

February 1, 2023

Unofficial Redline of the Credit Card Late Fees Proposed Rule

On February 1, 2023, the Consumer Financial Protection Bureau (Bureau or CFPB) issued a proposed rule ([Credit Card Late Fees Proposed Rule](#)) that would amend Regulation Z and its commentary to better ensure that the late fees charged on credit card accounts are “reasonable and proportional” to the late payment as required under the Truth in Lending Act (TILA). The Bureau is releasing this unofficial, informal redline to assist industry and other stakeholders in reviewing the proposed changes to Regulation Z’s regulatory text and commentary.

The underlying (unmarked) text in this document reflects the existing text of the relevant provisions of Regulation Z and its commentary that are impacted by the proposed rule. The changes that the proposed rule would make to Regulation Z and its commentary are marked in red.

This redline is not a substitute for reviewing Regulation Z, its commentary, or the proposed rule. If any conflicts exist between this redline and the text of Regulation Z, its commentary, or the proposed rule, the documents published in the *Federal Register* are the controlling documents. The redline includes asterisks to indicate where it omits text from current Regulation Z or its commentary that the proposed rule would not change.

PART 1026—TRUTH IN LENDING (REGULATION Z)

* * * * *

Subpart G—Special Rules Applicable to Credit Card Accounts and Open-End Credit Offered to College Students

* * * * *

§ 1026.52 Limitation on fees.

* * * * *

(b) *Limitations on penalty fees.* * * *

(1) *General rule.* * * *

(ii) *Safe harbors.* A card issuer may impose a fee for a late payment on an account if the dollar amount of the fee does not exceed \$8. Other than a fee for a late payment, a card issuer may impose a fee for violating the terms or other requirements of an account if the dollar amount of the fee does not exceed, as applicable:

(A) \$30;

(B) \$41 if the card issuer previously imposed a fee pursuant to paragraph (b)(1)(ii)(A) of this section for a violation of the same type that occurred during the same billing cycle or one of the next six billing cycles; or

(C) Three percent of the delinquent balance on a charge card account that requires payment of outstanding balances in full at the end of each billing cycle if the card issuer has not received the required payment for two or more consecutive billing cycles -, notwithstanding the limitation on the amount of a late payment fee in paragraph (b)(1)(ii) of this section.

(D) The amounts in paragraphs (b)(1)(ii)(A) and (b)(1)(ii)(B) of this section will be adjusted annually by the Bureau to reflect changes in the Consumer Price Index.

(2) *Prohibited fees -*

(i) ~~Fees~~Late payment fees that exceed 25 percent of the amount of the required minimum periodic payment or fees, other than late payment fees, that exceed dollar amount associated with violation -

(A) *Generally.* A card issuer must not impose a fee for a late payment on a credit card account under an open-end (not home-secured) consumer credit plan that exceeds 25 percent of the amount of the required minimum periodic payment due immediately prior to assessment of the late payment fee. For fees other than a fee for a late payment, a card issuer must not impose a fee for violating the terms or other requirements of a credit card account ~~under an open-end (not home-secured) consumer credit plan~~described above that exceeds the dollar amount associated with the violation.

* * * * *

Supplement I to Part 1026—Official Interpretations

* * * * *

Section 1026.7 - Periodic Statement

* * * * *

7(b)(11) Due Date; Late Payment Costs

1. *Informal periods affecting late payments.* Although the terms of the account agreement may provide that a card issuer may assess a late payment fee if a payment is not received by a certain date, the card issuer may have an informal policy or practice that delays the assessment of the late payment fee for payments received a brief period of time after the date upon which a card issuer has the contractual right to impose the fee. A card issuer must disclose the due date according to the legal obligation between the parties, and need not consider the end of an informal “courtesy period” as the due date under § 1026.7(b)(11).

2. *Assessment of late payment fees.* Some [stateState](#) or other laws require that a certain number of days must elapse following a due date before a late payment fee may be imposed. In addition, a card issuer may be restricted by the terms of the account agreement from imposing a late payment fee until a payment is late for a certain number of days following a due date. For example, assume a payment is due on March 10 and the account agreement or [stateState](#) law provides that a late payment fee cannot be assessed before March 21. A card issuer must disclose the due date under the terms of the legal obligation (March 10 in this example), and not a date different than the due date, such as when the card issuer is restricted by the account agreement or [stateState](#) or other law from imposing a late payment fee unless a payment is late for a certain number of days following the due date (March 21 in this example). Consumers' rights under [stateState](#) law to avoid the imposition of late payment fees during a specified period following a due date are unaffected by the disclosure requirement. In this example, the card issuer would disclose March 10 as the due date for purposes of § 1026.7(b)(11), but could not, under [stateState](#) law, assess a late payment fee before March 21.

3. *Fee or rate triggered by multiple events.* If a late payment fee or penalty rate is triggered after multiple events, such as two late payments in six months, the card issuer may, but is not required to, disclose the late payment and penalty rate disclosure each month. The disclosures must be included on any periodic statement for which a late payment could trigger the late payment fee or penalty rate, such as after the consumer made one late payment in this example. For example, if a cardholder has already made one late payment, the disclosure must be on each statement for the following five billing cycles.

4. *Range of late fees or penalty rates.* A card issuer that imposes a range of late payment fees or rates on a credit card account under an open-end (not home-secured) consumer credit plan may state the highest fee or rate along with an indication lower fees or rates could be

imposed. For example, a phrase indicating the late payment fee could be “up to \$ ~~298~~” complies with this requirement.

5. *Penalty rate in effect.* If the highest penalty rate has previously been triggered on an account, the card issuer may, but is not required to, delete the amount of the penalty rate and the warning that the rate may be imposed for an untimely payment, as not applicable. Alternatively, the card issuer may, but is not required to, modify the language to indicate that the penalty rate has been increased due to previous late payments (if applicable).

6. *Same day each month.* The requirement that the due date be the same day each month means that the due date must generally be the same numerical date. For example, a consumer’s due date could be the 25th of every month. In contrast, a due date that is the same relative date but not numerical date each month, such as the third Tuesday of the month, generally would not comply with this requirement. However, a consumer’s due date may be the last day of each month, even though that date will not be the same numerical date. For example, if a consumer’s due date is the last day of each month, it will fall on February 28th (or February 29th in a leap year) and on August 31st.

7. *Change in due date.* A creditor may adjust a consumer’s due date from time to time provided that the new due date will be the same numerical date each month on an ongoing basis. For example, a creditor may choose to honor a consumer’s request to change from a due date that is the 20th of each month to the 5th of each month, or may choose to change a consumer’s due date from time to time for operational reasons. *See* comment 2(a)(4)-3 for guidance on transitional billing cycles.

8. *Billing cycles longer than one month.* The requirement that the due date be the same day each month does not prohibit billing cycles that are two or three months, provided that the due date for each billing cycle is on the same numerical date of the month. For example, a

creditor that establishes two-month billing cycles could send a consumer periodic statements disclosing due dates of January 25, March 25, and May 25.

9. *Payment due date when the creditor does not accept or receive payments by mail.* If the due date in a given month falls on a day on which the creditor does not receive or accept payments by mail and the creditor is required to treat a payment received the next business day as timely pursuant to § 1026.10(d), the creditor must disclose the due date according to the legal obligation between the parties, not the date as of which the creditor is permitted to treat the payment as late. For example, assume that the consumer's due date is the 4th of every month, and the creditor does not accept or receive payments by mail on Thursday, July 4. Pursuant to § 1026.10(d), the creditor may not treat a mailed payment received on the following business day, Friday, July 5, as late for any purpose. The creditor must nonetheless disclose July 4 as the due date on the periodic statement and may not disclose a July 5 due date.

* * * * *

Section 1026.52—Limitations on Fees

52(a) Limitations during first year after account opening.

52(a)(1) General rule

1. *Application.* The 25 percent limit in § 1026.52(a)(1) applies to fees that the card issuer charges to the account as well as to fees that the card issuer requires the consumer to pay with respect to the account through other means (such as through a payment from the consumer's asset account, including a prepaid account as defined in § 1026.61, to the card issuer or from another credit account provided by the card issuer). For example:

i. Assume that, under the terms of a credit card account, a consumer is required to pay \$120 in fees for the issuance or availability of credit at account opening. The consumer is also required to pay a cash advance fee that is equal to five percent of the cash advance and a late

payment fee of ~~\$158~~ if the required minimum periodic payment is not received by the payment due date (which is the twenty-fifth of the month). At account opening on January 1 of year one, the credit limit for the account is \$500. Section 1026.52(a)(1) permits the card issuer to charge to the account the \$120 in fees for the issuance or availability of credit at account opening. On February 1 of year one, the consumer uses the account for a \$100 cash advance. Section 1026.52(a)(1) permits the card issuer to charge a \$5 cash-advance fee to the account. On March 26 of year one, the card issuer has not received the consumer's required minimum periodic payment. Section 1026.52(a)(2) permits the card issuer to charge a ~~\$158~~ late payment fee to the account. On July 15 of year one, the consumer uses the account for a \$50 cash advance. Section 1026.52(a)(1) does not permit the card issuer to charge a \$2.50 cash advance fee to the account. Furthermore, § 1026.52(a)(1) prohibits the card issuer from collecting the \$2.50 cash advance fee from the consumer by other means.

ii. Assume that, under the terms of a credit card account, a consumer is required to pay \$125 in fees for the issuance or availability of credit during the first year after account opening. At account opening on January 1 of year one, the credit limit for the account is \$500. Section 1026.52(a)(1) permits the card issuer to charge the \$125 in fees to the account. However, § 1026.52(a)(1) prohibits the card issuer from requiring the consumer to make payments to the card issuer for additional non-exempt fees with respect to the account during the first year after account opening. Section 1026.52(a)(1) also prohibits the card issuer from requiring the consumer to open a separate credit account with the card issuer to fund the payment of additional non-exempt fees during the first year after the credit card account is opened.

