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 **[insert date that is 30 days after the date of publication in the Federal Register]**.

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.

SUPPLEMENTARY INFORMATION:

I. Background and Implementation of the Credit Card Act

January 2009 Regulation Z and FTC Act Rules

On December 18, 2008, the Board adopted two final rules pertaining to open-end (not home-secured) credit. These rules were published in the **Federal Register** on January 29, 2009. The first rule makes comprehensive changes to Regulation Z's provisions applicable to open-end (not home-secured) credit, including amendments that affect all of the five major types of required disclosures: credit card applications and solicitations, account-opening disclosures, periodic statements, notices of changes in terms, and advertisements. See 74 FR 5244 (January 2009 Regulation Z Rule). The second is a joint rule published with the Office of Thrift Supervision (OTS) and the National Credit Union Administration (NCUA) under the Federal Trade Commission Act (FTC Act) to protect consumers from unfair acts or practices with respect to consumer credit card accounts. See 74 FR 5498 (January 2009 FTC Act Rule). The effective date for both rules is July 1, 2010.

On May 5, 2009, the Board published proposed clarifications and technical amendments to the January 2009 Regulation Z Rule (May 2009 Regulation Z Proposed Clarifications) in the **Federal Register**. See 74 FR 20784. The Board, the OTS, and the NCUA (collectively, the Agencies) concurrently published proposed clarifications and technical amendments to the January 2009 FTC Act Rule. See 74 FR 20804 (May 2009 FTC Act Rule Proposed Clarifications). In both cases, as stated in the **Federal Register**, these proposals were intended to clarify and facilitate compliance with the consumer protections contained in the January 2009 final rules and not to reconsider the need for – or the extent of – those protections. The comment period on both of these proposed sets of amendments ended on June 4, 2009. Where relevant, the Board has considered the comments submitted in preparing this proposed rule and is republishing the proposed amendments with several revisions as discussed in **V. Section-by-Section Analysis**.

The Board intends to finalize the amendments, with revisions as appropriate, in connection with this rulemaking.

<u>The Credit Card Act</u>

On May 22, 2009, the Credit Card Accountability Responsibility and Disclosure Act of 2009 (Credit Card Act) was signed into law. Pub. L. No. 111-24, 123 Stat. 1734 (2009). The Credit Card Act primarily amends the Truth in Lending Act (TILA) and establishes a number of new substantive and disclosure requirements to establish fair and transparent practices pertaining to open-end consumer credit plans. Several of the provisions of the Credit Card Act are similar to provisions in the Board's January 2009 Regulation Z and FTC Act Rules, while other portions of the Credit Card Act address practices or mandate disclosures that were not addressed in the Board's rules.

The requirements of the Credit Card Act that pertain to credit cards or other open-end credit for which the Board has rulemaking authority become effective in three stages. First, provisions generally requiring that consumers receive 45 days' advance notice of interest rate increases and significant changes in terms (new TILA Section 127(i)) and provisions regarding the amount of time that consumers have to make payments (revised TILA Section 163) became effective on August 20, 2009 (90 days after enactment of the Credit Card Act). A majority of the requirements under the Credit Card Act for which the Board has rulemaking authority, including, among other things, provisions regarding interest rate increases (revised TILA Section 171), over-the-limit transactions (new TILA Section 127(k)), and student cards (new TILA Sections 127(c)(8), 127(p), and 140(f)) become effective on February 22, 2010 (9 months after enactment). Finally, two provisions of the Credit Card Act addressing the reasonableness and proportionality of penalty fees and charges (new TILA Section 149) and re-evaluation by creditors of rate increases (new TILA Section 148) are effective on August 22, 2010 (15 months after enactment). The Credit Card Act also requires the Board to conduct several studies and to make several reports to Congress, and sets forth differing time periods in which these studies and reports must be completed.

Implementation Plan

On July 22, 2009, the Board published an interim final rule to implement those provisions of the Credit Card Act that became effective on August 20, 2009 (July 2009 Regulation Z Interim Final Rule). See 74 FR 36077. As discussed in the supplementary information to the July 2009 Regulation Z Interim Final Rule, the Board is implementing the provisions of the Credit Card Act in stages, consistent with the statutory timeline established by Congress. Accordingly, the interim final rule implemented those provisions of the statute that became effective August 20, 2009, primarily addressing change-in-terms notice requirements and the amount of time that consumers have to make payments. The Board issued rules in interim final form based on its determination that, given the short implementation period established by the Credit Card Act and the fact that similar rules were already the subject of notice-and-comment rulemaking, it would be impracticable and unnecessary to issue a proposal for public comment followed by a final rule. The Board solicited comment on the interim final rule; the comment period ended on September 21, 2009. The Board intends to consider comments on the interim final rule when finalizing this rulemaking implementing those provisions of the

Credit Card Act that become effective February 22, 2010.[1]

The Board intends to separately consider the two remaining provisions under the Credit Card Act regarding reasonable and proportional penalty fees and charges and the re-evaluation of rate increases, and to finalize implementing regulations in accordance with the timeline established by Congress, upon notice and after giving the public an opportunity to comment.

To the extent appropriate, the Board has used its January 2009 rules and the underlying rationale as the basis for its rulemakings under the Credit Card Act. The Board also intends to retain those portions of its January 2009 Regulation Z Rule that are unaffected by the Credit Card Act. The Board is not withdrawing any provisions of the January 2009 Regulation Z Rule or its January 2009 FTC Act Rule at this time. The Board anticipates that in connection with finalizing this proposed rule for those provisions of the Credit Card Act that are effective February 22, 2010, it will amend or withdraw those portions of the January 2009 Regulation Z Rule that are inconsistent with the requirements of the Credit Card Act. In addition, as discussed further in **V. Section-by-Section Analysis**, the Board is proposing to move the requirements in its January 2009 FTC Act Rule into Regulation Z and intends to withdraw the requirements adopted under Regulation AA, consistent with Congress's approach of amending the Truth in Lending Act.[2] Finally, except as otherwise noted, the Board is considering comments

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[1] The Board has already begun consideration of the comment letters received on the July 2009 Regulation Z Interim Final Rule. However, the review of the comment letters is ongoing, and accordingly the supplementary information to this proposal does not discuss the comments received. The Board anticipates addressing the comments in their entirety when it issues a final rule based on this proposal.

[2] See also OTS Memorandum for Chief Executive Officers: Credit CARD Act: Interest Rate Increases and Rules on Unfair Practices (issued July 13, 2009) (available at http://files.ots.treas.gov/25312.pdf); NCUA Press Release: Working with Other Regulators on Credit CARD Act and UDAP Rule (issued July 1, 2009) (available at http://www.ncua.gov/news/press_releases/2009/MR09-0701.htm).

received on the May 2009 Regulation Z Proposed Clarifications and plans to incorporate those final clarifications, to the extent appropriate, when it promulgates final rules pursuant to this proposal.

Republication of Provisions of January 2009 Regulation Z Rule

The Board has published four proposed or final rules in 2009 that amend or propose to amend Regulation Z's provisions applicable to open-end (not home-secured) credit: the January 2009 Regulation Z Rule, the May 2009 Regulation Z Proposed Clarifications, the July 2009 Regulation Z Interim Final Rule, and the present proposal. The Board is aware that the existence of multiple concurrent Regulation Z rulemakings pertaining to open-end (not home-secured) credit has the potential to cause confusion. In particular, the Board understands that it may be difficult for interested parties to ascertain how the four proposed or final rules will read as an integrated whole once all final rules are adopted and effective.

In order to more clearly illustrate the cumulative changes in the four proposed or final rules, the Board is republishing in this proposal all sections of Regulation Z from the four proposed or final rules that pertain to open-end (not home-secured) credit. As discussed further in this supplementary information, the requirements of the Board's January 2009 FTC Act Rule are also being incorporated into this proposal under Regulation Z, with proposed amendments as necessary to conform to the requirements of the Credit Card Act. The Board believes that this is the clearest way to present the proposed and final revisions to Regulation Z in an integrated format. The Board thinks that it is important that commenters be able to consider the changes included in this proposal in light of the complete package of changes effected by the Board's recent rulemakings pertaining to open-end (not home-secured) credit.

The Board is not reconsidering the need for or the extent of the January 2009 Regulation Z Rule, except to the extent that it is inconsistent with the requirements of the Credit Card Act. Accordingly, although the Board is republishing the provisions of Regulation Z that pertain to open-end (not home-secured) credit in their entirety, the Board is requesting that interested parties limit the scope of their comments to the proposed changes, which are discussed in the supplementary information. As necessary, the Board has made technical and conforming changes to the regulatory text from the January 2009 Regulation Z Rule in order to conform with the proposed regulations implementing the Credit Card Act. These changes are not substantive in nature and are therefore not discussed in detail in **V. Section-by-Section Analysis**.

The Board is not republishing in connection with this proposal several sections of the January 2009 Regulation Z Rule that are applicable only to home-equity lines of credit subject to the requirements of § 226.5b (HELOCs). In particular, the Board is not republishing §§ 226.6(a), 226.7(a) and 226.9(c)(1). These sections, as discussed in the supplementary information to the January 2009 Regulation Z Rule, are intended to preserve the existing requirements of Regulation Z for home-equity lines of credit until the Board's ongoing review of the rules that apply to HELOCs is completed. On August 26, 2009, the Board published proposed revisions to those portions of Regulation Z affecting HELOCs in the **Federal Register**. <u>See</u> 74 FR 43428 (August 2009 Regulation Z HELOC Proposal). In order to clarify that this proposed rule is not intended to amend or otherwise affect the August 2009 Regulation Z HELOC Proposal, the Board is not republishing several sections of the January 2009 Regulation Z Rule that apply only to HELOCs in this **Federal Register** notice.

The Board anticipates, however, that a final rule will be issued with regard to this proposal prior to completion of final rules regarding HELOCs. Therefore, the Board anticipates that it will include §§ 226.6(a), 226.7(a), and 226.9(c)(1), as adopted in the January 2009 Regulation Z Rule, in its final rulemaking based on this proposal, to give HELOC creditors clear guidance as to the applicable Regulation Z requirements between the effective date of this rule and the effective date of the forthcoming HELOC final rules.

The Board is, however, republishing several provisions of general applicability to all credit subject to Regulation Z that were included in the January 2009 Regulation Z Rule, such as the definitions in § 226.2 and the rules regarding finance charges in § 226.4. The Board notes that these provisions, and any other provisions applicable to HELOCs, could be subject to revision in connection with finalizing the August 2009 Regulation Z HELOC Proposal. In addition, on August 26, 2009, the Board also published in the **Federal Register** proposed revisions to Regulation Z's provisions addressing closed-end credit secured by real property or a consumer's dwelling. 74 FR 43232 (August 2009 Regulation Z Closed-End Credit Proposal). Among other things, the August 2009 Regulation Z Closed-End Credit Proposal includes several proposed revisions to § 226.4, which addresses finance charges. This proposal is not intended to affect or withdraw any proposed changes to such provisions of general applicability included in either the August 2009 Regulation Z HELOC Proposal or the August 2009 Regulation Z Closed-End Credit Proposal.

Finally, the Board has incorporated in the regulatory text and commentary for §§ 226.1, 226.2, and 226.3 several changes that were adopted in the Board's recent rulemaking pertaining to private education loans. See 74 FR 41194 (August 14, 2009) for further discussion of these changes. The Board is not soliciting comment on these amendments.

When publishing a proposed rule for comment under Regulation Z, the Board generally denotes regulatory and commentary text proposed to be deleted by use of bolded brackets. Similarly, the Board generally denotes the proposed insertion of text with bolded arrows. For this proposal, the Board is not displaying proposed insertions and deletions of text using brackets and arrows. As noted above, the Board has published four proposed or final rules pertaining to open-end (not home-secured) credit under Regulation Z in 2009, many of which impact the same provisions, and therefore the Board believes that the use of brackets and arrows for just those changes introduced in this proposal could cause confusion.

Effective Date

As noted above, the effective date of the Board's January 2009 Regulation Z Rule is July 1, 2010. However, the effective date of the provisions of the Credit Card Act implemented by this proposal is February 22, 2010. Many of the provisions of the Credit Card Act as implemented by this proposal are closely related to provisions of the January 2009 Regulation Z Rule. For example, proposed § 226.9(c)(2)(ii), which describes "significant changes in terms" for which 45 days' advance notice is required, cross-references § 226.6(b)(1) and (b)(2) as adopted in the January 2009 Regulation Z Rule. **In order to implement the Credit Card Act in a manner consistent with the January**

2009 Regulation Z Rule, the Board intends to make the effective date for the final rule pursuant to this proposal February 22, 2010. The Board is considering whether this effective date should apply to both the provisions of the January 2009 Regulation Z Rule that are not directly affected by the Credit Card Act that are included in the proposed rule as well as new and amended requirements proposed pursuant to the Credit Card Act.

The Board recognizes that there are certain provisions of the January 2009 Regulation Z Rule that impose substantial operational burdens on creditors that are not directly required by the Credit Card Act. For such provisions, the Board is considering retaining the original mandatory compliance date of July 1, 2010, consistent with the effective date it adopted when the January 2009 Regulation Z Rule was issued. In particular, the Board is considering whether the original mandatory compliance date of July 1, 2010 would be appropriate for certain tabular or other formatting requirements applicable to account-opening disclosures under § 226.6(b), portions of the periodic statement under § 226.7(b)[3], disclosures provided with checks that access a credit card account under § 226.9(b)(3), change-in-terms notices provided pursuant to § 226.9(c)(2), and notices of a rate increase due to a consumer's default, delinquency, or as a penalty pursuant to § 226.9(g). The Board understands that creditors are already in the process of updating their systems in order to provide these disclosures in the appropriate tabular format by the July 1, 2010 effective date of the January 2009 Regulation Z Rule, and that retaining a July 1, 2010 effective date for the formatting requirements associated with such disclosures may be appropriate. The Board solicits comment on this approach, as

[3] The Board notes that the Credit Card Act does, however, require a tabular format for the repayment disclosures under proposed § 226.7(b)(12), and accordingly does not intend to provide a July 1, 2010 mandatory compliance date for such formatting requirements.

well as whether there are other provisions of this proposed rule that are not directly required by the Credit Card Act for which a mandatory compliance date of July 1, 2010 would also be appropriate. The Board also seeks comment on appropriate transition rules for the proposed amendments to Regulation Z.

II. Summary of Major Proposed Revisions

A. Increases in Annual Percentage Rates

Existing balances. Consistent with the Credit Card Act, the proposed rule would prohibit creditors from applying increased annual percentage rates and certain fees and charges to existing credit card balances, except in the following circumstances: (1) when a temporary rate lasting at least six months expires; (2) when the rate is increased due to the operation of an index (i.e., when the rate is a variable rate); (3) when the minimum payment has not been received within 60 days after the due date; and (4) when the consumer successfully completes or fails to comply with the terms of a workout arrangement. In addition, when the annual percentage rate on an existing balance has been reduced pursuant to the Servicemembers Civil Relief Act (SCRA), the proposed rule would permit the creditor to increase that rate once the SCRA ceases to apply.

New transactions. The proposed rule would implement the Credit Card Act's prohibition on increasing an annual percentage rate during the first year after an account is opened. After the first year, the proposed rule would provide that creditors are permitted to increase the annual percentage rates that apply to new transactions so long as the creditor complies with the Credit Card Act's 45-day advance notice requirement, which was implemented in the July 2009 Regulation Z Interim Final Rule.

B. Evaluation of Consumer's Ability to Pay

General requirements. The Credit Card Act prohibits creditors from opening a new credit card account or increasing the credit limit for an existing credit card account unless the creditor considers the consumer's ability to make the required payments under the terms of the account. Because credit card accounts typically require consumers to make a minimum monthly payment that is a percentage of the total balance (plus, in some cases, accrued interest and fees), the proposed rule would require creditors to consider the consumer's ability to make the required minimum payments.

However, because a creditor will not know the exact amount of a consumer's minimum payments at the time it is evaluating the consumer's ability to make those payments, the proposal would require creditors to use a reasonable method for estimating a consumer's minimum payments and would provide a safe harbor that creditors could use to satisfy this requirement. For example, with respect to the opening of a new credit card account, the safe harbor would provide that it would be reasonable for a creditor to estimate minimum payments based on a consumer's utilization of the full credit line using the minimum payment formula employed by the creditor with respect to the credit card product for which the consumer is being considered.

The proposed rule would also clarify the types of factors creditors should review in considering a consumer's ability to make the required minimum payments. Specifically, an evaluation of a consumer's ability to pay must include a review of the consumer's income or assets as well as the consumer's current obligations, and a creditor must establish reasonable policies and procedures for considering that information. When considering a consumer's income or assets and current obligations, a creditor would be permitted to rely on information provided by the consumer or information in a consumer's credit report.

Specific requirements for underage consumers. Consistent with the Credit Card Act, the proposed rule prohibits a creditor from issuing a credit card to a consumer who has not attained the age of 21 unless the consumer has submitted a written application that meets certain requirements. Specifically, the application must include either: (1) the signature of a cosigner who has attained the age of 21, who has the means to repay debts incurred by the underage consumer in connection with the account, and who assumes joint liability for such debts; or (2) information indicating that the underage consumer has the ability to make the required payments for the account.

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.

D. Fees or Charges for Transactions That Exceed the Credit Limit

Consumer consent requirement. Consistent with the Credit Card Act, the proposed rule would require that a creditor obtain a consumer's express consent (or opt-in) before imposing any fees on a consumer's credit card account for making an extension of credit that exceeds the account's credit limit. Prior to obtaining this consent, the creditor must disclose, among other things, the dollar amount of any fees or charges that will be assessed for an over-the-limit transaction as well as any increased rate that may apply if the consumer exceeds the credit limit. In addition, if the consumer consents, the creditor is also required to provide a notice of the consumer's right to revoke that consent on any periodic statement that reflects the imposition of an over-the-limit fee or charge.

The proposed rule would apply these requirements to all consumers (including existing account holders) if the creditor imposes a fee or charge for paying an over-the-limit transaction. Thus, after the February 22, 2010 effective date, creditors would be prohibited from assessing any over-the-limit fees or charges on an account until the consumer consents to the payment of transactions that exceed the credit limit.

Prohibited practices. Even if the consumer has affirmatively consented to the creditor's payment of over-the-limit transactions, the Credit Card Act prohibits certain practices in connection with the assessment of over-the-limit fees or charges. Consistent with these statutory prohibitions, the proposed rule would prohibit a creditor from imposing more than one over-the-limit fee or charge per billing cycle. In addition, a creditor could not impose an over-the-limit fee or charge on the account for the same over-the-limit transaction in more than three billing cycles.

The Credit Card Act also directs the Board to prescribe regulations that prevent unfair or deceptive acts or practices in connection with the manipulation of credit limits designed to increase over-the-limit fees or other penalty fees. Pursuant to this authority, the proposed rule would prohibit a creditor from assessing an over-the-limit fee or charge that is caused by the creditor's failure to promptly replenish the consumer's available credit. The proposed rule would also prohibit creditors from conditioning the amount of available credit on the consumer's consent to the payment of over-the-limit transactions. Finally, the proposed rule would prohibit the imposition of any over-the-limit fees or charges if the credit limit is exceeded solely because of the creditor's assessment of fees or charges (including accrued interest charges) on the consumer's account.

E. Timely Settlement of Estates

The Credit Card Act directs the Board to prescribe regulations requiring creditors to establish procedures ensuring that any administrator of an estate can resolve the outstanding credit card balance of a deceased accountholder in a timely manner. The proposed rule would impose two specific requirements designed to enable administrators to determine the amount of and pay a deceased consumer's balance in a timely manner. First, upon request by the administrator, the creditor would be required to disclose the amount of the balance in a timely manner. Second, once an administrator has made such a request, the creditor would be required to cease the imposition of fees and charges on the account (including the accrual of interest) so that the amount of the balance does not increase while the administrator is arranging for payment.

F. On-line Disclosure of Credit Card Agreements

The Credit Card Act requires creditors to post credit card agreements on their Web sites and to submit those agreements to the Board for posting on its Web site. The Credit Card Act further provides that the Board may establish exceptions to these requirements in any case where the administrative burden outweighs the benefit of increased transparency, such as where a credit card plan has a de minimis number of accountholders.

The proposed rule would require a creditor to post on its Web site or otherwise make available its credit card agreements with its current cardholders. However, the proposed rule would establish two limitations with respect to the submission of agreements to the Board. First, the proposed rule would establish a de minimis exception for creditors with fewer than 10,000 open credit card accounts. Because the overwhelming majority of credit card accounts are held by creditors that have more than 10,000 open accounts, the information provided through the Board's Web site would still reflect virtually all of the terms available to consumers.

