

Bur. of Consumer Financial Protection

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(b) *Special rules*—(1) *Accounts with balances subject to deferred interest or similar program.* When a balance on a credit card account under an open-end (not home-secured) consumer credit plan is subject to a deferred interest or similar program that provides that a consumer will not be obligated to pay interest that accrues on the balance if the balance is paid in full prior to the expiration of a specified period of time:

(i) *Last two billing cycles.* The card issuer must allocate any amount paid by the consumer in excess of the required minimum periodic payment consistent with paragraph (a) of this section, except that, during the two billing cycles immediately preceding expiration of the specified period, the excess amount must be allocated first to the balance subject to the deferred interest or similar program and any remaining portion allocated to any other balances consistent with paragraph (a) of this section; or

(ii) *Consumer request.* The card issuer may at its option allocate any amount paid by the consumer in excess of the required minimum periodic payment among the balances on the account in the manner requested by the consumer.

(2) *Accounts with secured balances.* When a balance on a credit card account under an open-end (not home-secured) consumer credit plan is secured, the card issuer may at its option allocate any amount paid by the consumer in excess of the required minimum periodic payment to that balance if requested by the consumer.

§ 1026.54 Limitations on the imposition of finance charges.

(a) *Limitations on imposing finance charges as a result of the loss of a grace period*—(1) *General rule.* Except as provided in paragraph (b) of this section, a card issuer must not impose finance charges as a result of the loss of a grace period on a credit card account under an open-end (not home-secured) consumer credit plan if those finance charges are based on:

(i) Balances for days in billing cycles that precede the most recent billing cycle; or

(ii) Any portion of a balance subject to a grace period that was repaid prior to the expiration of the grace period.

(2) *Definition of grace period.* For purposes of paragraph (a)(1) of this section, “grace period” has the same meaning as in § 1026.5(b)(2)(ii)(B)(3).

(b) *Exceptions.* Paragraph (a) of this section does not apply to:

(1) Adjustments to finance charges as a result of the resolution of a dispute under § 1026.12 or § 1026.13; or

(2) Adjustments to finance charges as a result of the return of a payment.

§ 1026.55 Limitations on increasing annual percentage rates, fees, and charges.

(a) *General rule.* Except as provided in paragraph (b) of this section, a card issuer must not increase an annual percentage rate or a fee or charge required to be disclosed under § 1026.6(b)(2)(ii), (b)(2)(iii), or (b)(2)(xii) on a credit card account under an open-end (not home-secured) consumer credit plan.

(b) *Exceptions.* A card issuer may increase an annual percentage rate or a fee or charge required to be disclosed under § 1026.6(b)(2)(ii), (b)(2)(iii), or (b)(2)(xii) pursuant to an exception set forth in this paragraph even if that increase would not be permitted under a different exception.

(1) *Temporary rate, fee, or charge exception.* A card issuer may increase an annual percentage rate or a fee or charge required to be disclosed under § 1026.6(b)(2)(ii), (b)(2)(iii), or (b)(2)(xii) upon the expiration of a specified period of six months or longer, provided that:

(i) Prior to the commencement of that period, the card issuer disclosed in writing to the consumer, in a clear and conspicuous manner, the length of the period and the annual percentage rate, fee, or charge that would apply after expiration of the period; and

(ii) Upon expiration of the specified period:

(A) The card issuer must not apply an annual percentage rate, fee, or charge to transactions that occurred prior to the period that exceeds the annual percentage rate, fee, or charge that applied to those transactions prior to the period;

(B) If the disclosures required by paragraph (b)(1)(i) of this section are provided pursuant to § 1026.9(c), the card issuer must not apply an annual

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percentage rate, fee, or charge to transactions that occurred within 14 days after provision of the notice that exceeds the annual percentage rate, fee, or charge that applied to that category of transactions prior to provision of the notice; and

(C) The card issuer must not apply an annual percentage rate, fee, or charge to transactions that occurred during the period that exceeds the increased annual percentage rate, fee, or charge disclosed pursuant to paragraph (b)(1)(i) of this section.

(2) *Variable rate exception.* A card issuer may increase an annual percentage rate when:

(i) The annual percentage rate varies according to an index that is not under the card issuer's control and is available to the general public; and

(ii) The increase in the annual percentage rate is due to an increase in the index.

