

## Approval Order

December 30, 2020

### I. Overview

Synchrony Bank (Synchrony), a federal savings bank and wholly owned subsidiary of Synchrony Financial Inc., has submitted to the Bureau of Consumer Financial Protection (Bureau) a formal application (Application) for an approval, pursuant to section 130(f) of the Truth in Lending Act (TILA), under the Policy on the Compliance Assistance Sandbox (CAS Policy).<sup>1</sup>

Subject to Synchrony's good faith compliance with the terms and conditions contained in the Compliance Assistance Statement of Terms (CAST), dated December 30, 2020, this order (Approval Order) approves of Synchrony's offering or providing the described aspects of Synchrony's dual-feature<sup>2</sup> credit card program (DFCC or DFCC Program) that are included in Section IV below, as described in the particularized compliance determinations contained in Section V below. This Approval Order, and the particularized compliance determinations herein, are based on the Bureau's assessment of the Application and the factual representations made by Synchrony therein.<sup>3</sup>

This Approval Order is limited solely to Synchrony's offering or providing the described aspects of the DFCC Program, as set forth in Section IV below. This Approval Order does not apply to Synchrony's offering or providing different aspects of the product or services. In addition, it does not apply to any entities other than Synchrony. This Approval Order is limited to those particularized applications of law (or "particularized compliance determinations") that are contained in Section V below. Moreover, this Approval Order does not constitute the Bureau's endorsement of the DFCC Program or any other product or service offered or provided by Synchrony.

With this Approval Order, by operation of TILA section 130(f), Synchrony has a safe harbor from liability under TILA and Regulation Z, to the fullest extent permitted by this section as to any act done or omitted in good faith in conformity with this Approval Order.

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<sup>1</sup> Section 130(f) of TILA is codified at 15 U.S.C. 1640(f). The CAS Policy is available on the Bureau's website at [https://files.consumerfinance.gov/f/documents/cfpb\\_final-policy-on-cas.pdf](https://files.consumerfinance.gov/f/documents/cfpb_final-policy-on-cas.pdf). In addition, it was published in the Federal Register. See 84 FR 48246 (Sept. 13, 2019).

<sup>2</sup> This Approval Order uses "feature," "mode" and "use" interchangeably in connection with describing DFCC functionality. Except where specifically noted in Section V (where the legal significance of card "features" is discussed), however, the Approval Order's use of any such terms is not intended to connote any legal significance. The term "DFCC" is similarly used in this Approval Order for ease of reference and is not intended by the Bureau to reflect any legal view of the product's characteristics.

<sup>3</sup> As a condition of the Bureau granting this Approval Order, Synchrony will inform the Bureau of material changes to information included in the Application and of material information indicating that the described aspects of the product or service are not performing as anticipated in the Application.

## **II. Purpose of the CAS Policy**

The CAS Policy was finalized by the Bureau in September 2019 with a primary purpose of better enabling compliance in the face of regulatory uncertainty. The policy provides for the issuance of approvals that consist of “particularized determinations based on the application of existing law to specific factual scenarios.”<sup>4</sup> More specifically: “Approvals will issue only when they are a rational product of existing law, and they will be expressly limited to the particularized facts and circumstances of the described aspects of the product or service identified by the applicant.”<sup>5</sup>

As a result, subject to good faith compliance and for the period that they are in force, approvals offer a regulated entity that confronts regulatory uncertainty the assurance that specific aspects of the relevant product or service comply with specific legal requirements.<sup>6</sup> By facilitating compliance in such circumstances, approvals help further the Bureau’s statutory purpose of ensuring that all consumers have access to markets for consumer financial products and services and that markets for consumer financial products and services are fair, transparent, and competitive. Approvals thereby facilitate access and innovation within consumer financial services while also facilitating compliance.

## **III. Synchrony’s Application**

Synchrony’s Application focuses on the secured credit card market. Specifically, it concerns a proposed “dual-feature credit card account” (DFCC). Upon issuance, the DFCC provides for secured use. As with other secured credit cards, therefore, a consumer must provide a security deposit to open a DFCC card account. After at least one year, a DFCC customer that clears certain eligibility thresholds is offered the opportunity to graduate to use the unsecured feature of the account on terms that were disclosed at the opening of the DFCC account and then redisclosed in connection with the opportunity to opt in.

