

card plan. If maintenance of an account for clearing purposes is determined to be essential to the operation of the credit card plan, it may be required only if no service charges or minimum balance requirements are imposed.

(g) *Relation to Electronic Fund Transfer Act and Regulation E.* For guidance on whether Regulation Z (12 CFR part 1026) or Regulation E (12 CFR part 1005) applies in instances involving both credit and electronic fund transfer aspects, refer to Regulation E, 12 CFR 1005.12(a) regarding issuance and liability for unauthorized use. On matters other than issuance and liability, this section applies to the credit aspects of combined credit/electronic fund transfer transactions, as applicable.

EFFECTIVE DATE NOTE: At 81 FR 84369, Nov. 22, 2016, §1026.12 was amended by revising paragraph (d), effective Oct. 1, 2017. At 82 FR 18975, Apr. 25, 2017, the effective date was delayed to Apr. 1, 2018. For the convenience of the user, the revised text is set forth as follows:

**§ 1026.12 Special credit card provisions.**

\* \* \* \* \*

(d) *Offsets by card issuer prohibited*—(1) *General rule.* A card issuer may not take any action, either before or after termination of credit card privileges, to offset a cardholder’s indebtedness arising from a consumer credit transaction under the relevant credit card plan against funds of the cardholder held on deposit with the card issuer.

(2) *Rights of the card issuer.* This paragraph (d) does not alter or affect the right of a card issuer acting under state or Federal law to do any of the following with regard to funds of a cardholder held on deposit with the card issuer if the same procedure is constitutionally available to creditors generally: Obtain or enforce a consensual security interest in the funds; attach or otherwise levy upon the funds; or obtain or enforce a court order relating to the funds.

(3) *Periodic deductions.* (i) This paragraph (d) does not prohibit a plan, if authorized in writing by the cardholder, under which the card issuer may periodically deduct all or part of the cardholder’s credit card debt from a deposit account held with the card issuer (subject to the limitations in §1026.13(d)(1)).

(ii) With respect to a covered separate credit feature accessible by a hybrid prepaid-credit card as defined in §1026.61, for purposes of this paragraph (d)(3), “periodically” means no more frequently than once per calendar month, such as on a monthly due date

disclosed on the applicable periodic statement in accordance with the requirements of §1026.7(b)(11)(i)(A) or on an earlier date in each calendar month in accordance with a written authorization signed by the consumer.

\* \* \* \* \*

**§ 1026.13 Billing error resolution.**

(a) *Definition of billing error.* For purposes of this section, the term billing error means:

(1) A reflection on or with a periodic statement of an extension of credit that is not made to the consumer or to a person who has actual, implied, or apparent authority to use the consumer’s credit card or open-end credit plan.

(2) A reflection on or with a periodic statement of an extension of credit that is not identified in accordance with the requirements of §§1026.7(a)(2) or (b)(2), as applicable, and 1026.8.

(3) A reflection on or with a periodic statement of an extension of credit for property or services not accepted by the consumer or the consumer’s designee, or not delivered to the consumer or the consumer’s designee as agreed.

(4) A reflection on a periodic statement of the creditor’s failure to credit properly a payment or other credit issued to the consumer’s account.

(5) A reflection on a periodic statement of a computational or similar error of an accounting nature that is made by the creditor.

(6) A reflection on a periodic statement of an extension of credit for which the consumer requests additional clarification, including documentary evidence.

(7) The creditor’s failure to mail or deliver a periodic statement to the consumer’s last known address if that address was received by the creditor, in writing, at least 20 days before the end of the billing cycle for which the statement was required.

(b) *Billing error notice.* A billing error notice is a written notice from a consumer that:

(1) Is received by a creditor at the address disclosed under §1026.7(a)(9) or (b)(9), as applicable, no later than 60 days after the creditor transmitted the first periodic statement that reflects the alleged billing error;

(2) Enables the creditor to identify the consumer's name and account number; and

(3) To the extent possible, indicates the consumer's belief and the reasons for the belief that a billing error exists, and the type, date, and amount of the error.

(c) *Time for resolution; general procedures.* (1) The creditor shall mail or deliver written acknowledgment to the consumer within 30 days of receiving a billing error notice, unless the creditor has complied with the appropriate resolution procedures of paragraphs (e) and (f) of this section, as applicable, within the 30-day period; and

(2) The creditor shall comply with the appropriate resolution procedures of paragraphs (e) and (f) of this section, as applicable, within 2 complete billing cycles (but in no event later than 90 days) after receiving a billing error notice.

(d) *Rules pending resolution.* Until a billing error is resolved under paragraph (e) or (f) of this section, the following rules apply:

(1) *Consumer's right to withhold disputed amount; collection action prohibited.* The consumer need not pay (and the creditor may not try to collect) any portion of any required payment that the consumer believes is related to the disputed amount (including related finance or other charges). If the cardholder has enrolled in an automatic payment plan offered by the card issuer and has agreed to pay the credit card indebtedness by periodic deductions from the cardholder's deposit account, the card issuer shall not deduct any part of the disputed amount or related finance or other charges if a billing error notice is received any time up to 3 business days before the scheduled payment date.

(2) *Adverse credit reports prohibited.* The creditor or its agent shall not (directly or indirectly) make or threaten to make an adverse report to any person about the consumer's credit standing, or report that an amount or account is delinquent, because the consumer failed to pay the disputed amount or related finance or other charges.