(3) *Advance notice exception.* A card issuer may increase an annual percentage rate or a fee or charge required to be disclosed under §1026.6(b)(2)(ii), (b)(2)(iii), or (b)(2)(xii) after complying with the applicable notice requirements in §1026.9(b), (c), or (g), provided that:

(i) If a card issuer discloses an increased annual percentage rate, fee, or charge pursuant to §1026.9(b), the card issuer must not apply that rate, fee, or charge to transactions that occurred prior to provision of the notice;

(ii) If a card issuer discloses an increased annual percentage rate, fee, or charge pursuant to §1026.9(c) or (g), the card issuer must not apply that rate, fee, or charge to transactions that occurred prior to or within 14 days after provision of the notice; and

(iii) This exception does not permit a card issuer to increase an annual percentage rate or a fee or charge required to be disclosed under §1026.6(b)(2)(ii), (iii), or (xii) during the first year after the account is opened, while the account is closed, or while the card issuer does not permit the consumer to use the account for new transactions. For purposes of this paragraph, an account is considered open no earlier than the date on which the account may first be used by the consumer to engage in transactions.

(4) *Delinquency exception.* A card issuer may increase an annual percentage rate or a fee or charge required to be disclosed under §1026.6(b)(2)(ii), (b)(2)(iii), or (b)(2)(xii) due to the card issuer not receiving the consumer's required minimum periodic payment within 60 days after the due date for that payment, provided that:

(i) The card issuer must disclose in a clear and conspicuous manner in the notice of the increase pursuant to §1026.9(c) or (g):

(A) A statement of the reason for the increase; and

(B) That the increased annual percentage rate, fee, or charge will cease to apply if the card issuer receives six consecutive required minimum periodic payments on or before the payment due date beginning with the first payment due following the effective date of the increase; and

(ii) If the card issuer receives six consecutive required minimum periodic payments on or before the payment due date beginning with the first payment due following the effective date of the increase, the card issuer must reduce any annual percentage rate, fee, or charge increased pursuant to this exception to the annual percentage rate, fee, or charge that applied prior to the increase with respect to transactions that occurred prior to or within 14 days after provision of the §1026.9(c) or (g) notice.

(5) *Workout and temporary hardship arrangement exception.* A card issuer may increase an annual percentage rate or a fee or charge required to be disclosed under §1026.6(b)(2)(ii), (b)(2)(iii), or (b)(2)(xii) due to the consumer's completion of a workout or temporary hardship arrangement or the consumer's failure to comply with the terms of such an arrangement, provided that:

(i) Prior to commencement of the arrangement (except as provided in §1026.9(c)(2)(v)(D)), the card issuer has provided the consumer with a clear and conspicuous written disclosure of the terms of the arrangement (including any increases due to the completion or failure of the arrangement); and

(ii) Upon the completion or failure of the arrangement, the card issuer must

not apply to any transactions that occurred prior to commencement of the arrangement an annual percentage rate, fee, or charge that exceeds the annual percentage rate, fee, or charge that applied to those transactions prior to commencement of the arrangement.

(6) *Servicemembers Civil Relief Act exception.* If an annual percentage rate or a fee or charge required to be disclosed under § 1026.6(b)(2)(ii), (iii), or (xii) has been decreased pursuant to 50 U.S.C. app. 527 or a similar Federal or state statute or regulation, a card issuer may increase that annual percentage rate, fee, or charge once 50 U.S.C. app. 527 or the similar statute or regulation no longer applies, provided that the card issuer must not apply to any transactions that occurred prior to the decrease an annual percentage rate, fee, or charge that exceeds the annual percentage rate, fee, or charge that applied to those transactions prior to the decrease.

(7) *Index replacement and margin change exception.* A card issuer may increase an annual percentage rate when:

(i) The card issuer changes the index and margin used to determine the annual percentage rate if the original index becomes unavailable, as long as historical fluctuations in the original and replacement indices were substantially similar, and as long as the replacement index and replacement margin will produce a rate substantially similar to the rate that was in effect at the time the original index became unavailable. If the replacement index is newly established and therefore does not have any rate history, it may be used if it and the replacement margin will produce a rate substantially similar to the rate in effect when the original index became unavailable; or

(ii) If a variable rate on the plan is calculated using a LIBOR index, the card issuer changes the LIBOR index and the margin for calculating the variable rate on or after April 1, 2022, to a replacement index and a replacement margin, as long as historical fluctuations in the LIBOR index and replacement index were substantially similar, and as long as the replacement index value in effect on October 18, 2021, and replacement margin will produce an annual percentage rate sub-

