, § 226.57(c) would not prohibit card issuers and creditors from instituting marketing programs on or near the campus of an institution of higher education, or at an event sponsored by or related to an institution of higher education, where a tangible item will be offered to induce people to apply for or open an open-end consumer credit plan. However, those card issuers or creditors that do so must have reasonable procedures for determining whether an applicant or participant is a college student before giving the applicant or participant the tangible item.

57(d) Annual Report to the Board

The Board proposed to implement new TILA Section 127(r)(2) in § 226.57(d). Consistent with the statute, proposed § 226.57(d) required card issuers that are a party to one or more college credit card agreements to submit annual reports to the Board regarding those agreements. Section 226.57(d) is adopted with modifications as discussed below.

Proposed § 226.57(d) required creditors that were a party to one or more college credit card agreements to register with the Board before submitting their first annual report. The Board is eliminating the registration requirement from the final rule because

of technical changes to the Board's submission process. Proposed § 226.57(d)(1) therefore is not included in the final rule. The Board will capture the identifying information that would have been captured from each issuer during the registration process (*e.g.*, the issuer's name, address, and identifying number (such as an RSSD ID number or tax identification number), and the name, phone number and email address of a contact person at the issuer) at the time the issuer submits its annual report to the Board. Under the final rule, there is no requirement to register with the Board prior to submitting an annual report regarding college credit card agreements. As proposed, issuers must submit their initial annual report on college credit card agreements, providing information for the 2009 calendar year, to the Board by February 22, 2010. For each subsequent calendar year, issuers must submit annual reports by the first business day on or after March 31 of the following calendar year.

Proposed § 226.57(d) required that annual reports include a copy of each college credit card agreement to which the card issuer was a party that was in effect during the period covered by the report, as well as certain related information specified in new TILA Section 127(r)(2), including the total dollar amount of payments pursuant to the agreement from the card issuer to the institution (or affiliated organization) during the period covered by the report, and how such amount is determined; the total number of credit card accounts opened pursuant to the agreement during the period; and the total number of such credit card accounts that were open at the end of the period. The final rule specifies that annual reports must include "the method or formula used to determine" the amount of payments from an issuer to an institution of higher education or affiliated organization during the reporting period, rather than "how such amount is determined" as

proposed. The Board believes this more precisely describes the information intended to be captured under new TILA Section 127(r)(2).

In connection with the proposal, the Board solicited comment on whether issuers should be required to submit additional information on the terms and conditions of college credit card agreements in the annual report, such as identifying specific terms that differentiate between student and non-student accounts (for example, that provide for difference in payments based on whether an account is a student or non-student account), identifying specific terms that relate to advertising or marketing (such as provisions on mailing lists, on-line advertising, or on-campus marketing), and the terms and conditions of credit card accounts (for example, rates and fees) that may be opened in connection with the college credit card agreement. One card issuer commenter argued that such additional information should not be required, citing the additional burden on issuers. Some consumer group commenters urged the Board to collect additional information including the items identified by the Board in the proposal as well as other information such as the differences in comparative rates of default and average outstanding balances between student and non-student accounts. The Board believes that requiring issuers to track, assemble, and submit this information would impose significant costs and administrative burdens on issuers, and the Board does not believe that requiring issuers to submit additional information is necessary to achieve the purposes of new TILA Section 127(r)(2). Thus, no additional information requirements are adopted in the final rule.

As proposed, § 226.57(d) requires that each annual report include a copy of any memorandum of understanding 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." Proposed comment 57(d)(3)-1 clarified what types of documents would be considered memoranda of understanding for purposes of this requirement, by providing that 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, and by providing of examples of documents that would or would not be included. The Board received no comments regarding what types of documents should be considered memoranda of understanding, and comment 57(d)(3)-1, redesignated as comment 57(d)(2)-1, is adopted as proposed.

Additional details regarding the submission process are provided in the Consumer and College Credit Card Agreement Submission Technical Specifications Document, which is published as Attachment I to this **Federal Register** notice and which will be available on the Board's public Web site.

~~Section 226.58 Internet Posting of Credit Card Agreements~~

~~Section 204 of the Credit Card Act adds new TILA Section 122(d) to require creditors to post agreements for open-end consumer credit card plans on the creditors' Web sites and to submit those agreements to the Board for posting on a publicly-available Web site established and maintained by the Board. 15 U.S.C. 1632(d). The Board proposed to implement these provisions in proposed § 226.58 with additional guidance included in proposed Appendix N. As discussed below, proposed § 226.58 is adopted with modifications. Proposed Appendix N has been eliminated from the final rule, but the provisions of proposed Appendix N, with certain modifications, have been incorporated into § 226.58.~~