Second, creditors would not be required to submit agreements that are not currently offered to the public. The Board believes that the primary purpose of the information provided through the Board's Web site is to assist consumers in comparing credit card agreements offered by different issuers when shopping for a new credit card. Including agreements that are no longer offered to the public would not facilitate comparison shopping by consumers. In addition, including such agreements could create confusion regarding which terms are currently available.

G. Additional Provisions

The proposed rule also implements the following provisions of the Credit Card Act, all of which go into effect on February 22, 2010.

Limitations on fees. The Board's January 2009 FTC Act Rule prohibited banks from charging to a credit card account during the first year after account opening certain account-opening and other fees that, in total, constituted the majority of the initial credit limit. The Credit Card Act contains a similar provision, except that it applies to all fees (other than fees for late payments, returned payments, and exceeding the credit limit) and limits the total fees to 25% of the initial credit limit.

Payment allocation. When different rates apply to different balances on a credit card account, the Board's January 2009 FTC Act Rule required banks to allocate payments in excess of the minimum first to the balance with the highest rate or pro rata among the balances. The Credit Card Act contains a similar provision, except that excess payments must always be allocated first to the balance with the highest rate.

Double-cycle billing. The Board's January 2009 FTC Act Rule prohibited banks from imposing finance charges on balances for days in previous billing cycles as a result of the loss of a grace period (a practice sometimes referred to as "double-cycle billing"). The Credit Card Act contains a similar prohibition. In addition, when a consumer pays some but not all of a balance prior to expiration of a grace period, the Credit Card Act prohibits the creditor from imposing finance charges on the portion of the balance that has been repaid.

Fees for making payment. The Credit Card Act prohibits creditors from charging a fee for making a payment, except for payments involving an expedited service by a service representative of the creditor.

Minimum payments. The Board's January 2009 Regulation Z Rule implemented provisions of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 requiring creditors to provide a toll-free telephone number where consumers could receive an estimate of the time to repay their account balances if they made only the required minimum payment each month. The Credit Card Act substantially revised the statutory requirements for these disclosures. In particular, the Credit Card Act requires the following new disclosures on the periodic statement: (1) the amount of time and the total cost (interest and principal) involved in paying the balance in full making only minimum payments; and (2) the monthly payment amount required to pay off the balance in 36 months and the total cost (interest and principal) of repaying the balance in 36 months.

III. Statutory Authority

Section 2 of the Credit Card Act states that the Board "may issue such rules and publish such model forms as it considers necessary to carry out this Act and the amendments made by this Act." This proposed rule implements several sections of the Credit Card Act, which amend TILA. TILA mandates that the Board prescribe regulations to carry out its purposes and specifically authorizes the Board, among other things, to do the following:

- Issue regulations that contain such classifications, differentiations, or other provisions, or that provide for such adjustments and exceptions for any class of transactions, that in the Board's judgment are necessary or proper to effectuate the purposes of TILA, facilitate compliance with the act, or prevent circumvention or evasion. 15 U.S.C. 1604(a).
- Exempt from all or part of TILA any class of transactions if the Board determines that TILA coverage does not provide a meaningful benefit to consumers in the form of useful information or protection. The Board must consider factors identified in the act and publish its rationale at the time it proposes an exemption for comment. 15 U.S.C. 1604(f).
- Add or modify information required to be disclosed with credit and charge card applications or solicitations if the Board determines the action is necessary to carry out the purposes of, or prevent evasions of, the application and solicitation disclosure rules. 15 U.S.C. 1637(c)(5).
- Require disclosures in advertisements of open-end plans. 15 U.S.C. 1663.

For the reasons discussed in this notice, the Board is using its specific authority under TILA and the Credit Card Act, in concurrence with other TILA provisions, to effectuate the purposes of TILA, to prevent the circumvention or evasion of TILA, and to facilitate compliance with the act.

IV. Applicability of Proposed Provisions

While several provisions under the Credit Card Act apply to all open-end credit, others apply only to certain types of open-end credit, such as credit card accounts under open-end consumer credit plans. As a result, the Board understands that some additional clarification may be helpful as to which provisions of the Credit Card Act as proposed to be implemented in Regulation Z are applicable to which types of open-end credit products. In order to clarify the scope of the proposed revisions to Regulation Z, the Board is providing the below table, which summarizes the applicability of each of the major revisions to Regulation Z.[4]

Provision	Applicability
§ 226.5(a)(2)(iii)	All open-end (not home-secured) consumer credit plans
§ 226.5(b)(2)(ii)	All open-end consumer credit plans
§ 226.7(b)(11)	Credit card accounts under an open-end (not home-secured) consumer credit plan
§ 226.7(b)(12)	Credit card accounts under an open-end (not home-secured) consumer credit plan
§ 226.7(b)(14)	All open-end (not home-secured) consumer credit plans
§ 226.9(c)(2)	All open-end (not home-secured) consumer credit plans
§ 226.9(e)	Credit or charge card accounts subject to § 226.5a
§ 226.9(g)	All open-end (not home-secured) consumer credit plans

[4] This table summarizes the applicability only of those new paragraphs or provisions added to Regulation Z in order to implement the Credit Card Act, as well as the applicability of proposed provisions addressing deferred interest or similar offers. The Board notes that it is not proposing to change the applicability of provisions of Regulation Z amended by the January 2009 Regulation Z Rule or May 2009 Regulation Z Proposed Clarifications.

Provision	Applicability
§ 226.9(h)	Credit card accounts under an open-end (not home-secured) consumer credit plan
§ 226.10(b)(2)(ii)	All open-end consumer credit plans
§ 226.10(b)(3)	Credit card accounts under an open-end (not home-secured) consumer credit plan
§ 226.10(d)	All open-end consumer credit plans
§ 226.10(e)	Credit card accounts under an open-end (not home-secured) consumer credit plan
§ 226.10(f)	Credit card accounts under an open-end (not home-secured) consumer credit plan
§ 226.11(c)	Credit card accounts under an open-end (not home-secured) consumer credit plan
§ 226.16(f)	All open-end consumer credit plans
§ 226.16(h)	All open-end (not home-secured) consumer credit plans
§ 226.51	Credit card accounts under an open-end (not home-secured) consumer credit plan
§ 226.52	Credit card accounts under an open-end (not home-secured) consumer credit plan
§ 226.53	Credit card accounts under an open-end (not home-secured) consumer credit plan
§ 226.54	Credit card accounts under an open-end (not home-secured) consumer credit plan
§ 226.55	Credit card accounts under an open-end (not home-secured) consumer credit plan
§ 226.56	Credit card accounts under an open-end (not home-secured) consumer credit plan
§ 226.57	Credit card accounts under an open-end (not home-secured) consumer credit plan, except that § 226.57(c) applies to all open-end consumer credit plans
§ 226.58	Credit card accounts under an open-end (not home-secured) consumer credit plan

V. Section-by-Section Analysis

Section 226.2 Definitions and Rules of Construction

2(a) Definitions

2(a)(15) Credit Card

In the January 2009 Regulation Z Rule, the Board revised § 226.2(a)(15) to read as follows: "Credit card means any card, plate, or other single credit device that may be used from time to time to obtain credit. Charge card means a credit card on an account for which no periodic rate is used to compute a finance charge." 74 FR 5257. In order to clarify the application of certain provisions of the Credit Card Act that apply to "credit card account[s] under an open end consumer credit plan," the Board proposes to further revise § 226.2(a)(15) by adding a definition of "credit card account under an open-end (not home-secured) consumer credit plan." Specifically, proposed § 226.2(a)(15)(ii) would define this term to mean any credit account accessed by a credit card except a credit card that accesses a home-equity plan subject to the requirements of § 226.5b or an overdraft line of credit accessed by a debit card. The definitions of "credit card" and "charge card" in the January 2009 Regulation Z Rule would be moved to proposed § 226.2(a)(15)(i) and (iii), respectively.

The exclusion of credit cards that access a home-equity plan subject to § 226.5b is consistent with the approach adopted by the Board in the July 2009 Regulation Z Interim Final Rule. See 74 FR 36083. Specifically, the Board used its authority under TILA Section 105(a) and § 2 of the Credit Card Act to interpret the term "credit card account under an open-end consumer credit plan" in new TILA Section 127(i) to exclude home-equity lines of credit subject to § 226.5b, even if those lines could be accessed by a credit card. Instead, the Board applied the disclosure requirements in current § 226.9(c)(2)(i) and (g)(1) to "credit card accounts under an open-end (not home-secured) consumer credit plan." See 74 FR 36094-36095. For consistency with the interim final rule, the Board would generally use its authority under TILA Section 105(a) and § 2 of the Credit Card Act to apply the same interpretation to other provisions of the Credit Card Act that apply to a "credit card account under an open end consumer credit plan." See, e.g., revised TILA § 127(j), (k), (l), (n); revised TILA § 171; new TILA §§ 140A, 148, 149, 172.[5] This interpretation is also consistent with the Board's historical treatment of HELOC accounts accessible by a credit card under TILA; for example, the credit and charge card application and solicitation disclosure requirements under § 226.5a expressly do not apply to home-equity plans accessible by a credit card that are subject to § 226.5b. See current § 226.5a(a)(3); revised § 226.5a(a)(5)(i), 74 FR 5403. The Board has issued the August 2009 Regulation Z HELOC Proposal to address changes to Regulation Z that it believes are necessary and appropriate for HELOCs and will consider any appropriate revisions to the requirements for HELOCs in connection with that review.

The Board also proposes to interpret the term "credit card account under an open end consumer credit plan" to exclude a debit card that accesses an overdraft line of credit. Although such cards are "credit cards" under current § 226.2(a)(15), the Board has generally excluded them from the provisions of Regulation Z that specifically apply to credit cards. For example, as with credit cards that access HELOCs, the provisions in § 226.5a regarding credit and charge card applications and solicitations do not apply to overdraft lines of credit tied to asset accounts accessed by debit cards. See current § 226.5a(a)(3); revised § 226.5a(a)(5)(ii), 74 FR 5403.

Instead, Regulation E (Electronic Fund Transfers) generally governs debit cards that access overdraft lines of credit. See 12 CFR part 205. For example, Regulation E generally governs the issuance of debit cards that access an overdraft line of credit, although Regulation Z's issuance provisions apply to the addition of a credit feature

[5] In certain cases, the Board has applied a statutory provision that refers to "credit card accounts under an open end consumer credit plan" to a wider range of products. Specifically, see the discussion below regarding the implementation of new TILA Section 127(i) in proposed § 226.9(c)(2), the implementation of new TILA Section 127(m) in proposed §§ 226.5(a)(2)(iii) and 226.16(f), and the implementation of new TILA Section 127(o) in proposed § 226.10(d).

(such as an overdraft line) to a debit card. See 12 CFR 205.12(a)(1)(ii) and (a)(2)(i). Similarly, when a transaction that debits a checking or other asset account also draws on an overdraft line of credit, Regulation Z treats the extension of credit as incident to an electronic fund transfer and the error resolution provisions in Regulation E generally govern the transaction. See 12 CFR 205.12 comment 12(a)-1.i.[6]

Consistent with this approach, the Board believes that debit cards that access overdraft lines of credit should not be subject to the regulations implementing the provisions of the Credit Card Act that apply to "credit card accounts under an open end consumer credit plan." As discussed in the January 2009 Regulation Z Rule, the Board understands that overdraft lines of credit are not in wide use.[7] Furthermore, as a general matter, the Board understands that creditors do not generally engage in the practices addressed in the relevant provisions of the Credit Card Act with respect to overdraft lines of credit. For example, as discussed in the January 2009 Regulation Z Rule, overdraft lines of credit are not typically promoted as – or used for – long-term extensions of credit. See 74 FR 5331. Therefore, because proposed § 226.9(c)(2) would require a creditor to provide 45 days' notice before increasing an annual percentage rate for an overdraft line of credit, a creditor is unlikely to engage in the practices prohibited by revised TILA Section 171 with respect to the application of increased rates to existing

[6] However, the error resolution provisions in § 226.13(d) and (g) do apply to such transactions. See 12 CFR 205.12 comment 12(a)-1.ii.D; see also current §§ 226.12(g) and 13(i); current comments 12(c)(1)-1 and 13(i)-3; new comment 12(c)-3, 74 FR 5488; revised comment 12(c)(1)-1.iv., 74 FR 5488. In addition, if the transaction solely involves an extension of credit and does not include a debit to a checking or other asset account, the liability limitations and error resolution requirements in Regulation Z apply. See 12 CFR 205.12(a)-1.i.

[7] The 2007 Survey of Consumer Finances data indicates that few families (1.7 percent) had a balance on lines of credit other than a home-equity line or credit card at the time of the interview. In comparison, 73 percent of families had a credit card, and 60.3 percent of these families had a credit card balance at the time of the interview. See Brian Bucks, et al., Changes in U.S. Family Finances from 2004 to 2007: Evidence from the Survey of Consumer Finances, Federal Reserve Bulletin (February 2009).

balances. Similarly, because creditors generally do not apply different rates to different balances or provide grace periods with respect to overdraft lines of credit, the provisions in proposed §§ 226.53 and 226.54 would not provide any meaningful protection. Accordingly, the Board proposes to use its authority under TILA Section 105(a) and § 2 of the Credit Card Act to create an exception for debit cards that access an overdraft line of credit. The Board notes this proposed definition is not intended to alter the scope or coverage of provisions of Regulation Z that refer generally to credit cards or open-end credit rather than the new defined term "credit card account under an open-end (not home-secured consumer credit plan."

Section 226.5 General Disclosure Requirements

5(a) Form of Disclosures

5(a)(2) Terminology

Section 103 of the Credit Card Act creates a new TILA Section 127(m) (15 U.S.C. 1637(m)), which states that with respect to the terms of any credit card account under an open-end consumer credit plan, the term "fixed," when appearing in conjunction with a reference to the APR or interest rate applicable to such account, may only be used to refer to an APR or interest rate that will not change or vary for any reason over the period specified clearly and conspicuously in the terms of the account. 15 U.S.C. 1637(m). In the January 2009 Regulation Z Rule, the Board had adopted §§ 226.5(a)(2)(iii) and 226.16(f) to restrict the use of the term "fixed," or any similar term, to describe a rate disclosed in certain required disclosures and in advertisements only to instances when that rate would not increase until the expiration of a specified time period. If no time period is specified, then the term “fixed,” or any similar term, may not be used to describe the rate unless the rate will not increase while the plan is open.

The Board believes that §§ 226.5(a)(2)(iii) and 226.16(f), as adopted in the January 2009 Regulation Z Rule, would be consistent with new TILA Section 127(m). Therefore, the Board is not proposing any changes to these rules.

While TILA Section 127(m) applies only to credit card accounts under an open-end consumer credit plan, § 226.5(a)(2)(iii) applies to all open-end (not home-secured) plans and § 226.16(f) applies to all open-end plans. The Board continues to believe this scope is appropriate, so consumers of non-credit card products that are open-end (not home-secured) plans will still benefit from the protections of this requirement. The Board accordingly proposes to use its TILA Section 105(a) authority to apply the requirements of § 226.5(a)(2)(iii) to all open-end (not home-secured) plans and § 226.16(f) to all open-end plans. Furthermore, although TILA Section 127(m) only references the term “fixed,” §§ 226.5(a)(2)(iii) and 226.16(f) restrict use of the word “fixed” as well as other similar terms. The Board believes this interpretation is necessary to prevent creditors from circumventing the rule by using different terminology that would essentially have the same meaning as “fixed” in the minds of consumers. As a result, the Board proposes to use its authority under TILA Section 105(a) to apply the provision to other terms similar to the term “fixed.”

Also, TILA Section 127(m) implies that a time period for which the rate is fixed must be specified in the account terms. While most creditors will likely state a term for the which the rate is fixed, the Board believes the rule should address instances when a rate is described as “fixed” but no time period is provided. The Board, therefore, proposes to use its authority under TILA Section 105(a) to provide that if a creditor describes a rate as "fixed," but does not disclose a time period for which the rate will be fixed, the rate must not increase while the plan is open. Finally, TILA Section 127(m) states that a rate described as "fixed" may not change or vary for any reason. The Board believes, however, that it would be beneficial to consumers to permit a creditor to decrease a rate described as "fixed." Accordingly, the Board proposes to use its authority under TILA Section 105(a) to provide that a rate described as "fixed" may not be increased.

5(b) Time of Disclosures

5(b)(1) Account-Opening Disclosures

5(b)(1)(i) General Rule

In certain circumstances, a creditor may substitute or replace one credit card account with another credit card account. For example, if an existing cardholder requests additional features or benefits (such as rewards on purchases), the creditor may substitute or replace the existing credit card account with a new credit card account that provides those features or benefits. The Board also understands that creditors often charge higher annual percentage rates or annual fees to compensate for additional features and benefits. As discussed below, proposed § 226.55 and its commentary address the application of the general prohibitions on increasing annual percentage rates, fees, and charges during the first year after account opening and on applying increased rates to existing balances in these circumstances. See proposed § 226.55(d); proposed comments 55(b)(3)-3 and 55(d)-1 through -3.

In order to clarify the application of the disclosure requirements in §§ 226.6(b) and 226.9(c)(2) when one credit card account is substituted or replaced with another, the Board proposes to adopt comment 5(b)(1)(i)-6, which states that, when a card issuer substitutes or replaces an existing credit card account with another credit card account, the card issuer must either provide notice of the terms of the new account consistent with § 226.6(b) or provide notice of the changes in the terms of the existing account consistent with § 226.9(c)(2). The Board understands that, when an existing cardholder requests new features or benefits, disclosure of the new terms pursuant to § 226.6(b) may be preferable because the cardholder generally will not want to wait 45 days for the new terms to take effect (as would be the case if notice were provided pursuant to § 226.9(c)(2)). Thus, this comment is intended to provide card issuers with some flexibility regarding whether to treat the substitution or replacement as the opening of a new account (subject to § 226.6(b)) or a change in the terms of an existing account (subject to § 226.9(c)(2)).

However, the Board does not intend to permit card issuers to circumvent the disclosure requirements in § 226.9(c)(2) by treating a change in terms as the opening of a new account. Accordingly, the comment would further state that whether a substitution or replacement 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 §§ 226.6(b) and 226.9(c)(2) is determined in light of all the relevant facts and circumstances.

The comment provides the following list of relevant facts and circumstances: (1) whether the card issuer provides the consumer with a new credit card; (2) whether the card issuer provides the consumer with a new account number; (3) whether the account provides new features or benefits after the substitution or replacement (such as rewards on purchases); (4) whether the account can be used to conduct transactions at a greater or lesser number of merchants after the substitution or replacement; (5) whether the card issuer implemented the substitution or replacement on an individualized basis; and (6) whether the account becomes a different type of open-end plan after the substitution or replacement (such as when a charge card is replaced by a credit card). The comment states that, when most of these facts and circumstances are present, the substitution or replacement likely constitutes the opening of a new account for which § 226.6(b) disclosures are appropriate. However, the comment also states that, when few of these facts and circumstances are present, the substitution or replacement likely constitutes a change in the terms of an existing account for which § 226.9(c)(2) disclosures are appropriate.[8]

The Board solicits comment on whether additional facts and circumstances are relevant. The Board also solicits comment on alternative approaches to determining whether a substitution or replacement 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 §§ 226.6(b) and 226.9(c)(2).

5(b)(2) Periodic Statements

The Board is proposing to amend comment 5(b)(2)(ii)-2 in several respects in order to clarify the consequences of a failure to comply with the requirement in § 226.5(b)(2)(ii) that creditors adopt reasonable procedures designed to ensure that periodic statements for open-end credit plans are mailed or delivered at least 21 days

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[8] The comment also provides cross-references to other provisions in Regulation Z and its commentary that address the substitution or replacement of credit card accounts.

before the payment due date and the date on which any grace period expires. First, the title of the comment would be amended to cover both treating a payment as late for any purpose and collecting any finance or other charge. Second, because § 226.5(b)(2)(ii) only prohibits the creditor from treating a payment as late for any purpose or collecting any finance or other charge as a result of a failure to comply with the general 21-day requirement, the comment would be amended to clarify that the prohibition in § 226.5(b)(2)(ii) on treating a payment as late for any purpose or collecting finance or other charges applies only during the 21-day period following mailing or delivery of the periodic statement. Thus, if a creditor does not receive a payment within 21 days of mailing or delivery of the periodic statement, the prohibition does not apply and the creditor may, for example, impose a late payment fee.

Third, for similar reasons, the amended comment would clarify that, when an account is not eligible for a grace period, a creditor may impose a finance charge due to a periodic interest rate without treating a payment as late or collecting finance or other charges as a result of a failure to comply with § 226.5(b)(2)(ii).

The Board is also proposing to amend the cross-reference in comment 5(b)(2)(ii)-6 to reflect the restructuring of the commentary to § 226.7.