iii. Assume that a consumer opens a prepaid account accessed by a prepaid card on January 1 of year one and opens a covered separate credit feature accessible by a hybrid prepaid-credit card as defined by § 1026.61 that is a credit card account under an open-end (not home-

secured) consumer credit plan on March 1 of year one. Assume that, under the terms of the covered separate credit feature accessible by the hybrid prepaid-credit card, a consumer is required to pay \$50 in fees for the issuance or availability of credit at account opening. At credit account opening on March 1 of year one, the credit limit for the account is \$200. Section 1026.52(a)(1) permits the card issuer to charge the \$50 in fees to the credit account. However, § 1026.52(a)(1) prohibits the card issuer from requiring the consumer to make payments to the card issuer for additional non-exempt fees with respect to the credit account during the first year after account opening. Section 1026.52(a)(1) also prohibits the card issuer from requiring the consumer to open an additional credit feature with the card issuer to fund the payment of additional non-exempt fees during the first year after the covered separate credit feature is opened.

iv. Assume that a consumer opens a prepaid account accessed by a prepaid card on January 1 of year one and opens a covered separate credit feature accessible by a hybrid prepaid-credit card as defined in § 1026.61 that is a credit card account under an open-end (not home-secured) consumer credit plan on March 1 of year one. Assume that, under the terms of the covered separate credit feature accessible by the hybrid prepaid-credit card, a consumer is required to pay \$120 in fees for the issuance or availability of credit at account opening. The consumer is also required to pay a cash advance fee that is equal to 5 percent of any cash advance and a late payment fee of \$8 if the required minimum periodic payment is not received by the payment due date (which is the 25th of the month). At credit account opening on March 1 of year one, the credit limit for the account is \$500. Section 1026.52(a)(1) permits the card issuer to charge to the account the \$120 in fees for the issuance or availability of credit at account opening. On April 1 of year one, the consumer uses the account for a \$100 cash advance. Section 1026.52(a)(1) permits the card issuer to charge a \$5 cash advance fee to the

account. On April 26 of year one, the card issuer has not received the consumer's required minimum periodic payment. Section 1026.52(a)(2) permits the card issuer to charge a \$ ~~15~~8 late payment fee to the account. On July 15 of year one, the consumer uses the account for a \$50 cash advance. Section 1026.52(a)(1) does not permit the card issuer to charge a \$2.50 cash advance fee to the account, because the total amount of non-exempt fees reached the 25 percent limit with the \$5 cash advance fee on April 1 (the \$ ~~15~~8 late fee on April 26 is exempt pursuant to § 1026.52(a)(2)(i)). Furthermore, § 1026.52(a)(1) prohibits the card issuer from collecting the \$2.50 cash advance fee from the consumer by other means.

2. Fees that exceed 25 percent limit. A card issuer that charges a fee to a credit card account that exceeds the 25 percent limit complies with § 1026.52(a)(1) if the card issuer waives or removes the fee and any associated interest charges or credits the account for an amount equal to the fee and any associated interest charges within a reasonable amount of time but no later than the end of the billing cycle following the billing cycle during which the fee was charged. For example, assuming the facts in the example in comment 52(a)(1)-1.i above, the card issuer complies with § 1026.52(a)(1) if the card issuer charged the \$2.50 cash advance fee to the account on July 15 of year one but waived or removed the fee or credited the account for \$2.50 (plus any interest charges on that \$2.50) at the end of the billing cycle.

3. Changes in credit limit during first year.

i. Increases in credit limit. If a card issuer increases the credit limit during the first year after the account is opened, § 1026.52(a)(1) does not permit the card issuer to require the consumer to pay additional fees that would otherwise be prohibited (such as a fee for increasing the credit limit). For example, assume that, at account opening on January 1, the credit limit for a credit card account is \$400 and the consumer is required to pay \$100 in fees for the issuance or availability of credit. On July 1, the card issuer increases the credit limit for the account to

\$600. Section 1026.52(a)(1) does not permit the card issuer to require the consumer to pay additional fees based on the increased credit limit.

ii. *Decreases in credit limit.* If a card issuer decreases the credit limit during the first year after the account is opened, § 1026.52(a)(1) requires the card issuer to waive or remove any fees charged to the account that exceed 25 percent of the reduced credit limit or to credit the account for an amount equal to any fees the consumer was required to pay with respect to the account that exceed 25 percent of the reduced credit limit within a reasonable amount of time but no later than the end of the billing cycle following the billing cycle during which the credit limit was reduced. For example, assume that, at account opening on January 1, the credit limit for a credit card account is \$1,000 and the consumer is required to pay \$250 in fees for the issuance or availability of credit. The billing cycles for the account begin on the first day of the month and end on the last day of the month. On July 30, the card issuer decreases the credit limit for the account to \$600. Section 1026.52(a)(1) requires the card issuer to waive or remove \$100 in fees from the account or to credit the account for an amount equal to \$100 within a reasonable amount of time but no later than August 31.

4. *Date on which account may first be used by consumer to engage in transactions.*

i. *Methods of compliance.* For purposes of § 1026.52(a)(1), 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. A card issuer may consider an account open for purposes of § 1026.52(a)(1) on any of the following dates:

A. The date the account is first used by the consumer for a transaction (such as when an account is established in connection with financing the purchase of goods or services).

B. The date the consumer complies with any reasonable activation procedures imposed by the card issuer for preventing fraud or unauthorized use of a new account (such as requiring

the consumer to provide information that verifies his or her identity), provided that the account may be used for transactions on that date.

C. The date that is seven days after the card issuer mails or delivers to the consumer account-opening disclosures that comply with § 1026.6, provided that the consumer may use the account for transactions after complying with any reasonable activation procedures imposed by the card issuer for preventing fraud or unauthorized use of the new account (such as requiring the consumer to provide information that verifies his or her identity). If a card issuer has reasonable procedures designed to ensure that account-opening disclosures that comply with § 1026.6 are mailed or delivered to consumers no later than a certain number of days after the card issuer establishes the account, the card issuer may add that number of days to the seven-day period for purposes of determining the date on which the account was opened.

ii. *Examples.* A. Assume that, on July 1 of year one, a credit card account under an open-end (not home-secured) consumer credit plan is established in connection with financing the purchase of goods or services and a \$500 transaction is charged to the account by the consumer. The card issuer may consider the account open on July 1 of year one for purposes of § 1026.52(a)(1). Accordingly, § 1026.52(a)(1) ceases to apply to the account on July 1 of year two.

B. Assume that, on July 1 of year one, a card issuer approves a consumer's application for a credit card account under an open-end (not home-secured) consumer credit plan and establishes the account on its internal systems. On July 5, the card issuer mails or delivers to the consumer account-opening disclosures that comply with § 1026.6. If the consumer may use the account for transactions on the date the consumer complies with any reasonable procedures imposed by the card issuer for preventing fraud or unauthorized use, the card issuer may

consider the account open on July 12 of year one for purposes of § 1026.52(a)(1). Accordingly, § 1026.52(a)(1) ceases to apply to the account on July 12 of year two.

C. Same facts as in paragraph B above except that the card issuer has adopted reasonable procedures designed to ensure that account-opening disclosures that comply with § 1026.6 are mailed or delivered to consumers no later than three days after an account is established on its systems. If the consumer may use the account for transactions on the date the consumer complies with any reasonable procedures imposed by the card issuer for preventing fraud or unauthorized use, the card issuer may consider the account open on July 11 of year one for purposes of § 1026.52(a)(1). Accordingly, § 1026.52(a)(1) ceases to apply to the account on July 11 of year two. However, if the consumer uses the account for a transaction or complies with the card issuer's reasonable procedures for preventing fraud or unauthorized use on July 8 of year one, the card issuer may, at its option, consider the account open on that date for purposes of § 1026.52(a)(1) and § 1026.52(a)(1) therefore ceases to apply to the account on July 8 of year two.

* * * * *

52(b) Limitations on Penalty Fees

1. *Fees for violating the account terms or other requirements.* For purposes of § 1026.52(b), a fee includes any charge imposed by a card issuer based on an act or omission that violates the terms of the account or any other requirements imposed by the card issuer with respect to the account, other than charges attributable to periodic interest rates. Accordingly, for purposes of § 1026.52(b), a fee does not include charges attributable to an increase in an annual percentage rate based on an act or omission that violates the terms or other requirements of an account.

i. The following are examples of fees that are subject to the limitations in § 1026.52(b) or are prohibited by § 1026.52(b):

A. Late payment fees and any other fees imposed by a card issuer if an account becomes delinquent or if a payment is not received by a particular date. A late payment fee or late fee is any fee imposed for a late payment. See § 1026.60(b)(9) and accompanying commentary.

B. Returned payment fees and any other fees imposed by a card issuer if a payment received via check, automated clearing house, or other payment method is returned.

C. Any fee or charge for an over-the-limit transaction as defined in § 1026.56(a), to the extent the imposition of such a fee or charge is permitted by § 1026.56.

D. Any fee imposed by a card issuer if payment on a check that accesses a credit card account is declined.

E. Any fee or charge for a transaction that the card issuer declines to authorize. *See* § 1026.52(b)(2)(i)(B).

F. Any fee imposed by a card issuer based on account inactivity (including the consumer's failure to use the account for a particular number or dollar amount of transactions or a particular type of transaction). *See* § 1026.52(b)(2)(i)(B).

G. Any fee imposed by a card issuer based on the closure or termination of an account. *See* § 1026.52(b)(2)(i)(B).

ii. The following are examples of fees to which § 1026.52(b) does not apply:

A. Balance transfer fees.

B. Cash advance fees.

C. Foreign transaction fees.

D. Annual fees and other fees for the issuance or availability of credit described in § 1026.60(b)(2), except to the extent that such fees are based on account inactivity. *See* § 1026.52(b)(2)(i)(B).