Because secured cards carry a lower credit risk to a card issuer, they are available to consumers—or at least those consumers who can provide the requisite security interest—who have lower credit scores. As a result, they represent a potentially significant point of access to credit for certain consumers. Like other secured card offerings, the DFCC offers such consumers the opportunity to improve or establish their credit profile.

Despite the lower credit risk that issuers incur, however, the Bureau has observed from its market monitoring that secured cards are generally priced in line with unsecured entry-level consumer card products.<sup>7</sup> In contrast, the Application describes Synchrony’s commitment to an APR on the DFCC’s secured feature that is “substantially lower” than the APRs currently offered

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<sup>4</sup> See 84 FR 48246, 48251 & 48253.

<sup>5</sup> See *id.* at 48251.

<sup>6</sup> See *id.* at 48247.

<sup>7</sup> See 2017 Consumer Credit Card Market Report, 213-34 & 238 (Dec. 2017), available at [https://files.consumerfinance.gov/f/documents/cfpb\\_consumer-credit-card-market-report\\_2017.pdf](https://files.consumerfinance.gov/f/documents/cfpb_consumer-credit-card-market-report_2017.pdf).

on many other secured cards. Reflecting the lack of security, the unsecured feature of the DFCC would then be at a higher APR than it was for secured use.

The DFCC, as described by Synchrony, seeks to provide transparency about the cost difference between the secured and unsecured features, while making the process of graduating to unsecured use as seamless, clear, and straightforward as possible for the consumer that wants to take advantage of any opportunity to graduate. Consumers who wish to use the unsecured feature will need to affirmatively opt in to any such opportunity, which will not be provided until at least one year after account opening. A consumer that does opt in will not have to wait—or reapply to open a new account—to transition to unsecured use. At graduation, the security deposit will be used to pay the outstanding balance, with the remainder returned to the cardholder. As a result, the cardholder will have full, unsecured access to their credit limit upon graduation.

DFCC customers who are not offered the opportunity to graduate or who prefer not to transition the account to unsecured use can simply continue—by default—to use the account on a secured basis and at a lower rate.

As the Application notes, the innovative product structure of the DFCC raises a number of specific questions about the application of existing law both to Synchrony’s disclosure of the two modes of use and to the substance of the envisioned graduation mechanism. Section IV below describes the relevant aspects of the product as represented by Synchrony in more detail, and Section V provides and explains the Bureau’s approval of these aspects under specific provisions of law therein identified. Absent this determination, the Bureau understands that Synchrony is not resolved to offer the DFCC. In particular, without the seamless graduation process that the Bureau’s determination would permit, Synchrony believes that there would be less interest in a lower cost secured card that has a complicated and cumbersome process to transition the cardholder to an unsecured credit line.

#### **IV. Described Aspects of the DFCC**

This Approval Order applies to the following described aspects of the DFCC Program, as represented by Synchrony in its Application.

##### *Application Information*

1. Synchrony will provide information in marketing collateral and pre-application disclosures that will inform consumers of, and help them to understand the specific terms and benefits associated with each of the features of the DFCC account. The application process will require the applicant to agree that they understand the following information:
  - a. The account has a secured and an unsecured feature;
  - b. There are different pricing and benefits associated with each feature of the account;
  - c. Only the secured feature will be accessible at account opening;

- d. After twelve months, the cardholder may be eligible to opt in to access the unsecured feature based on specific eligibility criteria and the cardholder's credit profile;
  - e. The cardholder is never required to transition from the secured feature to the unsecured feature; and
  - f. If the cardholder affirmatively chooses to access the unsecured feature, the secured feature is disabled permanently.
2. For tabular disclosures required pursuant to 12 C.F.R. 1026.60, Synchrony will include in the required table both the secured and unsecured uses of the account with their respective terms.

