



NACUBO has excerpted those portions of this *Federal Register* notice pertaining to colleges and universities. Proposed regulatory language has been reformatted to make it easier to read.

Excerpted from October 21, 2009 *Federal Register* pp. 54123-54332

FEDERAL RESERVE SYSTEM

12 CFR Part 226

[Regulation Z; Docket No. R-1370]

Truth in Lending

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Proposed rule; request for public comment.

SUMMARY: The Board proposes to amend Regulation Z, which implements the Truth in Lending Act, and the staff commentary to the regulation in order to implement provisions of the Credit Card Accountability Responsibility and Disclosure Act of 2009 that are effective on February 22, 2010. The proposal also republishes portions of the final rules amending Regulation Z's provisions regarding open-end credit that was published in the *Federal Register* on January 29, 2009. Finally, the proposal also republishes several proposed amendments to the January 2009 Regulation Z Rule that were originally published in the *Federal Register* on May 5, 2009.

DATES: Comments must be received on or before November 20, 2009.

ADDRESSES: You may submit comments, identified by Docket No. R-1370, by any of the following methods:

- Agency Web Site: <http://www.federalreserve.gov>. Follow the instructions for submitting comments at <http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm>.
- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.
- E-mail: regs.comments@federalreserve.gov. Include the docket number in the subject line of the message.
- Facsimile: (202) 452-3819 or (202) 452-3102.
- Mail: Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW, Washington, DC 20551.

All public comments are available from the Board's Web site at <http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm> as submitted, unless modified for technical reasons. Accordingly, your comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper form in Room MP-500 of the Board's Martin Building (20th and C Streets, NW) between 9:00 a.m. and 5:00 p.m. on weekdays.

FOR FURTHER INFORMATION CONTACT: Jennifer S. Benson or Stephen Shin, Attorneys, Amy Burke, Benjamin K. Olson, or Vivian Wong, Senior Attorneys, or Krista Ayoub or Ky Tran-Trong, Counsels, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, at (202) 452-3667 or 452-2412; for users of Telecommunications Device for the Deaf (TDD) only, contact (202) 263-4869.

Preamble Discussion

[FR p. 54127]

C. Marketing to Students

Prohibited inducements. The Credit Card Act limits a creditor's ability to offer a student at an institution of higher education any tangible item to induce the student to apply for or open an open-end consumer credit plan offered by the creditor. Specifically, the Credit Card Act prohibits such offers: (1) on the campus of an institution of higher education; (2) near the campus of an institution of higher education; or (3) at an event sponsored by or related to an institution of higher education.

The proposed commentary would provide guidance to assist creditors in complying with the rule. For example, the proposed commentary would clarify that "tangible item" means a physical item (such as a gift card, t-shirt, or magazine subscription) and does not include non-physical items (such as discounts, rewards points, or promotional credit terms). The proposed commentary would also clarify that a location that is within 1,000 feet of the border of the campus of an institution of higher education (as defined by the institution) is considered near the campus of that institution. Finally, consistent with guidance recently adopted by the Board with respect to certain private education loans, the proposed commentary would state that an event is related to an institution of higher education if the marketing of such event uses words, pictures, or symbols identified with the institution in a way that implies that the institution endorses or otherwise sponsors the event.

Disclosure and reporting requirements. The proposed rule would also implement the provisions of the Credit Card Act requiring institutions of higher education to publicly disclose agreements with credit card issuers regarding the marketing of credit cards. The proposal would state that an institution may comply with this requirement by, for example, posting the agreement on its Web site or by making the agreement available upon request.

Section 226.57 Special Rules for Marketing Open-End Credit to College Students

Section 304 of the Credit Card Act adds new TILA Section 140(f) to require the public disclosure of contracts or other agreements between card issuers and institutions of higher education for the purpose of marketing a credit card and to impose new restrictions related to marketing open-end credit to college students. 15 U.S.C. 1650(f). The Board proposes to implement these provisions in new §226.57.

The Board also proposes to implement provisions related to new TILA Section 127(r) in §226.57. 15 U.S.C. 1637(r). TILA Section 127(r), which was added by Section 305 of the Credit Card Act, requires card issuers to submit an annual report to the Board containing the terms and conditions of business, marketing, promotional agreements, and college affinity card agreements with an institution of higher education, or other related entities, with respect to any college student credit card issued to a college student at such institution.