Section 226.5a Credit and Charge Card Applications and Solicitations

5a(b) Required Disclosures

5a(b)(1) Annual Percentage Rate

To complement the proposed disclosure requirements for deferred interest or similar plans proposed in §§ 226.7(b) and 226.16(h) in the May 2009 Regulation Z Proposed Clarifications, the Board also proposed a new comment 5a(b)(1)-9 to clarify that an issuer offering a deferred interest or similar plan may not disclose a rate as 0% due to the possibility that the consumer may not be obligated for interest regarding the deferred interest or similar transaction. 74 FR 20797. The Board is republishing proposed comment 5a(b)(1)-9 in this **Federal Register** notice.

Section 226.7 Periodic Statement

7(b) Rules Affecting Open-End (Not Home-Secured) Plans

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

In 2005, the Bankruptcy Act amended TILA to add Section 127(b)(12), which required creditors that charge a late payment fee to disclose on the periodic statement (1) the payment due date or, if the due date differs from when a late payment fee would be charged, the earliest date on which the late payment fee may be charged, and (2) the amount of the late payment fee. See 15 U.S.C. 1637(b)(12). In the January 2009 Regulation Z Rule, the Board implemented this section of TILA for open-end (not home-secured) credit plans. Specifically, the final rule added § 226.7(b)(11) to require creditors offering open-end (not home-secured) credit plans that charge a fee or impose a penalty rate for paying late to disclose on the periodic statement: the payment due date, and the amount of any late payment fee and any penalty APR that could be triggered by a late payment. For ease of reference, this supplementary information will refer to the disclosure of any late payment fee and any penalty APR that could be triggered by a late payment as "the late payment disclosures."

Section 226.7(b)(13), as adopted in the January 2009 Regulation Z Rule, sets forth formatting requirements for the due date and the late payment disclosures. Specifically, § 226.7(b)(13) requires that the due date be disclosed on the front side of the first page of the periodic statement. Further, the amount of any late payment fee and any penalty APR that could be triggered by a late payment must be disclosed in close proximity to the due date.

Section 202 of the Credit Card Act amends TILA Section 127(b)(12) to provide that for a "credit card account under an open-end consumer credit plan," a creditor that charges a late payment fee must disclose in a conspicuous location on the periodic statement (1) the payment due date, or, if the due date differs from when a late payment fee would be charged, the earliest date on which the late payment fee may be charged, and (2) the amount of the late payment fee. In addition, if a late payment may result in an increase in the APR applicable to the credit card account, a creditor also must provide on the periodic statement a disclosure of this fact, along with the applicable penalty APR. The disclosure related to the penalty APR must be placed in close proximity to the due-date disclosure discussed above.

In addition, Section 106 of the Credit Card Act adds new TILA Section 127(o), which requires that the payment due date for a credit card account under an open-end (not home-secured) consumer credit plan be the same day each month. 15 U.S.C. 1637(o).

As discussed in more detail below, the Board proposes to retain the due date and the late payment disclosure provisions adopted in § 226.7(b)(11) as part of the January 2009 Regulation Z Rule, with several revisions. Format requirements relating to the due date and the late payment disclosure provisions are discussed in more detail in the section-by-section analysis to proposed § 226.7(b)(13).

Applicability of the due date and the late payment disclosure requirements. The due date and the late payment disclosures added to TILA Section 127(b)(12) by the

Bankruptcy Act applied to all open-end credit plans. Consistent with TILA Section 127(b)(12), as added by the Bankruptcy Act, the due date and the late payment disclosures in § 226.7(b)(11) (as adopted in the January 2009 Regulation Z Rule) apply to all open-end (not home-secured) credit plans, including credit card accounts, overdraft lines of credit and other general purpose lines of credit that are not home secured.

The Credit Card Act amended TILA Section 127(b)(12) to apply the due date and the late payment disclosures only to creditors offering a credit card account under an open-end consumer credit plan. Consistent with newly-revised TILA Section 127(b)(12), the Board proposes to amend § 226.7(b)(11) to require the due date and the late payment disclosures only for a "credit card account under an open-end (not home-secured) consumer credit plan," as that term is defined under proposed § 226.2(a)(15)(ii). As discussed in more detail in the section-by-section analysis to proposed § 226.2(a)(15)(ii), the term "credit card account under an open-end (not home-secured) consumer credit plan" means any account accessed by a credit card, except this term does not include HELOC accounts subject to § 226.5b that are accessed by a credit card device or overdraft lines of credit that are accessed by a debit card. Thus, based on the proposed definition of "credit card account under an open-end (not home-secured) consumer credit plan," the due date and the late payment disclosures would not apply to (1) open-end credit plans that are not credit card accounts such as general purpose lines of credit that are not accessed by a credit card; (2) HELOC accounts subject to § 226.5b even if they are accessed by a credit card device; and (3) overdraft lines of credit even if they are accessed by a debit card. In addition, as discussed in more detail below, under proposed

§ 226.7(b)(11)(ii), the Board also proposes to exempt charge card accounts from the late payment disclosure requirements.

Charge card accounts. As discussed above, the late payment disclosures in TILA Section 127(b)(12), as amended by the Credit Card Act, apply to "creditors" offering credit card accounts under an open-end consumer credit plan. Issuers of "charge cards" (which are typically products where outstanding balances cannot be carried over from one billing period to the next and are payable when a periodic statement is received) are "creditors" for purposes of specifically enumerated TILA disclosure requirements. 15 U.S.C. 1602(f); § 226.2(a)(17). The late payment disclosure requirement in TILA Section 127(b)(12), as amended by the Credit Card Act, is not among those specifically enumerated.

For the reasons discussed in more detail below, a charge card issuer would be required to disclose the due date on the periodic statement, and this payment due date must be the same day each month. Nonetheless, under proposed § 226.7(b)(11)(ii), a charge card issuer would not be required to disclose on the periodic statement the late payment disclosures, namely any late payment fee or penalty APR that could be triggered by a late payment. As discussed above, the late payment disclosure requirements are not specifically enumerated in TILA Section 103(f) to apply to charge card issuers. In addition, the Board notes that for some charge card issuers, payments are not considered "late" for purposes of imposing a fee until a consumer fails to make payments in two consecutive billing cycles. It would be undesirable to encourage consumers who in January receive a statement with the balance due upon receipt, for example, to avoid paying the balance when due because a late payment fee may not be assessed until mid-

February; if consumers routinely avoided paying a charge card balance by the due date, it could cause issuers to change their practice with respect to charge cards.

Section 226.7(b)(11)(ii) makes clear the exemption is for periodic statements provided solely for charge card accounts; periodic statements provided for card accounts with a charge card feature and revolving feature must comply with the late payment disclosure provisions as to the revolving feature. The Board also proposes to retain comment app. G-9 (which was adopted in the January 2009 Regulation Z Rule). Comment app. G-9 explains that creditors offering card accounts with a charge card feature and a revolving feature may revise disclosures, such as the late payment disclosures and the repayment disclosures discussed in the section-by-section analysis to proposed § 226.7(b)(12) below, to make clear the feature to which the disclosures apply.

Payment due date. As adopted in the January 2009 Regulation Z Rule, § 226.7(b)(11) requires creditors offering open-end (not home-secured) credit to disclose the due date for a payment if a late payment fee or penalty rate could be imposed under the credit agreement, as discussed in more detail as follows. As adopted in the January 2009 Regulation Z Rule, § 226.7(b)(11) applies to all open-end (not home-secured) credit plans, even those plans that are not accessed by a credit card device. The Board proposes generally to retain the due date disclosure, except that this disclosure would be required only for a card issuer offering a "credit card account under an open-end (not home-secured) consumer credit plan," as that term is defined in proposed § 226.2(a)(15)(ii).

In addition, as discussed below, the Board is proposing several other revisions to § 226.7(b)(11) in order to implement new TILA Section 127(o), which requires that the payment due date for a credit card account under an open-end (not home-secured) consumer credit plan be the same day each month. In addition to requiring that the due date disclosed be the same day each month, in order to implement new TILA Section 127(o), the Board proposes to require that the due date disclosure be provided regardless of whether a late payment fee or penalty rate could be imposed. Second, the Board proposes to amend § 226.7(b)(11)(ii) to require that the due date be disclosed for charge card accounts, although charge card issuers would not be required to provide the late payment disclosures set forth in proposed § 226.7(b)(11)(i)(B).

1. Courtesy periods. In the January 2009 Regulation Z Rule, § 226.7(b)(11) interpreted the due date to be a date that is required by the legal obligation. Comment 7(b)(11)-1 clarified that creditors need not disclose informal "courtesy periods" not part of the legal obligation that creditors may observe for a short period after the stated due date before a late payment fee is imposed, to account for minor delays in payments such as mail delays. The Board proposes to retain comment 7(b)(11)-1 with technical revisions to refer to card issuers, rather than creditors, consistent with the proposal to limit the due date and late payment disclosures to a "credit card account under an open-end (not home-secured) consumer credit plan," as that term is defined in proposed § 226.2(a)(15)(ii).

2. Assessment of late fees. Under TILA Section 127(b)(12), as revised by the Credit Card Act, a card issuer must disclose on periodic statements the payment due date or, if different, the earliest date on which the late payment fee may be charged. Some state laws require that a certain number of days must elapse following a due date before a late payment fee may be imposed. Under such a state law, the later date arguably would be required to be disclosed on periodic statements.

In the January 2009 Regulation Z Rule, the Board required creditors to disclose the due date under the terms of the legal obligation, and not a later date, such as when creditors are restricted by state or other law from imposing a late payment fee unless a payment is late for a certain number of days following the due date. Specifically, comment 7(b)(12)-2 (as adopted as part of the January 2009 Regulation Z Rule) notes that some state or other laws require that a certain number of days must elapse following a due date before a late payment fee may be imposed. For example, assume a payment is due on March 10 and state law provides that a late payment fee cannot be assessed before March 21. Comment 7(b)(11)-2 clarifies that creditors 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 creditors are restricted by state or other law to delay 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 state 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 creditor would disclose March 10 as the due date for purposes of § 226.7(b)(11), even if under state law the creditor could not assess a late payment fee before March 21.

The Board was concerned that disclosure of the later date would not provide a meaningful benefit to consumers in the form of useful information or protection and would result in consumer confusion. In the example above, highlighting March 20 as the last date to avoid a late payment fee may mislead consumers into thinking that a payment made any time on or before March 20 would have no adverse financial consequences. However, failure to make a payment when due is considered an act of default under most credit contracts, and can trigger higher costs due to loss of a grace period, interest accrual, and perhaps penalty APRs. The Board considered additional disclosures on the periodic statement that would more fully explain the consequences of paying after the due date and before the date triggering the late payment fee, but such an approach appeared cumbersome and overly complicated.

For these reasons, notwithstanding TILA Section 127(b)(12), as revised by the Credit Card Act, the Board proposes to continue to require card issuers to disclose the due date under the terms of the legal obligation, and not a later date, such as when creditors are restricted by state or other law from imposing a late payment fee unless a payment is late for a certain number of days following the due date. The Board proposes this exception to the TILA requirement to disclose the later date pursuant to the Board's authority under TILA Section 105(a) to make adjustments that are necessary to effectuate the purposes of TILA. 15 U.S.C. 1604(a).

The Board proposes to retain comment 7(b)(11)-2 with several revisions. First, the comment would be revised to refer to card issuers, rather than creditors, consistent with the proposal to limit the due date and late payment disclosures to a "credit card account under an open-end (not home-secured) consumer credit plan," as that term is defined in proposed § 226.2(a)(15)(ii). Second, the comment would be revised to address the situation where the terms of the account agreement (rather than state law) limit a card issuer from imposing a late payment fee unless a payment is late a certain number of days following a due date. The Board proposes to revise comment 7(b)(11)-2 to provide that in this situation a card issuer must disclose the date the payment is due under the terms of the legal obligation, and not the later date when a late payment fee may be imposed under the contract.

3. Same due date each month. The Credit Card Act created a new TILA Section 127(o), which states in part that the payment due date for a credit card account under an open end consumer credit plan shall be the same day each month. The Board is proposing to implement this requirement by revising § 226.7(b)(11)(i). The text the Board is proposing to insert into amended § 226.7(b)(11)(i) would generally track the statutory language in new TILA Section 127(o) and would state that for credit card accounts under open-end (not home-secured) consumer credit plans, the due date disclosed pursuant to § 226.7(b)(11)(i) must be the same day of the month for each billing cycle.

The Board is proposing several new comments to clarify the requirement that the due date be the same day of the month for each billing cycle. Proposed comment 7(b)(11)(i)-6 would clarify that the same day of the month means the same numerical day of the month. The comment notes that one example of a compliant practice would be to have a due date that is the 25th of every month. In contrast, it would not be permissible for the payment due date to be the same relative date, but not numerical date, of each month, such as the third Tuesday of the month. The Board believes that the intent of new TILA Section 127(o) is to promote predictability and to enhance consumer awareness of due dates each month to make it easier to make timely payments. The Board believes that requiring the due date to be the same numerical day each month effectuates the statute, and that permitting the due date to be the same relative day each month would not as effectively promote predictability for consumers.

The Board notes that in practice the requirement that the due date be the same numerical date each month would preclude creditors from setting due dates that are the 29th, 30th, or 31st of the month. The Board is aware that some credit card issuers currently set due dates for a portion of their accounts on every day of the month, in order to distribute the burden associated with processing payments more evenly throughout the month. The Board solicits comment on any operational burden associated with processing additional payments received on the 1st through 28th of the month in those months with more than 28 days.

Proposed comment 7(b)(11)(i)-7 would clarify that a creditor may adjust a consumer's due date from time to time, for example in response to a consumer-initiated request, provided that the new due date will be the same numerical date each month on an ongoing basis. The proposed comment would cross-reference existing comment 2(a)(4)-3 for guidance on transitional billing cycles that might result when the consumer's due date is changed. The Board believes that it is appropriate to permit creditors to change the consumer's due date from time to time, for example, if the creditor wishes to honor a consumer request for a new due date that better coincides with the time of the month when the consumer is paid by his or her employer. The Board notes that while the proposed comment refers to consumer-initiated requests as one example of when a change in due date might occur, proposed § 226.7(b)(11)(i) and comment 7(b)(11)(i)-7 would not prohibit changes in the consumer's due date from time to time that are not consumer-initiated, for example, if a creditor acquires a portfolio and changes the consumer's due date as it migrates acquired accounts onto its own systems.

Regulation Z's definition of "billing cycle" in § 226.2(a)(4) contemplates that the interval between the days or dates of regular periodic statements must be equal and no longer than a quarter of a year. Therefore, some creditors may have billing cycles that are two or three months in duration. The Board is proposing comment 7(b)(11)(i)-8 to clarify that new § 226.7(b)(11)(i) 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 each month. The Board believes that it was not the intent of new TILA Section 127(o) to require that each billing cycle be exactly one month, so long as the due date is always the same day of the month for each billing cycle. For example, the comment notes that 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.

Finally, the Board is proposing comment 7(b)(11)(i)-9 to clarify the relationship between §§ 226.7(b)(11)(i) and 226.10(d). As discussed elsewhere in this supplementary information, proposed § 226.10(d) provides that if the payment due date is a day on which the creditor does not receive or accept payments by mail, the creditor is generally required to treat a payment received the next business day as timely. It is likely that, from time to time, a due date that is the same numerical date each month as required by § 226.7(b)(11)(i) may fall on a date on which the creditor does not accept or receive mailed payments, such as a holiday or weekend. However, proposed comment 7(b)(11)(i)-9 clarifies that in such circumstances 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 § 226.10(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, however, disclose July 4 as the due date on the periodic statement and may not disclose a July 5 due date. This is consistent with the approach that the Board has taken with regard to payment due dates in comment 5(b)(2)(ii)-3 of the July 2009 Regulation Z Interim Final Rule, where the due date disclosed is required to reflect the legal obligation between the parties, not any courtesy period offered by the creditor or required by state or other law.

Late payment fee and penalty APR. In the January 2009 Regulation Z Rule, the Board adopted § 226.7(b)(11) to require creditors offering open-end (not home-secured) credit plans that charge a fee or impose a penalty rate for paying late to disclose on the periodic statement the amount of any late payment fee and any penalty APR that could be triggered by a late payment (in addition to the payment due date discussed above). Consistent with TILA Section 127(b)(12), as revised by the Credit Card Act, proposed § 226.7(b)(11) would continue to require that a card issuer disclose any late payment fee and any penalty APR that may be imposed on the account as a result of a late payment, in addition to the payment due date discussed above.

Fee or rate triggered by multiple events. In the January 2009 Regulation Z Rule, the Board added comment 7(b)(11)-3 to provide guidance on complying with the late payment disclosure if a late fee or penalty APR is triggered after multiple events, such as two late payments in six months. Comment 7(b)(11)-3 provides that in such cases, the creditor may, but is not required to, disclose the late payment and penalty APR 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 APR, such as after the consumer made one late payment in this example. The Board proposes to retain this comment with technical revisions to refer to card issuers, rather than creditors, consistent with the proposal to limit the late payment disclosures to a “credit card account under an open-end (not home-secured) consumer credit plan,” as that term is defined in proposed § 226.2(a)(15)(ii).

Range of fees and rates. In the January 2009 Regulation Z Rule, § 226.7(b)(11)(i)(B) provides that if a range of late payment fees or penalty APRs could be imposed on the consumer’s account, creditors may disclose the highest late payment fee and rate and at creditors’ option, an indication (such as using the phrase “up to”) that lower fees or rates may be imposed. Comment 7(b)(11)-4 was added to illustrate the requirement. The final rule also permits creditors to disclose a range of fees or rates. The Board proposes to retain § 226.7(b)(11)(i)(B) and comment 7(b)(11)-4 with technical revisions to refer to card issuers, rather than creditors, consistent with the proposal to limit the late payment disclosures to a “credit card account under an open-end (not home-secured) consumer credit plan,” as that term is defined in proposed § 226.2(a)(15)(ii). This approach recognizes the space constraints on periodic statements and provides card issuers flexibility in disclosing possible late payment fees and penalty rates.

Penalty APR in effect. In the January 2009 Regulation Z Rule, comment 7(b)(11)-5 was added to provide that if the highest penalty APR has previously been triggered on an account, the creditor may, but is not required to, delete as part of the late payment disclosure the amount of the penalty APR and the warning that the rate may be imposed for an untimely payment, as not applicable. Alternatively, the creditor may, but is not required to, modify the language to indicate that the penalty APR has been increased due to previous late payments, if applicable. The Board proposes to retain this comment with technical revisions to refer to card issuers, rather than creditors, consistent with the proposal to limit the late payment disclosures to a "credit card account under an open-end (not home-secured) consumer credit plan," as that term is defined in proposed § 226.2(a)(15)(ii).

7(b)(12) Repayment Disclosures

The Bankruptcy Act added TILA Section 127(b)(11) to require creditors that extend open-end credit to provide a disclosure on the front of each periodic statement in a prominent location about the effects of making only minimum payments. 15 U.S.C. 1637(b)(11). This disclosure included: (1) a "warning" statement indicating that making only the minimum payment will increase the interest the consumer pays and the time it takes to repay the consumer's balance; (2) a hypothetical example of how long it would take to pay off a specified balance if only minimum payments are made; and (3) a toll-free telephone number that the consumer may call to obtain an estimate of the time it would take to repay his or her actual account balance ("generic repayment estimate"). In order to standardize the information provided to consumers through the toll-free telephone numbers, the Bankruptcy Act directed the Board to prepare a "table" illustrating the approximate number of months it would take to repay an outstanding balance if the consumer pays only the required minimum monthly payments and if no other advances are made. The Board was directed to create the table by assuming a significant number of different APRs, account balances, and minimum payment amounts;

the Board was required to provide instructional guidance on how the information contained in the table should be used to respond to consumers' requests.

Alternatively, the Bankruptcy Act provided that a creditor may use a toll-free telephone number to provide the actual number of months that it will take consumers to repay their outstanding balances ("actual repayment disclosure") instead of providing an estimate based on the Board-created table. A creditor that does so would not need to include a hypothetical example on its periodic statements, but must disclose the warning statement and the toll-free telephone number on its periodic statements. 15 U.S.C. 1637(b)(11)(J)-(K).

For ease of reference, this supplementary information will refer to the above disclosures in the Bankruptcy Act about the effects of making only the minimum payment as "the minimum payment disclosures."

