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12 CFR Ch. II (1–1–10 Edition)

§ 226.5a Credit and charge card applications and solicitations.

(a) *General rules.* The card issuer shall provide the disclosures required under this section on or with a solicitation or an application to open a credit or charge card account.

(1) *Definition of solicitation.* For purposes of this section, the term *solicitation* means an offer by the card issuer to open a credit or charge card account that does not require the consumer to complete an application. A “firm offer of credit” as defined in section 603(l) of the Fair Credit Reporting Act (15 U.S.C. 1681a(l)) for a credit or charge card is a solicitation for purposes of this section.

(2) *Form of disclosures; tabular format.* (i) The disclosures in paragraphs (b)(1) through (5) (except for (b)(1)(iv)(B)) and (b)(7) through (15) of this section made pursuant to paragraph (c), (d)(2), (e)(1) or (f) of this section generally shall be in the form of a table with headings, content, and format substantially similar to any of the applicable tables found in G–10 in appendix G to this part.

(ii) The table described in paragraph (a)(2)(i) of this section shall contain only the information required or permitted by this section. Other information may be presented on or with an application or solicitation, provided such information appears outside the required table.

(iii) Disclosures required by paragraphs (b)(1)(iv)(B) and (b)(6) of this section must be placed directly beneath the table.

(iv) When a tabular format is required, any annual percentage rate required to be disclosed pursuant to paragraph (b)(1) of this section, any introductory rate permitted to be disclosed pursuant to paragraph (b)(1)(ii) or required to be disclosed under paragraph (b)(1)(vii) of this section, any rate that will apply after a premium initial rate expires permitted to be disclosed under paragraph (b)(1)(iii) or required to be disclosed under paragraph (b)(1)(vii), and any fee or percentage amounts required to be disclosed pursuant to paragraphs (b)(2), (b)(4), (b)(8) through (b)(13) of this section must be disclosed in bold text. However, bold text shall not be used for: Any maximum limits on fee amounts disclosed in the table that do not relate to fees that vary by state; the amount of any periodic fee disclosed pursuant to paragraph (b)(2) of this section that is not an annualized amount; and other annual percentage rates or fee amounts disclosed in the table.

(v) For an application or a solicitation that is accessed by the consumer in electronic form, the disclosures required under this section may be provided to the consumer in electronic form on or with the application or solicitation.

(vi)(A) Except as provided in paragraph (a)(2)(vi)(B) of this section, the table described in paragraph (a)(2)(i) of this section

must be provided in a prominent location on or with an application or a solicitation.

(B) If the table described in paragraph (a)(2)(i) of this section is provided electronically, it must be provided in close proximity to the application or solicitation.

(3) *Fees based on a percentage.* If the amount of any fee required to be disclosed under this section is determined on the basis of a percentage of another amount, the percentage used and the identification of the amount against which the percentage is applied may be disclosed instead of the amount of the fee.

(4) *Fees that vary by state.* Card issuers that impose fees referred to in paragraphs (b)(8) through (12) of this section that vary by state may, at the issuer’s option, disclose in the table the specific fee applicable to the consumer’s account, or the range of the fees, if the disclosure includes a statement that the amount of the fee varies by state and refers the consumer to a disclosure provided with the table where the amount of the fee applicable to the consumer’s account is disclosed. A card issuer may not list fees for multiple states in the table.

(5) *Exceptions.* This section does not apply to:

(i) Home-equity plans accessible by a credit or charge card that are subject to the requirements of §226.5b;

(ii) Overdraft lines of credit tied to asset accounts accessed by check-guarantee cards or by debit cards;

(iii) Lines of credit accessed by check-guarantee cards or by debit cards that can be used only at automated teller machines;

(iv) Lines of credit accessed solely by account numbers;

(v) Additions of a credit or charge card to an existing open-end plan;

(vi) General purpose applications unless the application, or material accompanying it, indicates that it can be used to open a credit or charge card account; or

(vii) Consumer-initiated requests for applications.

(b) *Required disclosures.* The card issuer shall disclose the items in this paragraph on or with an application or a solicitation in accordance with the requirements of paragraphs (c), (d), (e)(1) or (f) of this section. A credit card issuer shall disclose all applicable items in this paragraph except for paragraph (b)(7) of this section. A charge card issuer shall disclose the applicable items in paragraphs (b)(2), (4), (7) through (12), and (15) of this section.