57(a) Definitions

New TILA Section 140(f) does not provide any definitions while new TILA Section 127(r) provides definitions for terms that are also used in new TILA Section 140(f). See 15 U.S.C. 1650(f). To ensure the use of these terms is consistent throughout these sections, the Board proposes to incorporate the definitions set forth in TILA Section 127(r) in §226.57(a).

Proposed §226.57(a)(1) would define “college student credit card” as a credit card issued under a credit card account under an open-end (not home-secured) consumer credit plan to any college student. This definition is similar to TILA Section 127(r)(1)(B), which defines “college student credit card account” as a credit card account under an open-end consumer credit plan established or maintained for or on behalf of any college student.

Proposed §226.57(a)(1) defines “college student credit card” rather than “college student credit card account” because the statute and regulation use the former term but not the latter. Also, the proposed definition uses the proposed defined term “credit card account under an open-end (not home-secured) consumer credit plan” (in proposed §226.2(a)(15)) for consistency with other sections of the proposed regulations implementing the Credit Card Act. The term would exclude home-equity lines of credit accessed by credit cards and overdraft lines of credit accessed by debit cards, which the Board believes are not typical types of college student credit cards.

TILA Section 127(r)(1)(A) defines “college affinity card” as a credit card issued under an open end consumer credit plan in conjunction with an agreement between the issuer and an institution of higher education or an alumni organization or a foundation affiliated with or related to an institution of higher education under which cards are issued to college students having an affinity with the institution, organization or foundation where at least one of three criteria also is met. These three criteria are: (1) the creditor has agreed to donate a portion of the proceeds of the credit card to the institution, organization, or foundation (including a lump-sum or one-time payment of money for access); (2) the creditor has agreed to offer discounted terms to the consumer; or (3) the credit card bears the name, emblem, mascot, or logo

of such institution, organization, or foundation, or other words, pictures or symbols readily identified with such institution or affiliated organization. The Board is not proposing a regulatory definition comparable to this definition in the statute; it appears that the definition of “college student credit card,” discussed above, is broad enough to encompass any “college affinity card” as defined in TILA Section 127(r)(1)(A), and therefore the definition of “college affinity card” is unnecessary. However, the Board solicits comment on whether the regulations should contain a definition of “college affinity card” as well as a definition of “college student credit card.”

Proposed comment 57(a)(1)-1 would clarify that a college student credit card includes a college affinity card, as discussed above, and that, in addition, a card may fall within the scope of the definition regardless of the fact that it is not intentionally targeted at or marketed to college students.

Proposed §226.57(a)(2) would define “college student” as an individual who is a full-time or a part-time student attending an institution of higher education. This definition is consistent with the definition of “college student” in TILA Section 127(r)(1)(C). The definition is intended to be broad and would apply to students of any age attending an institution of higher education. Furthermore, the term “college student” is not limited to students attending an undergraduate program at an institution of higher education. The term applies to all students, including those enrolled in graduate programs or joint degree programs.

TILA Section 127(r)(1)(D) states that the term “institution of higher education” has the same meaning as in section 101 and 102 of the Higher Education Act of 1965. 20 U.S.C. 1001 and 1002. Meanwhile, TILA Section 140(a)(3), as added by the Higher Education Opportunity Act of 2008, contains a definition for “institution of higher education” that differs slightly from the definition in TILA Section 127(r)(1)(D). Specifically, TILA Section 140(a)(3) states that “institution of higher education” has the same meaning as in section 102 of the Higher Education Act of 1965 (20 U.S.C. 1002), without reference to section 101 of the Higher Education Act of 1965 (20 U.S.C. 1001). However, as discussed in the Board’s recently adopted amendments regarding private education loans, the Board understands that institutions covered under section 101 of the Higher Education Act of 1965 would also be covered under section 102 of the Higher Education Act of 1965. As a result, the definition of “institution of higher education” adopted in §226.46(b)(2) to implement TILA Section 140(a)(3), as it applies to private education loans references both sections 101 and 102 of the Higher Education Act of 1965. [Footnote 48: 74 FR 41194 (Aug. 14, 2009)]