In the January 2009 Regulation Z Rule, the Board implemented this section of TILA. In that rulemaking, the Board limited the minimum payment disclosures required by the Bankruptcy Act to credit card accounts, pursuant to the Board's authority under TILA Section 105(a) to make adjustments that are necessary to effectuate the purposes of TILA. 15 U.S.C. 1604(a). In addition, the final rule in § 226.7(b)(12) provided that credit card issuers could choose one of three ways to comply with the minimum payment disclosure requirements set forth in the Bankruptcy Act: (1) provide on the periodic statement a warning about making only minimum payments, a hypothetical example, and a toll-free telephone number where consumers may obtain generic repayment estimates; (2) provide on the periodic statement a warning about making only minimum payments, and a toll-free telephone number where consumers may obtain actual repayment disclosures; or (3) provide on the periodic statement the actual repayment disclosure. The Board issued guidance in Appendix M1 to part 226 for how to calculate the generic repayment estimates, and guidance in Appendix M2 to part 226 for how to calculate the actual repayment disclosures. Appendix M3 to part 226 provided sample calculations for the generic repayment estimates and the actual repayment disclosures discussed in Appendices M1 and M2 to part 226.

The Credit Card Act substantially revised Section 127(b)(11) of TILA. Specifically, Section 201 of the Credit Card Act amends TILA Section 127(b)(11) to provide that creditors that extend open-end credit must provide the following disclosures on each periodic statement: (1) a “warning” statement indicating that making only the minimum payment will increase the interest the consumer pays and the time it takes to repay the consumer’s balance; (2) the number of months that it would take to repay the outstanding balance if the consumer pays only the required minimum monthly payments and if no further advances are made; (3) the total cost to the consumer, including interest and principal payments, of paying that balance in full, if the consumer pays only the required minimum monthly payments and if no further advances are made; (4) the monthly payment amount that would be required for the consumer to pay off the outstanding balance in 36 months, if no further advances are made, and the total cost to the consumer, including interest and principal payments, of paying that balance in full if the consumer pays the balance over 36 months; and (5) a toll-free telephone number at which the consumer may receive information about credit counseling and debt management services. For ease of reference, this supplementary information will refer to the above disclosures in the Credit Card Act as “the repayment disclosures.”

The Credit Card Act provides that the repayment disclosures discussed above (except for the warning statement) must be disclosed in the form and manner which the Board prescribes by regulation and in a manner that avoids duplication; and be placed in a conspicuous and prominent location on the billing statement. By regulation, the Board must require that the disclosure of the repayment information (except for the warning statement) be in the form of a table that contains clear and concise headings for each item of information and provides a clear and concise form stating each item of information required to be disclosed under each such heading. In prescribing the table, the Board must require that all the information in the table, and not just a reference to the table, be placed on the billing statement and the items required to be included in the table must be listed in the order in which such items are set forth above. In prescribing the table, the statute states that the Board shall use terminology different from that used in the statute, if such terminology is more easily understood and conveys substantially the same meaning. With respect to the toll-free telephone number for providing information about credit counseling and debt management services, the Credit Card Act provides that the Board must issue guidelines by rule, in consultation with the Secretary of the Treasury, for the establishment and maintenance by creditors of a toll-free telephone number for purposes of providing information about a accessing credit counseling and debt management services. These guidelines must ensure that referrals provided by the toll-free telephone number include only those nonprofit budget and credit counseling agencies approved by a U.S. bankruptcy trustee pursuant to 11 U.S.C. 111(a).

As discussed in more detail below, the Board proposes to revise § 226.7(b)(12) to implement Section 201 of the Credit Card Act.

Proposal to limit the repayment disclosure requirements to credit card accounts. Under the Credit Card Act, the repayment disclosure requirements apply to all open-end accounts (such as credit card accounts, HELOCs, and general purpose credit lines). As discussed above, in the January 2009 Regulation Z Rule, the Board limited the minimum payment disclosures required by the Bankruptcy Act to credit card accounts. For similar reasons, the Board proposes to limit the repayment disclosures in the Credit Card Act to credit card accounts under open-end (not home-secured) consumer credit plans, as that term is defined in proposed § 226.2(a)(15)(ii).

As discussed in more detail in the section-by-section analysis to proposed § 226.2(a)(15)(ii), the term "credit card account under an open-end (not home-secured) consumer credit plan" means any account accessed by a credit card, except this term does not include HELOC accounts subject to § 226.5b that are accessed by a credit card device or overdraft lines of credit that are accessed by a debit card. Thus, based on the proposed exemption to limit the repayment disclosures to credit card accounts under open-end (not home-secured) consumer credit plans, the following products would be exempt from the repayment disclosures in TILA Section 127(b)(11), as set forth in the Credit Card Act: (1) HELOC accounts subject to § 226.5b even if they are accessed by a credit card device; (2) overdraft lines of credit even if they are accessed by a debit card; and (3) open-end credit plans that are not credit card accounts, such as general purpose lines of credit that are not accessed by a credit card.

The Board proposes this rule pursuant to its exception and exemption authorities under TILA Section 105. Section 105(a) authorizes the Board to make exceptions to TILA to effectuate the statute's purposes, which include facilitating consumers' ability to compare credit terms and helping consumers avoid the uninformed use of credit. See 15 U.S.C. 1601(a), 1604(a). Section 105(f) authorizes the Board to exempt any class of transactions from coverage under any part of TILA if the Board determines that coverage under that part does not provide a meaningful benefit to consumers in the form of useful information or protection. See 15 U.S.C. 1604(f)(1). The Board must make this determination in light of specific factors. See 15 U.S.C. 1604(f)(2). These factors are (1) the amount of the loan and whether the disclosure provides a benefit to consumers who are parties to the transaction involving a loan of such amount; (2) the extent to which the requirement complicates, hinders, or makes more expensive the credit process; (3) the status of the borrower, including any related financial arrangements of the borrower, the financial sophistication of the borrower relative to the type of transaction, and the importance to the borrower of the credit, related supporting property, and coverage under TILA; (4) whether the loan is secured by the principal residence of the borrower; and (5) whether the exemption would undermine the goal of consumer protection.

As discussed in more detail below, the Board has considered each of these factors carefully, and based on that review, believes that the proposed exemption is appropriate.

1. HELOC accounts. In the August 2009 Regulation Z HELOC Proposal, the Board proposed that the repayment disclosures required by TILA Section 127(b)(11), as amended by the Credit Card Act, not apply to HELOC accounts, including HELOC accounts that can be accessed by a credit card device. See 74 FR 43428. The Board proposed this rule pursuant to its exception and exemption authorities under TILA Section 105(a) and 105(f), as discussed above. In the supplementary information to the August 2009 Regulation Z HELOC Proposal, the Board stated its belief that the

minimum payment disclosures in the Credit Card Act would be of limited benefit to consumers for HELOC accounts and are not necessary to effectuate the purposes of TILA. First, the Board understands that most HELOCs have a fixed repayment period. Under the August 2009 Regulation Z HELOC Proposal, in proposed § 226.5b(c)(9)(i), creditors offering HELOCs subject to § 226.5b would be required to disclose the length of the plan, the length of the draw period and the length of any repayment period in the disclosures that must be given within three business days after application (but not later than account opening). In addition, this information also must be disclosed at account opening under proposed § 226.6(a)(2)(v)(A), as set forth in the August 2009 Regulation Z HELOC Proposal. Thus, for a HELOC account with a fixed repayment period, a consumer could learn from those disclosures the amount of time it would take to repay the HELOC account if the consumer only makes required minimum payments. The cost to creditors of providing this information a second time, including the costs to reprogram periodic statement systems, appears not to be justified by the limited benefit to consumers.

In addition, in the supplementary information to the August 2009 Regulation Z HELOC Proposal, the Board stated its belief that the disclosure about total cost to the consumer of paying the outstanding balance in full (if the consumer pays only the required minimum monthly payments and if no further advances are made) would not be useful to consumers for HELOC accounts because of the nature of consumers' use of HELOC accounts. The Board understands that HELOC consumers tend to use HELOC accounts for larger transactions that they can finance at a lower interest rate than is offered on unsecured credit cards, and intend to repay these transactions over the life of the HELOC account. By contrast, consumers tend to use unsecured credit cards to engage in a significant number of small dollar transactions per billing cycle, and may not intend to finance these transactions for many years. The Board also understands that HELOC consumers often will not have the ability to repay the balances on the HELOC account at the end of each billing cycle, or even within a few years. To illustrate, the Board's 2007 Survey of Consumer Finances data indicates that the median balance on HELOCs (for families that had a balance at the time of the interview) was $24,000, while the median balance on credit cards (for families that had a balance at the time of the interview) was $3,000.[9]

As discussed in the supplementary information to the August 2009 Regulation Z HELOC Proposal, the nature of consumers' use of HELOCs also underlies the Board's belief that periodic disclosure of the monthly payment amount required for the consumer to pay off the outstanding balance in 36 months, and the total cost to the consumer of paying that balance in full if the consumer pays the balance over 36 months, would not provide useful information to consumers for HELOC accounts.

For all these reasons, in the August 2009 Regulation Z HELOC Proposal, the Board proposed to exempt HELOC accounts (even when they are accessed by a credit card account) from the repayment disclosure requirements set forth in TILA Section 127(b)(11), as revised by the Credit Card Act.

2. Overdraft lines of credit and other general purpose credit lines. The Board also proposes to exempt overdraft lines of credit (even if they are accessed by a debit card) and general purpose credit lines that are not accessed by a credit card from the

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[9] Brian Bucks, et al., Changes in U.S. Family Finances from 2004 to 2007: Evidence from the Survey of Consumer Finances, Federal Reserve Bulletin (February 2009).

repayment disclosure requirements set forth in TILA Section 127(b)(11), as revised by the Credit Card Act, for several reasons. 15 U.S.C. 1637(b)(11). First, these lines of credit are not in wide use. The 2007 Survey of Consumer Finances data indicates that few families--1.7 percent--had a balance on lines of credit other than a home-equity line or credit card at the time of the interview. (By comparison, 73 percent of families had a credit card, and 60.3 percent of these families had a credit card balance at the time of the interview.)[10] Second, these lines of credit typically are neither promoted, nor used, as long-term credit options of the kind for which the repayment disclosures are intended. Third, the Board is concerned that the operational costs of requiring creditors to comply with the repayment disclosure requirements for overdraft lines of credit and other general purpose lines of credit may cause some institutions to no longer provide these products as accommodations to consumers, to the detriment of consumers who currently use these products. For these reasons, the Board proposes to use its TILA Section 105(a) and 105(f) authority (as discussed above) to exempt overdraft lines of credit and other general purpose credit lines from the repayment disclosure requirements, because in this context the Board believes the repayment disclosures are not necessary to effectuate the purposes of TILA. 15 U.S.C. 1604(a) and (f).

7(b)(12)(i) In General

TILA Section 127(b)(11)(A), as amended by the Credit Card Act, requires that a creditor that extends open-end credit must provide the following disclosures on each periodic statement: (1) a "warning" statement indicating that making only the minimum payment will increase the interest the consumer pays and the time it takes to repay the

[10] Brian Bucks, et al., Changes in U.S. Family Finances from 2004 to 2007: Evidence from the Survey of Consumer Finances, Federal Reserve Bulletin (February 2009).

consumer's balance; (2) the number of months that it would take to repay the outstanding balance if the consumer pays only the required minimum monthly payments and if no further advances are made; (3) the total cost to the consumer, including interest and principal payments, of paying that balance in full, if the consumer pays only the required minimum monthly payments and if no further advances are made; (4) the monthly payment amount that would be required for the consumer to pay off the outstanding balance in 36 months, if no further advances are made, and the total cost to the consumer, including interest and principal payments, of paying that balance in full if the consumer pays the balance over 36 months; and (5) a toll-free telephone number at which the consumer may receive information about accessing credit counseling and debt management services.

In implementing these statutory disclosures, proposed § 226.7(b)(12)(i) sets forth the repayment disclosures that a credit card issuer generally must provide on the periodic statement. As discussed in more detail below, proposed § 226.7(b)(12)(ii) sets forth the repayment disclosures that a credit card issuer must provide on the periodic statement when negative or no amortization occurs on the account.

Warning statement. TILA Section 127(b)(11)(A), as amended by the Credit Card Act, requires that a creditor include the following statement on each periodic statement: "Minimum Payment Warning: Making only the minimum payment will increase the amount of interest you pay and the time it takes to repay your balance," or a similar statement that is required by the Board pursuant to consumer testing. 15 U.S.C. 1637(b)(11)(A). Under proposed § 226.7(b)(12)(i)(A), if amortization occurs on the account, a credit card issuer generally would be required to disclose the following statement with a bold heading on each periodic statement: "**Minimum Payment Warning**: If you make only the minimum payment each period, you will pay more in interest and it will take you longer to pay off your balance." The proposed warning statement contains several stylistic revisions to the statutory language, based on plain language principles, in an attempt to make the language of the warning more understandable to consumers. The Board tested the proposed warning statement as part of the consumer testing conducted by the Board on credit card disclosures in relation to the January 2009 Regulation Z Rule. Participants in that consumer testing reviewed periodic statement disclosures with the proposed warning statement, and they indicated they understood from this statement that paying only the minimum payment would increase both interest charges and the length of time it would take to pay off a balance.

Minimum payment disclosures. TILA Section 127(b)(11)(B)(i) and (ii), as amended by the Credit Card Act, requires that a creditor provide on each periodic statement: (1) the number of months that it would take to pay the entire amount of the outstanding balance, if the consumer pays only the required minimum monthly payments and if no further advances are made; and (2) the total cost to the consumer, including interest and principal payments, of paying that balance in full, if the consumer pays only the required minimum monthly payments and if no further advances are made. 15 U.S.C. 1637(b)(11)(B)(i) and (ii). The Board proposes new § 226.7(b)(12)(i)(B) and (C) to implement these statutory provisions.

1. Minimum payment repayment estimate. Under proposed § 226.7(b)(12)(i)(B), if amortization occurs on the account, a credit card issuer generally would be required to disclose on each periodic statement the minimum payment repayment estimate, as

described in proposed Appendix M1 to part 226. As described in more detail in the section-by-section analysis to proposed Appendix M1 to part 226, the minimum payment repayment estimate would be an estimate of the number of months that it would take to pay the entire amount of the outstanding balance shown on the periodic statement, if the consumer pays only the required minimum monthly payments and if no further advances are made. Under proposed Appendix M1 to part 226, a credit card issuer generally would calculate the minimum payment repayment estimate based on the minimum payment formula(s), the APRs and the outstanding balance currently applicable to a consumer's account. For other terms that may impact the calculation of the minimum payment repayment estimate, the Board proposes to allow issuers to make certain assumption about these terms.

Proposed § 226.7(b)(12)(i)(B) provides that if the minimum payment repayment estimate is less than 2 years, a credit card issuer must disclose the estimate in months. Otherwise, the estimate would be disclosed in years. If the estimate is 2 years or more, the estimate would be rounded to the nearest whole year, meaning that if the estimate contains a fractional year less than 0.5, the estimate would be rounded down to the nearest whole year. The estimate would be rounded up to the nearest whole year if the estimate contains a fractional year equal to or greater than 0.5. The Board proposes that the minimum payment repayment estimate be disclosed in years (if the estimated payoff period is 2 years or more), pursuant to the Board's authority to make adjustments to TILA's requirements to effectuate the statute's purposes, which include facilitating consumers' ability to compare credit terms and helping consumers avoid the uninformed use of credit. See 15 U.S.C. 1601(a), 1604(a).

The Board believes that disclosing the estimated minimum payment repayment period in years (if the estimated payoff period is 2 years or more) allows consumers to better comprehend longer repayment periods without having to convert the repayment periods themselves from months to years. In consumer testing conducted by the Board on credit card disclosures in relation to the January 2009 Regulation Z Rule, participants reviewed disclosures with estimated minimum payment repayment periods in years, and they indicated they understood the length of time it would take to repay the balance if only minimum payments were made.

2. Minimum payment total cost estimate. Consistent with TILA Section 127(b)(11)(B)(ii), as revised by the Credit Card Act, proposed § 226.7(b)(12)(i)(C) provides that if amortization occurs on the account, a credit card issuer generally must disclose on each periodic statement the minimum payment total cost estimate, as described in proposed Appendix M1 to part 226. As described in more detail in the section-by-section analysis to proposed Appendix M1 to part 226, the minimum payment total cost estimate would be an estimate of the total dollar amount of the interest and principal that the consumer would pay if he or she made minimum payments for the length of time calculated as the minimum payment repayment estimate, as described in proposed Appendix M1 to part 226. Under the proposal, the minimum payment total cost estimate must be rounded to the nearest whole dollar.

3. Disclosure of assumptions used to calculate the minimum payment repayment estimate and the minimum payment total cost estimate. Under the proposal, a creditor would be required to provide on the periodic statement the following statements: (1) a statement that the minimum payment repayment estimate and the minimum payment total

cost estimate are based on the current outstanding balance shown on the periodic statement; and (2) a statement that the minimum payment repayment estimate and the minimum payment total cost estimate are based on the assumption that only minimum payments are made and no other amounts are added to the balance. The Board believes that this information is needed to help consumers understand the minimum payment repayment estimate and the minimum payment total cost estimate. The Board does not propose to require issuers to disclose other assumptions used to calculate these estimates. The many assumptions that are necessary to calculate the minimum payment repayment estimate and the minimum payment total cost estimate are complex and unlikely to be meaningful or useful to most consumers.

Repayment disclosures based on repayment in 36 months. TILA Section 127(b)(11)(B)(iii), as revised by the Credit Card Act, requires that a creditor disclose on each periodic statement: (1) the monthly payment amount that would be required for the consumer to pay off the outstanding balance in 36 months, if no further advances are made; and (2) the total costs to the consumer, including interest and principal payments, of paying that balance in full if the consumer pays the balance over 36 months. 15 U.S.C. 1637(b)(11)(B)(iii).

1. Estimated monthly payment for repayment in 36 months and total cost estimate for repayment in 36 months. In implementing TILA Section 127(b)(11)(B)(iii), as revised by the Credit Card Act, proposed § 226.7(b)(12)(i)(F) provides that except when the minimum payment repayment estimate disclosed under proposed § 226.7(b)(12)(i)(B) is 3 years or less, a credit card issuer must disclose on each periodic statement the estimated monthly payment for repayment in 36 months and the total cost

estimate for repayment in 36 months, as described in proposed Appendix M1 to part 226. As described in more detail in the section-by-section analysis to proposed Appendix M1 to part 226, the estimated monthly payment for repayment in 36 months would be an estimate of the monthly payment amount that would be required to pay off the outstanding balance shown on the statement within 36 months, assuming the consumer paid the same amount each month for 36 months. Also, as described in proposed Appendix M1 to part 226, the total cost estimate for repayment in 36 months would be the total dollar amount of the interest and principal that the consumer would pay if he or she made the estimated monthly payment each month for 36 months. Under the proposal, the estimated monthly payment for repayment in 36 months and the total cost estimate for repayment in 36 months must be rounded to the nearest whole dollar. Proposed § 226.7(b)(12)(i)(F)(2) provides that a credit card issuer generally must disclose on each periodic statement a statement that the card issuer estimates that the consumer will repay the outstanding balance shown on the periodic statement in 3 years if the consumer pays the estimated monthly payment each month for 3 years. The Board believes that this information is needed to help consumers understand the estimated monthly payment for repayment in 36 months. The Board does not propose to require issuers to disclose assumptions used to calculate this estimated monthly payment. The many assumptions that are necessary to calculate the estimated monthly payment for repayment in 36 months are complex and unlikely to be meaningful or useful to most consumers.

2. Savings estimate for repayment in 36 months. In addition to the disclosure of the estimated monthly payment for repayment in 36 months and the total cost estimate for repayment in 36 months, proposed § 226.7(b)(12)(i)(F) also requires that a credit card

issuer generally must disclose on each periodic statement the savings estimate for repayment in 36 months, as described in proposed Appendix M1 to part 226. As described in proposed Appendix M1 to part 226, the savings estimate for repayment in 36 months would be calculated as the difference between the minimum payment total cost estimate and the total cost estimate for repayment in 36 months. Thus, the savings estimate for repayment in 36 months would represent an estimate of the amount of interest that a consumer would "save" if the consumer repaid the balance shown on the statement in 3 years by making the estimated monthly payment for repayment in 36 months each month, rather than making minimum payments each month. The Board proposes to require that credit card issuers disclose the savings estimate for repayment in 36 months on the periodic statement pursuant to the Board's authority to make adjustments to TILA's requirements to effectuate the statute's purposes, which include facilitating consumers' ability to compare credit terms and helping consumers avoid the uninformed use of credit. See 15 U.S.C. 1601(a), 1604(a).

