

#### E. Timely Settlement of Estates

The Credit Card Act directs the Board to prescribe regulations requiring creditors to establish procedures ensuring that any administrator of an estate can resolve the outstanding credit card balance of a deceased accountholder in a timely manner. The proposed rule would impose two specific requirements designed to enable administrators to determine the amount of and pay a deceased consumer's balance in a timely manner. First, upon request by the administrator, the creditor would be required to disclose the amount of the balance in a timely manner. Second, once an administrator has made such a request, the creditor would be required to cease the imposition of fees and charges on the account (including the accrual of interest) so that the amount of the balance does not increase while the administrator is arranging for payment.

#### F. On-line Disclosure of Credit Card Agreements

~~The Credit Card Act requires creditors to post credit card agreements on their Web sites and to submit those agreements to the Board for posting on its Web site. The Credit Card Act further provides that the Board may establish exceptions to these requirements in any case where the administrative burden outweighs the benefit of increased transparency, such as where a credit card plan has a de minimis number of accountholders.~~

~~The proposed rule would require a creditor to post on its Web site or otherwise make available its credit card agreements with its current cardholders. However, the proposed rule would establish two limitations with respect to the submission of agreements to the Board. First, the proposed rule would establish a de minimis exception for creditors with fewer than 10,000 open credit card accounts. Because the~~

~~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. Furthermore, for example, assume the same facts as above except the prior post office box number is no longer valid and mail sent to that address would be returned to sender.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.~~

~~Proposed comment 10(f)-5 would clarify that 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 the purposes of § 226.10(f). Notwithstanding the proposed rule, a card issuer may impose a finance charge due to a periodic interest rate in those circumstances.~~

## **Section 226.11 Treatment of Credit Balances; Account Termination**

### **11(c) Timely Settlement of Estate Debts**

New TILA Section 140A requires that the Board, in consultation with the Federal Trade Commission and each other agency referred to in § 108(a) of TILA, prescribe regulations requiring creditors, with respect to credit card accounts under an open-end consumer credit plan, to establish procedures to ensure that any administrator of an estate can resolve the outstanding credit balance of a deceased accountholder in a timely manner. 15 U.S.C. 1651. The Board proposes to implement TILA Section 140A in new

§ 226.11(c). In developing this proposal, the Board consulted with the Federal Trade Commission and the agencies referred to in § 108(a) of TILA. Proposed § 226.11(c)(1) requires creditors to adopt reasonable procedures designed to ensure that any administrator or executor of an estate of a deceased accountholder can determine the amount of and pay any balance on the decedent's credit card account in a timely manner. Proposed § 226.11(c) would apply only to credit card accounts under an open-end (not home-secured) consumer credit plan, consistent with the approach the Board has taken with regard to other provisions of the Credit Card Act applicable to credit card accounts.

Proposed § 226.11(c) generally follows the language in TILA Section 140A with some modification. For clarity, the Board proposes to interpret the term "resolve" for purposes of § 226.11(c) to mean determine the amount of and pay any balance on a deceased consumer's account. In addition, in order to ensure that the rule applies consistently to any personal representative of an estate who has the duty to settle any estate debt, the Board proposes to include "executor" in proposed § 226.11(c). The Board notes that the duties and responsibilities of administrators and executors are generally the same; however, it is the Board's understanding that administrators are distinct from executors in the manner in which they are appointed. Specifically, an executor is designated by the decedent's will while an administrator is typically appointed by a court in accordance with state law. The Board believes that TILA Section 140A is intended to apply to any deceased accountholder's estate, regardless of whether an administrator or executor is responsible for the estate.

In addition, the Board is proposing to require creditors to adopt "reasonable procedures designed to ensure" that administrators or executors can determine the

amount of and pay any balance in a timely manner. The Board recognizes that some creditors may already have established procedures for the resolution of a deceased accountholder's balance. Thus, a "reasonable procedures" standard would permit creditors to retain, to the extent appropriate, procedures which may already be in place, in complying with proposed § 226.11(c), as well as applicable state and federal laws governing probate. Proposed comment 11(c)-1 provides examples of reasonable procedures consistent with proposed § 226.11(c).