In order to have a consistent definition of the term for all sections added by the Credit Card Act and to facilitate compliance, the Board proposes to use its authority under TILA Section 105(a) to apply the definition in TILA Section 127(r)(1)(D) to TILA Section 140(f). 15 U.S.C. 1604(a). As a result proposed §226.57(a)(3) would adopt the definition of “institution of higher education” in TILA Section 127(r)(1)(D) and would be applicable not only to the provisions in TILA Section 127(r), but also TILA Section 140(f). This definition would also be consistent with the definition of “institution of higher education” in § 226.46(b)(2) for private education loans.

Proposed §226.57(a)(4) would define “affiliated organization” as an alumni organization or foundation affiliated with or related to an institution of higher education, to provide a conveniently shorter term to be used to refer to such organizations and foundations in various provisions of the proposed regulations.

Proposed §226.57(a)(5) would delineate the types of agreements for which creditors must provide annual reports to the Board, under the defined term “college credit card agreement.” The term would be defined to include any business, marketing or promotional agreement between a card issuer and an institution of higher education or an affiliated organization in connection with which college student credit cards are issued to college students currently enrolled at that institution. The definition would not incorporate the concept of a college affinity card agreement, which is used in TILA Section 127(r)(1)(A), as discussed above. The Board believes that the definition of “college credit card agreement” as proposed would be broad enough to include agreements concerning college affinity cards; however, the Board requests comment on whether language referring to college affinity card agreements should also be included in the regulations.

As proposed comment 57(a)(5)-1 would clarify, business, marketing and promotional agreements may include a broad range of arrangements between a creditor and an institution of higher education or affiliated organization, including arrangements that do not fall within the concept of a college affinity card agreement as discussed in TILA Section 127(r)(1)(A). For example, TILA Section 127(r)(1)(A) specifies that under a college affinity card agreement, the card issuer has agreed to make a donation to the institution or affiliated organization, the card issuer has agreed to offer discounted terms to the consumer, or the credit card will display pictures, symbols, or words identified with the institution or affiliated organization; even if these conditions are not met, an agreement may qualify as a college credit card agreement, if the agreement is a business, marketing or promotional agreement that contemplates the issuance of college student credit cards to college students currently enrolled at the institution. An agreement may qualify as a college credit card agreement even if marketing of cards under the agreement is targeted at alumni, faculty, staff, and other non-student consumers, as long as cards may also be issued to students in connection with the agreement.

57(b) Public Disclosure of Agreements

The Board proposes to implement new TILA Section 140(f)(1) in §226.57(b). Consistent with the statute, proposed §226.57(b) would state that an institution of higher education shall publicly disclose any credit card marketing contract or other agreement made with a card issuer or creditor. The Board also proposes commentary to provide examples of how an institution of higher education may publicly disclose such contracts or agreements, and to clarify that the entire agreement must be disclosed. Proposed comment 57(b)-1 would specify that an institution of higher education may fulfill its duty to publicly disclose any contract or other agreement made with a card issuer or creditor for the purposes of marketing a credit card by posting such contract or agreement on its Web site. Alternatively, the institution of higher education may make such contract or agreement available upon request, provided the procedures for requesting the documents are reasonable and free of cost to the requestor, and the contract or agreement is provided within a reasonable time frame. The list in proposed comment 57(b)-1 is not exhaustive, so an institution of higher education may publicly disclose these contracts or agreements in other ways.

In addition, proposed comment 57(b)-2 would bar institutions of higher education from redacting any contracts or agreements they are required to publicly disclose under proposed §226.57(b). As a result, any clauses in existing contract or agreements addressing the confidentiality of such contracts or agreements would be invalid to the extent they prevent institutions of higher education from publicly disclosing such

contracts or agreements in accordance with proposed §226.57(b). The Board believes that it is important that all provisions of these contracts or agreements be available to college students and other interested parties. If institutions were permitted to redact portions of these contracts or agreements, interested parties may be deprived of a full understanding of these arrangements.