The Board believes that the savings estimate for repayment in 36 months will allow consumers more easily to understand the potential savings of paying the balance shown on the periodic statement in 3 years rather than making minimum payments each month. This potential savings appears to be Congress' purpose in requiring that the total cost for making minimum payments and the total cost for repayment in 36 months be disclosed on the periodic statement. The Board believes that including the savings estimate on the periodic statement allows consumers to comprehend better the potential savings without having to compute this amount themselves from the total cost estimates disclosed on the periodic statement. In consumer testing conducted by the Board on closed-end mortgage disclosures in relation to the August 2009 Regulation Z Closed-End Credit Proposal, some participants were shown two offers for mortgage loans with different APRs and different totals of payments. In that consumer testing, in comparing the two mortgage loans, participants tended not to calculate for themselves the difference between the total of payments for the two loans (i.e., the potential savings in choosing one loan over another), and use that amount to compare the two loans. Instead, participants tended to disregard the total of payments for both loans, because both totals were large numbers. Given the results of that consumer testing, the Board believes it is important to disclose the savings estimate on the periodic statement to focus consumers' attention explicitly on the potential savings of repaying the balance in 36 months.

3. Minimum payment repayment estimate disclosed on the periodic statement is three years or less. Under proposed § 226.7(b)(12)(i)(F), a credit card issuer would not be required to provide the disclosures related to repayment in 36 months if the minimum payment repayment estimate disclosed under proposed § 226.7(b)(12)(i)(B) is 3 years or less. The Board proposes this exemption pursuant to the Board's authority exception and exemption authorities under TILA Section 105(a) and (f). The Board has considered the statutory factors carefully, and based on that review, believes that the proposed exemption is appropriate. The Board believes that the estimated monthly payment for repayment in 36 months, and the total cost estimate for repayment in 36 months would not be useful and may be misleading to consumers where based on the minimum payments that would be due on the account, a consumer would be required to repay the outstanding balance in three years or less. For example, assume that based on the minimum payments due on an account, a consumer would repay his or her outstanding

balance in two years if the consumer only makes minimum payments and take no additional advances. The consumer under the account terms would not have the option to repay the outstanding balance in 36 months (i.e., 3 years). In this example, disclosure of the estimated monthly payment for repayment in 36 months and the total cost estimate for repayment in 36 months would be misleading, because under the account terms the consumer does not have the option to make the estimated monthly payment each month for 36 months. Requiring that this information be disclosed on the periodic statement when it is might be misleading to consumers would undermine TILA's goal of consumer protection, and could make the credit process more expensive by requiring card issuers to incur costs to address customer confusion about these disclosures.

Toll-free telephone number. TILA Section 127(b)(11)(B)(iii), as revised by the Credit Card Act, requires that a creditor disclose on each periodic statement a toll-free telephone number at which the consumer may receive information about credit counseling and debt management services. 15 U.S.C. 1637(b)(11)(B)(iii). Proposed § 226.7(b)(12)(i)(E) provides that a credit card issuer generally must disclose on each periodic statement a toll-free telephone number where the consumer may obtain information about credit counseling services consistent with the requirements set forth in proposed § 226.7(b)(12)(iv). As discussed in more detail below, proposed § 226.7(b)(12)(iv) sets forth the information that a credit card issuer must provide through the toll-free telephone number.

7(b)(12)(ii) Negative or No Amortization

Negative or no amortization can occur if the required minimum payment is the same as or less than the total finance charges and other fees imposed during the billing cycle. Several major credit card issuers have established minimum payment requirements that prevent prolonged negative or no amortization. But some creditors may use a minimum payment formula that allows negative or no amortization (such as by requiring a payment of 2 percent of the outstanding balance, regardless of the finance charges or fees incurred).

The Credit Card Act appears to require the following disclosures even when negative or no amortization occurs: (1) a "warning" statement indicating that making only the minimum payment will increase the interest the consumer pays and the time it takes to repay the consumer's balance; (2) the number of months that it would take to repay the outstanding balance if the consumer pays only the required minimum monthly payments and if no further advances are made; (3) the total cost to the consumer, including interest and principal payments, of paying that balance in full, if the consumer pays only the required minimum monthly payments and if no further advances are made; (4) the monthly payment amount that would be required for the consumer to pay off the outstanding balance in 36 months, if no further advances are made, and the total cost to the consumer, including interest and principal payments, of paying that balance in full if the consumer pays the balance over 36 months; and (5) a toll-free telephone number at which the consumer may receive information about credit counseling and debt management services.

Nonetheless, for the reasons discussed in more detail below, the Board proposes to make adjustments to the above statutory requirements when negative or no amortization occurs, pursuant to the Board's authority under TILA Section 105(a) to make adjustments or exceptions to effectuate the purposes of TILA. 15 U.S.C. 1604(a).

Specifically, when negative or no amortization occurs, the Board proposes in new § 226.7(b)(12)(ii) to require a credit card issuer to disclose to the consumer on the periodic statement the following information: (1) the following statement: "**Minimum Payment Warning:** Even if you make no more charges using this card, if you make only the minimum payment each month we estimate **you will never pay off the balance shown on this statement** because your payment will be less than the interest charged each month;" (2) the following statement: "If you make more than the minimum payment each period, you will pay less in interest and pay off your balance sooner;" (3) the estimated monthly payment for repayment in 36 months; (4) the fact that the card issuer estimates that the consumer will repay the outstanding balance shown on the periodic statement in 3 years if the consumer pays the estimated monthly payment each month for 3 years; and (5) the toll-free telephone number for obtaining information about credit counseling services.

When negative or no amortization occurs, the number of months to repay the balance shown on the statement if minimum payments are made and the total cost in interest and principal if the balance is repaid making only minimum payments cannot be calculated because the balance will never be repaid if only minimum payments are made. The Board proposes to replace these statutory disclosures with a warning that the consumer will never repay the balance if making minimum payments each month.

In addition, if negative or no amortization occurs, card issuers would be required to disclose the following statement: "If you make more than the minimum payment each period, you will pay less in interest and pay off your balance sooner." This sentence is similar to, and accomplishes the goals of, the statutory warning statement, by informing consumers that they can pay less interest and pay off the balance sooner if the consumer pays more than the minimum payment each month.

In addition, consistent with TILA Section 127(b)(11) as revised by the Credit Card Act, if negative or no amortization occurs, the Board proposes that the credit card issuer disclose to the consumer the estimated monthly payment for repayment in 36 months and a statement of the fact the card issuer estimates that the consumer will repay the outstanding balance shown on the periodic statement in 3 years if the consumer pays the estimated monthly payment each month for 3 years.

If negative or no amortization occurs, a card issuer, however, would not disclose the total cost estimate for repayment in 36 months, as described in proposed Appendix M1 to part 226. The Board proposes an exception to TILA's requirement to disclose the total cost estimate for repayment in 36 months pursuant to the Board's exception and exemption authorities under TILA Section 105(f).

The Board has considered each of the statutory factors carefully, and based on that review, believes that the proposed exemption is appropriate. As discussed above, when negative or no amortization occurs, a minimum payment cost estimate cannot be calculated because the balance shown on the statement will never be repaid if only minimum payments are made. Thus, under the proposal, a credit card issuer would not be required to disclose a minimum payment cost estimate as described in proposed Appendix M1 to part 226. Because the minimum payment cost estimate will not be disclosed when negative or no amortization occurs, the Board does not believe that the total cost estimate for repayment in 36 months would be useful to consumers. The Board believes that the total cost estimate for repayment in 36 months is useful when it can be compared to the minimum payment total cost estimate. Requiring that this information be disclosed on the periodic statement when it is not useful to consumers could distract consumers from more important information on the periodic statement, which could undermine TILA's goal of consumer protection.

7(b)(12)(iii) Format Requirements

As discussed above, TILA Section 127(b)(11)(D), as revised by the Credit Card Act, provides that the repayment disclosures (except for the warning statement) must be disclosed in the form and manner which the Board prescribes by regulation and in a manner that avoids duplication; and must be placed in a conspicuous and prominent location on the billing statement. 15 U.S.C. 1637(b)(11)(D). By regulation, the Board must require that the disclosure of the repayment information (except for the warning statement) be in the form of a table that contains clear and concise headings for each item of information and provides a clear and concise form stating each item of information required to be disclosed under each such heading. In prescribing the table, the Board must require that all the information in the table, and not just a reference to the table, be placed on the billing statement. In addition, the items required to be included in the table must be listed in the following order: (1) the minimum payment repayment estimate; (2) the minimum payment total cost estimate; (3) the estimated monthly payment for repayment in 36 months; (4) the total cost estimate for repayment in 36 months; and (5) the toll-free telephone number. In prescribing the table, the Board must use terminology different from that used in the statute, if such terminology is more easily understood and conveys substantially the same meaning.

Samples G-18(C)(1), G-18(C)(2) and G-18(C)(3). Proposed § 226.7(b)(12)(iii) provides that a credit card issuer must provide the repayment disclosures in a format substantially similar to proposed Samples G 18(C)(1), G-18(C)(2) and G-18(C)(3) in Appendix G to part 226, as applicable.

Proposed Sample G-18(C)(1) applies when amortization occurs and the minimum payment repayment estimate disclosed on the periodic statement is more than 3 years. In this case, as discussed above, a credit card issuer would be required under proposed § 226.7(b)(12) to disclose on the periodic statement: (1) the warning statement; (2) the minimum payment repayment estimate; (3) the minimum payment total cost estimate; (4) the fact that the minimum payment repayment estimate and the minimum payment total cost estimate are based on the current outstanding balance shown on the periodic statement, and the fact that the minimum payment repayment estimate and the minimum payment total cost estimate are based on the assumption that only minimum payments are made and no other amounts are added to the balance; (5) the estimated monthly payment for repayment in 36 months; (6) the total cost estimate for repayment in 36 months; (7) the savings estimate for repayment in 36 months; (8) the fact that the card issuer estimates that the consumer will repay the outstanding balance shown on the periodic statement in 3 years if the consumer pays the estimated monthly payment each month for 3 years; and (9) the toll-free telephone number for obtaining information about credit counseling services.

As shown in proposed Sample G-18(C)(1), a card issuer would be required to provide the following disclosures in the form of a table with headings, content and format substantially similar to proposed Sample G-18(C)(1): (1) the fact that the minimum payment repayment estimate and the minimum payment total cost estimate are based on the assumption that only minimum payments are made; (2) the minimum payment repayment estimate; (3) the minimum payment total cost estimate, (4) the estimated monthly payment for repayment in 36 months; (5) the fact the card issuer estimates that the consumer will repay the outstanding balance shown on the periodic statement in 3 years if the consumer pays the estimated monthly payment each month for 3 years; (6) total cost estimate for repayment in 36 months; and (7) the savings estimate for repayment in 36 months. The following information would be incorporated into the headings for the proposed table: (1) the fact that the minimum payment repayment estimate and the minimum payment total cost estimate are based on the current outstanding balance shown on the periodic statement; and (2) the fact that the minimum payment repayment estimate and the minimum payment total cost estimate are based on the assumption that no other amounts are added to the balance. The warning statement would be disclosed above the proposed table and the toll-free telephone number would be disclosed below the proposed table.

Proposed Sample G-18(C)(2) applies when amortization occurs and the minimum payment repayment estimate disclosed on the periodic statement is equal to or less than 3 years. In this case, as discussed above, a credit card issuer would be required under proposed § 226.7(b)(12) to disclose on the periodic statement: (1) the warning statement; (2) the minimum payment repayment estimate; (3) the minimum payment total cost estimate; (4) the fact that the minimum payment repayment estimate and the minimum payment total cost estimate are based on the current outstanding balance shown on the periodic statement, and the fact that the minimum payment repayment estimate and the minimum payment total cost estimate are based on the assumption that only minimum payments are made and no other amounts are added to the balance; and (5) the toll-free telephone number for obtaining information about credit counseling services.

As shown in proposed Sample G-18(C)(2), disclosure of the above information would be similar in format to how this information is disclosed in proposed Sample G-18(C)(1). Specifically, as shown in proposed Sample G-18(C)(2), a card issuer would be required to disclose the following disclosures in the form of a table with headings, content and format substantially similar to proposed Sample G-18(C)(2): (1) the fact that the minimum payment repayment estimate and the minimum payment total cost estimate are based on the assumption that only minimum payments are made; (2) the minimum payment repayment estimate; and (3) the minimum payment total cost estimate. The following information would be incorporated into the headings for the proposed table: (1) the fact that the minimum payment repayment estimate and the minimum payment total cost estimate are based on the current outstanding balance shown on the periodic statement; and (2) the fact that the minimum payment repayment estimate and the minimum payment total cost estimate are based on the assumption that no other amounts are added to the balance. The warning statement would be disclosed above the proposed table and the toll-free telephone number would be disclosed below the proposed table.

Proposed Sample G-18(C)(3) applies when negative or no amortization occurs. In this case, as discussed above, a credit card issuer would be required under proposed § 226.7(b)(12) to disclose on the periodic statement: (1) the following statement: **Minimum Payment Warning**: Even if you make no more charges using this card, if you make only the minimum payment each month we estimate **you will never pay off**

the balance shown on this statement because your payment will be less than the interest charged each month;" (2) the following statement: "If you make more than the minimum payment each period, you will pay less in interest and pay off your balance sooner;" (3) the estimated monthly payment for repayment in 36 months; (4) the fact the card issuer estimates that the consumer will repay the outstanding balance shown on the periodic statement in 3 years if the consumer pays the estimated monthly payment each month for 3 years; and (5) the toll-free telephone number for obtaining information about credit counseling services.

As shown in proposed Sample G-18(C)(3), none of the above information would be required to be in the form of a table, notwithstanding TILA's requirement that the repayment information (except the warning statement) be in the form of a table. The Board proposes an exemption to this TILA requirement pursuant to the Board's authority exception and exemption authorities under TILA Section 105(a). The Board does not believe that the tabular format is a useful format for disclosing that negative or no amortization is occurring. The Board believes that a narrative format is better than a tabular format for communicating to consumers that making only minimum payments will not repay the balance shown on the periodic statement. For consistency, proposed Sample G-18(C)(3) also provides the disclosures about repayment in 36 months in a narrative form as well. To help ensure that consumers notice the disclosures about negative or no amortization and the disclosures about repayment in 36 months, the Board would require that card issuers disclose certain key information in bold text, as shown in proposed Sample G-18(C)(3).

As discussed above, TILA Section 127(b)(11)(D), as revised by the Credit Card Act, provides that the toll-free telephone number for obtaining credit counseling information must be disclosed in the table with: (1) the minimum payment repayment estimate; (2) the minimum payment total cost estimate; (3) the estimated monthly payment for repayment in 36 months; and (4) the total cost estimate for repayment in 36 months. As discussed above, the Board does not propose that the toll-free telephone number be in a tabular format. See proposed Samples G-18(C)(1), G-18(C)(2) and G-18(C)(3). The Board proposes this exemption pursuant to the Board's exception and exemption authorities under TILA Section 105(a), as discussed above. The Board believes that it might be confusing to consumers to include the toll-free telephone number in the table because it does not logically flow from the other information included in the table. To help ensure that the toll-free telephone number is noticeable to consumer, the Board proposes to require that the toll-free telephone number be grouped with the other repayment information.

Format requirements set forth in proposed § 226.7(b)(13). Proposed § 226.7(b)(12)(iii) also provides that a credit card issuer must provide the repayment disclosures in accordance with the format requirements of proposed § 226.7(b)(13). As discussed in more detail in the section-by-section analysis to proposed § 226.7(b)(13), the Board proposes in § 226.7(b)(13) to require that the repayment disclosures required to be disclosed under proposed § 226.7(b)(12) must be disclosed closely proximate to the minimum payment due. In addition, under the proposal, the repayment disclosures must be grouped together with the due date, late payment fee and annual percentage rate, ending balance, and minimum payment due, and this information must be disclosed on the front of the first page of the periodic statement.

7(b)(12)(iv) Provision of Information about Credit Counseling Services

Section 201(c) of the Credit Card Act requires the Board to issue guidelines by rule, in consultation with the Secretary of the Treasury, for the establishment and maintenance by creditors of the toll-free number disclosed on the periodic statement from which consumers can obtain information about accessing credit counseling and debt management services. The Credit Card Act requires that these guidelines ensure that consumers are referred "only [to] those nonprofit and credit counseling agencies approved by a United States bankruptcy trustee pursuant to [11 U.S.C. 111(a)]." The Board proposes to implement Section 201(c) of the Credit Card Act in § 226.7(b)(12)(iv). In developing this proposal, the Board consulted with the Treasury Department as well as the Executive Office for United States Trustees.

Prior to filing a bankruptcy petition, a consumer generally must have received "an individual or group briefing (including a briefing conducted by telephone or on the Internet) that outlined the opportunities for available credit counseling and assisted [the consumer] in performing a related budget analysis." 11 U.S.C. 109(h). This briefing can only be provided by "nonprofit budget and credit counseling agencies that provide 1 or more [of these] services … [and are] currently approved by the United States trustee (or the bankruptcy administrator, if any)." 11 U.S.C. 111(a)(1); see also 11 U.S.C. 109(h). In order to be approved to provide credit counseling services, an agency must, among other things: be a nonprofit entity; demonstrate that it will provide qualified counselors, maintain adequate provision for safekeeping and payment of client funds, and provide adequate counseling with respect to client credit problems; charge only a reasonable fee for counseling services and make such services available without regard to ability to pay the fee; and provide trained counselors who receive no commissions or bonuses based on the outcome of the counseling services. See 11 U.S.C. 111(c).

Proposed § 226.7(b)(12)(iv)(A) provides that a card issuer must provide through the toll-free telephone number disclosed pursuant to proposed § 226.7(b)(12)(i)(E) or (ii)(E) the name, street address, telephone number, and Web site address for at least three organizations that have been approved by the United States Trustee or a bankruptcy administrator pursuant to 11 U.S.C. 111(a)(1) to provide credit counseling services in the state in which the billing address for the account is located or the state specified by the consumer. In addition, proposed § 226.7(b)(12)(iv)(B) requires that, upon the request of the consumer and to the extent available from the United States Trustee or a bankruptcy administrator, the card issuer must provide the consumer with the name, street address, telephone number, and Web site address for at least one organization meeting the above requirements that provides credit counseling services in a language other than English that is specified by the consumer.

The United States Trustee collects the name, street address, telephone number, and Web site address for approved organizations and provides that information to the public through its Web site.[11] The United States Trustee's Web site organizes this information by state as well as by the language in which the organization can provide credit counseling services. For jurisdictions where credit counseling organizations are approved by a bankruptcy administrator pursuant to 11 U.S.C. 111(a)(1), a card issuer

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[11] See U.S Trustee Program, List of Credit Counseling Agencies Approved Pursuant to 11 U.S.C. § 111 (available at http://www.usdoj.gov/ust/eo/bapcpa/ccde/cc_approved.htm).

can obtain this information from the relevant administrator. Accordingly, the information that a card issuer is required to provide by proposed § 226.7(b)(12)(iv) is readily available.

Because different credit counseling organizations may provide different services and charge different fees, the Board believes that providing information regarding at least three approved organizations will enable consumers to make a choice about the organization that best suits their needs. However, the Board solicits comment on whether card issuers should provide information regarding a different number of approved organizations.

As proposed, § 226.7(b)(12)(iv) relies in two respects on the Board's authority under TILA Section 105(a) to make adjustments or exceptions to effectuate the purposes of TILA or to facilitate compliance therewith. See 15 U.S.C. 1604(a). First, although revised TILA Section 127(b)(11)(B)(iv) and Section 201(c)(1) of the Credit Card Act refer to the creditors' obligation to provide information about accessing "credit counseling and debt management services," proposed § 226.7(b)(12)(iv) only requires the creditor to provide information about obtaining credit counseling services.[12] Although credit counseling may include information that assists the consumer in managing his or her debts, 11 U.S.C. 109(h) and 111(a)(1) do not require the United States Trustee or a bankruptcy administrator to approve organizations to provide debt management services. Because Section 201(c) of the Credit Card Act requires that creditors only provide information about organizations approved pursuant to 11 U.S.C. 111(a), the Board does not believe that Congress intended to require creditors to provide information about

[12] Similarly, proposed § 226.7(b)(12)(i)(E) and (ii)(E) only require a card issuer to disclose on the periodic statement a toll-free telephone number where the consumer may acquire from the card issuer information about obtaining credit counseling services.

services that are not subject to that approval process. Accordingly, proposed § 226.7(b)(12)(iv) would not require card issuers to disclose information about debt management services.

Second, although Section 201(c)(2) of the Credit Card Act refers to credit counseling organizations approved pursuant to 11 U.S.C. 111(a), proposed § 226.7(b)(12)(iv) clarifies that creditors may provide information only regarding organizations approved pursuant to 11 U.S.C. 111(a)(1), which addresses the approval process for credit counseling organizations. In contrast, 11 U.S.C. 111(a)(2) addresses a different approval process for instructional courses concerning personal financial management.