E. Fees for insurance described in § 1026.4(b)(7) or debt cancellation or debt suspension coverage described in § 1026.4(b)(10) written in connection with a credit transaction, provided that such fees are not imposed as a result of a violation of the account terms or other requirements of an account.

F. Fees for making an expedited payment (to the extent permitted by § 1026.10(e)).

G. Fees for optional services (such as travel insurance).

H. Fees for reissuing a lost or stolen card.

2. *Rounding to nearest whole dollar.* A card issuer may round any fee that complies with § 1026.52(b) to the nearest whole dollar. For example, if § 1026.52(b) permits a card issuer to impose a late payment fee of \$~~215~~.50, the card issuer may round that amount up to the nearest whole dollar and impose a late payment fee of \$~~226~~. However, if the late payment fee permitted by § 1026.52(b) were \$~~215~~.49, the card issuer would not be permitted to round that amount up to \$~~226~~, although the card issuer could round that amount down and impose a late payment fee of \$~~215~~.

3. *Fees in connection with covered separate credit features accessible by hybrid prepaid-credit cards.* With regard to a covered separate credit feature and an asset feature on a prepaid account that are both accessible by a hybrid prepaid-credit card as defined in § 1026.61 where the credit feature is a credit card account under an open-end (not home-secured) consumer credit plan, § 1026.52(b) applies to any fee for violating the terms or other requirements of the credit feature, regardless of whether those fees are imposed on the credit feature or on the asset feature of the prepaid account. For example, assume that a late fee will

be imposed by the card issuer if the covered separate credit feature becomes delinquent or if a payment is not received by a particular date. This fee is subject to § 1026.52(b) regardless of whether the fee is imposed on the asset feature of the prepaid account or on the separate credit feature.

4. *Fees imposed on the asset feature of a prepaid account that are not charges imposed as part of the plan.* Section 1026.52(b) does not apply to any fee or charge imposed on the asset feature of the prepaid account that is not a charge imposed as part of the plan under § 1026.6(b)(3). See § 1026.6(b)(3)(iii)(D) and (E) and related commentary regarding fees imposed on the asset feature prepaid account that are not charges imposed as part of the plan under § 1026.6(b)(3) with respect to covered separate credit features accessible by hybrid prepaid-credit cards and non-covered separate credit features as those terms are defined in § 1026.61.

5. *Examples. Any dollar amount examples in the commentary to § 1026.52(b) relating to the safe harbors in § 1026.52(b)(1) are based on the original historical safe-harbor thresholds of \$25 and \$35 for penalty fees other than late fees, and on the threshold of \$8 for late fees.*

52(b)(1) General Rule

1. *Relationship between § 1026.52(b)(1)(i), (b)(1)(ii), and (b)(2).*

i. *Relationship between § 1026.52(b)(1)(i) and (b)(1)(ii).* A card issuer may impose a fee for violating the terms or other requirements of an account pursuant to either § 1026.52(b)(1)(i) or (b)(1)(ii).

A. A card issuer that complies with the safe harbors in § 1026.52(b)(1)(ii) is not required to determine that its fees represent a reasonable proportion of the total costs incurred by the card issuer as a result of a type of violation under § 1026.52(b)(1)(i).

B. A card issuer may impose a fee for one type of violation pursuant to § 1026.52(b)(1)(i) and may impose a fee for a different type of violation pursuant to § 1026.52(b)(1)(ii). For example, a card issuer may impose a late payment fee of ~~\$30~~ based on a cost determination pursuant to § 1026.52(b)(1)(i) but impose returned payment and over-the-limit fees of \$25 or \$35 pursuant to the safe harbors in § 1026.52(b)(1)(ii).

C. A card issuer that previously based the amount of a penalty fee for a particular type of violation on a cost determination pursuant to § 1026.52(b)(1)(i) may begin to impose a penalty fee for that type of violation that is consistent with § 1026.52(b)(1)(ii) at any time (subject to the notice requirements in § 1026.9), provided that the first fee imposed pursuant to § 1026.52(b)(1)(ii) is consistent with § 1026.52(b)(1)(ii)(A). For example, assume that consistent with § 1026.56, a late consumer has affirmatively consented to the payment of transactions that exceed the credit limit. A transaction occurs on January 15 that causes the account balance to exceed the credit limit and ~~that~~, based on a cost determination pursuant to § 1026.52(b)(1)(i), the card issuer imposes a \$30 ~~late over-the-limit fee. The consumer's next monthly payment fee. Another late payment occurs on~~ brings the account balance below the credit limit. On July 15-, another transaction causes the account balance to exceed the credit limit. The card issuer may impose another \$30 ~~late payment over-the-limit~~ fee pursuant to § 1026.52(b)(1)(i) or may impose a \$25 ~~late payment over-the-limit~~ fee pursuant to § 1026.52(b)(1)(ii)(A). However, the card issuer may not impose a \$35 ~~late payment over-the-limit~~ fee pursuant to § 1026.52(b)(1)(ii)(B). If the card issuer imposes a \$25 fee pursuant to § 1026.52(b)(1)(ii)(A) for the July 15 ~~late payment over-the-limit transaction~~ and ~~another late payment occurs~~ on September 15 another transaction causes the account balance to exceed the credit limit, the card issuer may impose a \$35 fee for the September 15 ~~late payment over-the-limit transaction~~ pursuant to § 1026.52(b)(1)(ii)(B).

ii. *Relationship between § 1026.52(b)(1) and (b)(2)*. Section 1026.52(b)(1) does not permit a card issuer to impose a fee that is inconsistent with the prohibitions in § 1026.52(b)(2). For example, if § 1026.52(b)(2)(i) prohibits the card issuer from imposing a late payment fee that exceeds \$~~45~~7, § 1026.52(b)(1)(ii) does not permit the card issuer to impose a higher late payment fee.

52(b)(1)(i) Fees Based on Costs

1. *Costs incurred as a result of violations*. Section 1026.52(b)(1)(i) does not require a card issuer to base a fee on the costs incurred as a result of a specific violation of the terms or other requirements of an account. Instead, for purposes of § 1026.52(b)(1)(i), a card issuer must have determined that a fee for violating the terms or other requirements of an account represents a reasonable proportion of the costs incurred by the card issuer as a result of that type of violation. A card issuer may make a single determination for all of its credit card portfolios or may make separate determinations for each portfolio. The factors relevant to this determination include:

- i. The number of violations of a particular type experienced by the card issuer during a prior period of reasonable length (for example, a period of twelve months).
- ii. The costs incurred by the card issuer during that period as a result of those violations.
- iii. At the card issuer's option, the number of fees imposed by the card issuer as a result of those violations during that period that the card issuer reasonably estimates it will be unable to collect. *See comment 52(b)(1)(i)-5.*
- iv. At the card issuer's option, reasonable estimates for an upcoming period of changes in the number of violations of that type, the resulting costs, and the number of fees that the card issuer will be unable to collect. *See illustrative examples in comments 52(b)(1)(i)-6 through -9.*

2. *Amounts excluded from cost analysis.* The following amounts are not costs incurred by a card issuer as a result of violations of the terms or other requirements of an account for purposes of § 1026.52(b)(1)(i):

i. Losses and associated costs (including the cost of holding reserves against potential losses ~~and~~, the cost of funding delinquent accounts, and any collection costs that are incurred after an account is charged off in accordance with loan-loss provisions).

ii. Costs associated with evaluating whether consumers who have not violated the terms or other requirements of an account are likely to do so in the future (such as the costs associated with underwriting new accounts). However, once a violation of the terms or other requirements of an account has occurred, the costs associated with preventing additional violations for a reasonable period of time are costs incurred by a card issuer as a result of violations of the terms or other requirements of an account for purposes of § 1026.52(b)(1)(i).

3. *Third-party charges.* As a general matter, amounts charged to the card issuer by a third party as a result of a violation of the terms or other requirements of an account are costs incurred by the card issuer for purposes of § 1026.52(b)(1)(i). For example, if a card issuer is charged a specific amount by a third party for each returned payment, that amount is a cost incurred by the card issuer as a result of returned payments. However, if the amount is charged to the card issuer by an affiliate or subsidiary of the card issuer, the card issuer must have determined that the charge represents a reasonable proportion of the costs incurred by the affiliate or subsidiary as a result of the type of violation. For example, if an affiliate of a card issuer provides collection services to the card issuer on delinquent accounts, the card issuer must have determined that the amounts charged to the card issuer by the affiliate for such services represent a reasonable proportion of the costs incurred by the affiliate as a result of late payments.

4. *Amounts charged by other card issuers.* The fact that a card issuer's fees for violating the terms or other requirements of an account are comparable to fees assessed by other card issuers does not satisfy the requirements of § 1026.52(b)(1)(i).

5. *Uncollected fees.* For purposes of § 1026.52(b)(1)(i), a card issuer may consider fees that it is unable to collect when determining the appropriate fee amount. Fees that the card issuer is unable to collect include fees imposed on accounts that have been charged off by the card issuer, fees that have been discharged in bankruptcy, and fees that the card issuer is required to waive in order to comply with a legal requirement (such as a requirement imposed by 12 CFR ~~Part~~part 1026 or 50 U.S.C. app. 527). However, fees that the card issuer chooses not to impose or chooses not to collect (such as fees the card issuer chooses to waive at the request of the consumer or under a workout or temporary hardship arrangement) are not relevant for purposes of this determination. See illustrative examples in comments 52(b)(2)(i)-6 through -9.

6. *Late payment fees.*

i. *Costs incurred as a result of late payments.* For purposes of § 1026.52(b)(1)(i), the costs incurred by a card issuer as a result of late payments include the costs associated with the collection of late payments, such as the costs associated with notifying consumers of delinquencies and resolving delinquencies (including the establishment of workout and temporary hardship arrangements).

ii. *Examples.* A. *Late payment fee based on past delinquencies and costs.* Assume that, during year one, a card issuer experienced 1 million delinquencies and incurred \$26 million in costs as a result of those delinquencies. For purposes of § 1026.52(b)(1)(i), a \$26 late payment fee would represent a reasonable proportion of the total costs incurred by the card issuer as a result of late payments during year two.