57(c) Prohibited Inducements

Under TILA Section 140(f)(2), no card issuer or creditor may offer to a student at an institution of higher education any tangible item to induce such student to apply for or participate in an open-end consumer credit plan offered by such card issuer or creditor, if such offer is made on the campus of an institution of higher education, near the campus of an institution of higher education, or at an event sponsored by or related to an institution of higher education. The Board proposes to implement this provision in §226.57(c), which generally would track the statutory language. The Board notes that unlike other statutory provisions the Board proposes to implement in §226.57, TILA Section 140(f)(2) applies not only to credit card accounts, but also other open-end consumer credit plans, such as lines of credit.

To provide further guidance on the prohibition in §226.57(c), the Board also proposes several new comments. Proposed comment 57(c)-1 would clarify that a tangible item under §226.57(c) includes any physical item, such as a gift card, a t-shirt, or a magazine subscription, that a card issuer or creditor offers to induce a college student to apply for or open an open-end consumer credit plan offered by such card issuer or creditor. The proposed comment would also provide some examples of non-physical inducements that would not be considered tangible items, such as discounts, rewards points, or promotional credit terms.

Because offering tangible items to college students is prohibited only if the items are offered to induce the student to apply for or open an open-end consumer credit plan, proposed comment 57(c)-2 would clarify that if a tangible item is offered to a person whether or not that person applies for or opens an open-end consumer credit plan, the item is not an inducement. As an example, proposed comment 57(c)-2 states that refreshments offered to a college student on campus that are not conditioned on whether the student has applied for or agreed to open an open-end consumer credit plan would not be considered inducements that would cause a creditor to violate §226.57(c).

The prohibition in §226.57(c) extends to an offer that is made, among other places, near the campus of an institution of higher education. The Board is not aware of any standard for determining a location near a school that is analogous to the prohibition in TILA Section 140(f)(2), but is aware of existing standards for other types of prohibitions. TILA Section 140(f)(2)(B) requires the Board to determine what is considered near the campus of an institution of higher education. Based on the distances used in state and federal laws for other restricted activities near a school¹, the Board proposes comment 57(c)-3 to provide that a location that is within 1,000 feet of the border of the campus of an institution of higher education,

¹ Footnote 49 See, e.g., 18 U.S.C. 922(q)(2) (making it unlawful for an individual to possess an unlicensed firearm in a school zone, defined in 18 U.S.C. 921(a)(25) as within 1,000 feet of the school); the Family Smoking Prevention and Tobacco Control Act (Pub. L. 111-31, June 22, 2009) (requiring regulations to ban outdoor tobacco advertisements within 1,000 feet of a school or playground); and Mass. Gen. Laws ch. 94C, § 32J (requiring mandatory minimum term of imprisonment for drug violations committed within 1,000 feet of a school).

as defined by the institution of higher education, be considered near the campus of an institution of higher education. The Board solicits comment on other appropriate ways to determine a location that is considered near the campus of an institution of higher education.

Proposed comment 57(c)-4 would clarify that offers of tangible items mailed to a college student at an address on or near the campus of an institution of higher education would be subject to the restrictions in §226.57(c). The statutory language does not distinguish between different methods of making offers of tangible items, and proposed comment 57(c)-4 would make clear that offers of tangible items made on or near the campus of an institution of higher education for purposes of §226.57(c) include offers of tangible items that are sent to those locations through the mail.

Furthermore, under proposed §226.57(c), an offer of a tangible item to induce a college student to apply for or open an open-end consumer credit plan may not be made at an event sponsored by or related to an institution of higher education. In order to give card issuers and creditors guidance on determining whether an event is related to an institution, the Board proposes comment 57(c)-5. Proposed comment 57(c)-5 would provide that an event is related to an institution of higher education if the marketing of such event uses the name, emblem, mascot, or logo of an institution of higher education, or other words, pictures, or symbols identified with an institution of higher education in a way that implies that the institution of higher education endorses or otherwise sponsors the event. The proposed comment was adapted from guidance the Board recently adopted in §226.48 regarding co-branding restrictions for certain private education loans.