(1) *Annual percentage rate.* Each periodic rate that may be used to compute the finance charge on an outstanding balance for purchases, a cash advance, or a balance transfer, expressed as an annual percentage rate (as determined by §226.14(b)). When more than one rate applies for a category of transactions, the range of balances to which

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each rate is applicable shall also be disclosed. The annual percentage rate for purchases disclosed pursuant to this paragraph shall be in at least 16-point type, except for the following: Oral disclosures of the annual percentage rate for purchases; or a penalty rate that may apply upon the occurrence of one or more specific events.

(i) *Variable rate information.* If a rate disclosed under paragraph (b)(1) of this section is a variable rate, the card issuer shall also disclose the fact that the rate may vary and how the rate is determined. In describing how the applicable rate will be determined, the card issuer must identify the type of index or formula that is used in setting the rate. The value of the index and the amount of the margin that are used to calculate the variable rate shall not be disclosed in the table. A disclosure of any applicable limitations on rate increases or decreases shall not be included in the table.

(ii) *Discounted initial rate.* If the initial rate is an introductory rate, as that term is defined in §226.16(g)(2)(ii), the card issuer must disclose the rate that would otherwise apply to the account pursuant to paragraph (b)(1) of this section. Where the rate is not tied to an index or formula, the card issuer must disclose the rate that will apply after the introductory rate expires. In a variable-rate account, the card issuer must disclose a rate based on the applicable index or formula in accordance with the accuracy requirements set forth in paragraphs (c), (d), or (e) of this section, as applicable. Except as provided in paragraph (b)(1)(vii) of this section, the issuer is not required to, but may disclose in the table the introductory rate along with the rate that would otherwise apply to the account if the card issuer also discloses the time period during which the introductory rate will remain in effect, and uses the term “introductory” or “intro” in immediate proximity to the introductory rate.

(iii) *Premium initial rate.* If the initial rate is temporary and is higher than the rate that will apply after the temporary rate expires, the card issuer must disclose the premium initial rate pursuant to paragraph (b)(1) of this section. Except as provided in paragraph (b)(1)(vii) of this section, the issuer is not required to, but may disclose in the table the rate that will apply after the premium initial rate expires if the issuer also discloses the time period during which the premium initial rate will remain in effect. Consistent with paragraph (b)(1) of this section, the premium initial rate for purchases must be in at least 16-point type. If the issuer also discloses in the table the rate that will apply after the premium initial rate for purchases expires, that rate also must be in at least 16-point type.

(iv) *Penalty rates—(A) In general.* Except as provided in paragraph (b)(1)(iv)(B), if a rate may increase as a penalty for one or more

events specified in the account agreement, such as a late payment or an extension of credit that exceeds the credit limit, the card issuer must disclose pursuant to paragraph (b)(1) of this section the increased rate that may apply, a brief description of the event or events that may result in the increased rate, and a brief description of how long the increased rate will remain in effect.

(B) *Introductory rates.* If the issuer discloses an introductory rate, as that term is defined in §226.16(g)(2)(ii), in the table or in any written or electronic promotional materials accompanying applications or solicitations subject to paragraph (c) or (e) of this section, the issuer must briefly disclose directly beneath the table the circumstances, if any, under which the introductory rate may be revoked, and the type of rate that will apply after the introductory rate is revoked.

(v) *Rates that depend on consumer's creditworthiness.* If a rate cannot be determined at the time disclosures are given because the rate depends, at least in part, on a later determination of the consumer's creditworthiness, the card issuer must disclose the specific rates or the range of rates that could apply and a statement that the rate for which the consumer may qualify at account opening will depend on the consumer's creditworthiness, and other factors if applicable. If the rate that depends, at least in part, on a later determination of the consumer's creditworthiness is a penalty rate, as described in paragraph (b)(1)(iv) of this section, the card issuer at its option may disclose the highest rate that could apply, instead of disclosing the specific rates or the range of rates that could apply.

(vi) *APRs that vary by state.* Issuers imposing annual percentage rates that vary by state may, at the issuer's option, disclose in the table the specific annual percentage rate applicable to the consumer's account, or the range of the annual percentage rates, if the disclosure includes a statement that the annual percentage rate varies by state and refers the consumer to a disclosure provided with the table where the annual percentage rate applicable to the consumer's account is disclosed. A card issuer may not list annual percentage rates for multiple states in the table.