(3) *Acceleration of debt and restriction of account prohibited.* A creditor shall

not accelerate any part of the consumer's indebtedness or restrict or close a consumer's account solely because the consumer has exercised in good faith rights provided by this section. A creditor may be subject to the forfeiture penalty under 15 U.S.C. 1666(e) for failure to comply with any of the requirements of this section.

(4) *Permitted creditor actions.* A creditor is not prohibited from taking action to collect any undisputed portion of the item or bill; from deducting any disputed amount and related finance or other charges from the consumer's credit limit on the account; or from reflecting a disputed amount and related finance or other charges on a periodic statement, provided that the creditor indicates on or with the periodic statement that payment of any disputed amount and related finance or other charges is not required pending the creditor's compliance with this section.

(e) *Procedures if billing error occurred as asserted.* If a creditor determines that a billing error occurred as asserted, it shall within the time limits in paragraph (c)(2) of this section:

(1) Correct the billing error and credit the consumer's account with any disputed amount and related finance or other charges, as applicable; and

(2) Mail or deliver a correction notice to the consumer.

(f) *Procedures if different billing error or no billing error occurred.* If, after conducting a reasonable investigation, a creditor determines that no billing error occurred or that a different billing error occurred from that asserted, the creditor shall within the time limits in paragraph (c)(2) of this section:

(1) Mail or deliver to the consumer an explanation that sets forth the reasons for the creditor's belief that the billing error alleged by the consumer is incorrect in whole or in part;

(2) Furnish copies of documentary evidence of the consumer's indebtedness, if the consumer so requests; and

(3) If a different billing error occurred, correct the billing error and credit the consumer's account with any disputed amount and related finance or other charges, as applicable.

(g) *Creditor's rights and duties after resolution.* If a creditor, after complying with all of the requirements of

**Bur. of Consumer Financial Protection**

**§ 1026.14**

this section, determines that a consumer owes all or part of the disputed amount and related finance or other charges, the creditor:

(1) Shall promptly notify the consumer in writing of the time when payment is due and the portion of the disputed amount and related finance or other charges that the consumer still owes;

(2) Shall allow any time period disclosed under §1026.6(a)(1) or (b)(2)(v), as applicable, and §1026.7(a)(8) or (b)(8), as applicable, during which the consumer can pay the amount due under paragraph (g)(1) of this section without incurring additional finance or other charges;

(3) May report an account or amount as delinquent because the amount due under paragraph (g)(1) of this section remains unpaid after the creditor has allowed any time period disclosed under §1026.6(a)(1) or (b)(2)(v), as applicable, and §1026.7(a)(8) or (b)(8), as applicable or 10 days (whichever is longer) during which the consumer can pay the amount; but

(4) May not report that an amount or account is delinquent because the amount due under paragraph (g)(1) of the section remains unpaid, if the creditor receives (within the time allowed for payment in paragraph (g)(3) of this section) further written notice from the consumer that any portion of the billing error is still in dispute, unless the creditor also:

(i) Promptly reports that the amount or account is in dispute;

(ii) Mails or delivers to the consumer (at the same time the report is made) a written notice of the name and address of each person to whom the creditor makes a report; and

(iii) Promptly reports any subsequent resolution of the reported delinquency to all persons to whom the creditor has made a report.

(h) *Reassertion of billing error.* A creditor that has fully complied with the requirements of this section has no further responsibilities under this section (other than as provided in paragraph (g)(4) of this section) if a consumer reasserts substantially the same billing error.

(i) *Relation to Electronic Fund Transfer Act and Regulation E.* If an extension of

credit is incident to an electronic fund transfer, under an agreement between a consumer and a financial institution to extend credit when the consumer's account is overdrawn or to maintain a specified minimum balance in the consumer's account, the creditor shall comply with the requirements of Regulation E, 12 CFR 1005.11 governing error resolution rather than those of paragraphs (a), (b), (c), (e), (f), and (h) of this section.

EFFECTIVE DATE NOTE: At 81 FR 84369, Nov. 22, 2016, §1026.13 was amended by revising paragraph (i), effective Oct. 1, 2017. At 82 FR 18975, Apr. 25, 2017, the effective date was delayed to Apr. 1, 2018. For the convenience of the user, the revised text is set forth as follows:

**§ 1026.13 Billing error resolution.**

\* \* \* \* \*

(i) *Relation to Electronic Fund Transfer Act and Regulation E.* A creditor shall comply with the requirements of Regulation E, 12 CFR 1005.11, and 1005.18(e) as applicable, governing error resolution rather than those of paragraphs (a), (b), (c), (e), (f), and (h) of this section if:

(1) Except with respect to a prepaid account as defined in §1026.61, an extension of credit that is incident to an electronic fund transfer occurs under an agreement between the consumer and a financial institution to extend credit when the consumer's account is overdrawn or to maintain a specified minimum balance in the consumer's account; or

(2) With regard to a covered separate credit feature and an asset feature of a prepaid account where both are accessible by a hybrid prepaid-credit card as defined in §1026.61, an extension of credit that is incident to an electronic fund transfer occurs when the hybrid prepaid-credit card accesses both funds in the asset feature of the prepaid account and a credit extension from the credit feature with respect to a particular transaction.

\* \* \* \* \*

**§ 1026.14 Determination of annual percentage rate.**

(a) *General rule.* The annual percentage rate is a measure of the cost of credit, expressed as a yearly rate. An annual percentage rate shall be considered accurate if it is not more than 1/8th of 1 percentage point above or