Since the prohibition in §226.57(c) applies solely to offering a tangible item to a college student at specified locations, a card issuer or creditor would be permitted to offer any person who is not a college student a tangible item to induce such person to apply for or open an open-end consumer credit plan offered by such card issuer or creditor at such locations. The Board believes a card issuer or creditor who opts to have a marketing program on or near the campus of an institution of higher education, or at an event sponsored by or related to an institution of higher education where a tangible item will be offered to induce people to apply for or open an open-end consumer credit plan should have reasonable procedures for determining whether an applicant or participant is a college student before giving the applicant or participant the tangible item.

Proposed comment 57(c)-6 illustrates one way in which a card issuer or creditor might meet this standard. Specifically, the Board provides that a card issuer or creditor may ask whether the applicant is a college student as part of the application process. Proposed comment 57(c)-6 would also provide that the card issuer or creditor may rely on the representations made by the applicant. Therefore, if an applicant misrepresents his or her status as a student, the card issuer or creditor would not violate § 226.57(c) by relying on that representation.

57(d) Annual Report to the Board

The Board proposes to implement new TILA Section 127(r)(2) in proposed §226.57(d). Consistent with the statute, proposed §226.57(d) would require creditors that are a party to one or more college credit card agreements to register with the Board and to submit annual reports to the Board regarding those agreements. Creditors that were a party to one or more college credit card agreements at any time during the 2009 calendar year would be required to register with the Board by February 1, 2010. The initial

report from creditors would be due by February 22, 2010, as required by TILA Section 127(r)(2)(D). Creditors would be required to submit subsequent annual reports by the first business day on or after March 31 of the following year.

Proposed §226.57(d) would require that annual report include a copy of each college credit card agreement to which the creditor was a party that was in effect during the period covered by the report, as well as certain related information including the total dollar amount of payments pursuant to the agreement from the creditor to the institution (or affiliated organization) during the period covered by the report, and how such amount is determined; the number of credit card accounts opened pursuant to the agreement during the period; and the total number of such credit card accounts that were open at the end of the period.

The annual report would also be required to include a copy of any memorandum of understanding that “directly or indirectly relates to the college credit card agreement or that controls or directs any obligations or distribution of benefits between any such entities.” Proposed comment 57(d)(3)-1 would clarify what types of documents would be considered memoranda of understanding for purposes of this requirement, by providing that a memorandum of understanding includes any document that amends the college credit card agreement, or that constitutes a further agreement between the parties as to the interpretation or administration of the agreement, and by providing of examples of documents that would or would not be included.

The Board solicits comment on whether additional items of information should be required to be included in the annual report. New TILA Section 127(r)(2)(A) specifies that the required annual report contain “the terms and conditions” of college credit card agreements between the card issuer and institutions of higher education or affiliated organizations. For example, information that may be part of the terms and conditions of a college credit card agreement and that, if so, could be required to be included in the report, could include any terms that differentiate between student and non-student accounts (for example, that provide for difference in payments based on whether an account is a student or non-student account), or that relate to advertising or marketing (such as provisions on mailing lists, online advertising, or on-campus marketing). The report could also be required to specify the terms and conditions of credit card accounts (for example, rates and fees) that may be opened in connection with the college credit card agreement. Inclusion of such information in issuers’ annual reports could facilitate the Board’s review of the reports and preparation of the Board’s report to Congress concerning college credit card agreements, but could also impose additional costs on card issuers in preparing their reports to the Board. The Board requests comment on the costs and benefits of requiring these (or any other) items of information to be included in the annual report.

Proposed Regulatory Language

[FR pp. 54228-54229]

SUBPART G – SPECIAL RULES APPLICABLE TO CREDIT CARD ACCOUNTS AND OPEN-END CREDIT OFFERED TO COLLEGE STUDENTS

§226.57 Special rules for marketing open-end credit to college students.

(a) Definitions

(1) **College student credit card.** The term “college student credit card” in this section means a credit card issued under a credit card account under an open-end (not home-secured) consumer credit plan to any college student.

(2) **College student.** The term “college student” as used in this section means an individual who is a full-time or part-time student of an institution of higher education.

(3) **Institution of higher education.** The term “institution of higher education” as used in this section has the same meaning as in sections 101 and 102 of the Higher Education Act of 1965 (20 U.S.C. 1001 and 1002).

(4) **Affiliated organization.** The term “affiliated organization” in this section means an alumni organization or foundation affiliated with or related to an institution of higher education.