B. Adjustment based on fees card issuer is unable to collect. Same facts as above except that the card issuer imposed a late payment fee for each of the 1 million delinquencies experienced during year one but was unable to collect 25% of those fees (in other words, the card issuer was unable to collect 250,000 fees, leaving a total of 750,000 late payments for which the card issuer did collect or could have collected a fee). For purposes of § 1026.52(b)(2)(i), a late payment fee of \$35 would represent a reasonable proportion of the total costs incurred by the card issuer as a result of late payments during year two.

C. Adjustment based on reasonable estimate of future changes. Same facts as paragraphs A and B above except the card issuer reasonably estimates that ~~—~~ based on past delinquency rates and other factors relevant to potential delinquency rates for year two ~~—~~ it will experience a 2% decrease in delinquencies during year two (in other words, 20,000 fewer delinquencies for a total of 980,000). The card issuer also reasonably estimates that it will be unable to collect the same percentage of fees (25%) during year two as during year one (in other words, the card issuer will be unable to collect 245,000 fees, leaving a total of 735,000 late payments for which the card issuer will be able to collect a fee). The card issuer also reasonably estimates that ~~—~~ based on past changes in costs incurred as a result of delinquencies and other factors relevant to potential costs for year two ~~—~~ it will experience a 5% increase in costs during year two (in other words, \$1.3 million in additional costs for a total of \$27.3 million). For purposes of § 1026.52(b)(1)(i), a \$37 late payment fee would represent a reasonable proportion of the total costs incurred by the card issuer as a result of late payments during year two.

7. Returned payment fees.

i. Costs incurred as a result of returned payments. For purposes of § 1026.52(b)(1)(i), the costs incurred by a card issuer as a result of returned payments include:

A. Costs associated with processing returned payments and reconciling the card issuer's systems and accounts to reflect returned payments;

B. Costs associated with investigating potential fraud with respect to returned payments;
and

C. Costs associated with notifying the consumer of the returned payment and arranging for a new payment.

ii. *Examples.* A. *Returned payment fee based on past returns and costs.* Assume that, during year one, a card issuer experienced 150,000 returned payments and incurred \$3.1 million in costs as a result of those returned payments. For purposes of § 1026.52(b)(1)(i), a \$21 returned payment fee would represent a reasonable proportion of the total costs incurred by the card issuer as a result of returned payments during year two.

B. *Adjustment based on fees card issuer is unable to collect.* Same facts as above except that the card issuer imposed a returned payment fee for each of the 150,000 returned payments experienced during year one but was unable to collect 15% of those fees (in other words, the card issuer was unable to collect 22,500 fees, leaving a total of 127,500 returned payments for which the card issuer did collect or could have collected a fee). For purposes of § 1026.52(b)(2)(i), a returned payment fee of \$24 would represent a reasonable proportion of the total costs incurred by the card issuer as a result of returned payments during year two.

C. *Adjustment based on reasonable estimate of future changes.* Same facts as paragraphs A and B above except the card issuer reasonably estimates that ~~—~~ based on past returned payment rates and other factors relevant to potential returned payment rates for year two ~~—~~ it will experience a 2% increase in returned payments during year two (in other words, 3,000 additional returned payments for a total of 153,000). The card issuer also reasonably estimates that it will be unable to collect 25% of returned payment fees during year two (in other

words, the card issuer will be unable to collect 38,250 fees, leaving a total of 114,750 returned payments for which the card issuer will be able to collect a fee). The card issuer also reasonably estimates that ~~—~~ based on past changes in costs incurred as a result of returned payments and other factors relevant to potential costs for year two ~~—~~ it will experience a 1% decrease in costs during year two (in other words, a \$31,000 reduction in costs for a total of \$3.069 million). For purposes of § 1026.52(b)(1)(i), a \$27 returned payment fee would represent a reasonable proportion of the total costs incurred by the card issuer as a result of returned payments during year two.

8. *Over-the-limit fees.*

i. *Costs incurred as a result of over-the-limit transactions.* For purposes of § 1026.52(b)(1)(i), the costs incurred by a card issuer as a result of over-the-limit transactions include:

A. Costs associated with determining whether to authorize over-the-limit transactions; and

B. Costs associated with notifying the consumer that the credit limit has been exceeded and arranging for payments to reduce the balance below the credit limit.

ii. *Costs not incurred as a result of over-the-limit transactions.* For purposes of § 1026.52(b)(1)(i), costs associated with obtaining the affirmative consent of consumers to the card issuer's payment of transactions that exceed the credit limit consistent with § 1026.56 are not costs incurred by a card issuer as a result of over-the-limit transactions.

iii. *Examples. A. Over-the-limit fee based on past fees and costs.* Assume that, during year one, a card issuer authorized 600,000 over-the-limit transactions and incurred \$4.5 million in costs as a result of those over-the-limit transactions. However, because of the affirmative consent requirements in § 1026.56, the card issuer was only permitted to impose

200,000 over-the-limit fees during year one. For purposes of § 1026.52(b)(1)(i), a \$23 over-the-limit fee would represent a reasonable proportion of the total costs incurred by the card issuer as a result of over-the-limit transactions during year two.

B. Adjustment based on fees card issuer is unable to collect. Same facts as above except that the card issuer was unable to collect 30% of the 200,000 over-the-limit fees imposed during year one (in other words, the card issuer was unable to collect 60,000 fees, leaving a total of 140,000 over-the-limit transactions for which the card issuer did collect or could have collected a fee). For purposes of § 1026.52(b)(2)(i), an over-the-limit fee of \$32 would represent a reasonable proportion of the total costs incurred by the card issuer as a result of over-the-limit transactions during year two.

C. Adjustment based on reasonable estimate of future changes. Same facts as paragraphs A and B above except the card issuer reasonably estimates that ~~—~~ based on past over-the-limit transaction rates, the percentages of over-the-limit transactions that resulted in an over-the-limit fee in the past (consistent with § 1026.56), and factors relevant to potential changes in those rates and percentages for year two ~~—~~ it will authorize approximately the same number of over-the-limit transactions during year two (600,000) and impose approximately the same number of over-the-limit fees (200,000). The card issuer also reasonably estimates that it will be unable to collect the same percentage of fees (30%) during year two as during year one (in other words, the card issuer was unable to collect 60,000 fees, leaving a total of 140,000 over-the-limit transactions for which the card issuer will be able to collect a fee). The card issuer also reasonably estimates that ~~—~~ based on past changes in costs incurred as a result of over-the-limit transactions and other factors relevant to potential costs for year two ~~—~~ it will experience a 6% decrease in costs during year two (in other words, a \$270,000 reduction in costs for a total of \$4.23 million). For purposes of § 1026.52(b)(1)(i), a \$30 over-the-limit fee would represent a

reasonable proportion of the total costs incurred by the card issuer as a result of over-the-limit transactions during year two.

9. *Declined access check fees.*

i. *Costs incurred as a result of declined access checks.* For purposes of § 1026.52(b)(1)(i), the costs incurred by a card issuer as a result of declining payment on a check that accesses a credit card account include:

A. Costs associated with determining whether to decline payment on access checks;

B. Costs associated with processing declined access checks and reconciling the card issuer's systems and accounts to reflect declined access checks;

C. Costs associated with investigating potential fraud with respect to declined access checks; and

D. Costs associated with notifying the consumer and the merchant or other party that accepted the access check that payment on the check has been declined.

ii. *Example.* Assume that, during year one, a card issuer declined 100,000 access checks and incurred \$2 million in costs as a result of those declined checks. The card issuer imposed a fee for each declined access check but was unable to collect 10% of those fees (in other words, the card issuer was unable to collect 10,000 fees, leaving a total of 90,000 declined access checks for which the card issuer did collect or could have collected a fee). For purposes of § 1026.52(b)(1)(i), a \$22 declined access check fee would represent a reasonable proportion of the total costs incurred by the card issuer as a result of declined access checks during year two.

52(b)(1)(ii) Safe Harbors

1. *Multiple violations of same type.*

i. *Same billing cycle or next six billing cycles.* A card issuer cannot impose a late fee in excess of \$8 pursuant to § 1026.52(b)(1)(ii), regardless of whether the card issuer has imposed a

late fee within the six previous billing cycles. For all other penalty fees, a card issuer cannot impose a fee for a violation pursuant to § 1026.52(b)(1)(ii)(B) unless a fee has previously been imposed for the same type of violation pursuant to § 1026.52(b)(1)(ii)(A). Once a fee has been imposed for a violation pursuant to § 1026.52(b)(1)(ii)(A), the card issuer may impose a fee pursuant to § 1026.52(b)(1)(ii)(B) for any subsequent violation of the same type until that type of violation has not occurred for a period of six consecutive complete billing cycles. A fee has been imposed for purposes of § 1026.52(b)(1)(ii) even if the card issuer waives or rebates all or part of the fee.

A. *Late payments.* For purposes of § 1026.52(b)(1)(ii), a late payment occurs during the billing cycle in which the payment may first be treated as late consistent with the requirements of this part and the terms or other requirements of the account.

B. *Returned payments.* For purposes of § 1026.52(b)(1)(ii), a returned payment occurs during the billing cycle in which the payment is returned to the card issuer.

C. *Transactions that exceed the credit limit.* For purposes of § 1026.52(b)(1)(ii), a transaction that exceeds the credit limit for an account occurs during the billing cycle in which the transaction occurs or is authorized by the card issuer.