#### *Account Approval and Communication*

3. In connection with the account approval process (and therefore prior to initial account opening), Synchrony will assess whether the consumer has the ability, at the respective secured and unsecured APRs, to make required minimum periodic payments on the account at the offered credit limit for secured use as well as required minimum periodic payments on the account at the same credit limit when the account is used on an unsecured basis.
4. The approval communication will provide account terms and disclosures that apply to both the secured and unsecured uses of the account. It will also repeat the information provided during the application process as described in Section IV.1 above.
5. The approval communication will also inform the consumer:
  - a. That the consumer is approved for the DFCC account;
  - b. Of the maximum credit limit available to the consumer at account opening; and
  - c. That the actual credit limit at account opening will be equal to the amount of the security deposit received (up to the stated limit) and will not be available for use until after the security deposit has been received by Synchrony.

#### *Account Opening, Disclosures, and Cardholder Agreement*

6. When the security deposit is received, the DFCC account will be opened and access to the secured feature granted to the new account holder. (If the consumer does not send in a security deposit, then the DFCC account will not be opened.)
7. The cardholder agreement provided in connection with account opening will contain the terms of the account, including information about the graduation option and the terms of each feature.
8. The cardholder agreement will contain the account opening disclosure table that is required under 1026.6(b). For tabular disclosures required pursuant to 12 C.F.R.

1026.6(b), Synchrony will include in the required table both the secured and unsecured uses of the account with their respective terms.

9. The cardholder agreement will include:
  - a. The terms of both the secured and unsecured features, and the fact that there are differences;
  - b. A statement that the account will initially allow access only to the secured feature;
  - c. A description of the possible graduation, including the necessity of meeting graduation criteria;
  - d. A description of the communication that an eligible consumer would receive in connection with the opportunity to graduate;
  - e. A statement that if the account holder opts in to graduation the secured feature is permanently disabled and the unsecured feature will be at specified price terms that are higher than otherwise available for secured use; and
  - f. A description of the other mechanics of graduation, including the application of the security deposit account to the existing balance and the return of any excess to the consumer.

#### *Credit Line Increase During Secured Use*

10. If Synchrony increases the credit limit during the period of secured use, it will consider the consumer's ability to pay in the same manner that is described in Section IV.3 above.

#### *Graduation Consideration*

11. Beginning twelve months after account opening, Synchrony will consider whether the cardholder is eligible to affirmatively opt in to access the unsecured feature of the account based on specific eligibility criteria and the cardholder's credit profile.

#### *Graduation Mechanics and Notification*

12. If the cardholder qualifies, Synchrony or its merchant partner will notify the cardholder in writing.
13. The notification will include:
  - a. A statement that the unsecured feature will have the same terms as previously disclosed;

- b. The same terms for the secured and unsecured uses of the account that were initially provided at account approval in the form of a table that follows the account-opening disclosure requirements under 1026.6(b);<sup>8</sup> and
- c. The cardholder agreement (which, for an accountholder who may properly be notified electronically, may be provided via a link).

14. The notification will also state the following in clear and simple terms:

- a. The cardholder may, but is not required to, choose to opt in to access the unsecured feature of the account;
- b. If the cardholder opts in to access the unsecured feature, the cardholder's access to the secured feature will be permanently disabled;
- c. A reminder of the differential pricing (higher APR and late fee) and benefits (e.g. higher rewards earn rate);
- d. A reminder that choosing to access the unsecured feature means that the security deposit will be returned, minus the amount needed to pay off the existing secured balance;
- e. If the consumer opts in, how the effective date will be set for switching features (the "switch date");
- f. That transactions occurring after the "switch date" will be subject to the terms of the unsecured feature;
- g. How the cardholder may opt in (which will involve an electronic or written communication), and the deadline to do so;
- h. If the cardholder chooses to retain access to the secured feature (i.e. does not opt in), that the cardholder may be considered periodically for future opportunities to opt in to access the unsecured feature; and
- i. A method for the cardholder to ask questions about graduation.

#### *Unsecured Use*

15. If the cardholder chooses to opt in to access the unsecured feature, Synchrony will:

- a. Provide the cardholder written confirmation of the opt in;
- b. Provide the cardholder a replacement card and card number to access the account;
- c. Offer the cardholder the benefit of the full credit line on the account;
- d. Apply the security deposit account, in accordance with the terms of the cardholder agreement, to repay the secured balance that exists at the time of the account; and
- e. Promptly return any remaining portion of the security deposit account to the cardholder, such as by electronic transfer or check.