In addition to the general rule, the Board is proposing § 226.11(c)(2)(i), which would prohibit creditors from imposing fees and charges on a deceased consumer's account upon receiving a request for the amount of any balance from an administrator or executor of an estate. The intent of new TILA Section 140A is to ensure the timely settlement of a deceased accountholder's credit card balance. The Board understands that establishing and administering an estate may be a complex, time-consuming process, which is subject to various state law requirements and can involve a probate court. Furthermore, the Board understands that some administrators and executors currently may be unable to obtain the amount of a deceased accountholder's balance in a timely manner, which in turn, delays the settlement of estate debts. If balances cannot be obtained and settled in a timely manner, fees and other charges, such as a late fee or finance charge, may continue to accrue on the account balance. Under these circumstances, the Board believes that the estate and its assets may be disadvantaged if fees and charges continue to accrue on the account. Accordingly, proposed § 226.11(c)(2)(i) would prohibit a creditor from imposing fees and charges on the deceased consumer's account upon receiving a request for the amount of the balance on

the account from an administrator or executor of an estate. The Board believes that this prohibition is necessary to provide certainty for all parties as to the balance amount and to ensure the timely settlement of estate debts. Proposed comment 11(c)-2 would clarify that a creditor may impose finance charges based on balances for days that precede the date on which the creditor receives a request pursuant to proposed § 226.11(c)(3). The Board solicits comment on whether a creditor should be permitted to resume the imposition of fees and charges if the administrator or executor of an estate has not paid the account balance within a specified period of time.

Proposed § 226.11(c)(2)(ii) would provide that a creditor may impose fees and charges on a deceased consumer's account if a joint accountholder remains on the account. For joint accounts, a joint accountholder remains liable for the account. In contrast, because an authorized user is not liable for the account, proposed § 226.11(c)(2)(ii) would not extend to such users. Accordingly, a creditor may not impose fees and charges on the account if only an authorized user remains on the account. Proposed comment 11(c)-3 would clarify that a creditor may impose fees and charges on a deceased consumer's account if a joint accountholder remains on the account. The proposed comment would further clarify that a creditor may not impose fees and charges on a deceased consumer's account if an authorized user remains on the account.

The Board is also proposing comment 11(c)-4 to clarify that a creditor may receive a request for the amount of the balance on the account in writing or by telephone call from the administrator or executor of an estate. If a request is made in writing, such as by mail, the request is received when the creditor receives the correspondence.

Under proposed § 226.11(c)(3)(i), a creditor would be required to disclose the amount of the balance on the account in a timely manner, upon request by the administrator or executor of the estate. The Board believes a timely statement reflecting the deceased accountholder's balance is necessary to assist administrators and executors with the settlement of estate debts. Proposed comment 11(c)-5 provides guidance to creditors in complying with § 226.11(c)(3). Creditors may provide the amount of the balance, if any, by a written statement or by telephone. Proposed comment 11(c)-5 also clarifies that proposed § 226.11(c)(3) would not preclude a creditor from providing the balance amount to appropriate persons, other than the administrator or executor of an estate. For example, the Board notes that the proposed rule would not preclude creditors, subject to applicable federal and state laws, from providing a spouse or family members who indicate that they will pay the decedent's debts from obtaining a balance amount for that purpose.

Proposed § 226.11(c)(3)(ii) provides creditors with a safe harbor for disclosing the balance amount in a timely manner, stating that it would be reasonable for a creditor to provide the balance on the account within 30 days of receiving a request by the administrator or executor of an estate. The Board believes that 30 days is reasonable to ensure that transactions and charges have been accounted for and calculated and to provide a written statement or confirmation. The Board seeks comment as to whether 30 days provides creditors with sufficient time to provide a statement of the balance on the deceased consumer's account.

