

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).

*Comments on
Final
Regulations*

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.

(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 § 226.10.

(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 § 226.6(b)(3).

FINAL REGULATIONS **§ 226.57 Reporting and marketing rules for college student open-end credit.**

(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.

(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.

(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.

(d) Annual report to the Board. (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 Board an annual report regarding those agreements in the form and manner prescribed by the Board.

(2) Contents of report. The annual report to the Board 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 § 226.57(d)(3), a card issuer must submit its annual report for each calendar year to the Board by the first business day on or after March 31 of the following calendar year. Card issuers must submit the first report following the effective date of this section, providing information for the 2009 calendar year, to the Board by February 22, 2010.