D. *Declined access checks.* For purposes of § 1026.52(b)(1)(ii), a check that accesses a credit card account is declined during the billing cycle in which the card issuer declines payment on the check.

ii. *Relationship to §§ 1026.52(b)(2)(ii) and 1026.56(j)(1).* If multiple violations are based on the same event or transaction such that § 1026.52(b)(2)(ii) prohibits the card issuer from imposing more than one fee, the event or transaction constitutes a single violation for purposes of § 1026.52(b)(1)(ii). Furthermore, consistent with § 1026.56(j)(1)(i), no more than one violation for exceeding an account's credit limit can occur during a single billing cycle for

purposes of § 1026.52(b)(1)(ii). However, § 1026.52(b)(2)(ii) does not prohibit a card issuer from imposing fees for exceeding the credit limit in consecutive billing cycles based on the same over-the-limit transaction to the extent permitted by § 1026.56(j)(1). In these circumstances, the second and third over-the-limit fees permitted by § 1026.56(j)(1) may be imposed pursuant to § 1026.52(b)(1)(ii)(B). *See comment 52(b)(2)(ii)-1.*

iii. *Examples.* The following examples illustrate the application of § 1026.52(b)(1)(ii), ~~(b)(1)(ii)(A)~~, and (b)(1)(ii)(B) with respect to credit card accounts under an open-end (not home-secured) consumer credit plan that are not charge card accounts. For purposes of these examples, assume that the billing cycles for the account begin on the first day of the month and end on the last day of the month and that the payment due date for the account is the twenty-fifth day of the month.

A. *Violations of same type (late payments). A required minimum periodic over the credit limit.* Consistent with § 1026.56, the consumer has affirmatively consented to the payment of ~~\$50 is due on March 25. transactions that exceed the credit limit.~~ On March ~~26~~20, a ~~late payment has occurred because no payment has been received. Accordingly,~~ ~~consistent~~ transaction causes the account balance to increase to \$1,150, which exceeds the ~~account's \$1,000 credit limit.~~ Consistent with § 1026.52(b)(1)(ii)(A), the card issuer imposes a \$25 ~~late payment over-the-limit~~ fee ~~on March 26 for the March billing cycle.~~ The card issuer ~~receives a \$300 payment on March 25, bringing the account below the credit limit.~~ In order for the card issuer to impose a \$35 ~~late payment over-the-limit~~ fee pursuant to § 1026.52(b)(1)(ii)(B), a second ~~late payment over-the-limit transaction~~ must occur during the April, May, June, July, August, or September billing cycles.

1. ~~The card issuer does not receive any payment during the March billing cycle. A required minimum periodic payment of \$100 is due on April 25. Same facts as above.~~ On April

20, ~~a transaction causes the account balance to increase to \$1,200, which exceeds the card issuer receives a \$50 payment. No further payment is received during the April billing cycle. Accordingly, consistent~~ account's \$1,000 credit limit. Consistent with § 1026.52(b)(1)(ii)(B), the card issuer may impose a \$35 ~~late payment over-the-limit~~ fee on for the April 26 billing cycle. Furthermore, the card issuer may impose a \$35 ~~late over-the-limit~~ payment fee for any late payment over-the-limit transaction or event that triggers an over-the-limit fee that occurs during the May, June, July, August, September, or October billing cycles ~~-, subject to the limitations in § 1026.56(j)(1).~~

2. Same facts as in paragraph A above. ~~On March 30, the card issuer receives a \$50 payment and the required minimum periodic payments for the April, May, June, July, August, and September billing cycles are received on or before the payment due date. A required minimum periodic payment of \$60 is due on October 25. On October 26, a late payment has occurred because the required minimum periodic payment due on October 25 has not been received. However, because this late payment~~ The account remains below the limit from March 25 until October 20, when a transaction causes the account balance to exceed the credit limit. However, because this over-the-limit transaction did not occur during the six billing cycles following the March billing cycle, § 1026.52(b)(1)(ii) only permits the card issuer to impose ~~a late payment an over-the-limit~~ fee of \$25.

B. *Violations of different types (late payment and over the credit limit).* The credit limit for an account is \$1,000. Consistent with § 1026.56, the consumer has affirmatively consented to the payment of transactions that exceed the credit limit. ~~A required minimum periodic payment of \$3035 is due on August 25. On August 26, a late payment has occurred because no payment has been received. Accordingly, consistent with § 1026.52(b)(1)(ii)(A), the card issuer imposes a \$258 late payment fee on August 26. On August 30, the card issuer receives a \$3035~~

payment. On September 10, a transaction causes the account balance to increase to \$1,150, which exceeds the account's \$1,000 credit limit. On September 11, a second transaction increases the account balance to \$1,350. On September 23, the card issuer receives the \$50 required minimum periodic payment due on September 25, which reduces the account balance to \$1,300. On September 30, the card issuer imposes a \$25 over-the-limit fee, consistent with § 1026.52(b)(1)(ii)(A). On October 26, a late payment has occurred because the \$60 required minimum periodic payment due on October 25 has not been received. Accordingly, consistent with § 1026.52(b)(1)(ii)(~~B~~), the card issuer imposes a \$~~35~~35 late payment fee on October 26.

C. Violations of different types (late payment and returned payment). -A required minimum periodic payment of \$~~50~~40 is due on July 25. On July 26, a late payment has occurred because no payment has been received. Accordingly, consistent with § 1026.52(b)(1)(ii)(~~A~~), the card issuer imposes a \$~~25~~25 late payment fee on July 26. On July 30, the card issuer receives a \$~~50~~60 payment. A required minimum periodic payment of \$~~50~~40 is due on August 25. On August 24, a \$~~50~~40 payment is received. On August 27, the \$~~50~~40 payment is returned to the card issuer for insufficient funds. In these circumstances, § 1026.52(b)(2)(ii) permits the card issuer to impose either a late payment fee or a returned payment fee but not both, because the late payment and the returned payment result from the same event or transaction. Accordingly, for purposes of § 1026.52(b)(1)(ii), the event or transaction constitutes a single violation. However, if the card issuer imposes a late payment fee, § 1026.52(b)(1)(ii)(~~B~~) permits the issuer to impose a fee of \$~~35 because the late payment occurred during the six billing cycles following the July billing cycle. In contrast, if~~8. If the card issuer imposes a returned payment fee, the amount of the fee may be no more than \$25 pursuant to § 1026.52(b)(1)(ii)(A).

2. *Adjustments based on Consumer Price Index-~~for penalty fees other than late fees.~~*

For purposes of § 1026.52(b)(1)(ii)(A) and (b)(1)(ii)(B), the Bureau shall calculate each year price level adjusted amounts for penalty fees other than late fees using the Consumer Price Index in effect on 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 amounts in § 1026.52(b)(1)(ii)(A) and (b)(1)(ii)(B) has risen by a whole dollar, those amounts will be increased by \$1.00. Similarly, when the cumulative change in the adjusted minimum value derived from applying the annual Consumer Price level to the current amounts in § 1026.52(b)(1)(ii)(A) and (b)(1)(ii)(B) has decreased by a whole dollar, those amounts will be decreased by \$1.00. The Bureau will publish adjustments to the amounts in § 1026.52(b)(1)(ii)(A) and (b)(1)(ii)(B).

i. *Historical thresholds.*

A. Card issuers were permitted to impose a fee for violating the terms of an agreement if the fee did not exceed \$25 under § 1026.52(b)(1)(ii)(A) and \$35 under § 1026.52(b)(1)(ii)(B), through December 31, 2013.

B. Card issuers were permitted to impose a fee for violating the terms of an agreement if the fee did not exceed \$26 under § 1026.52(b)(1)(ii)(A) and \$37 under § 1026.52(b)(1)(ii)(B), through December 31, 2014.

C. Card issuers were permitted to impose a fee for violating the terms of an agreement if the fee did not exceed \$27 under § 1026.52(b)(1)(ii)(A) and \$38 under § 1026.52(b)(1)(ii)(B), through December 31, 2015.

D. Card issuers were permitted to impose a fee for violating the terms of an agreement if the fee did not exceed \$27 under § 1026.52(b)(1)(ii)(A), through December 31, 2016. Card issuers were permitted to impose a fee for violating the terms of an agreement if the fee did not

exceed \$37 under § 1026.52(b)(1)(ii)(B), through June 26, 2016, and \$38 under § 1026.52(b)(1)(ii)(B) from June 27, 2016, through December 31, 2016.

E. Card issuers were permitted to impose a fee for violating the terms of an agreement if the fee did not exceed \$27 under § 1026.52(b)(1)(ii)(A) and \$38 under § 1026.52(b)(1)(ii)(B), through December 31, 2017.

F. Card issuers were permitted to impose a fee for violating the terms of an agreement if the fee did not exceed \$27 under § 1026.52(b)(1)(ii)(A) and \$38 under § 1026.52(b)(1)(ii)(B), through December 31, 2018.

G. Card issuers were permitted to impose a fee for violating the terms of an agreement if the fee did not exceed \$28 under § 1026.52(b)(1)(ii)(A) and \$39 under § 1026.52(b)(1)(ii)(B), through December 31, 2019.

H. Card issuers were permitted to impose a fee for violating the terms of an agreement if the fee did not exceed \$29 under § 1026.52(b)(1)(ii)(A) and \$40 under § 1026.52(b)(1)(ii)(B), through December 31, 2020.

I. Card issuers were permitted to impose a fee for violating the terms of an agreement if the fee did not exceed \$29 under § 1026.52(b)(1)(ii)(A) and \$40 under § 1026.52(b)(1)(ii)(B), through December 31, 2021.