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<sup>8</sup> If prior to providing a given graduation opportunity, Synchrony, acting in compliance with applicable regulations, has changed any term that was disclosed in the initial account opening table provided at account approval, then the tabular disclosures provided with that opportunity would instead include that revised term.

16. In limited cases, where the cardholder has a pending dispute or a balance that is subject to special terms (for example, a promotional rate or a rate under the Servicemembers Civil Relief Act (SCRA)), Synchrony will not apply the security deposit to those balances. Instead, those balances will remain on the account at the terms applicable prior to graduation. Synchrony will not retain any portion of the security deposit following graduation, and thus these balances will be unsecured but still subject to the lower APR in effect at graduation. However, the balances will reduce the available credit on the account.
17. In connection with graduation to unsecured use, Synchrony will not:
  - a. Require any special payments from the cardholder; or
  - b. Change the minimum payment formula on the account.
18. If Synchrony increases the credit line in connection with a consumer's choosing to graduate to unsecured use, or otherwise increases the credit line after graduation, it will conduct an ability to pay test premised only on the terms of unsecured use.

**V. Particularized Compliance Determinations**

The Bureau reaches the following particularized determinations of compliance with respect to the described aspects of the DFCC Program based on the interpretation and application of existing laws, as described below, to the specific factual circumstances represented by Synchrony as set forth in Section IV above.

1. *Disclosure of both the secured and unsecured features in the application and solicitation disclosure table and in the account opening table as provided at the application and the opening of a DFCC account, respectively, complies with the requirements of 12 C.F.R. 1026.60(b) and 1026.6(b).*

Synchrony seeks confirmation that it is compliant with the account opening disclosure requirements of 12 C.F.R. 1026.6(b) to include both secured and unsecured uses, and their applicable terms, in the account opening table, even though unsecured use will not be available for at least one year and will only be available to consumers that later meet certain eligibility requirements. The Bureau agrees that this is compliant in the particular circumstances described by Synchrony. Section 1026.6(b)(2)(i) requires that the account opening table include each periodic rate "that may be used." Even though unsecured use is not immediately available and may never prove available to a given consumer, it is a rate that "may be used" given the potential availability of graduation on the terms described. Similarly, balance transfer rates "may be used," even though the consumer may not receive a balance transfer offer on those disclosed terms for some time, or indeed ever. It is, therefore, compliant to include the unsecured terms and balance transfer rates in the account opening disclosure.

For the same reasons, the Bureau further determines that it is compliant with 12 C.F.R. 1026.60 to include both the secured and unsecured usage, and their applicable terms, in the tabular disclosures required by that provision.

2. *The disclosure that Synchrony describes providing at opt-in prior to the first unsecured use of a DFCC account complies with any applicable pre-use notification requirements of 12 C.F.R. 1026.9(b)(1).*

Synchrony seeks confirmation that to the extent that 1026.9(b)(1) applies to graduation, the disclosure that it will provide with the opt-in opportunity complies with the pre-use notification requirements of 1026.9(b)(1). Section 1026.9(b)(1) states that: “if the creditor adds a credit feature to the consumer’s account ... on the same finance charge terms [as those previously disclosed], the creditor shall disclose, before the consumer uses the feature ... for the first time, that it is for use in obtaining credit under the terms previously disclosed.”

As described by Synchrony, the terms of unsecured use will be unchanged from prior disclosure.<sup>9</sup> Further, if the cardholder qualifies for unsecured use, Synchrony’s notification will indicate the terms of unsecured use and note that they are unchanged from such prior disclosure.<sup>10</sup> Accordingly, the Bureau determines that the opt-in disclosures described by Synchrony comply with the pre-use renotification requirements of 1026.9(b)(1), to the extent that they apply.<sup>11</sup>

3. *In the specific circumstances described by Synchrony, DFCC graduation complies with the advance notice exception to the limitation on APR, fee, and charge increases in 12 C.F.R. 1026.55(a) and (b)(3) to the extent that limitation would otherwise apply.*

Section 1026.55(a) prohibits a card issuer from increasing an annual percentage rate or certain fees or charges required to be disclosed at account opening on a credit card account under an open-end (not home-secured) consumer credit plan subject to certain exceptions. Section 1026.55(b)(3) establishes an exception for certain prospective increases imposed by the issuer “after complying with the applicable notice requirements in § 1026.9(b), (c), or (g).”