(vii) *Issuers subject to 12 CFR 227.24 or similar law.* Notwithstanding paragraphs (b)(1)(ii) and (b)(1)(iii) of this section, issuers that are subject to 12 CFR §227.24 or similar law must disclose in the table any introductory rate applicable to the account, consistent with the requirements of paragraph (b)(1)(ii) of this section, and any rate applicable upon the expiration of a premium initial rate, consistent with the requirements of paragraph (b)(1)(iii) of this section.

(2) *Fees for issuance or availability.* (i) Any annual or other periodic fee that may be imposed for the issuance or availability of a

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credit or charge card, including any fee based on account activity or inactivity; how frequently it will be imposed; and the annualized amount of the fee.

(ii) Any non-periodic fee that relates to opening an account. A card issuer must disclose that the fee is a one-time fee.

(3) *Fixed finance charge; minimum interest charge.* Any fixed finance charge and a brief description of the charge. Any minimum interest charge if it exceeds \$1.00 that could be imposed during a billing cycle, and a brief description of the charge. The \$1.00 threshold amount shall be adjusted periodically by the Board to reflect changes in the Consumer Price Index. The Board shall calculate each year a price level adjusted minimum interest charge using the Consumer Price Index in effect on the June 1 of that year. When the cumulative change in the adjusted minimum value derived from applying the annual Consumer Price level to the current minimum interest charge threshold has risen by a whole dollar, the minimum interest charge will be increased by \$1.00. The issuer may, at its option, disclose in the table minimum interest charges below this threshold.

(4) *Transaction charges.* Any transaction charge imposed by the card issuer for the use of the card for purchases.

(5) *Grace period.* The date by which or the period within which any credit extended for purchases may be repaid without incurring a finance charge due to a periodic interest rate and any conditions on the availability of the grace period. If no grace period is provided, that fact must be disclosed. If the length of the grace period varies, the card issuer may disclose the range of days, the minimum number of days, or the average number of days in the grace period, if the disclosure is identified as a range, minimum, or average. In disclosing in the tabular format a grace period that applies to all types of purchases, the phrase "How to Avoid Paying Interest on Purchases" shall be used as the heading for the row describing the grace period. If a grace period is not offered on all types of purchases, in disclosing this fact in the tabular format, the phrase "Paying Interest" shall be used as the heading for the row describing this fact.

(6) *Balance computation method.* The name of the balance computation method listed in paragraph (g) of this section that is used to determine the balance for purchases on which the finance charge is computed, or an explanation of the method used if it is not listed. In determining which balance computation method to disclose, the card issuer shall assume that credit extended for purchases will not be repaid within the grace period, if any.

(7) *Statement on charge card payments.* A statement that charges incurred by use of the charge card are due when the periodic statement is received.

(8) *Cash advance fee.* Any fee imposed for an extension of credit in the form of cash or its equivalent.

(9) *Late-payment fee.* Any fee imposed for a late payment.

(10) *Over-the-limit fee.* Any fee imposed for exceeding a credit limit.

(11) *Balance transfer fee.* Any fee imposed to transfer an outstanding balance.

(12) *Returned-payment fee.* Any fee imposed by the card issuer for a returned payment.

(13) *Required insurance, debt cancellation or debt suspension coverage.* (i) A fee for insurance described in §226.4(b)(7) or debt cancellation or suspension coverage described in §226.4(b)(10), if the insurance or debt cancellation or suspension coverage is required as part of the plan; and

(ii) A cross reference to any additional information provided about the insurance or coverage accompanying the application or solicitation, as applicable.

(14) *Available credit.* If a card issuer requires fees for the issuance or availability of credit described in paragraph (b)(2) of this section, or requires a security deposit for such credit, and the total amount of those required fees and/or security deposit that will be imposed and charged to the account when the account is opened is 15 percent or more of the minimum credit limit for the card, a card issuer must disclose the available credit remaining after these fees or security deposit are debited to the account, assuming that the consumer receives the minimum credit limit. In determining whether the 15 percent threshold test is met, the issuer must only consider fees for issuance or availability of credit, or a security deposit, that are required. If fees for issuance or availability are optional, these fees should not be considered in determining whether the disclosure must be given. Nonetheless, if the 15 percent threshold test is met, the issuer in providing the disclosure must disclose the amount of available credit calculated by excluding those optional fees, and the available credit including those optional fees. This paragraph does not apply with respect to fees or security deposits that are not debited to the account.