Proposed comment 7(b)(12)(iv)-1 would clarify that, when providing the information required by § 226.7(b)(12)(iv)(A), the card issuer may use the billing address for the account or, at its option, allow the consumer to specify a state. The comment would also clarify that a card issuer does not satisfy the requirement to provide information regarding credit counseling agencies approved pursuant to 11 U.S.C. 111(a)(1) by providing information regarding providers that have been approved to offer personal financial management courses pursuant to 11 U.S.C. 111(a)(2).

Proposed comment 7(b)(12)(iv)-2 would clarify that a card issuer complies with the requirements of § 226.7(b)(12)(iv) if it provides the consumer with the information provided by the United States Trustee or a bankruptcy administrator, including information provided on the Web site operated by the United States Trustee. If, for example, the Web site address for an organization approved by the United States Trustee is not available from the Web site operated by the United States Trustee, a card issuer is not required to provide a Web site address for that organization. However, at least annually, the card issuer must verify and update the information it provides for consistency with the information provided by the United States Trustee or a bankruptcy administrator. The Board solicits comment on whether card issuers should be required to verify and update the credit counseling information they provide to consumers more or less frequently.

Proposed comment 7(b)(12)(iv)-3 would clarify that, at their option, card issuers may use toll-free telephone numbers that connect consumers to automated systems, such as an interactive voice response system, through which consumers may obtain the information required by § 226.7(b)(12)(iv) by inputting information using a touch-tone telephone or similar device.

Proposed comment 7(b)(12)(iv)-4 would clarify that a card issuer may provide a toll-free telephone number that is designed to handle customer service calls generally, so long as the option to receive the information required by § 226.7(b)(12)(iv) is prominently disclosed to the consumer. For automated systems, the option to receive the information required by § 226.7(b)(12)(iv) is prominently disclosed to the consumer if it is listed as one of the options in the first menu of options given to the consumer, such as ‘‘Press or say ‘3’ if you would like information about credit counseling services.’’ If the automated system permits callers to select the language in which the call is conducted and in which information is provided, the menu to select the language may precede the menu with the option to receive information about accessing credit counseling services.

Proposed comment 7(b)(12)(iv)-5 would clarify that, at their option, card issuers may use a third party to establish and maintain a toll-free telephone number for use by the issuer to provide the information required by § 226.7(b)(12)(iv).

Proposed comment 7(b)(12)(iv)-6 would clarify that, when providing the toll-free telephone number on the periodic statement pursuant to § 226.7(b)(12)(iv), a card issuer at its option may also include a reference to a Web site address (in addition to the toll-free telephone number) where its customers may obtain the information required by § 226.7(b)(12)(iv), so long as the information provided on the Web site complies with § 226.7(b)(12)(iv). The Web site address disclosed must take consumers directly to the Web page where information about accessing credit counseling may be obtained. In the alternative, the card issuer may disclose the Web site address for the Web page operated by the United States Trustee where consumers may obtain information about approved credit counseling organizations. Finally, proposed comment 7(b)(12)(iv)-7 would clarify that, if a consumer requests information about credit counseling services, the card issuer may not provide advertisements or marketing materials to the consumer (except for providing the name of the issuer) prior to providing the information required by § 226.7(b)(12)(iv). However, educational materials that do not solicit business are not considered advertisements or marketing materials for this purpose. The comment would also provide examples of how the restriction on the provision of advertisements and marketing materials applies in the context of the toll-free number and a Web page.

7(b)(12)(v) Exemptions

As explained above, the Board proposes that the repayment disclosures required under proposed § 226.7(b)(12) be provided only for a "credit card account under an open-end (not home-secured) consumer credit plan," as that term is defined in proposed § 226.2(a)(15)(ii).

In addition, as discussed below, the Board proposes several additional exemptions from the repayment disclosure requirements pursuant to the Board's exception and exemption authorities under TILA Section 105(a) and (f).

As discussed in more detail below, the Board has considered the statutory factors carefully, and based on that review, believes that following proposed exemptions are appropriate.

Exemption for charge cards. The Board proposes to exempt charge cards from the repayment disclosure requirements because the Board believes that the repayment disclosures would not be useful for consumers with charge card accounts. See proposed § 226.7(b)(12)(vii)(A). Charge cards are used in connection with an account on which outstanding balances cannot be carried from one billing cycle to another and are payable when a periodic statement is received.

Exemption where cardholders have paid their accounts in full for two consecutive billing cycles. In proposed § 226.7(b)(vii)(B), the Board proposes to provide that a card issuer is not required to include the repayment disclosures on the periodic statement for a particular billing cycle immediately following two consecutive billing cycles in which the consumer paid the entire balance in full, had a zero balance or had a credit balance. The Board believes this approach strikes an appropriate balance between benefits to consumers of the repayment disclosures, and compliance burdens on issuers in providing the disclosures. Consumers who might benefit from the repayment disclosures would receive them. Consumers who carry a balance each month would always receive the repayment disclosures, and consumers who pay in full each month would not. Consumers who sometimes pay their bill in full and sometimes do not would receive the repayment disclosures if they do not pay in full two consecutive months (cycles). Also, if a consumer's typical payment behavior changes from paying in full to revolving, the consumer would begin receiving the repayment disclosures after not paying in full one billing cycle, when the disclosures would appear to be useful to the consumer. In addition, credit card issuers typically provide a grace period on new purchases to consumers (that is, creditors do not charge interest to consumers on new purchases) if consumers paid both the current balance and the previous balance in full. Thus, card issuers already currently capture payment history for consumers for two consecutive months (or cycles).

The Board notes that card issuers would not be required to use this proposed exemption. A card issuer would be allowed to provide the repayment disclosures to all of its cardholders, even to those cardholders that fall within this proposed exemption. If issuers choose to provide voluntarily the repayment disclosures to those cardholders that fall within this exemption, the Board would expect issuers to follow the disclosure rules set forth in proposed § 226.7(b)(12), the accompanying commentary, and proposed Appendix M1 to part 226 for those cardholders.

Exemption where minimum payment would pay off the entire balance for a particular billing cycle. In proposed § 226.7(b)(12)(v)(C), the Board proposes to exempt a card issuer from providing the repayment disclosure requirements for a particular billing cycle where paying the minimum payment due for that billing cycle will pay the outstanding balance on the account for that billing cycle. For example, if the entire outstanding balance on an account for a particular billing cycle is $20 and the minimum payment is $20, an issuer would not need to comply with the repayment disclosure requirements for that particular billing cycle. The Board believes that the repayment disclosures would not be helpful to consumers in this context.

Other exemptions. In the January 2009 Regulation Z Rule, the Board in § 226.7(b)(12)(v)(E) exempted a credit card account from the minimum payment disclosure requirements where a fixed repayment period for the account is specified in the account agreement and the required minimum payments will amortize the outstanding balance within the fixed repayment period. This exemption would be applicable to, for example, accounts that have been closed due to delinquency and the required monthly payment has been reduced or the balance decreased to accommodate a fixed payment for a fixed period of time designed to pay off the outstanding balance. See comment 7(b)(12)(v)-1.

In addition, in the January 2009 Regulation Z Rule, the Board in § 226.7(b)(12)(v)(F) exempted credit card issuers from providing the minimum payment disclosures on periodic statements in a billing cycle where the entire outstanding balance held by consumers in that billing cycle is subject to a fixed repayment period specified in the account agreement and the required minimum payments applicable to that balance will amortize the outstanding balance within the fixed repayment period. Some retail credit cards have several credit features associated with the account. One of the features may be a general revolving feature, where the required minimum payment for this feature does not pay off the balance in a specific period of time. The card also may have another feature that allows consumers to make specific types of purchases (such as furniture purchases, or other large purchases), and the required minimum payments for that feature will pay off the purchase within a fixed period of time, such as one year. This exemption was meant to cover retail cards where the entire outstanding balance held by a consumer in a particular billing cycle is subject to a fixed repayment period specified in the account agreement. On the other hand, this exemption would not have applied in those cases where all or part of the consumer's balance for a particular billing cycle is held in a general revolving feature, where the required minimum payment for this feature does not pay off the balance in a specific period of time set forth in the account agreement. See comment 7(b)(12)(v)-2.

In adopting these two exemptions to the minimum payment disclosure requirements in the January 2009 Regulation Z Rule, the Board stated that in these two situations, the minimum payment disclosure does not appear to provide additional information to consumers that they do not already have in their account agreements.

The Board proposes not to include these two exemptions in proposed § 226.7(b)(12)(v). In implementing Section 201 of the Credit Card Act, proposed § 226.7(b)(12) would require additional repayment information beyond the disclosure of the estimated length of time it would take to repay the outstanding balance if only minimum payments are made, which was the main type of information that was required to be disclosed under the January 2009 Regulation Z Rule. As discussed above, under proposed § 226.7(b)(12)(i), a card issuer would be required to disclose on the periodic statement information about the total costs in interest and principal to repay the outstanding balance if only minimum payments are made, and information about repayment of the outstanding balance in 36 months. Consumers would not know from the account agreements this additional information about the total cost in interest and principal of making minimum payments, and information about repayment of the outstanding balance in 36 months. Thus, these two exemptions may no longer be appropriate given the additional repayment information that must be provided on the periodic statement pursuant to proposed § 226.7(b)(12). Nonetheless, the Board solicits comment on whether these exemptions should be retained. For example, the Board solicits comment on whether the repayment disclosures relating to repayment in 36 months would be helpful where a fixed repayment period longer than 3 years is specified in the account agreement and the required minimum payments will amortize the outstanding balance within the fixed repayment period. For these types of accounts, the Board solicits comment on whether consumers tend to enter into the agreement with the intent (and the ability) to repay the account balance over the life of the account, such that the disclosures for repayment of the account in 36 months would not be useful to consumers.

7(b)(13) Format Requirements

Under the January 2009 Regulation Z Rule, creditors offering open-end (not home-secured) plans are required to disclose the payment due date (if a late payment fee or penalty rate may be imposed) on the front side of the first page of the periodic statement. The amount of any late payment fee and penalty APR that could be triggered by a late payment is required to be disclosed in close proximity to the due date. In addition, the ending balance and the minimum payment disclosures must be disclosed closely proximate to the minimum payment due. Also, the due date, late payment fee, penalty APR, ending balance, minimum payment due, and the minimum payment disclosures must be grouped together. See § 226.7(b)(13). In the supplementary information to the January 2009 Regulation Z Rule, the Board stated that these formatting requirements were intended to fulfill Congress' intent to have the due date, late payment and minimum payment disclosures enhance consumers' understanding of the consequences of paying late or making only minimum payments, and were based on consumer testing conducted for the Board in relation to the January 2009 Regulation Z Rule that indicated improved understanding when related information is grouped together. For the reasons described below, the Board proposes to retain these format requirements, with several revisions. Proposed Sample G-18(D) in Appendix G to part 226 illustrates the proposed requirements.

Due date and late payment disclosures. As discussed above under the section-by-section analysis to proposed § 226.7(b)(11), Section 202 of the Credit Card Act amends TILA Section 127(b)(12) to provide that for a "credit card account under an open-end consumer credit plan," a creditor that charges a late payment fee must disclose in a conspicuous location on the periodic statement (1) the payment due date, or, if the due date differs from when a late payment fee would be charged, the earliest date on which the late payment fee may be charged, and (2) the amount of the late payment fee. In addition, if a late payment may result in an increase in the APR applicable to the credit card account, a creditor also must provide on the periodic statement a disclosure of this fact, along with the applicable penalty APR. The disclosure related to the penalty APR must be placed in close proximity to the due-date disclosure discussed above.

Consistent with TILA Section 127(b)(12), as revised by the Credit Card Act, the Board proposes to retain the requirement in § 226.7(b)(13) that credit card issuers disclose the payment due date on the front side of the first page of the periodic statement. In addition, credit card issuers would be required to disclose the amount of any late payment fee and penalty APR that could be triggered by a late payment in close proximity to the due date. Also, the due date, late payment fee, penalty APR, ending balance, minimum payment due, and the repayment disclosures required by proposed § 226.7(b)(12) must be grouped together. See § 226.7(b)(13). The Board believes that these format requirements fulfill Congress' intent that the due date and late payment disclosures be grouped together and be disclosed in a conspicuous location on the periodic statement.

Repayment disclosures. As discussed above under the section-by-section analysis to proposed § 226.7(b)(12), TILA Section 127(b)(11)(D), as revised by the Credit Card Act, provides that the repayment disclosures (except for the warning statement) must be disclosed in the form and manner which the Board prescribes by regulation and in a manner that avoids duplication; and must be placed in a conspicuous and prominent location on the billing statement. 15 U.S.C. 1637(b)(11)(D).

Under proposed § 226.7(b)(13), the ending balance and the repayment disclosures required under proposed § 226.7(b)(12) must be disclosed closely proximate to the minimum payment due. In addition, proposed § 226.7(b)(13) provides that the repayment disclosures must be grouped together with the due date, late payment fee, penalty APR, ending balance, and minimum payment due, and this information must appear on the front of the first page of the periodic statement. The Board believes that these proposed format requirements fulfill Congress' intent that the repayment disclosures be placed in a conspicuous and prominent location on the billing statement.

Samples G-18(D), 18(E), 18(F) and 18(G). As adopted in the January 2009 Regulation Z Rule, Samples G-18(D) and G-18(E) in Appendix G to part 226 illustrate the requirement to group together the due date, late payment fee, penalty APR, ending balance, minimum payment due, and the repayment disclosures required by § 226.7(b)(12). Sample G-18(D) applies to credit cards and includes all of the above disclosures grouped together. Sample G-18(E) applies to non-credit card accounts, and includes all of the above disclosures except for the repayment disclosures because the repayment disclosures only apply to credit card accounts. Samples G-18(F) and G-18(G) illustrate the front side of sample periodic statements and show the disclosures listed above.

The Board proposes to revise Sample G-18(D), G-18(F) and G-18(G) to incorporate the new format requirements for the repayment disclosures, as shown in proposed Sample G-18(C)(1) and G-18(C)(2). See section-by-section analysis to proposed § 226.7(b)(12) for a discussion of these new format requirements. In addition, the Board proposes to delete Sample G-18(E) (which applies to non-credit card accounts) as unnecessary. Under the proposal, the formatting requirements in proposed § 226.7(b)(13) generally are applicable only to credit card issuers because the due date, late payment fee, penalty APR, and repayment disclosures would apply only to a "credit card account under an open-end (not home-secured) consumer credit plan," as that term is defined in proposed § 226.2(a)(15)(ii).

7(b)(14) Deferred Interest or Similar Transactions

In the May 2009 Regulation Z Proposed Clarifications, the Board proposed revisions to comment 7(b)-1 to require creditors to provide consumers with information regarding deferred interest or similar balances on which interest may be imposed under a deferred interest or similar program, as well as the interest charges accruing during the term of a deferred interest or similar program. 74 FR 20797-20798. The Board also proposed to add a new § 226.7(b)(14) to require creditors to include on a consumer's periodic statement, for two billing cycles immediately preceding the date on which deferred interest or similar transactions must be paid in full in order to avoid the imposition of interest charges, a disclosure that the consumer must pay such transactions in full by that date in order to avoid being obligated for the accrued interest. 74 FR 20793. Furthermore, to provide additional guidance on compliance with the disclosure requirement set forth in proposed § 226.7(b)(14), the Board proposed several complementary changes to comment 7(b)-1.

Moreover, proposed Sample G-18(H) provided model language for making the disclosure required by proposed § 226.7(b)(14), and the Board proposed that the language used to make the disclosure under § 226.7(b)(14) would be required to be substantially similar to Sample G-18(H). 74 FR 20797. Finally, the Board proposed conforming technical changes to comment 5(b)(2)(ii)-1, which cross-references comment 7(b)-1. 74 FR 20797. The Board is republishing these same revisions for additional comment in this **Federal Register** notice, with some technical changes to account for the fact that related provisions previously set forth in the January 2009 FTC Act Final Rule, and proposed in the May 2009 FTC Act Rule Proposed Clarifications, have been modified and proposed in this **Federal Register** notice under Regulation Z.

Section 226.9 Subsequent Disclosure Requirements

9(c) Change in Terms

Section 226.9(c) sets forth the advance notice requirements when a creditor changes the terms applicable to a consumer's account. As discussed below, the Board is proposing several changes to § 226.9(c)(2) as adopted in the January 2009 Regulation Z Rule and the associated staff commentary in order to conform to the new requirements of the Credit Card Act.

9(c)(1) Rules Affecting Home-Equity Plans

In the January 2009 Regulation Z Rule, the Board preserved the existing rules for changes in terms for home-equity lines of credit in a new § 226.9(c)(1), in order to clearly delineate the requirements for HELOCs from those applicable to other open-end credit. The Board noted that possible revisions to rules affecting HELOCs would be considered in the Board's review of home-secured credit, which was underway at the time that the January 2009 Regulation Z rule was published. On August 26, 2009, the Board published proposed revisions to those portions of Regulation Z affecting HELOCs in the **Federal Register.** As discussed in **I. Background and Implementation of the Credit Card Act**, in order to clarify that this proposed rule is not intended to amend or otherwise affect the August 2009 Regulation Z HELOC Proposal, the Board is not republishing § 226.9(c)(1) in this **Federal Register** notice.

The Board anticipates, however, that a final rule will be issued with regard to this proposal prior to completion of final rules regarding HELOCs. Therefore, the Board anticipates that it will include § 226.9(c)(1), as adopted in the January 2009 Regulation Z Rule, in its final rulemaking based on this proposal, to give HELOC creditors guidance on how to comply with change-in-terms requirements between the effective date of this rule and the effective date of the forthcoming HELOC rules.

9(c)(2) Rules Affecting Open-End (Not Home-Secured) Plans

Credit Card Act[13]

New TILA Section 127(i)(1) generally requires creditors to provide consumers with a written notice of an annual percentage rate increase at least 45 days prior to the effective date of the increase, for credit card accounts under an open-end consumer credit plan. 15 U.S.C. 1637(i)(1). The statute establishes several exceptions to this general requirement. 15 U.S.C. 1637(i)(1) and (i)(2). The first exception applies when the change is an increase in an annual percentage rate upon expiration of a specified period of time, provided that prior to commencement of that period, the creditor clearly and conspicuously disclosed to the consumer the length of the period and the rate that would apply after expiration of the period. The second exception applies to increases in variable annual percentage rates that change according to operation of a publicly available index that is not under the control of the creditor. Finally, a third exception applies to rate increases due to the completion of, or failure of a consumer to comply with, the terms of a workout or temporary hardship arrangement, provided that prior to the commencement of such arrangement the creditor clearly and conspicuously disclosed to the consumer the terms of the arrangement, including any increases due to completion or failure.

[13] For convenience, this section summarizes the provisions of the Credit Card Act that apply both to advance notices of changes in terms and rate increases. Consistent with the approach it took in the January 2009 Regulation Z Rule and the July 2009 Regulation Z Interim Final Rule, the Board is implementing the advance notice requirements applicable to contingent rate increases set forth in the cardholder agreement in a separate section (§ 226.9(g)) from those advance notice requirements applicable to changes in the cardholder agreement (§ 226.9(c)). The distinction between these types of changes is that § 226.9(g) addresses changes in a rate being applied to a consumer's account consistent with the existing terms of the cardholder agreement, while § 226.9(c) addresses changes in the underlying terms of the agreement.

In addition to the rules in new TILA Section 127(i)(1) regarding rate increases, new TILA Section 127(i)(2) establishes a 45-day advance notice requirement for significant changes, as determined by rule of the Board, in the terms (including an increase in any fee or finance charge) of the cardholder agreement between the creditor and the consumer. 15 U.S.C. 1637(i)(2).

New TILA Section 127(i)(3) also establishes an additional content requirement for notices of interest rate increases or significant changes in terms provided pursuant to new TILA Section 127(i). 15 U.S.C. 1637(i)(3). Such notices are required to contain a brief statement of the consumer's right to cancel the account, pursuant to rules established by the Board, before the effective date of the rate increase or other change disclosed in the notice. In addition, new TILA Section 127(i)(4) states that closure or cancellation of an account pursuant to the consumer's right to cancel does not constitute a default under the existing cardholder agreement, and does not trigger an obligation to immediately repay the obligation in full or through a method less beneficial than those listed in revised TILA Section 171(c)(2). 15 U.S.C. 1637(i)(4). The disclosure associated with the right to cancel is discussed in the section-by-section analysis to § 226.9(c) and (g), while the substantive rules regarding this new right are discussed in the section-by-section analysis to § 226.9(h).