3. *Delinquent balance for charge card accounts.* Section 1026.52(b)(1)(ii)(C) provides that, when a charge card issuer that requires payment of outstanding balances in full at the end of each billing cycle has not received the required payment for two or more consecutive billing cycles, the card issuer may impose a late payment fee that does not exceed three percent of the delinquent balance. For purposes of § 1026.52(b)(1)(ii)(C), the delinquent balance is any previously billed amount that remains unpaid at the time the late payment fee is imposed pursuant to § 1026.52(b)(1)(ii)(C). Consistent with § 1026.52(b)(2)(ii), a charge card issuer that

imposes a fee pursuant to § 1026.52(b)(1)(ii)(C) with respect to a late payment may not impose a fee pursuant to § 1026.52(b)(1)(ii)(B) with respect to the same late payment. The following examples illustrate the application of § 1026.52(b)(1)(ii)(C):

i. Assume that a charge card issuer requires payment of outstanding balances in full at the end of each billing cycle and that the billing cycles for the account begin on the first day of the month and end on the last day of the month. At the end of the June billing cycle, the account has a balance of \$1,000. On July 5, the card issuer provides a periodic statement disclosing the \$1,000 balance consistent with § 1026.7. During the July billing cycle, the account is used for ~~\$300~~292 in transactions, increasing the balance to \$1,~~292~~300. At the end of the July billing cycle, no payment has been received and the card issuer imposes a ~~\$25~~8 late payment fee consistent with § 1026.52(b)(1)(ii)(~~A~~). On August 5, the card issuer provides a periodic statement disclosing the \$1,~~325~~300 balance consistent with § 1026.7. During the August billing cycle, the account is used for \$200 in transactions, increasing the balance to \$1,~~525~~500. At the end of the August billing cycle, no payment has been received. Consistent with § 1026.52(b)(1)(ii)(C), the card issuer may impose a late payment fee of ~~\$43~~9, which is 3% of the \$1,~~325~~300 balance that was due at the end of the August billing cycle. Section 1026.52(b)(1)(ii)(C) does not permit the card issuer to include the \$200 in transactions that occurred during the August billing cycle.

ii. Same facts as above except that, on August 25, a \$100 payment is received. Consistent with § 1026.52(b)(1)(ii)(C), the card issuer may impose a late payment fee of \$36, which is 3% of the unpaid portion of the \$1,300 balance that was due at the end of the August billing cycle (\$1,200).

iii. Same facts as in paragraph i above except that, on August 25, a \$200 payment is received. Consistent with § 1026.52(b)(1)(ii)(C), the card issuer may impose a late payment fee

of \$~~973~~³, which is 3% of the unpaid portion of the \$1,~~925~~³⁰⁰ balance that was due at the end of the August billing cycle (\$1,~~225~~¹⁰⁰). ~~Same facts as in paragraph A above except that, on August 25, a \$200 payment is received. Consistent with § 1026.52(b)(1)(ii)(C), the card issuer may impose a late payment fee of \$34, which is 3% of the unpaid portion of the \$1,325 balance that was due at the end of the August billing cycle (\$1,125).~~ In the alternative, the card issuer may impose a late payment fee of \$~~35~~⁸ consistent with § 1026.52(b)(1)(ii)(~~B~~). However, § 1026.52(b)(2)(ii) prohibits the card issuer from imposing both fees.

52(b)(2) Prohibited fees

1. *Relationship to § 1026.52(b)(1)*. A card issuer does not comply with § 1026.52(b) if it imposes a fee that is inconsistent with the prohibitions in § 1026.52(b)(2). Thus, the prohibitions in § 1026.52(b)(2) apply even if a fee is consistent with § 1026.52(b)(1)(i) or (b)(1)(ii). For example, even if a card issuer has determined for purposes of § 1026.52(b)(1)(i) that a \$27 fee represents a reasonable proportion of the total costs incurred by the card issuer as a result of a particular type of violation, § 1026.52(b)(2)(i) prohibits the card issuer from imposing that fee if the dollar amount associated with the violation is less than \$27. Similarly, even if § 1026.52(b)(1)(ii) permits a card issuer to impose a \$25 fee, § 1026.52(b)(2)(i) prohibits the card issuer from imposing that fee if the dollar amount associated with the violation is less than \$25.

52(b)(2)(i) Late Payment Fees That Exceed 25 Percent of the Amount of the Required Minimum Periodic Payment or Fees, other than Late Payment Fees, that Exceed Dollar Amount Associated ~~With~~with Violation

1. *Late payment fees.* ~~For purposes of § Section 1026.52(b)(2)(i), the dollar amount associated with-) provides that a card issuer must not impose a fee for a late payment is the amount on a credit card account under an open-end (not home-secured) consumer credit plan~~

that exceeds 25 percent of the amount of the required minimum periodic payment due immediately prior to assessment of the late payment fee. ~~Thus, § 1026.52(b)(2)(i)(A) prohibits a card issuer from imposing a late payment fee that exceeds the amount of that~~ The required minimum periodic payment. ~~For~~ due immediately prior to the assessment of the late payment fee is the amount that the consumer is required to pay to avoid the late payment fee, including, as applicable, any missed payments and fees assessed from prior billing cycles. For example:

i. Assume that a \$~~1520~~ required minimum periodic payment is due on September 25. The card issuer does not receive any payment on or before September 25. On September 26, the card issuer imposes a late payment fee. For purposes of § 1026.52(b)(2)(i), the dollar amount associated with the late payment is twenty-five percent of the amount of the required minimum periodic payment due on September 25 (\$~~155~~). Thus, under § 1026.52(b)(2)(i)(A), the amount of that fee cannot exceed \$~~155~~ (even if a higher fee would be permitted under § 1026.52(b)(1)).

ii. Same facts as above except that, on September 25, the card issuer receives a \$10 payment. No further payments are received. On September 26, the card issuer imposes a late payment fee. For purposes of § 1026.52(b)(2)(i), the dollar amount associated with the late payment is twenty-five percent of the full amount of the required minimum periodic payment due on September 25 (\$~~155~~), rather than twenty-five percent of the unpaid portion of that payment (\$~~52.50~~). Thus, under § 1026.52(b)(2)(i)(A), the amount of the late payment fee cannot exceed \$~~155~~ (even if a higher fee would be permitted under § 1026.52(b)(1)).

iii. Assume that a \$~~1520~~ required minimum periodic payment is due on October 28 and the billing cycle for the account closes on October 31. The card issuer does not receive any payment on or before November 3. On November 3, the card issuer determines that the required minimum periodic payment due on November 28 is \$50. On November 5, the card issuer imposes a late payment fee. For purposes of § 1026.52(b)(2)(i), the dollar amount

associated with the late payment is twenty-five percent of the amount of the required minimum periodic payment due on October 28 (\$~~45~~), rather than the amount of the required minimum periodic payment due on November 28 (\$50). Thus, under § 1026.52(b)(2)(i)(A), the amount of that fee cannot exceed \$~~45~~ (even if a higher fee would be permitted under § 1026.52(b)(1)).

2. *Returned payment fees.* For purposes of § 1026.52(b)(2)(i), the dollar amount associated with a returned payment is the amount of the required minimum periodic payment due immediately prior to the date on which the payment is returned to the card issuer. Thus, § 1026.52(b)(2)(i)(A) prohibits a card issuer from imposing a returned payment fee that exceeds the amount of that required minimum periodic payment. However, if a payment has been returned and is submitted again for payment by the card issuer, there is no additional dollar amount associated with a subsequent return of that payment and § 1026.52(b)(2)(i)(B) prohibits the card issuer from imposing an additional returned payment fee. For example:

i. Assume that the billing cycles for an account begin on the first day of the month and end on the last day of the month and that the payment due date is the twenty-fifth day of the month. A minimum payment of \$15 is due on March 25. The card issuer receives a check for \$100 on March 23, which is returned to the card issuer for insufficient funds on March 26. For purposes of § 1026.52(b)(2)(i), the dollar amount associated with the returned payment is the amount of the required minimum periodic payment due on March 25 (\$15). Thus, § 1026.52(b)(2)(i)(A) prohibits the card issuer from imposing a returned payment fee that exceeds \$15 (even if a higher fee would be permitted under § 1026.52(b)(1)). Furthermore, § 1026.52(b)(2)(ii) prohibits the card issuer from assessing both a late payment fee and a returned payment fee in these circumstances. *See comment 52(b)(2)(ii)-1.*

ii. Same facts as above except that the card issuer receives the \$100 check on March 31 and the check is returned for insufficient funds on April 2. The minimum payment due on April

25 is \$30. For purposes of § 1026.52(b)(2)(i), the dollar amount associated with the returned payment is the amount of the required minimum periodic payment due on March 25 (\$15), rather than the amount of the required minimum periodic payment due on April 25 (\$30). Thus, § 1026.52(b)(2)(i)(A) prohibits the card issuer from imposing a returned payment fee that exceeds \$15 (even if a higher fee would be permitted under § 1026.52(b)(1)). Furthermore, § 1026.52(b)(2)(ii) prohibits the card issuer from assessing both a late payment fee and a returned payment fee in these circumstances. *See comment 52(b)(2)(ii)-1.*

iii. Same facts as paragraph i above except that, on March 28, the card issuer presents the \$100 check for payment a second time. On April 1, the check is again returned for insufficient funds. Section 1026.52(b)(2)(i)(B) prohibits the card issuer from imposing a returned payment fee based on the return of the payment on April 1.

iv. Assume that the billing cycles for an account begin on the first day of the month and end on the last day of the month and that the payment due date is the twenty-fifth day of the month. A minimum payment of \$15 is due on August 25. The card issuer receives a check for \$15 on August 23, which is not returned. The card issuer receives a check for \$50 on September 5, which is returned to the card issuer for insufficient funds on September 7. Section 1026.52(b)(2)(i)(B) does not prohibit the card issuer from imposing a returned payment fee in these circumstances. Instead, for purposes of § 1026.52(b)(2)(i), the dollar amount associated with the returned payment is the amount of the required minimum periodic payment due on August 25 (\$15). Thus, § 1026.52(b)(2)(i)(A) prohibits the card issuer from imposing a returned payment fee that exceeds \$15 (even if a higher fee would be permitted under § 1026.52(b)(1)).