stantially similar to the rate calculated using the LIBOR index value in effect on October 18, 2021, and the margin that applied to the variable rate immediately prior to the replacement of the LIBOR index used under the plan. If the replacement index is newly established and therefore does not have any rate history, it may be used if the replacement index value in effect on October 18, 2021, and the replacement margin will produce an annual percentage rate substantially similar to the rate calculated using the LIBOR index value in effect on October 18, 2021, and the margin that applied to the variable rate immediately prior to the replacement of the LIBOR index used under the plan. If the replacement index is not published on October 18, 2021, the card issuer generally must use the next calendar day for which both the LIBOR index and the replacement index are published as the date for selecting indices values in determining whether the annual percentage rate based on the replacement index is substantially similar to the rate based on the LIBOR index. The one exception is that if the replacement index is the spread-adjusted index based on SOFR recommended by the Alternative Reference Rates Committee for consumer products to replace the 1-month, 3-month, 6-month, or 1-year U.S. Dollar LIBOR index, the card issuer must use the index value on June 30, 2023, for the LIBOR index and, for the SOFR-based spread-adjusted index for consumer products, must use the index value on the first date that index is published, in determining whether the annual percentage rate based on the replacement index is substantially similar to the rate based on the LIBOR index.

(c) *Treatment of protected balances—(1)*

Definition of protected balance. For purposes of this paragraph, “protected balance” means the amount owed for a category of transactions to which an increased annual percentage rate or an increased fee or charge required to be disclosed under § 1026.6(b)(2)(ii), (b)(2)(iii), or (b)(2)(xii) cannot be applied after the annual percentage rate, fee, or charge for that category of transactions has been increased pursuant to paragraph (b)(3) of this section.

(2) *Repayment of protected balance.* The card issuer must not require repayment of the protected balance using a method that is less beneficial to the consumer than one of the following methods:

(i) The method of repayment for the account before the effective date of the increase;

(ii) An amortization period of not less than five years, beginning no earlier than the effective date of the increase; or

(iii) A required minimum periodic payment that includes a percentage of the balance that is equal to no more than twice the percentage required before the effective date of the increase.

(d) *Continuing application.* This section continues to apply to a balance on a credit card account under an open-end (not home-secured) consumer credit plan after:

(1) The account is closed or acquired by another creditor; or

(2) The balance is transferred from a credit card account under an open-end (not home-secured) consumer credit plan issued by a creditor to another credit account issued by the same creditor or its affiliate or subsidiary (unless the account to which the balance is transferred is subject to § 1026.40).

(e) *Promotional waivers or rebates of interest, fees, and other charges.* If a card issuer promotes the waiver or rebate of finance charges due to a periodic interest rate or fees or charges required to be disclosed under § 1026.6(b)(2)(ii), (iii), or (xii) and applies the waiver or rebate to a credit card account under an open-end (not home-secured) consumer credit plan, any cessation of the waiver or rebate on that account constitutes an increase in an annual percentage rate, fee, or charge for purposes of this section.

[76 FR 79772, Dec. 22, 2011, as amended at 86 FR 69782, Dec. 8, 2021]

§ 1026.56 Requirements for over-the-limit transactions.

(a) *Definition.* For purposes of this section, the term “over-the-limit transaction” means any extension of credit by a card issuer to complete a transaction that causes a consumer’s credit card account balance to exceed the credit limit.

(b) *Opt-in requirement*—(1) *General.* A card issuer shall not assess a fee or charge on a consumer’s credit card account under an open-end (not home-secured) consumer credit plan for an over-the-limit transaction unless the card issuer:

(i) Provides the consumer with an oral, written or electronic notice, segregated from all other information, describing the consumer’s right to affirmatively consent, or opt in, to the card issuer’s payment of an over-the-limit transaction;

(ii) Provides a reasonable opportunity for the consumer to affirmatively consent, or opt in, to the card issuer’s payment of over-the-limit transactions;

(iii) Obtains the consumer’s affirmative consent, or opt-in, to the card issuer’s payment of such transactions;

(iv) Provides the consumer with confirmation of the consumer’s consent in writing, or if the consumer agrees, electronically; and

(v) Provides the consumer notice in writing of the right to revoke that consent following the assessment of an over-the-limit fee or charge.

(2) *Completion of over-the-limit transactions without consumer consent.* Notwithstanding the absence of a consumer’s affirmative consent under paragraph (b)(1)(iii) of this section, a card issuer may pay any over-the-limit transaction on a consumer’s account provided that the card issuer does not impose any fee or charge on the account for paying that over-the-limit transaction.

(c) *Method of election.* A card issuer may permit a consumer to consent to the card issuer’s payment of any over-the-limit transaction in writing, orally, or electronically, at the card issuer’s option. The card issuer must also permit the consumer to revoke his or her consent using the same methods available to the consumer for providing consent.

(d) *Timing and placement of notices*—(1) *Initial notice*—(i) *General.* The notice required by paragraph (b)(1)(i) of this section shall be provided prior to the assessment of any over-the-limit fee or charge on a consumer’s account.

(ii) *Oral or electronic consent.* If a consumer consents to the card issuer’s