The Board implemented TILA Section 127(i), which was effective August 20, 2009, in the July 2009 Regulation Z Interim Final Rule. However, the Board is now proposing to implement additional provisions of the Credit Card Act that are effective on February 22, 2010 that have an impact on the content of change-in-terms notices and the types of changes that are permissible upon provision of a change-in-terms notice pursuant to § 226.9(c) or (g). For example, revised TILA Section 171(a), which the Board proposes to implement in a new § 226.55, as discussed elsewhere in this **Federal Register** notice generally prohibits increases in annual percentage rates, fees, and finance charges applicable to outstanding balances, subject to several exceptions. In addition, revised TILA Section 171(b) requires, for certain types of penalty rate increases, that the advance notice state the reason for a rate increase. Finally, for penalty rate increases applied to outstanding balances when the consumer fails to make a minimum payment within 60 days after the due date, as permitted by revised TILA Section 171(b)(4), a creditor will be required to disclose in the notice of the increase that the increase will be terminated if the consumer makes the subsequent six minimum payments on time.

January 2009 Regulation Z Rule and July 2009 Regulation Z Interim Final Rule

As discussed in **I. Background and Implementation of the Credit Card Act**, the Board is proposing to implement the changes contained in the Credit Card Act in a manner consistent with the January 2009 Regulation Z Rule, to the extent permitted under the statute. Accordingly, the Board is proposing to retain those requirements of the January 2009 Regulation Z Rule that are not directly affected by the Credit Card Act in this rulemaking, concurrently with the promulgation of regulations implementing the provisions of the Credit Card Act effective February 22, 2010.[14] Consistent with this approach, the Board is proposing to use § 226.9(c)(2) of the January 2009 Regulation Z Rule as the basis for its regulations to implement the change-in-terms requirements of the

[14] However, as discussed in **I. Background and Implementation of the Credit Card Act**, the Board intends to leave in place the mandatory compliance date for certain aspects of proposed §226.9(c)(2) that are not directly required by the Credit Card Act. These provisions would have a mandatory compliance date of July 1, 2010, consistent with the effective date that the Board adopted in the January 2009 Regulation Z Rule. For example, the Board is not proposing to require a tabular format for certain change-in-terms notice requirements before the July 1, 2010 effective date.

Credit Card Act. Proposed § 226.9(c)(2) also is intended, except where noted, to contain requirements that are substantively equivalent to the requirements of the July 2009 Regulation Z Interim Final Rule. Accordingly, the Board is proposing to adopt a revised version of § 226.9(c)(2) of the January 2009 Regulation Z Rule, with several amendments necessary to conform to the new Credit Card Act. While the Board is republishing revised § 226.9(c)(2) and the associated commentary in its entirety, this supplementary information will focus on highlighting those aspects in which proposed § 226.9(c)(2) differs from § 226.9(c)(2) of the January 2009 Regulation Z Rule.

May 2009 Regulation Z Proposed Clarifications

On May 5, 2009, the Board published for comment in the **Federal Register** proposed clarifications to the January 2009 Regulation Z Rule. See 74 FR 20784. Several of these proposed clarifications pertain to the advance notice requirements in § 226.9(c). The Board is republishing the May 2009 Regulation Z Proposed Clarifications that affect proposed § 226.9(c)(2), with revisions to the extent appropriate, as discussed further in this supplementary information.

9(c)(2)(i) Changes Where Written Advance Notice is Required

Section § 226.9(c)(2) sets forth the change-in-terms notice requirements for open-end consumer credit plans that are not home-secured. Proposed paragraph (c)(2)(i) states that a creditor must generally provide a written notice at least 45 days prior to the change, when any term required to be disclosed under § 226.6(b)(3), (b)(4), or (b)(5) is changed or the required minimum periodic payment is increased, unless an exception applies. This rule is intended to be substantively equivalent to § 226.9(c)(2) of the January 2009 Regulation Z Rule. The exceptions, as discussed below, are set forth in proposed paragraph (c)(2)(v). In addition, paragraph (c)(2)(iii) provides that 45 days' advance notice is not required for those changes that the Board is not designating as "significant changes" in terms using its authority under new TILA Section 127(i). Proposed § 226.9(c)(2)(iii), which is discussed in more detail in this supplementary information, also is intended to be equivalent in substance to the Board's January 2009 Regulation Z Rule.

Proposed § 226.9(c)(2)(i) sets forth two additional clarifications of the scope of the change-in-terms notice requirements, consistent with § 226.9(c)(2) of the January 2009 Regulation Z Rule and the July 2009 Regulation Z Interim Final Rule. First, the 45-day advance notice requirement does not apply if the consumer has agreed to the particular change; in that case, the notice need only be given before the effective date of the change. Second, proposed § 226.9(c)(2) also notes that increases in the rate applicable to a consumer's account due to delinquency, default, or as a penalty described in § 226.9(g) that are not made by means of a change in the contractual terms of a consumer's account must be disclosed pursuant to that section.

The Board notes that proposed § 226.9(c)(2) would apply to all open-end (not home-secured) credit, consistent with the January 2009 Regulation Z Rule. TILA Section 127(i), as adopted by the Credit Card Act and as implemented in the July 2009 Regulation Z Interim Final Rule for the period between August 20, 2009 and February 22, 2010, applies only to credit card accounts. However, the advance notice requirements adopted by the Board in January 2009 apply to all open-end (not home-secured) credit. For consistency with the January 2009 Regulation Z Rule, the proposal accordingly would apply § 226.9(c)(2) to all open-end (not home-secured) credit. The

Board notes that while the general notice requirements are consistent for credit card accounts and other open-end credit that is not home-secured, there are certain content and other requirements, such as a consumer's right to reject certain changes in terms, that apply only to credit card accounts. As discussed in more detail in the supplementary information to § 226.9(c)(2)(iv), the regulation would apply such requirements only to credit card accounts.

9(c)(2)(ii) Significant Changes in Account Terms

Pursuant to new TILA Section 127(i), the Board has the authority to determine by rule what are significant changes in the terms of the cardholder agreement between a creditor and a consumer. The Board is proposing § 226.9(c)(2)(ii) to identify which changes are significant changes in terms. Similar to the January 2009 Regulation Z Rule, § 226.9(c)(2)(ii) would state that for the purposes of § 226.9(c), a significant change in account terms means changes to terms required to be disclosed in the table provided at account opening pursuant to § 226.6(b)(1) and (b)(2). The terms included in the account-opening table are those that the Board determined, based on its consumer testing, to be the most important to consumers. In the July 2009 Regulation Z Interim Final Rule, the Board had expressly listed these terms in § 226.9(c)(2)(ii). Because § 226.6(b) was not in effect as of August 20, 2009, the Board could not identify these terms by a cross-reference to § 226.6(b). However, proposed § 226.9(c)(2)(ii) is intended to be substantively equivalent to the list of terms included in § 226.9(c)(2)(ii) of the July 2009 Regulation Z Interim Final Rule. However, for clarity, the Board is proposing to amend the text of § 226.9(c)(2)(ii) to cross-reference the requirements of § 226.6(b)(1) and (b)(2).

<u>9(c)(2)(iii) Charges Not Covered by § 226.6(b)(1) and (b)(2)</u>

Proposed § 226.9(c)(2)(iii) sets forth the disclosure requirements for changes in terms required to be disclosed under § 226.6(b)(3) that are not significant changes in account terms as described in § 226.9(c)(2)(ii). Consistent with TILA Section 127(i), the Board is only proposing a 45-day notice period for changes in the terms that are required to be disclosed as a part of the account-opening table under proposed § 226.6(b)(1) and (b)(2) or for increases in the required minimum periodic payment. A different disclosure requirement would apply when a creditor increases any component of a charge, or introduces a new charge, that is imposed as part of the plan under proposed § 226.6(b)(3) but is not required to be disclosed as part of the account-opening summary table under proposed § 226.6(b)(1) and (b)(2). Under those circumstances, the proposal would require the creditor to either, at its option (1) provide at least 45 days' written advance notice before the change becomes effective, or (2) provide notice orally or in writing of the amount of the charge to an affected consumer at a relevant time before the consumer agrees to or becomes obligated to pay the charge. This is consistent with the requirements of both the January 2009 Regulation Z Rule and the July 2009 Regulation Z Interim Final Rule.

<u>9(c)(2)(iv) Disclosure Requirements</u>

Proposed § 226.9(c)(2)(iv) contains the content and formatting requirements for change-in-terms notices required to be given for significant changes in account terms pursuant to proposed § 226.9(c)(2)(i). Proposed § 226.9(c)(2)(iv)(A) sets forth the content that would be required in notices under § 226.9(c)(2)(i) for all open-end (not home-secured) credit and mirrors the content required to be disclosed in change-in-terms notices pursuant to the Board’s January 2009 Regulation Z Rule. Notices provided pursuant to § 226.9(c)(2)(i) would be required to include (1) a summary of the changes made to terms required by § 226.6(b)(1) and (b)(2) or of any increase in the required minimum periodic payment, (2) a statement that changes are being made to the account, (3) for accounts other than credit card accounts under an open-end consumer credit plan subject to § 226.9(c)(2)(iv)(B), a statement indicating that the consumer has the right to opt out of these changes, if applicable, and a reference to additional information describing the opt-out right provided in the notice, if applicable, (4) the date the changes will become effective, (5) if applicable, a statement that the consumer may find additional information about the summarized changes, and other changes to the account, in the notice, (6) if the creditor is changing a rate on the account other than a penalty rate, a statement that if a penalty rate currently applies to the consumer’s account, the new rate referenced in the notice does not apply to the consumer’s account until the consumer’s account balances are no longer subject to the penalty rate, and (7) if the change in terms being disclosed is an increase in an annual percentage rate, the balances to which the increased rate will be applied and, if applicable, a statement identifying the balances to which the current rate will continue to apply as of the effective date of the change in terms.

The content required by proposed § 226.9(c)(2)(iv)(A) generally mirrors the content required under § 226.9(c)(2)(iii) of the January 2009 Regulation Z Rule. Creditors would be required to disclose information regarding the balances to which the increased rate will apply as well as a statement, if applicable, identifying balances to which the current rate will continue to apply as of the effective date of the increase. This content was not included in the July 2009 Regulation Z Interim Final Rule because at that time there were no substantive limitations regarding rate increases equivalent to those in proposed § 226.55. However, consistent with the January 2009 Regulation Z Rule, the Board believes that a statement identifying to which balances an increased rate will apply to is an important disclosure in light of § 226.55, in order to permit consumers to make informed decisions about their account usage.

In addition, the Board is proposing to require a disclosure regarding any applicable right to opt out of changes under proposed § 226.9(c)(2)(iv)(A)(3) only if the change is being made to an open-end (not home-secured) credit plan that is not a credit card account subject to § 226.9(c)(2)(iv)(B). For credit card accounts, as discussed below and in the supplementary information to §§ 226.9(h) and 226.55, the Credit Card Act imposes independent substantive limitations on rate increases, and generally provides the consumer with a right to reject other significant changes being made to their accounts. A disclosure of this right to reject, when applicable, is required for credit card accounts under proposed § 226.9(c)(2)(iv)(B). Therefore, the Board believes a separate reference to other applicable opt-out rights is unnecessary and may be confusing to consumers, when the notice is given in connection with a change in terms applicable to a credit card account.

Proposed § 226.9(c)(2)(iv)(B) sets forth additional content requirements that are applicable only to credit card accounts under an open-end (not home-secured) consumer credit plan. In addition to the information required to be disclosed pursuant to § 226.9(c)(2)(iv)(A), credit card issuers making significant changes to terms must also disclose certain information regarding the consumer's right to reject the change pursuant to § 226.9(h). The substantive rule regarding the right to reject is discussed in connection with proposed § 226.9(h); however, the associated disclosure requirements are set forth in § 226.9(c)(2). In particular, a card issuer must generally include in the notice (1) a statement that the consumer has the right to reject the change or changes prior to the effective date, unless the consumer fails to make a required minimum periodic payment within 60 days after the due date for that payment, (2) instructions for rejecting the change or changes, and a toll-free telephone number that the consumer may use to notify the creditor of the rejection, and (3) if applicable, a statement that if the consumer rejects the change or changes, the consumer's ability to use the account for further advances will be terminated or suspended. Section 226.9(c)(2)(iv)(B) mirrors requirements made applicable to credit card issuers in the July 2009 Regulation Z Interim Final Rule, with several amendments discussed below.

As discussed in the supplementary information to § 226.9(h), the Board is proposing that a consumer's right to reject would not extend to increases in the required minimum payment, an increase in an annual percentage rate applicable to a consumer's account, a change in the balance computation method applicable to a consumer's account necessary to comply with the new prohibition on use of "two-cycle" balance computation methods in proposed § 226.54, or changes due to the creditor not receiving the consumer's required minimum periodic payment within 60 days after the due date for that payment. The July 2009 Regulation Z Interim Final Rule similarly excluded increases in a consumer's minimum payment from being subject to the right to reject. The Board also is proposing that the right to reject not apply to rate increases, because consumers will automatically receive the protections against rate increases applicable to their balances under proposed § 226.55 without being required to take any action to reject the change. The Board recognizes that it would be an anomalous result for consumers to be able to reject a change in balance computation that is expressly required under the Credit Card Act and implementing rules. Finally, the Board would clarify that, as stated in proposed § 226.9(h)(3), the right to reject does not apply when the account is more than 60 days delinquent. Accordingly, for these types of changes creditors would not be required to give the disclosures associated with the right to reject in § 226.9(c)(2)(iv)(B).

Proposed § 226.9(c)(2)(iv)(C) sets forth the formatting requirements that would apply to notices required to be given pursuant to § 226.9(c)(2)(i). The proposed formatting requirements are generally the same as those that the Board adopted in § 226.9(c)(2)(iii) of the January 2009 Regulation Z Rule, except that the reference to the content of the notice would include, when applicable, the information about the right to reject that credit card issuers must disclose pursuant to § 226.9(c)(2)(iv)(B). These formatting requirements are not affected by the Credit Card Act, and therefore the Board proposes to adopt them generally as adopted in January 2009. Accordingly, as discussed in **I. Background and Implementation of the Credit Card Act**, the Board is considering making these formatting requirements mandatory beginning on July 1, 2010, consistent with the effective date adopted for the January 2009 Regulation Z Rule. In addition, the Board is proposing to publish revised model forms that would reflect the new disclosure of the right to reject, when applicable.

The Board is proposing to amend Sample G-20 and to add a new sample G-21 to illustrate how a card issuer may comply with the requirements of proposed § 226.9(c)(2)(iv). The Board would amend references to these samples in

§ 226.9(c)(2)(iv) and comment 9(c)(2)(iv)-8 accordingly. Proposed Sample G-20 is a disclosure of a rate increase applicable to a consumer's credit card account. The sample explains when the new rate will apply to new transactions and to which balances the current rate will continue to apply. Sample G-21 illustrates an increase in the consumer's late payment and returned payment fees, and sets forth the content required in order to disclose the consumer's right to reject those changes.

9(c)(2)(v) Notice Not Required

The Board is proposing § 226.9(c)(2)(v) to set forth the exceptions to the general change-in-terms notice requirements for open-end (not home-secured) credit. With several exceptions noted below, proposed § 226.9(c)(2)(v) is intended to be substantively equivalent to § 226.9(c)(2)(v) of the July 2009 Regulation Z Interim Final Rule. Proposed § 226.9(c)(2)(v)(A) would retain several exceptions that are in current § 226.9(c), including charges for documentary evidence, reductions of finance charges, suspension of future credit privileges (except as provided in § 226.9(c)(vi), discussed below), termination of an account or plan, or when the change results from an agreement involving a court proceeding. The Board is not including these changes in the set of "significant changes" giving rise to notice requirements pursuant to new TILA Section 127(i)(2). The Board believes that 45 days' advance notice is not necessary for these changes, which are not of the type that generally result in the imposition of a fee or other charge on a consumer's account that could come as a costly surprise. In addition, the Board believes that for safety and soundness reasons, issuers generally have a legitimate interest in suspending credit privileges or terminating an account or plan when a consumer's creditworthiness deteriorates, and that 45 days' advance notice of these types of changes therefore would not be appropriate.

Proposed § 226.9(c)(2)(v)(B) sets forth an exception contained in the Credit Card Act for increases in annual percentage rates upon the expiration of a specified period of time, provided that prior to the commencement of that period, the creditor disclosed to the consumer clearly and conspicuously in writing the length of the period and the annual percentage rate that would apply after that period. As discussed below, this disclosure would be required to be provided in close proximity and equal prominence to any disclosure of the rate that applies during that period, ensuring that it would be provided at the same time the consumer is informed of the temporary rate. In addition, in order to fall within this exception, the annual percentage rate that applies after the period ends may not exceed the rate previously disclosed.

The exception generally mirrors the statutory language, except for two additional requirements. First, the Board's proposal expressly provides, consistent with July 2009 Regulation Z Interim Final Rule and the standard for Regulation Z disclosures under Subpart B that the disclosure of the period and annual percentage rate that will apply after the period is generally required to be in writing. See § 226.5(a)(1). Second, pursuant to its authority under TILA Section 105(a) to prescribe regulations to effectuate the purposes of TILA, the Board is proposing to require that the disclosure of the length of the period and the annual percentage rate that would apply upon expiration of the period be set forth in close proximity and equal prominence to any disclosure of the rate that applies during the specified period of time. 15 U.S.C. 1604(a). The Board believes that both of these requirements are appropriate in order to ensure that consumers receive, comprehend, and are able to retain the disclosures regarding the rates that will apply to their transactions.

Proposed comment 9(c)(2)(v)-5 clarifies the timing of the disclosure requirements for telephone purchases financed by a merchant or private label credit card issuer. The Board is aware that the general requirement in the July 2009 Regulation Z Interim Final Rule that written disclosures be provided prior to commencement of the period during which a temporary rate will be in effect has caused some confusion for merchants who offer a promotional rate on the telephone to finance the purchase of goods. In order to clarify the application of the rule to such merchants, proposed comment 9(c)(2)(v)-5 would state that the timing requirements of § 226.9(c)(2)(v)(B) are deemed to have been met, and written disclosures required by § 226.9(c)(2)(v)(B) may be provided as soon as reasonably practicable after the first transaction subject to a temporary rate if: (1) the first transaction subject to the temporary rate occurs when a consumer contacts a merchant by telephone to purchase goods and at the same time the consumer accepts an offer to finance the purchase at the temporary rate; (2) the merchant or third-party creditor permits consumers to return any goods financed subject to the temporary rate and return the goods free of cost after the merchant or third-party creditor has provided the written disclosures required by § 226.9(c)(2)(v)(B); and (3) the disclosures required by § 226.9(c)(2)(v)(B) and the consumer's right to reject the temporary rate offer and return the goods are disclosed to the consumer as part of the offer to finance the purchase. This clarification mirrors a timing rule for account-opening disclosures provided by merchants financing the purchase of goods by telephone under § 226.5(b)(1)(iii) of the January 2009 Regulation Z Rule.

The Board is also aware of operational issues arising from application of

§ 226.9(c)(2)(v)(B) of the July 2009 Regulation Z Interim Final Rule to deferred interest or other promotional rate offers made at the time that a consumer is financing a purchase made at point of sale. At the present time, the systems available to provide disclosures to consumers at point of sale may not have access to the rate currently applicable to purchases made on the consumer's account. This could occur, for example, if the issuer offers a promotion to consumers with existing credit card accounts, and not all consumers in the portfolio have the same rate applicable to purchases. In addition, some consumers' accounts may currently be at a penalty rate that differs from the standard rates on accounts in the portfolio. The Board is aware that such issuers are encountering difficulty, at the present time, providing the disclosure required by § 226.9(c)(2)(v)(B), which requires that the rate that will apply after the expiration of the promotional period be disclosed.

This proposal, consistent with section 226.9(c)(2)(v)(B) of the July 2009 Regulation Z Interim Final Rule, requires disclosure of the specific rate that will apply to a given consumer's account after the expiration of a deferred interest or other promotional rate offer. The Board believes that, in general, the statutory requirement is best implemented by a rule stating that a single rate must be disclosed. However, the Board is supplementing its transition guidance to the July 2009 Regulation Z Interim Final Rule to state, that for a brief period necessary to update their systems to disclose a single rate, issuers offering a deferred interest or other promotional rate program at point of sale may disclose a range of rates or an "up to" rate rather than a single rate. The Board notes that stating a range of rates or "up to" rate is only permissible for a brief transition period and expects that merchants and creditors will disclose a single rate that will apply when a deferred interest or other promotional rate expires in accordance with § 226.9(c)(2)(v)(B) as soon as possible.

The Board is retaining in the proposal comment 9(c)(2)(v)-6 from the July 2009 Regulation Z Interim Final Rule (redesignated as comment 9(c)(2)(v)-7) to clarify that an issuer offering a deferred interest or similar program may utilize the exception in § 226.9(c)(2)(v)(B). The comment also provides examples of how the required disclosures can be made for deferred interest or similar programs. The Board continues to believe that the application of § 226.9(c)(2)(v)(B) to deferred interest arrangements is consistent with the Credit Card Act and that this clarification remains necessary in order to ensure that the proposed rule does not have unintended adverse consequences for deferred interest promotions.