To the extent that the higher rate on unsecured use amounts to a rate increase within the meaning of 1026.55(a), the Bureau is satisfied that such increase complies with the advance notice

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<sup>9</sup> In some cases, this will be because the terms are the same as those disclosed at account approval. In other cases, as noted in footnote 8 above, the applicable terms might have changed since account approval, but if so, then as noted therein, Synchrony would have effected that change consistent with applicable rules, which would necessarily have included disclosure of the revised terms.

<sup>10</sup> See Section IV.13-14.

<sup>11</sup> In light of this determination, the Bureau does not resolve Synchrony’s alternative contention that no opt-in disclosure is required under 1026.9(b)(1) because both features were fully described at account opening. In addition, the determination reached in this Section V.2 does not resolve the separate question of whether activation of the unsecured feature *at the same time that secured use is eliminated* (along with return of the security deposit net of outstanding secured balances) represents a “significant change in account terms” under 1026.9(c)(2). That question is addressed in Section V.4 below.



exception. *See* 12 C.F.R. 1026.55(b)(3).<sup>12</sup> Under that provision, the required notice may be given under 1026.9(b) so long as the disclosed rate is not applied to transactions that occurred prior to the provision of that notice. *See* 1026.55(b)(3)(i). Section V.2 above contains the Bureau’s determination that the notice provided with the opt-in complies with 1026.9(b).<sup>13</sup> In addition, the rate applicable to unsecured transactions after graduation does not apply to any prior transactions, all of which occurred before graduation and were therefore secured.<sup>14</sup> While 1026.55(b)(3)(iii) prohibits any rate increase within one year of account opening, Synchrony has stated that DFCC graduation will not occur until at least one year after the consumer opens the account.

4. *In the specific circumstances described by Synchrony, no 45-day advance notice of a change in terms is required under 12 C.F.R. 1026.9(c)(2) for the consumer to be offered an opt-in or for graduation to occur.*

The Bureau recognizes that the complete replacement of the secured terms with the unsecured terms that occurs at graduation raises the question of whether such a replacement amounts to a significant change of account terms. Section 1026.9(c)(2) requires for open-end credit that “when a significant change in account terms ... is made, a creditor must provide a written notice of the change at least 45 days prior to the effective date of the change to each consumer who may be affected,” subject to certain exceptions.

In the circumstances described by Synchrony, however, to the extent there is a disclosure obligation beyond 1026.9(b)(1), it is properly met by the 1026.6(b) account-opening disclosures that Synchrony describes providing at opt-in. Comment 1026.5(b)(1)(i)-6 provides that “[w]hether a substitution or replacement [of terms] results in the opening of a new account or a change in the terms of an existing account for purposes of the disclosure requirements in §§ 1026.6(b) and 1026.9(c)(2) is determined in light of all the relevant facts and circumstances.” The preamble to the rule and commentary explained that the standard was meant to provide “flexibility” to allow consumers to benefit from the use of new features and benefits—that the issuer would not want to provide without compensation—without having to wait 45 days in all circumstances.<sup>15</sup> The preamble also noted that the standard might have application when the consumer requests the substitution or replacement of terms, though such a request, without more,

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<sup>12</sup> As a result, the Bureau makes no determination about the Application’s further contention that no increase occurs at graduation because the terms of unsecured use were disclosed at account opening, redisclosed in connection with the opt-in, and remain unchanged through graduation.

<sup>13</sup> As noted above, this does not resolve the separate question of whether graduation might also represent a significant change in terms, thus requiring notice under 1026.9(c)(2). That question is addressed in Section V.4.

<sup>14</sup> If a secured transaction posts after graduation (because, for example, the merchant did not submit the transaction promptly), it will not be subject to the unsecured rate, but the secured rate.