~~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.~~

~~(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.~~

~~(f) Changes by card issuer. If a card issuer makes a material change in the address for receiving payment or procedures for handling cardholder 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.~~

13. Section 226.11 is revised to read as follows:

**§ 226.11 Treatment of credit balances; account termination.**

(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.

(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.

(c) Timely settlement of estate debts. (1) General rule. For credit card accounts under an open-end (not home-secured) consumer credit plan, creditors must adopt reasonable procedures designed to ensure that an administrator or executor of an estate of a deceased accountholder can determine the amount of and pay any balance on the account in a timely manner.

(2) Fees and charges. (i) Limitation on fees and charges. Except as provided in paragraph (c)(2)(ii) of this section, upon receiving a request by the administrator or executor of an estate for the amount of the balance on a deceased consumer's account, a creditor may not impose fees or charges, such as a late fee or finance charge, on the account on or after the date of receiving the request.

(ii) Application to joint accounts. For joint accounts, a creditor may impose fees and charges on an account of a deceased consumer if a joint accountholder remains on the account.

(3) Timely statement of balance. (i) Requirement. Upon request by the administrator or executor of an estate, a creditor must provide the administrator or executor of an estate with the amount of the balance on a deceased consumer's account in a timely manner.

(ii) Safe harbor. For the purposes of paragraph (c)(3)(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.

~~14. Section 226.12 is revised to read as follows:~~

~~§ 226.12 Special credit card provisions.~~

~~(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.<sup>21</sup>~~

~~(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.~~

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<sup>21</sup> [Reserved]

~~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.~~

~~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 the purposes of § 226.10(f).~~

#### Section 226.11—Treatment of Credit Balances; Account Termination

##### 11(a) Credit balances.

1. Timing of refund. The creditor may also fulfill its obligations under § 226.11 by:
  - i. Refunding any credit balance to the consumer immediately.
  - ii. Refunding any credit balance prior to receiving a written request (under § 226.11(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 § 226.11(a)(2) and any part of the credit balance remaining in the account in § 226.11(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 226.11 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.

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 § 226.11(b)(2).

11(c) Timely settlement of estate debts

1. Examples. The following are examples of reasonable procedures that may satisfy this rule:

i. A creditor may decline future transactions and terminate the account upon receiving reasonable notice of the consumer's death.

ii. A creditor may credit the account for fees and charges imposed after the date of receiving reasonable notice of the consumer's death.

iii. A creditor may waive the estate's liability for all charges made to the account after receiving reasonable notice of the consumer's death.

iv. A creditor may authorize an agent to handle matters in accordance with the requirements of this rule.

2. Fees and charges. Section 226.11(c)(2) does not prohibit a creditor from imposing finance charges based on balances for days that precede the date on which the creditor receives a request pursuant to § 226.11(c)(3). For example, if the last day of the billing cycle is June 30 and the creditor receives a request pursuant to § 226.11(c)(3) on June 25, the creditor may charge interest that accrued prior to June 25.

3. Application to joint accounts. A creditor 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 creditor may not impose fees and charges.

4. Request by an administrator or executor of an estate. A creditor 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 or executor of an estate. If a request is made in writing, such as by mail, the request is received on the date the creditor receives the correspondence.

5. Timely statement of balance. A creditor must disclose the balance on a deceased consumer's account, upon request by the administrator or executor of the decedent's estate. A creditor may provide the amount, if any, by a written statement or by telephone. This does not preclude a creditor from providing the balance amount to appropriate persons, other than the administrator or executor, such as the spouse or a relative of the decedent, who indicate that they may pay any balance. This provision does not relieve creditors of the requirements to provide a periodic statement, under § 226.5(b)(2). A periodic statement, under § 226.5(b)(2), may satisfy the requirements of § 226.11(c)(3), if provided within 30 days of the notice of the consumer's death.

#### Section 226.12—Special Credit Card Provisions

~~1. Scope. Sections 226.12(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 226.12(a) and (b) are exceptions to the general rule that the regulation applies only to consumer credit. (See §§ 226.1 and 226.3.)~~

~~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~~