(5) **College credit card agreement.** The term “college credit card agreement” in this section means any business, marketing or promotional agreement between a card issuer and an institution of higher education or an affiliated organization in connection with which college student credit cards are issued to college students currently enrolled at that institution.

(b) **Public disclosure of agreements.** An institution of higher education shall publicly disclose any contract or other agreement made with a card issuer or creditor for the purpose of marketing a credit card.

(c) **Prohibited inducements.** No card issuer or creditor may offer a college student any tangible item to induce such student to apply for or open an open-end consumer credit plan offered by such card issuer or creditor, if such offer is made:

- (i) on the campus of an institution of higher education;
- (ii) near the campus of an institution of higher education; or
- (iii) at an event sponsored by or related to an institution of higher education.

(d) Annual report to the Board.

(1) **Requirement to register.** A card issuer subject to the requirement to report under § 226.57(d)(2) with regard to calendar year 2009 must register with the Board in the form and manner prescribed by the Board no later than February 1, 2010. A card issuer that becomes subject to the requirement to report under § 226.57(d)(2) after December 31, 2009, must register with the Board in the form and manner prescribed by the Board no later than February 1 following the calendar year in which the issuer becomes subject.

(2) Requirement to report. Any card issuer that was a party to one or more college credit card agreements in effect at any time during a calendar year must submit to the Board an annual report regarding those agreements in the form and manner prescribed by the Board.

(3) Contents of report. The annual report to the Board must include the following:

- (i) a copy of any college credit card agreement to which the card issuer was a party that was in effect at any time during the period covered by the report;
- (ii) a copy of any memorandum of understanding in effect at any time during the period covered by the report between the card issuer and an institution of higher education or affiliated organization that directly or indirectly relates to the college credit card agreement or that controls or directs any obligations or distribution of benefits between any such entities;
- (iii) the total dollar amount of any payments pursuant to a college credit card agreement from the card issuer to an institution of higher education or affiliated organization during the period covered by the report, and how such amounts are determined;
- (iv) the number of credit card accounts opened pursuant to any college credit card agreement during the period covered by the report; and
- (v) the total number of credit card accounts opened pursuant to any such agreement that were open at the end of the period covered by the report.

(4) Timing of reports. Except for the initial report described below, a card issuer must submit its annual report for each calendar year to the Board by the first business day on or after March 31 of the following year. Card issuers must submit the first report following the effective date of this section, providing information for the 2009 calendar year, to the Board by February 22, 2010.

Supplement I – Official Staff Interpretation

[FR pp. 54327-54328]

Section 226.57—Special rules for marketing open-end credit to college students.

57(a) Definitions.

57(a)(1) College student credit card.

1. Definition. The definition of college student credit card excludes home-equity lines of credit accessed by credit cards and overdraft lines of credit accessed by debit cards. A college student credit card includes a college affinity card within the meaning of TILA Section 127(r)(1)(A). In addition, a card may fall within the scope of the definition regardless of the fact that it is not intentionally targeted at or marketed to college students. For example, an agreement between a college and a card issuer may provide for marketing of credit cards to alumni, faculty, staff, and other non-student consumers who have a relationship with the college, but also contain provisions that contemplate the issuance of cards to students. A credit card issued to a student at the college in connection with such an agreement qualifies as a college student credit card.

57(a)(5) College credit card agreement.

1. Definition. Section 226.57(a)(5) defines “college credit card agreement” to include any business, marketing or promotional agreement between a card issuer and a college or university (or an affiliated organization, such as an alumni club or a foundation) if the agreement provides for the issuance of credit cards to full-time or parttime students. Business, marketing or promotional agreements may include a broad range of arrangements between a card issuer and an institution of higher education or affiliated organization, including arrangements that do not meet the criteria to be considered college affinity card agreements as discussed in TILA Section 127(r)(1)(A). For example, TILA Section 127(r)(1)(A) specifies that under a college affinity card agreement, the card issuer has agreed to make a donation to the institution or affiliated organization, the card issuer has agreed to offer discounted terms to the consumer, or the credit card will display pictures, symbols, or words identified with the institution or affiliated organization; even if these conditions are not met, an agreement may qualify as a college credit card agreement, if the agreement is a business, marketing or promotional agreement that contemplates the issuance of college student credit cards to college students currently enrolled (either full-time or part-time) at the institution. An agreement may qualify as a college credit card agreement even if marketing of cards under the agreement is targeted at alumni, faculty, staff, and other non-student consumers, as long as cards may also be issued to students in connection with the agreement.

