

might apply to purchase transactions and cash advances.

As proposed, the final comment provides that where a card issuer replaces an accepted card with more than one renewal or substitute card on an unsolicited basis, all replacement cards must be issued subject to the same terms and conditions. The final comment clarifies that this requirement applies only to terms and conditions that are required to be disclosed under § 226.6 of Regulation Z, except that a creditor may vary terms for which no change-in-terms notice is required under § 226.9(c). For example, a card issuer could issue a supplemental card that has a lower APR, has a lower credit limit, can only be used for small dollar transactions or for a subset of merchants, or is subject to different security procedures than the accepted card. Moreover, the comment does not suggest that all the credit features available with the unsolicited supplemental card must be subject to the same terms; for example, the APRs for purchase transactions and cash advances might differ for the supplemental card to the same extent that these terms differ for the accepted card.

Commenters generally supported the third condition, that the consumer's total liability for unauthorized use of the account must not increase as a result of the creditor's issuance of a supplemental card. That condition is adopted without revision in the final comment.

Several consumer groups advocated adding a condition that either the replacement cards all be mailed in the same envelope to deter identity theft or the consumer be given written notice seven days before the mailing of an additional card. They also recommended requiring other security measures, such as consumer-initiated card activation.

Card issuers typically send cards that are not activated and employ security procedures requiring the consumer to verify receipt of the card, to avoid or limit monetary losses from the theft of credit cards sent through the mail. These measures have become increasingly common and are used on a substantial portion of cards now issued. It is expected that industry will continue these practices, which should be as effective when replacing an accepted card with one or more renewal or substitute cards.

Comment was also solicited on whether it would be appropriate to allow the unsolicited issuance of supplemental cards for an existing account on the conditions specified

above even when there is no renewal or substitution for the cardholder's existing card. Industry commenters stated that allowing additional cards to be sent outside of renewal or substitution would reduce card issuers' costs by eliminating the need to produce and distribute unnecessary replacement cards. They also noted that the issuance of supplemental cards alone (as opposed to issuance in connection with a renewal or substitution) would not result in increased risk of liability for unauthorized use of the cards. Consumer advocates opposed the unsolicited issuance of more than one card on an existing account (when there is no renewal or substitution) unless consumers are notified by mail seven days before an additional card is sent and security measures such as consumer-initiated card activation are required, to protect against any added risk of theft and unauthorized use.

Based on the comments received, staff plans to recommend that the Board consider amending § 226.12(a) to allow the unsolicited issuance of additional cards on an existing account outside of renewal or substitution under certain conditions. Also, consideration may be given to whether changes to Regulation E's restrictions on the unsolicited issuance of additional debit cards on a consumer's existing asset account are warranted.

Subpart C—Closed-End Credit

Section 226.18—Content of Disclosures

18(g) Payment Schedule

The disclosures for closed-end loans must include the number, amounts, and timing of payments scheduled to repay the obligation. Premiums paid for insurance that protects the creditor against the consumer's default or other credit loss (sometimes referred to as private mortgage insurance) are finance charges that must be included in the payment schedule. The payment schedule should reflect the fact that, under the Homeowners Protection Act of 1998 (HPA), such insurance generally must terminate before the term of the loan expires.

With some revisions for clarity, changes to comment 18(g)–5 are adopted as proposed to provide additional guidance on how mortgage insurance premiums should be disclosed on the payment schedule when some premiums are collected and escrowed at the time the loan is closed. Creditors are required to disclose a payment schedule based on the borrower's legal obligation. The comment provides an example to facilitate compliance.

Commenters generally supported the proposal. Several commenters noted that the loan documents might be silent on how the termination of insurance premiums will be implemented under the HPA. TILA disclosures must be based on the legal obligation, which is determined by applicable state or other law, and not solely by the parties' written agreement. See comment 17(c)(1)–1. Comment 18(g)–5 has been revised to reflect this guidance.

Two commenters sought clarification that the rules for disclosing mortgage insurance premiums under TILA would not affect the rules for escrow accounts under the Real Estate Settlement Procedures Act (RESPA). The text of the final comment has been modified to allay those concerns; the comment in no way affects creditors' compliance with RESPA's aggregate escrow accounting rules.

Section 226.19—Certain Residential Mortgage Transactions

19(b) Certain Variable-Rate Transactions

A technical amendment to comment 19(b)(1)–2 is adopted, as proposed, to change the citation to comment 19(b)–5, as amended (65 FR 17129, March 31, 2000). No substantive change is intended.

Subpart E—Special Rules for Certain Home Mortgage Transactions

Section 226.32—Requirements for Certain Closed-End Home Mortgages

32(a) Coverage

Section 226.32 implements the Home Ownership and Equity Protection Act of 1994 (HOEPA), which is part of the Truth in Lending Act. HOEPA requires additional disclosures and provides substantive protections for certain home-secured loans carrying rates or fees above specified triggers. HOEPA covers mortgage loans for which the annual percentage rate (APR) exceeds the yield on Treasury securities with a comparable maturity by a specified number of percentage points (8 for first-lien loans, 10 for subordinate-lien loans). The APR is compared with the yield on Treasury securities as of the 15th day of the month immediately preceding the month of application.

Revisions to comment 32(a)(1)(i)–4 were proposed to clarify how creditors should determine the applicable yield on Treasury securities. The proposal provided that creditors should not use results of Treasury auctions. Instead, creditors should use yields on actively traded issues adjusted to constant maturities that are listed on the Board's