(15) *Web site reference.* A reference to the Web site established by the Board and a statement that consumers may obtain on the Web site information about shopping for and using credit cards.

(c) *Direct mail and electronic applications and solicitations—*(1) *General.* The card issuer shall disclose the applicable items in paragraph (b) of this section on or with an application or solicitation that is mailed to consumers or provided to consumers in electronic form.

(2) *Accuracy.* (i) Disclosures in direct mail applications and solicitations must be accurate as of the time the disclosures are

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mailed. An accurate variable annual percentage rate is one in effect within 60 days before mailing.

(ii) Disclosures provided in electronic form must be accurate as of the time they are sent, in the case of disclosures sent to a consumer's e-mail address, or as of the time they are viewed by the public, in the case of disclosures made available at a location such as a card issuer's Web site. An accurate variable annual percentage rate provided in electronic form is one in effect within 30 days before it is sent to a consumer's e-mail address, or viewed by the public, as applicable.

(d) *Telephone applications and solicitations—*

(1) *Oral disclosure.* The card issuer shall disclose orally the information in paragraphs (b)(1) through (7) and (b)(14) of this section, to the extent applicable, in a telephone application or solicitation initiated by the card issuer.

(2) *Alternative disclosure.* The oral disclosure under paragraph (d)(1) of this section need not be given if the card issuer either:

(i)(A) Does not impose a fee described in paragraph (b)(2) of this section; or

(B) Imposes such a fee but provides the consumer with a right to reject the plan consistent with § 226.5(b)(1)(iv); and

(ii) The card issuer discloses in writing within 30 days after the consumer requests the card (but in no event later than the delivery of the card) the following:

(A) The applicable information in paragraph (b) of this section; and

(B) As applicable, the fact that the consumer has the right to reject the plan and not be obligated to pay fees described in paragraph (b)(2) or any other fees or charges until the consumer has used the account or made a payment on the account after receiving a billing statement.

(3) *Accuracy.* (i) The oral disclosures under paragraph (d)(1) of this section must be accurate as of the time they are given.

(ii) The alternative disclosures under paragraph (d)(2) of this section generally must be accurate as of the time they are mailed or delivered. A variable annual percentage rate is one that is accurate if it was:

(A) In effect at the time the disclosures are mailed or delivered; or

(B) In effect as of a specified date (which rate is then updated from time to time, but no less frequently than each calendar month).

(e) *Applications and solicitations made available to general public.* The card issuer shall provide disclosures, to the extent applicable, on or with an application or solicitation that is made available to the general public, including one contained in a catalog, magazine, or other generally available publication. The disclosures shall be provided in accordance with paragraph (e)(1) or (e)(2) of this section.

(1) *Disclosure of required credit information.* The card issuer may disclose in a prominent location on the application or solicitation the following:

(i) The applicable information in paragraph (b) of this section;

(ii) The date the required information was printed, including a statement that the required information was accurate as of that date and is subject to change after that date; and

(iii) A statement that the consumer should contact the card issuer for any change in the required information since it was printed, and a toll-free telephone number or a mailing address for that purpose.

(2) *No disclosure of credit information.* If none of the items in paragraph (b) of this section is provided on or with the application or solicitation, the card issuer may state in a prominent location on the application or solicitation the following:

(i) There are costs associated with the use of the card; and

(ii) The consumer may contact the card issuer to request specific information about the costs, along with a toll-free telephone number and a mailing address for that purpose.

(3) *Prompt response to requests for information.* Upon receiving a request for any of the information referred to in this paragraph, the card issuer shall promptly and fully disclose the information requested.

(4) *Accuracy.* The disclosures given pursuant to paragraph (e)(1) of this section must be accurate as of the date of printing. A variable annual percentage rate is accurate if it was in effect within 30 days before printing.