<sup>15</sup> *See* 75 FR 7658, 7665-66 (Feb. 22, 2010).

would not be sufficient to resolve the question of whether 1026.9(c)(2) notice or 1026.6(b) notice would be required.<sup>16</sup>

Comment 1026.5(b)(1)(i)-6 points to the presence of six facts and circumstances as suggesting that a replacement or substitution of terms is properly noticed with new account disclosures, rather than as a significant change in terms. Most of those factors are present here: a new card and account number will be issued in connection with graduation; new features are provided after graduation; graduation results from an individual DFCC customer's decision to opt in to graduation; and the basic functionality of the account changes from secured to unsecured. As a result, in the circumstances described by Synchrony, the Bureau determines that no 1026.9(c)(2) disclosure is required in connection with graduation.<sup>17</sup> The provision of 1026.6(b) disclosures with the opportunity to opt in, as described by Synchrony, complies with whatever notice requirements—beyond those discussed in Section V.2 above—may apply to graduation.

5. *Although Synchrony will provide 1026.6(b) disclosures at the time of opt-in, as described further below, graduation does not represent the opening of a new account for purposes of 1026.55(b)(3)(iii) or 1026.51(a)(1)(i).*

a. *Graduation does not restart the one-year period during which an issuer may not rely on the advance notice exception for prospective rate increases.*

Section 1026.55(b)(3)(iii) prohibits an issuer from using the advance notice exception to increase the rate on an account “during the first year after the account is opened.” Relevant commentary indicates that an account has not been opened for purposes of this section when an account is substituted or replaced by the same issuer. Comment 55(b)(3)-3.ii. The Bureau has already determined in Section V.4 above that DFCC graduation can be viewed as such a substitution or replacement. In addition, the described aspects of the DFCC product offer no alternative grounds to characterize graduation as an account opening. As a result, the Bureau determines that the one-year prohibition on rate increase after account opening does not restart at graduation.<sup>18</sup>

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<sup>16</sup> See *id.*

<sup>17</sup> Synchrony also contends that no change in terms notice is required because no change occurs at graduation. The company observes that the terms of unsecured use remain as disclosed at account opening and that no change in terms notice (or indeed any notice at all) is required to end secured functionality on an account. Given its determination in Section V.4 above, however, the Bureau does not need to determine whether Synchrony is correct in this alternative position. Similarly, the Bureau does not need to determine whether, in these circumstances, disclosure that meets the terms of 1026.9(b)(1) necessarily negates any need for 1026.9(c)(2) notice. Cf. Comment 1026.9(c)(2)-6 (noting that in some cases (9)(b) and 9(c) notice requirements are not mutually exclusive).

<sup>18</sup> This Approval Order makes no determination on the application of 1026.55(b)(3)(iii) to graduation that occurs less than one year after account opening because the Application is limited to graduation after that period.

- b. Absent a credit line increase, graduation does not trigger a new evaluation of the consumer's ability to pay.*

Section 1026.51(a)(1)(i) requires that a card issuer consider a consumer's ability to pay when it "open[s] a credit card account." In the described circumstances, the Bureau is satisfied that this provision does not require a new ability to pay test at graduation, at least so long as the credit line after graduation is the same as the one in place before graduation. As noted above, for disclosure purposes, graduation represents at most replacement or substitution of the account. In addition, assuming there is no change in the credit limit as a result of or otherwise following graduation, Synchrony will already have assessed the consumer's ability to pay in connection with unsecured use, at that same credit limit, even before graduation is made available. Finally, as described above, Synchrony will conduct a new ability to pay test if the credit limit is increased.

- 6. In the specific circumstances described by Synchrony, DFCC graduation complies with the requirements of 1026.55(c).*

To the extent that the higher rate on unsecured use amounts to a rate increase, the Bureau is satisfied that Synchrony's treatment of any secured balance existing at graduation complies with the protected balance requirements of 1026.55(c). At the time of graduation, Synchrony will apply the security deposit to any outstanding secured balance, returning the remainder to the cardholder.<sup>19</sup> Applying the security deposit to pay the existing balance at the time of transition is no less beneficial to the consumer than the repayment method applicable to secured balances before graduation, when, in the normal course, the consumer has no access to the security deposit at all. *See* 1026.55(c)(2)(i). Accordingly, the graduation process complies with the protected balance requirements of 1026.55(c).<sup>20</sup>