3. *Over-the-limit fees.* For purposes of § 1026.52(b)(2)(i), the dollar amount associated with extensions of credit in excess of the credit limit for an account is the total amount of credit extended by the card issuer in excess of the credit limit during the billing cycle in which the

over-the-limit fee is imposed. Thus, § 1026.52(b)(2)(i)(A) prohibits a card issuer from imposing an over-the-limit fee that exceeds that amount. Nothing in § 1026.52(b) permits a card issuer to impose an over-the-limit fee if imposition of the fee is inconsistent with § 1026.56. The following examples illustrate the application of § 1026.52(b)(2)(i)(A) to over-the-limit fees:

i. Assume that the billing cycles for a credit card account with a credit limit of \$5,000 begin on the first day of the month and end on the last day of the month. Assume also that, consistent with § 1026.56, the consumer has affirmatively consented to the payment of transactions that exceed the credit limit. On March 1, the account has a \$4,950 balance. On March 6, a \$60 transaction is charged to the account, increasing the balance to \$5,010. On March 25, a \$5 transaction is charged to the account, increasing the balance to \$5,015. On the last day of the billing cycle (March 31), the card issuer imposes an over-the-limit fee. For purposes of § 1026.52(b)(2)(i), the dollar amount associated with the extensions of credit in excess of the credit limit is the total amount of credit extended by the card issuer in excess of the credit limit during the March billing cycle (\$15). Thus, § 1026.52(b)(2)(i)(A) prohibits the card issuer from imposing an over-the-limit fee that exceeds \$15 (even if a higher fee would be permitted under § 1026.52(b)(1)).

ii. Same facts as above except that, on March 26, the card issuer receives a payment of \$20, reducing the balance below the credit limit to \$4,995. Nevertheless, for purposes of § 1026.52(b)(2)(i), the dollar amount associated with the extensions of credit in excess of the credit limit is the total amount of credit extended by the card issuer in excess of the credit limit during the March billing cycle (\$15). Thus, consistent with § 1026.52(b)(2)(i)(A), the card issuer may impose an over-the-limit fee of \$15.

4. *Declined access check fees.* For purposes of § 1026.52(b)(2)(i), the dollar amount associated with declining payment on a check that accesses a credit card account is the amount

of the check. Thus, when a check that accesses a credit card account is declined, § 1026.52(b)(2)(i)(A) prohibits a card issuer from imposing a fee that exceeds the amount of that check. For example, assume that a check that accesses a credit card account is used as payment for a \$50 transaction, but payment on the check is declined by the card issuer because the transaction would have exceeded the credit limit for the account. For purposes of § 1026.52(b)(2)(i), the dollar amount associated with the declined check is the amount of the check (\$50). Thus, § 1026.52(b)(2)(i)(A) prohibits the card issuer from imposing a fee that exceeds \$50. However, the amount of this fee must also comply with § 1026.52(b)(1)(i) or (b)(1)(ii).

5. *Inactivity fees.* Section 1026.52(b)(2)(i)(B)(2) prohibits a card issuer from imposing a fee with respect to a credit card account under an open-end (not home-secured) consumer credit plan based on inactivity on that account (including the consumer's failure to use the account for a particular number or dollar amount of transactions or a particular type of transaction). For example, § 1026.52(b)(2)(i)(B)(2) prohibits a card issuer from imposing a \$50 fee when a credit card account under an open-end (not home-secured) consumer credit plan is not used for at least \$2,000 in purchases over the course of a year. Similarly, § 1026.52(b)(2)(i)(B)(2) prohibits a card issuer from imposing a \$50 annual fee on all accounts of a particular type but waiving the fee on any account that is used for at least \$2,000 in purchases over the course of a year if the card issuer promotes the waiver or rebate of the annual fee for purposes of § 1026.55(e). However, if the card issuer does not promote the waiver or rebate of the annual fee for purposes of § 1026.55(e), § 1026.52(b)(2)(i)(B)(2) does not prohibit a card issuer from considering account activity along with other factors when deciding whether to waive or rebate annual fees on individual accounts (such as in response to a consumer's request).

6. *Closed account fees.* Section 1026.52(b)(2)(i)(B)(3) prohibits a card issuer from imposing a fee based on the closure or termination of an account. For example, § 1026.52(b)(2)(i)(B)(3) prohibits a card issuer from:

i. Imposing a one-time fee to consumers who close their accounts.

ii. Imposing a periodic fee (such as an annual fee, a monthly maintenance fee, or a closed account fee) after an account is closed or terminated if that fee was not imposed prior to closure or termination. This prohibition applies even if the fee was disclosed prior to closure or termination. *See also* comment 55(d)-1.

iii. Increasing a periodic fee (such as an annual fee or a monthly maintenance fee) after an account is closed or terminated. However, a card issuer is not prohibited from continuing to impose a periodic fee that was imposed before the account was closed or terminated.

7. *Declined transaction fees.* Section 1026.52(b)(2)(i)(B)(1) states that card issuers must not impose a fee when there is no dollar amount associated with the violation, such as for transactions that the card issuer declines to authorize. With regard to a covered separate credit feature and an asset feature on a prepaid account that are both accessible by a hybrid prepaid-credit card as defined in § 1026.61 where the credit feature is a credit card account under an open-end (not home-secured) consumer credit plan, § 1026.52(b)(2)(i)(B)(1) prohibits a card issuer from imposing declined transaction fees in connection with the credit feature, regardless of whether the declined transaction fee is imposed on the credit feature or on the asset feature of the prepaid account. For example, if the prepaid card attempts to access credit from the covered separate credit feature accessible by the hybrid prepaid-credit card and the transaction is declined, § 1026.52(b)(2)(i)(B)(1) prohibits the card issuer from imposing a declined transaction fee, regardless of whether the fee is imposed on the credit feature or on the asset feature of the prepaid account. Fees imposed for declining a transaction that would have only accessed the

asset feature of the prepaid account and would not have accessed the covered separate credit feature accessible by the hybrid prepaid-credit are not covered by § 1026.52(b)(2)(i)(B)(1).

52(b)(2)(ii) Multiple Fees Based on a Single Event or Transaction

1. *Single event or transaction.* Section 1026.52(b)(2)(ii) prohibits a card issuer from imposing more than one fee for violating the terms or other requirements of an account based on a single event or transaction. If § 1026.56(j)(1) permits a card issuer to impose fees for exceeding the credit limit in consecutive billing cycles based on the same over-the-limit transaction, those fees are not based on a single event or transaction for purposes of § 1026.52(b)(2)(ii). The following examples illustrate the application of § 1026.52(b)(2)(ii). Assume for purposes of these examples that the billing cycles for a credit card account begin on the first day of the month and end on the last day of the month and that the payment due date for the account is the twenty-fifth day of the month.

i. Assume that the required minimum periodic payment due on March 25 is ~~\$2035~~. On March 26, the card issuer has not received any payment and imposes a late payment fee. Consistent with ~~§§§~~ 1026.52(b)(1)(ii)(A) and (b)(2)(i), the card issuer may impose ~~a \$20~~ \$8 late payment fee on March 26. However, § 1026.52(b)(2)(ii) prohibits the card issuer from imposing an additional late payment fee if the ~~\$2035~~ minimum payment has not been received by a subsequent date (such as March 31).

A. On April 3, the card issuer provides a periodic statement disclosing that a \$70 required minimum periodic payment is due on April 25. This minimum payment includes the ~~\$2035~~ minimum payment due on March 25 and the ~~\$208~~ late payment fee imposed on March 26. On April 20, the card issuer receives a ~~\$2035~~ payment. No additional payments are received during the April billing cycle. Section 1026.52(b)(2)(ii) does not prohibit the card issuer from imposing a late payment fee based on the consumer's failure to make the \$70

required minimum periodic payment on or before April 25. Accordingly, consistent with § 1026.52(b)(1)(ii)(~~B~~) and (b)(2)(i), the card issuer may impose a ~~\$35~~\$8 late payment fee on April 26.

B. On April 3, the card issuer provides a periodic statement disclosing that a ~~\$2035~~ required minimum periodic payment is due on April 25. This minimum payment does not include the ~~\$2035~~ minimum payment due on March 25 or the ~~\$208~~ late payment fee imposed on March 26. On April 20, the card issuer receives a ~~\$2035~~ payment. No additional payments are received during the April billing cycle. Because the card issuer has received the required minimum periodic payment due on April 25 and because § 1026.52(b)(2)(ii) prohibits the card issuer from imposing a second late payment fee based on the consumer's failure to make the ~~\$2035~~ minimum payment due on March 25, the card issuer cannot impose a late payment fee in these circumstances.

ii. Assume that the required minimum periodic payment due on March 25 is ~~\$3035~~.

A. On March 25, the card issuer receives a check for \$50, but the check is returned for insufficient funds on March 27. Consistent with ~~§§§~~ 1026.52(b)(1)(ii), (b)(1)(ii)(A) and (b)(2)(i)(A), the card issuer may impose a late payment fee of ~~\$258~~ or a returned payment fee of \$25. However, § 1026.52(b)(2)(ii) prohibits the card issuer from imposing both fees because those fees would be based on a single event or transaction.