(f) *In-person applications and solicitations.* A card issuer shall disclose the information in paragraph (b) of this section, to the extent applicable, on or with an application or solicitation that is initiated by the card issuer and given to the consumer in person. A card issuer complies with the requirements of this paragraph if the issuer provides disclosures in accordance with paragraph (c)(1) or (e)(1) of this section.

(g) *Balance computation methods defined.* The following methods may be described by name. Methods that differ due to variations such as the allocation of payments, whether the finance charge begins to accrue on the transaction date or the date of posting the transaction, the existence or length of a grace period, and whether the balance is adjusted by charges such as late-payment fees, annual fees and unpaid finance charges do not constitute separate balance computation methods.

(1)(i) *Average daily balance (including new purchases).* This balance is figured by adding the outstanding balance (including new purchases and deducting payments and credits)

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for each day in the billing cycle, and then dividing by the number of days in the billing cycle.

(ii) *Average daily balance (excluding new purchases)*. This balance is figured by adding the outstanding balance (excluding new purchases and deducting payments and credits) for each day in the billing cycle, and then dividing by the number of days in the billing cycle.

(2)(i) *Two-cycle average daily balance (including new purchases)*. This balance is the sum of the average daily balances for two billing cycles. The first balance is for the current billing cycle, and is figured by adding the outstanding balance (including new purchases and deducting payments and credits) for each day in the billing cycle, and then dividing by the number of days in the billing cycle. The second balance is for the preceding billing cycle.

(ii) *Two-cycle average daily balance (excluding new purchases)*. This balance is the sum of the average daily balances for two billing cycles. The first balance is for the current billing cycle, and is figured by adding the outstanding balance (excluding new purchases and deducting payments and credits) for each day in the billing cycle, and then dividing by the number of days in the billing cycle. The second balance is for the preceding billing cycle.

(3) *Adjusted balance*. This balance is figured by deducting payments and credits made during the billing cycle from the outstanding balance at the beginning of the billing cycle.

(4) *Previous balance*. This balance is the outstanding balance at the beginning of the billing cycle.

(5) *Daily balance*. For each day in the billing cycle, this balance is figured by taking the beginning balance each day, adding any new purchases, and subtracting any payment and credits.

§ 226.5b Requirements for home equity plans.

The requirements of this section apply to open-end credit plans secured by the consumer’s dwelling. For purposes of this section, an annual percentage rate is the annual percentage rate corresponding to the periodic rate as determined under § 226.14(b).

(a) *Form of disclosures*—(1) *General*. The disclosures required by paragraph (d) of this section shall be made clearly and conspicuously and shall be grouped together and segregated from all unrelated information. The disclosures may be provided on the application form or on a separate form. The disclosure described in paragraph (d)(4)(iii), the itemization of third-party fees de-

scribed in paragraph (d)(8), and the variable-rate information described in paragraph (d)(12) of this section may be provided separately from the other required disclosures.

(2) *Precedence of certain disclosures*. The disclosures described in paragraph (d)(1) through (4)(ii) of this section shall precede the other required disclosures.

(3) For an application that is accessed by the consumer in electronic form, the disclosures required under this section may be provided to the consumer in electronic form on or with the application.

(b) *Time of disclosures*. The disclosures and brochure required by paragraphs (d) and (e) of this section shall be provided at the time an application is provided to the consumer.<sup>10a</sup>

(c) *Duties of third parties*—Persons other than the creditor who provide applications to consumers for home equity plans must provide the brochure required under paragraph (e) of this section at the time an application is provided. If such persons have the disclosures required under paragraph (d) of this section for a creditor’s home equity plan, they also shall provide the disclosures at such time.<sup>10a</sup>

(d) *Content of disclosures*. The creditor shall provide the following disclosures, as applicable:

(1) *Retention of information*. A statement that the consumer should make or otherwise retain a copy of the disclosures.

(2) *Conditions for disclosed terms*. (i) A statement of the time by which the consumer must submit an application to obtain specific terms disclosed and an identification of any disclosed term that is subject to change prior to opening the plan.

(ii) A statement that, if a disclosed term changes (other than a change due to fluctuations in the index in a variable-rate plan) prior to opening the plan and the consumer therefore elects

<sup>10a</sup> The disclosures and the brochure may be delivered or placed in the mail not later than three business days following receipt of a consumer’s application in the case of applications contained in magazines or other publications, or when the application is received by telephone or through an intermediary agent or broker.