

Industry commenters uniformly agreed that fees for expedited credit card delivery should not have to be disclosed under TILA as long as the consumer can obtain the card without paying a fee; some of these commenters believe it should be sufficient if the card issuer sends the card without a fee by any "reasonable method." Consumer groups contended that the fee should be disclosed as an "other charge" if the creditor documents consumers' knowing and voluntary assent to the fee, the fee charged for expediting delivery is reasonably related to the actual cost of delivery, and the card is available without a fee by first-class mail or faster. If these conditions are not satisfied, consumer advocates believe the fee should be disclosed as a finance charge.

The final comment reflects the view that a fee for expedited delivery of a credit card is not incidental to the extension of credit and thus is not a finance charge where the consumer requests the service and the card is also available by standard mail service (or another means that is at least as fast) without a fee. In those circumstances, the amount of the voluntary charge for expedited delivery in relation to the creditor's cost is not a factor in determining whether the fee is a finance charge.

In addition, the fee does not appear to be an "other charge" under Regulation Z. An expedited card delivery service does not appear to be significant or related to the credit plan because the service is provided only occasionally, such as when a consumer seeks to replace a lost or stolen credit card and requests expedited delivery. Finally, nothing in the record suggests the need for additional documentation to demonstrate that the consumer's assent to the service is knowing and voluntary.

#### Section 226.9—Subsequent Disclosure Requirements

##### 9(c) *Change in Terms*

A revision to comment 9(c)(2)–1 was proposed to address expedited payment fees consistent with the proposed revision to comment 6(b)–1. Because expedited payment fees are not being classified as "other charges" at this time, the proposed revision to comment 9(c)(2)–1 is unnecessary and is not being adopted.

#### Section 226.12—Special Credit Card Provisions

##### 12(a) *Issuance of Credit Cards*

Under the proposal, comment 12(a)(2)–6 would be revised to allow card issuers, subject to certain conditions, to replace an accepted credit

card with one or more replacement cards. Most commenters supported the proposed commentary provision with some suggested revisions, as discussed below. The proposal is adopted with revisions.

Section 132 of TILA, which is implemented by § 226.12(a) of Regulation Z, generally prohibits creditors from issuing credit cards except in response to a request or application. Section 132 explicitly exempts from this prohibition credit cards issued as renewals of or substitutes for previously accepted credit cards. Existing comment 12(a)(2)–5, the "one-for-one rule," interprets these statutory and regulatory provisions by providing that, in general, a creditor may not issue more than one credit card as a renewal of or substitute for an accepted card (as that term is defined under Regulation Z). The existing staff commentary does not, however, construe Section 132 as requiring one-for-one replacement in all circumstances. *See* comment 12(a)(2)–6.

Advances in technology used for information transmittal have enabled card issuers to issue credit cards in different sizes and formats. These new cards may enhance consumer convenience. A merchant's card reading equipment determines, however, whether a consumer can use a particular credit card with that merchant. For example, some merchants' equipment and some automated teller machines require insertion of a "full-size" credit card. Certain cards that are reduced in size may require different card readers than those presently used for "full-size" cards. Some card issuers have requested guidance on the issuance of cards using new technologies, which are intended to supplement but not necessarily replace a cardholder's existing card.

To address these developments, under the proposal, comment 12(a)(2)–6 would be revised to provide additional guidance, consistent with the statute and legislative purpose. The proposed comment indicated that a card issuer may replace an accepted credit card with more than one renewal or substitute card on the same account where: (1) The replacement cards access only the account of the accepted card; (2) all cards issued under the account are governed by the same terms and conditions; and (3) the consumer's total liability for unauthorized use with respect to the account does not increase.

Several industry commenters requested that the first condition be revised to require only that any replacement card access the same "credit plan" as the accepted card. This suggested revision is too broad. For

example, some open-end credit plans might include multiple accounts, such as a credit card account and a home equity line of credit (HELOC), where the consumer's credit card does not access the HELOC account. The commenters' suggestion to broaden the comment would permit creditors to replace an accepted card with one that accesses the credit card account and another that accesses the HELOC. Because the consumer did not previously have credit card access to the HELOC, adding such access on an unsolicited basis would be inconsistent with the legislative purposes of Section 132. Accordingly, the final comment provides that the replacement cards should access only the accounts previously accessed by the consumer's accepted card. Minor revisions have been made to this part of the final comment for clarity; no change in meaning is intended.

Some industry commenters requested a clarification in the final rule that a supplemental card need not access all of the features of the consumer's existing card account. Neither the proposal nor the final comment requires that all replacement cards issued access all of the account features of the accepted card.

Commenters also requested a clarification that issuers would not be prevented from issuing multiple replacement cards when there is a substitution due to a change in the card issuer's name or account number, or where there is a successor card issuer. The requirement that supplemental cards must access the same account as the accepted card does not preclude issuers from issuing multiple replacement cards as part of a proper substitution. *See, e.g.,* comments 12(a)(2)–2 and –3.

Some industry commenters opposed the second condition—that all cards issued in connection with a renewal or substitution be subject to the same terms and conditions. Some commenters noted that for safety and soundness reasons, an issuer might limit use of a supplemental access device to low-dollar sales transactions (such as purchases at a vending machine or gas pump); limit the availability of credit on a supplemental card (such as a card for the cardholder's dependent child); or limit use of particular access devices to transactions with merchants that employ special security procedures or agree to special risk-sharing arrangements. Other commenters requested clarification that all credit features accessible with a supplemental card need not be subject to the same terms, for example, a different APR