B. Same facts as paragraph ii.A above except that that card issuer receives the \$50 check on March 27 and the check is returned for insufficient funds on March 29. Consistent with ~~§§§~~ 1026.52(b)(1)(ii), (b)(1)(ii)(A) and (b)(2)(i)(A), the card issuer may impose a late payment fee of ~~\$258~~ or a returned payment fee of \$25. However, § 1026.52(b)(2)(ii) prohibits the card issuer from imposing both fees because those fees would be based on a single event or

transaction. If no payment is received on or before the next payment due date (April 25), § 1026.52(b)(2)(ii) does not prohibit the card issuer from imposing a late payment fee.

iii. Assume that the required minimum periodic payment due on July 25 is \$30. On July 10, the card issuer receives a \$50 payment, which is not returned. On July 20, the card issuer receives a \$100 payment, which is returned for insufficient funds on July 24. Consistent with § 1026.52(b)(1)(ii)(A) and (b)(2)(i)(A), the card issuer may impose a returned payment fee of \$25. Nothing in § 1026.52(b)(2)(ii) prohibits the imposition of this fee.

iv. Assume that the credit limit for an account is \$1,000 and that, consistent with § 1026.56, the consumer has affirmatively consented to the payment of transactions that exceed the credit limit. On March 31, the balance on the account is \$970 and the card issuer has not received the \$35 required minimum periodic payment due on March 25. On that same date (March 31), a \$70 transaction is charged to the account, which increases the balance to \$1,040. Consistent with § 1026.52(b)(1)(ii), ~~(b)(1)(ii)~~(A) and (b)(2)(i)(A), the card issuer may impose a late payment fee of ~~\$25~~ and an over-the-limit fee of \$25. Section 1026.52(b)(2)(ii) does not prohibit the imposition of both fees because those fees are based on different events or transactions. No additional transactions are charged to the account during the March, April, or May billing cycles. If the account balance remains more than \$35 above the credit limit on April 26, the card issuer may impose an over-the-limit fee of \$35 pursuant to § 1026.52(b)(1)(ii)(B), to the extent consistent with § 1026.56(j)(1). Furthermore, if the account balance remains more than \$35 above the credit limit on May 26, the card issuer may again impose an over-the-limit fee of \$35 pursuant to § 1026.52(b)(1)(ii)(B), to the extent consistent with § 1026.56(j)(1). Thereafter, § 1026.56(j)(1) does not permit the card issuer to impose additional over-the-limit fees unless another over-the-limit transaction occurs. However, if an over-the-limit transaction

occurs during the six billing cycles following the May billing cycle, the card issuer may impose an over-the-limit fee of \$35 pursuant to § 1026.52(b)(1)(ii)(B).

v. Assume that the credit limit for an account is \$5,000 and that, consistent with § 1026.56, the consumer has affirmatively consented to the payment of transactions that exceed the credit limit. On July 23, the balance on the account is \$4,950. On July 24, the card issuer receives the \$100 required minimum periodic payment due on July 25, reducing the balance to \$4,850. On July 26, a \$75 transaction is charged to the account, which increases the balance to \$4,925. On July 27, the \$100 payment is returned for insufficient funds, increasing the balance to \$5,025. Consistent with §§ 1026.52(b)(1)(ii)(A) and (b)(2)(i)(A), the card issuer may impose a returned payment fee of \$25 or an over-the-limit fee of \$25. However, § 1026.52(b)(2)(ii) prohibits the card issuer from imposing both fees because those fees would be based on a single event or transaction.

vi. Assume that the required minimum periodic payment due on March 25 is \$50. On March 20, the card issuer receives a check for \$50, but the check is returned for insufficient funds on March 22. Consistent with §§ 1026.52(b)(1)(ii)(A) and (b)(2)(i)(A), the card issuer may impose a returned payment fee of \$25. On March 25, the card issuer receives a second check for \$50, but the check is returned for insufficient funds on March 27. Consistent with §§ 1026.52(b)(1)(ii), (b)(1)(ii)(A), (b)(1)(ii)(B), and (b)(2)(i)(A), the card issuer may impose a late payment fee of \$25 or a returned payment fee of \$35. However, § 1026.52(b)(2)(ii) prohibits the card issuer from imposing both fees because those fees would be based on a single event or transaction.

vii. Assume that the required minimum periodic payment due on February 25 is \$100. On February 25, the card issuer receives a check for \$100. On March 3, the card issuer provides a periodic statement disclosing that a \$120 required minimum periodic payment is due on

March 25. On March 4, the \$100 check is returned to the card issuer for insufficient funds. Consistent with §§ 1026.52(b)(1)(ii), (b)(1)(ii)(A) and (b)(2)(i)(A), the card issuer may impose a late payment fee of \$~~25~~8 or a returned payment fee of \$25 with respect to the \$100 payment. However, § 1026.52(b)(2)(ii) prohibits the card issuer from imposing both fees because those fees would be based on a single event or transaction. On March 20, the card issuer receives a \$120 check, which is not returned. No additional payments are received during the March billing cycle. Because the card issuer has received the required minimum periodic payment due on March 25 and because § 1026.52(b)(2)(ii) prohibits the card issuer from imposing a second fee based on the \$100 payment that was returned for insufficient funds, the card issuer cannot impose a late payment fee in these circumstances.

* * * * *

Section 1026.60 - Credit and Charge Card Applications and Solicitations

* * * * *

60(a)(2) Form of Disclosures; Tabular Format

1. Location of table.

i. *General.* Except for disclosures given electronically, disclosures in § 1026.60(b) that are required to be provided in a table must be prominently located on or with the application or solicitation. Disclosures are deemed to be prominently located, for example, if the disclosures are on the same page as an application or solicitation reply form. If the disclosures appear elsewhere, they are deemed to be prominently located if the application or solicitation reply form contains a clear and conspicuous reference to the location of the disclosures and indicates that they contain rate, fee, and other cost information, as applicable.

ii. *Electronic disclosures.* If the table is provided electronically, the table must be provided in close proximity to the application or solicitation. Card issuers have flexibility in

satisfying this requirement. Methods card issuers could use to satisfy the requirement include, but are not limited to, the following examples (whatever method is used, a card issuer need not confirm that the consumer has read the disclosures):

A. The disclosures could automatically appear on the screen when the application or reply form appears;

B. The disclosures could be located on the same Web page as the application or reply form (whether or not they appear on the initial screen), if the application or reply form contains a clear and conspicuous reference to the location of the disclosures and indicates that the disclosures contain rate, fee, and other cost information, as applicable;

C. Card issuers could provide a link to the electronic disclosures on or with the application (or reply form) as long as consumers cannot bypass the disclosures before submitting the application or reply form. The link would take the consumer to the disclosures, but the consumer need not be required to scroll completely through the disclosures; or

D. The disclosures could be located on the same Web page as the application or reply form without necessarily appearing on the initial screen, immediately preceding the button that the consumer will click to submit the application or reply.

2. *Multiple accounts.* If a tabular format is required to be used, card issuers offering several types of accounts may disclose the various terms for the accounts in a single table or may provide a separate table for each account.

3. *Information permitted in the table.* See the commentary to § 1026.60(b), (d), and (e)(1) for guidance on additional information permitted in the table.

4. *Deletion of inapplicable disclosures.* Generally, disclosures need only be given as applicable. Card issuers may, therefore, omit inapplicable headings and their corresponding boxes in the table. For example, if no foreign transaction fee is imposed on the account, the

heading *Foreign transaction* and disclosure may be deleted from the table, or the disclosure form may contain the heading *Foreign transaction* and a disclosure showing *none*. There is an exception for the grace period disclosure; even if no grace period exists, that fact must be stated.

5. *Highlighting of annual percentage rates and fee amounts.*

i. *In general.* See Samples G-10(B) and G-10(C) for guidance on providing the disclosures described in § 1026.60(a)(2)(iv) in bold text. Other annual percentage rates or fee amounts disclosed in the table may not be in bold text. Samples G-10(B) and G-10(C) also provide guidance to issuers on how to disclose the rates and fees described in § 1026.60(a)(2)(iv) in a clear and conspicuous manner, by including these rates and fees generally as the first text in the applicable rows of the table so that the highlighted rates and fees generally are aligned vertically in the table.

ii. *Maximum limits on fees.* Section 1026.60(a)(2)(iv) provides that any maximum limits on fee amounts must be disclosed in bold text. For example, assume that, consistent with § 1026.52(b)(1)(ii), a card issuer's late payment fee will not exceed \$~~35~~**8**. The maximum limit of \$~~35~~**8** for the late payment fee must be highlighted in bold. Similarly, assume an issuer will charge a cash advance fee of \$5 or 3 percent of the cash advance transaction amount, whichever is greater, but the fee will not exceed \$100. The maximum limit of \$100 for the cash advance fee must be highlighted in bold.

iii. *Periodic fees.* Section 1026.60(a)(2)(iv) provides that any periodic fee disclosed pursuant to § 1026.60(b)(2) that is not an annualized amount must not be disclosed in bold. For example, if an issuer imposes a \$10 monthly maintenance fee for a card account, the issuer must disclose in the table that there is a \$10 monthly maintenance fee, and that the fee is \$120 on an annual basis. In this example, the \$10 fee disclosure would not be disclosed in bold, but

the \$120 annualized amount must be disclosed in bold. In addition, if an issuer must disclose any annual fee in the table, the amount of the annual fee must be disclosed in bold.

6. *Form of disclosures.* Whether disclosures must be in electronic form depends upon the following:

i. If a consumer accesses a credit card application or solicitation electronically (other than as described under ii. below), such as online at a home computer, the card issuer must provide the disclosures in electronic form (such as with the application or solicitation on its Web site) in order to meet the requirement to provide disclosures in a timely manner on or with the application or solicitation. If the issuer instead mailed paper disclosures to the consumer, this requirement would not be met.

ii. In contrast, if a consumer is physically present in the card issuer's office, and accesses a credit card application or solicitation electronically, such as via a terminal or kiosk (or if the consumer uses a terminal or kiosk located on the premises of an affiliate or third party that has arranged with the card issuer to provide applications or solicitations to consumers), the issuer may provide disclosures in either electronic or paper form, provided the issuer complies with the timing and delivery (“on or with”) requirements of the regulation.

7. *Terminology.* Section 1026.60(a)(2)(i) generally requires that the headings, content, and format of the tabular disclosures be substantially similar, but need not be identical, to the applicable tables in appendix G-10 to part 1026; but see § 1026.5(a)(2) for terminology requirements applicable to § 1026.60 disclosures.

* * * * *