57(b) Public disclosure of agreements.

1. Public disclosure. Section 226.57(b) requires an institution of higher education to publicly disclose any contract or other agreement made with a card issuer or creditor for the purpose of marketing a credit card. Examples of publicly disclosing such contracts or agreements include, but are not limited to, posting such contracts or agreements on the institution’s Web site or making such contracts or agreements available upon request, provided the procedures for requesting the documents are reasonable and free of

cost to the requestor, and the requested contracts or agreements are provided within a reasonable time frame.

2. Redaction prohibited. An institution of higher education must publicly disclose any contract or other agreement made with a card issuer for the purpose of marketing a credit card in its entirety and may not redact any portion of such contract or agreement. Any clause existing in such contracts or agreements, providing for the confidentiality of any portion of the contract or agreement, would be invalid to the extent it restricts the ability of the institution of higher education to publicly disclose the contract or agreement in its entirety.

57(c) Prohibited inducements.

1. Tangible item clarified. A tangible item includes any physical item, such as a gift card, a t-shirt, or a magazine subscription, that a card issuer or creditor offers to induce a college student to apply for or open an open-end consumer credit plan offered by such card issuer or creditor. Tangible items do not include non-physical inducements such as discounts, rewards points, or promotional credit terms.

2. Inducement clarified. If a tangible item is offered to a person whether or not that person applies for or opens an open-end consumer credit plan, the tangible item has not been offered to induce the person to apply for or open the plan. For example, refreshments offered to a college student on campus that are not conditioned on whether the student has applied for or agreed to open an open-end consumer credit plan would not violate § 226.57(c).

3. Near campus clarified. A location that is within 1,000 feet of the border of the campus of an institution of higher education, as defined by the institution of higher education, is considered near the campus of an institution of higher education.

4. Mailings included. The prohibition in § 226.57(c) on offering a tangible item to a college student to induce such student to apply for or open an open-end consumer credit plan offered by such card issuer or creditor applies to any solicitation or application mailed to a college student at an address on or near the campus of an institution of higher education.

5. Related event clarified. An event is related to an institution of higher education if the marketing of such event uses the name, emblem, mascot, or logo of an institution of higher education, or other words, pictures, symbols identified with an institution of higher education in a way that implies that the institution of higher education endorses or otherwise sponsors the event.

6. Reasonable procedures for determining if applicant is a student. Section 226.57(c) applies solely to offering a tangible item to a college student. Therefore, a card issuer or creditor may offer any person who is not a college student a tangible item to induce such person to apply for or open an open-end consumer credit plan offered by such card issuer or creditor, on campus, near campus, or at an event sponsored by or related to an institution of higher education. The card issuer or creditor must have reasonable procedures for determining whether an applicant is a college student before giving the applicant the tangible item. For example, a card issuer or creditor may ask whether the applicant is a college student as

part of the application process. The card issuer or creditor may rely on the representations made by the applicant.

57(d) Annual report to the Board.

57(d)(3) Contents of report.

1. Memorandum of understanding. Section 226.57(d)(3) requires that the report to the Board include, among other items, a copy of any memorandum of understanding between the card issuer and the institution (or affiliated organization) that “directly or indirectly relates to the college credit card agreement or that controls or directs any obligations or distribution of benefits between any such entities.” Such a memorandum of understanding includes any document that amends the college credit card agreement, or that constitutes a further agreement between the parties as to the interpretation or administration of the agreement. For example, a memorandum of understanding required to be included in the report would include a document that provides details on the dollar amounts of payments from the card issuer to the university, to supplement the original agreement which only provided for payments in general terms (e.g., as a percentage). A memorandum of understanding for these purposes would not include email (or other) messages that merely discuss matters such as the addresses to which payments should be sent or the names of contact persons for carrying out the agreement.