- 7. In the specific circumstances described by Synchrony, DFCC graduation does not trigger a rate reevaluation requirement.*

Rate reevaluation is required if there is an increase on an account that requires notice under 1026.9(c)(2) or 1026.9(g). *See* 1026.59. The Bureau has already determined that graduation does not require notice under 1026.9(c). (*See* Section V.4.) The Bureau further determines that 1026.9(g) has no application to graduation because the unsecured rate is not the product of the consumer's delinquency or default or imposed as a penalty. *See* 1026.9(g)(1)(i)-(ii). As a result, the Bureau determines that in the circumstances described above, DFCC graduation does not trigger a rate reevaluation requirement.

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<sup>19</sup> The Bureau understands that Synchrony will not apply the security deposit to repay certain limited balances subject to special terms at the time of graduation. These balances will remain subject to the terms applicable to use of the secured feature, and accordingly Synchrony will treat them as protected balances subject to the requirements of 1026.55(c).

<sup>20</sup> If a secured transaction posts after graduation (*see* footnote 14 *supra*), it will not be subject to the unsecured rate but the secured rate.

## **VI. Additional Considerations**

In issuing this Approval Order, the Bureau has also considered a variety of additional factors, including the innovative structure of the DFCC Program, the transparency of its graduation process, the importance of consumer choice in the program overall, and the program's potential to deliver a lower price for secured use than what is generally available in the secured card market. The Bureau sees the latter as an especially notable aspect of the DFCC Program because secured cards are an important means of access to credit for consumers with lower credit scores and they carry the potential for improving scores for consumers who use them successfully.

## **VII. Duration**

The duration of this Approval Order is 36 months from issuance. The Approval Order covers all DFCC graduations that align with the terms of the Approval Order and that occur on DFCC accounts originated in this 36-month period. DFCC accounts originated after this 36-month period are not covered under this Approval Order, absent an extension.

Under the CAS Policy, the Bureau generally views two years as a normal period sufficient to determine the appropriate follow-on action with respect to the regulatory uncertainty that is the focus of an application.<sup>21</sup> In this case, however, DFCC graduations do not occur until at least one year after the first DFCC account is issued, limiting the time period available for that determination. In the circumstance in which Synchrony applied for an extension, for example, it would have less than nine months of graduation experience on which to base that request, which is significantly less than the period envisioned in the Policy. Accordingly, the Bureau believes a longer duration of 36 months is appropriate in these circumstances.

Notwithstanding the foregoing, the Bureau may terminate this Approval Order prospectively prior to the end of its 36-month duration if: (i) Synchrony fails to substantially comply in good faith with the CAST; (ii) the described aspects of the product or service do not perform as anticipated in the Application; or (iii) a statutory change or Federal judicial holding causes the Bureau to conclude that Synchrony can no longer rely in good faith on the Approval Order as TILA requires.<sup>22</sup> In addition, if Synchrony notifies the Bureau that it wishes to terminate the CAST, thereby terminating its ability to rely on the Approval Order, the Bureau may then terminate the CAST and the Approval Order prospectively.

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<sup>21</sup> When it issued the final CAS Policy, the Bureau noted that two years would generally be an appropriate length of time to gather and analyze data to determine whether an approval should be: (1) confirmed in the Bureau's regulations or Commentary (or other generally applicable interpretive guidance), in which case an extension might also be appropriate; (2) maintained as is; or (3) modified or terminated. *See* CAS Policy, Preamble, IV.F.

<sup>22</sup> In accordance with the terms of the CAS Policy, however, the Bureau intends to notify Synchrony of possible grounds for termination, and permit Synchrony an opportunity to respond within a reasonable period of time. *See* CAS Policy, Section E.3.

### **VIII. Conclusion**

Based on the foregoing considerations, and subject to Synchrony's good faith compliance with the terms and conditions of the CAST, the Bureau approves of Synchrony's offering or providing the described aspects of the DFCC Program as stated in the particularized Regulation Z compliance determinations contained in this Approval Order.



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Thomas Pahl, Deputy Director  
Bureau of Consumer Financial Protection