The Board is proposing to retain generally as adopted in the July 2009 Regulation Z Interim Final Rule § 226.9(c)(2)(v)(C), which also implements an exception contained in the Credit Card Act, for increases in variable annual percentage rates in accordance with a credit card or other account agreement that provides for a change in the rate according to operation of an index that is not under the control of the creditor and is available to the general public. The Board is proposing a minor amendment to the text of § 226.9(c)(2)(v)(C) to reflect the fact that this exception would apply to all open-end (not home-secured) credit. The Board believes that even absent this express exception, such a rate increase would not generally be a change in the terms of the cardholder or other account agreement that gives rise to the requirement to provide 45 days' advance notice, because the index, margin, and frequency with which the annual percentage rate will vary will all be specified in the cardholder or other account agreement in advance. However, in order to clarify that 45 days' advance notice is not required for a rate increase that occurs due to adjustments in a variable rate tied to an index beyond the creditor's control, the Board is proposing to retain § 226.9(c)(2)(v)(C) of the July 2009 Regulation Z Interim Final Rule.

Finally, the proposal retains § 226.9(c)(2)(v)(D) from the July 2009 Regulation Z Interim Final Rule, with several changes. Section 226.9(c)(2)(v)(D) implements a statutory exception for increases in rates or fees or charges due to the completion of, or a consumer's failure to comply with the terms of, a workout or temporary hardship arrangement provided that the annual percentage rate or fee or charge applicable to a category of transactions following the increase does not exceed the rate that applied prior to the commencement of the workout or temporary hardship arrangement.

The Board notes that the exception in proposed § 226.9(c)(2)(v)(D) applies both to completion of or failure to comply with a workout arrangement. In the July 2009 Regulation Z Interim Final Rule, the Board had implemented the exception that applies to completion of an arrangement is implemented in § 226.9(c)(2)(v)(D), while the exception applicable to failure to comply with a workout or temporary hardship arrangement was implemented in § 226.9(g). For clarity, the Board is proposing to implement both of these exceptions in a single § 226.9(c)(2)(v)(D). The exception is conditioned on the creditor's having clearly and conspicuously disclosed, prior to the commencement of the arrangement, the terms of the arrangement (including any such increases due to such completion). The Board notes that the statutory exception applies in the event of either completion of, or failure to comply with, the terms of such a workout or temporary hardship arrangement. This exception also generally mirrors the statutory language, except that the Board has expressly provided that the disclosures regarding the workout or temporary hardship arrangement are required to be in writing.

The Board proposes to retain comment 9(c)(2)(v)-5 from the July 2009 Regulation Z Interim Final Rule (redesignated as comment 9(c)(2)(v)-6), which is applicable to the exceptions in both § 226.9(c)(2)(v)(B) and (c)(2)(v)(D), and provides additional clarification regarding the disclosure of variable annual percentage rates. The comment provides that if the creditor is disclosing a variable rate, the notice must also state that the rate may vary and how the rate is determined. The comment sets forth an example of how a creditor may make this disclosure. The Board believes that the fact that a rate is variable is an important piece of information of which consumers should be aware prior to commencement of a deferred interest promotion, a promotional rate, or a stepped rate program.

Finally, the Board also proposes to retain comment 9(c)(2)(v)-7 of the July 2009 Regulation Z Interim Final Rule (redesignated as comment 9(c)(2)(v)-8), which provides clarification as to what terms must be disclosed in connection with a workout or temporary hardship arrangement. The comment states that in order for the exception to apply, the creditor must disclose to the consumer the rate that will apply to balances subject to the workout or temporary hardship arrangement, as well as the rate that will apply if the consumer completes or fails to comply with the terms of, the workout or temporary hardship arrangement. For consistency with proposed § 226.55(b)(5)(i), the Board proposes to revise the comment to also state that the creditor must disclose the amount of any reduced fee or charge of a type required to be disclosed under § 226.6(b)(2)(ii), (b)(2)(iii), or (b)(2)(xii) that will apply to balances subject to the arrangement, as well as the fee or charge that will apply if the consumer completes or fails to comply with the terms of the arrangement. The notice also must state, if applicable, that the consumer must make timely minimum payments in order to remain eligible for the workout or temporary hardship arrangement. The Board believes that it is important for a consumer to be notified of his or her payment obligations pursuant to a workout or similar arrangement, and that the rate, fee or charge may be increased if he or she fails to make timely payments.

9(c)(2)(vi) Reduction of the Credit Limit

Consistent with the January 2009 Regulation Z Rule and the July 2009 Regulation Z Interim Final Rule, the Board is proposing to retain § 226.9(c)(2)(vi) to address notices of changes in a consumer's credit limit. Section 226.9(c)(2)(vi) requires an issuer to provide a consumer with 45 days' advance notice that a credit limit is being decreased or will be decreased prior to the imposition of any over-the-limit fee or penalty rate imposed solely as the result of the balance exceeding the newly decreased credit limit. The Board is not including a decrease in a consumer's credit limit itself as a significant change in a term that requires 45 days' advance notice, for several reasons. First, the Board recognizes that creditors have a legitimate interest in mitigating the risk of a loss when a consumer's creditworthiness deteriorates, and believes there would be safety and soundness concerns with requiring creditors to wait 45 days to reduce a credit limit. Second, the consumer's credit limit is not a term generally required to be disclosed under Regulation Z or TILA. Finally, the Board believes that § 226.9(c)(2)(vi) adequately protects consumers against the two most costly surprises potentially associated with a reduction in the credit limit, namely, fees and rate increases, while giving a consumer adequate time to mitigate the effect of the credit line reduction.

Furthermore, proposed § 226.55 would prohibit a creditor from applying an increased rate, fee, or charge to an existing balance as a result of transactions that exceeded the credit limit. In addition, proposed § 226.56 would allow a creditor to charge a fee for transactions that exceed the credit limit only when the consumer has consented to such transactions.

Proposed Changes to Commentary to § 226.9(c)(2)

The commentary to § 226.9(c)(2) generally is consistent with the commentary to § 226.9(c)(2) of the January 2009 Regulation Z Rule, except for technical changes or changes discussed below. In addition, as discussed above, the Board is proposing to adopt new comment 9(c)(2)(v)-5 (and to renumber comments 9(c)(2)(v)-5 through 9(c)(2)(v)-7 of the July 2009 Regulation Z Interim Final Rule accordingly as comments 9(c)(2)(v)-6 through 9(c)(2)(v)-8).

The Board is proposing to amend comment 9(c)(2)(i)-6 to reference examples in § 226.55 that illustrate how the advance notice requirements in § 226.9(c) relate to the substantive rule regarding rate increases in proposed § 226.55. In the January 2009 Regulation Z Rule, comment 9(c)(2)(i)-6 referred to the commentary to § 226.9(g). Because, as discussed in the supplementary information to § 226.55, the Credit Card Act moved the substantive rule regarding rate increases into Regulation Z, the Board believes that it is not necessary to repeat the examples under § 226.9.

The Board also proposes to amend comment 9(c)(2)(v)-2 (adopted in the January 2009 Regulation Z Rule as comment 9(c)(2)(iv)-2) in order to conform with the new substantive and notice requirements of the Credit Card Act. This comment addresses the disclosures that must be given when a credit program allows consumers to skip or reduce one or more payments during the year or involves temporary reductions in finance charges. However, new § 226.9(c)(2)(v)(B) requires a creditor to provide a notice of the period for which a temporarily reduced rate will be in effect, as well as a disclosure of the rate that will apply after that period, in order for a creditor to be permitted to increase the rate at the end of the period without providing 45 days' advance notice. Similarly, § 226.55, discussed elsewhere in this supplementary information, requires a creditor to provide advance notice of a temporarily reduced rate if a creditor wants to preserve the ability to raise the rate on balances subject to that temporarily reduced rate. Accordingly, the Board is proposing amendments to clarify that if a credit program involves temporary reductions in an interest rate, no notice of the change in terms is required either prior to the reduction or upon resumption of the higher rates if these features are disclosed in advance in accordance with the requirements of § 226.9(c)(2)(v)(B). See proposed comment 55(b)-3. The proposed comment further clarifies that if a creditor does not provide advance notice in accordance with § 226.9(c)(2)(v)(B), that it must provide a notice that complies with the timing requirements of § 226.9(c)(2)(i) and the content and format requirements of § 226.9(c)(2)(iv)(A), (B) (if applicable), and (C). The proposed comment notes that creditors should refer to § 226.55 for additional restrictions on resuming the original rate that is applicable to credit card accounts under an open-end (not home-secured) plan.

May 2009 Regulation Z Proposed Clarifications

As discussed in **I. Background and Implementation of the Credit Card Act**, the Board is generally republishing the May 2009 Regulation Z Proposed Clarifications in connection with this proposed rule. Accordingly, the Board is republishing proposed amendments to § 226.9(c)(2)(v) (proposed as § 226.9(c)(2)(iv) of the May 2009 Regulation Z Proposed Clarifications) and comments 9(c)(2)-4 and 9(c)(2)(i)-3.

The Board is republishing revisions to § 226.9(c)(2)(v) (proposed in May 2009 as § 226.9(c)(2)(iv)) and proposed comment 9(c)(2)-4, which clarifies the relationship between the change-in-terms requirements of § 226.9(c) and the notice provisions of § 226.9(b) that apply when a creditor adds a credit feature or delivers a credit access device for an existing open-end plan. See 74 FR 20787 for further discussion of these proposed amendments.

Section 226.9(c)(2)(i), as proposed and under the January 2009 Regulation Z Rule, provides that the 45-day advance notice timing requirement does not apply if the consumer has agreed to a particular change. In this case, notice must be given before the effective date of the change. Comment 9(c)(2)(i)-3 states that the provision is intended for use in "unusual instances," such as when a consumer substitutes collateral or when the creditor may advance additional credit only if a change relatively unique to that consumer is made. In May 2009, the Board proposed to amend the comment to emphasize the limited scope of the exception and provide that the exception applies "solely" to the unique circumstances specifically identified in the comment. See 74 FR 20788. The proposed comment would also add an example of an occurrence that would not be considered an "agreement" for purposes of relieving the creditor of its responsibility to provide an advance change-in-terms notice. This example would state that an "agreement" does not include a consumer's request to reopen a closed account or to upgrade an existing account to another account offered by the creditor with different credit or other features. Thus, a creditor that treats an upgrade of a consumer's account as a change in terms would be required to provide the consumer 45 days' advance notice before increasing the rate for new transactions or increasing the amount of any applicable fees to the account in those circumstances.

The Board is aware that some creditors have raised concerns about the 45-day notice requirement causing an undue delay when a consumer requests that his or her account be changed to a different product offered by the creditor, for example to take advantage of a rewards or other program. The Board has sought, in part, to address these concerns in proposed comment 5(b)(1)(i)-6, discussed above. The Board also continues to believe that the proposed clarification to comment 9(c)(2)(i)-3 is appropriate for those circumstances in which a creditor treats an upgrade of an account as a change-in-terms in accordance with proposed comment 5(b)(1)(i)-6. In addition, it would be difficult to define by regulation the circumstances under which a consumer is deemed to have requested the account upgrade, versus circumstances in which the upgrade is suggested by the creditor. The Board seeks further comment on the operational and other burdens that would be associated with the proposed revision to comment 9(c)(2)(i)-3.

9(e) Disclosures Upon Renewal of Credit or Charge Card

The Credit Card Act amended TILA Section 127(d), which sets forth the disclosures that card issuers must provide in connection with renewal of a consumer's credit or charge card account. 15 U.S.C. 1637(d). TILA Section 127(d) is implemented in § 226.9(e), which currently requires card issuers that assess an annual or other fee based on inactivity or activity, on a credit card account of the type subject to § 226.5a, to provide a renewal notice before the fee is imposed. The creditor must provide disclosures required for credit card applications and solicitations (although not in a tabular format) and must inform the consumer that the renewal fee can be avoided by terminating the account by a certain date. The notice must generally be provided at least 30 days or one billing cycle, whichever is less, before the renewal fee is assessed on the account. Under current § 226.9(e), there is an alternative delayed notice procedure where the fee can be assessed provided the fee is reversed if the consumer is given notice and chooses to terminate the account.

The Credit Card Act amended TILA Section 127(d) to eliminate the provision permitting creditors to provide an alternative delayed notice. Thus, all creditors will be required to provide the renewal notice described in § 226.9(e)(1) prior to imposition of any annual or other periodic fee to renew a credit or charge card account of the type subject to § 226.5a, including any fee based on account activity or inactivity. Creditors may no longer assess the fee and provide a delayed notice offering the consumer the opportunity to terminate the account and have the fee reversed. Accordingly, the Board is proposing to delete § 226.9(e)(2) and to renumber § 226.9(e)(3) as § 226.9(e)(2). The Board also proposes technical conforming changes to comments 9(e)-7, 9(e)(2)-1 (currently comment 9(e)(3)-1), and 9(e)(2)-2 (currently comment 9(e)(3)-2).

In addition, amended TILA Section 127(d) provides that a card issuer that has changed or amended any term of the account since the last renewal that has not been previously disclosed must provide the renewal disclosure, even if that card issuer does not charge a periodic or other fee for renewal of the credit or charge card account. The Board proposes to amend § 226.9(e)(1) to provide that the renewal notice must be provided in those circumstances. The amended language in proposed § 226.9(e)(1) would state, in part, that any card issuer that has changed or amended any term of a cardholder's account required to be disclosed under § 226.6(b)(1) and (b)(2) that has not previously been disclosed to the consumer, shall mail or deliver written notice of the renewal to the cardholder. The Board proposes to use its authority pursuant to TILA Section 105(a) to clarify that the requirement to provide the renewal disclosures due to a change in account terms applies only if the change has not been previously disclosed and is a change of the type required to be disclosed in the table provided at account opening.

The Board notes that in most cases, changes to terms required to be disclosed pursuant to § 226.6(b)(1) and (b)(2) will be required to be disclosed 45 days in advance in accordance with § 226.9(c)(2). However, there are several types of changes to terms required to be disclosed under § 226.6(b)(1) and (b)(2) for which advance notice is not required under § 226.9(c)(2)(v)(1), including reductions in finance and other charges and the extension of a grace period. The Board believes that such changes are generally beneficial to the consumer, and therefore a 45-day advance notice requirement is not appropriate for these changes. However, the Board believes that requiring creditors to send consumers subject to such changes a notice prior to renewal disclosing key terms of their accounts will promote the informed use of credit by consumers. The notice will remind consumers of the key terms of their accounts, including any reduced rates or extended grace periods that apply, when consumers are making a decision as to whether to renew their account and how to use the account in the future.

The Board considered an alternative interpretation of amended TILA Section 127(d) that would have required that the renewal disclosures be provided for all changes in account terms that have not been previously disclosed, even changes that are not required to be disclosed pursuant to § 226.6(b)(1) and (b)(2). Such an interpretation of the statute would require that the renewal disclosures be given even when creditors have made relatively minor changes to the account terms, such as by increasing the amount of a fee to expedite delivery of a credit card. However, the Board believes that providing a renewal notice in these circumstances would not provide a meaningful benefit to consumers. Amended TILA Section 127(d) requires only that the renewal disclosure contain the information set forth in TILA Sections 127(c)(1)(A) and (c)(4)(A), which are implemented in § 226.5a(b)(1) through (b)(7). These sections require disclosure of key terms of a credit card account including the annual percentage rates applicable to the account, annual or other periodic membership fees, minimum finance charges, transaction charges on purchases, the grace period, balance computation method, and disclosure of similar terms for charge card accounts. The Board notes that the required disclosures all address terms required to be disclosed pursuant to § 226.6(b)(1) and (b)(2). Therefore, if the rule required that the renewal disclosures be provided for any change in terms, such as a change in a fee for expediting delivery of a credit card, the renewal disclosures would not disclose the amount of the changed fee. The Board also notes that charges imposed as part of an open-end (not home-secured) plan that are not required to be disclosed pursuant to § 226.6(b)(1) and (b)(2) are required to be disclosed to consumers prior to their imposition pursuant to § 226.5(b)(1)(ii).

Proposed § 226.9(e)(1) would further clarify the timing of the notice requirement when a card issuer has changed a term on the account but does not impose an annual or other periodic fee for renewal, by stating that if the card issuer has changed or amended any term required to be disclosed under § 226.6(b)(1) and (b)(2) and such changed or amended term has not previously been disclosed to the consumer, the notice shall be provided at least 30 days prior to the scheduled renewal date of the consumer's credit or charge card. Accordingly, card issuers that do not charge periodic or other fees for renewal of the credit or charge card account, and who have previously disclosed any changed terms pursuant to § 226.9(c)(2) are not required to provide renewal disclosures pursuant to proposed § 226.9(e).

9(g) Increase in Rates Due to Delinquency or Default or as a Penalty

9(g)(1) Increases Subject to This Section

The Board is proposing to adopt § 226.9(g) substantially as adopted in the January 2009 Regulation Z Rule, except as required to be amended for conformity with the Credit Card Act. Proposed § 226.9(g), in combination with amendments to § 226.9(c), implements the 45-day advance notice requirements for rate increases in new TILA Section 127(i). This approach is consistent with the Board's January 2009 Regulation Z Rule and the July 2009 Regulation Z Interim Final Rule, each of which included change-in-terms notice requirements in § 226.9(c) and increases in rates due to the consumer's default or delinquency or as a penalty for events specified in the account agreement in § 226.9(g). The general rule is set forth in proposed § 226.9(g)(1) and provides that for open-end plans other than home-equity plans subject to the requirements of § 226.5b, a creditor must provide a written notice to each consumer who may be affected when a rate is increased due to a delinquency or default or as a penalty for one or more events specified in the account agreement.

9(g)(2) Timing of Written Notice

Proposed paragraph (g)(2) sets forth the timing requirements for the notice described in paragraph (g)(1), and states that the notice must be provided at least 45 days prior to the effective date of the increase. The notice must, however, be provided after the occurrence of the event that gave rise to the rate increase. That is, a creditor must provide the notice after the occurrence of the event or events that trigger a specific impending rate increase and may not send a general notice reminding the consumer of the conditions that may give rise to penalty pricing. For example, a creditor may send a consumer a notice pursuant to § 226.9(g) if the consumer makes a payment that is one day late disclosing a rate increase applicable to new transactions, in accordance with § 226.55. However, a more general notice reminding a consumer who makes timely payments that paying late may trigger imposition of a penalty rate would not be sufficient to meet the requirements of § 226.9(g) if the consumer subsequently makes a late payment.

9(g)(3) Disclosure Requirements for Rate Increases

Proposed paragraph (g)(3) sets forth the content and formatting requirements for notices provided pursuant to § 226.9(g). Proposed § 226.9(g)(3)(i)(A) sets forth the content requirements applicable to all open-end (not home-secured) credit plans. Similar to the approach discussed above with regard to § 226.9(c)(2)(iv), the Board is proposing a separate § 226.9(g)(3)(i)(B) that would contain additional content requirements required under the Credit Card Act that are applicable only to credit card accounts under an open-end (not home-secured) consumer credit plan.

Proposed § 226.9(g)(3)(i)(A) provides that the notice must state that the delinquency, default, or penalty rate has been triggered, and the date on which the increased rate will apply. The notice also must state the circumstances under which the increased rate will cease to apply to the consumer's account or, if applicable, that the increased rate will remain in effect for a potentially indefinite time period. In addition, the notice must include a statement indicating to which balances the delinquency or default rate or penalty rate will be applied, and, if applicable, a description of any balances to which the current rate will continue to apply as of the effective date of the rate increase, unless a consumer fails to make a minimum periodic payment within 60 days from the due date for that payment.

Proposed § 226.9(g)(3)(i)(B) sets forth additional content that credit card issuers must disclose if the rate increase is due to the consumer's failure to make a minimum periodic payment within 60 days from the due date for that payment. In those circumstances, the notice must state the reason for the increase and disclose that the increase will cease to apply if the creditor receives six consecutive required minimum periodic payments on or before the payment due date, beginning with the first payment due following the effective date of the increase. Proposed § 226.9(g)(3)(i)(B) implements notice requirements contained in amended TILA Section 171(b)(4), as adopted by the Credit Card Act, and implemented in proposed § 226.55(b)(4), as discussed below.

Unlike § 226.9(g)(3) of the July 2009 Regulation Z Interim Final Rule, the notice proposed under § 226.9(g)(3) need not disclose the consumer's right to reject the application of the penalty rate. For the reasons discussed in the supplementary information to § 226.9(h), the Board believes that a right to reject penalty rate increases is unnecessary in light of the new substantive rule on rate increases in proposed § 226.55. Accordingly, for penalty rate increases no disclosure of a right to reject need be provided.

Proposed paragraph (g)(3)(ii) sets forth the formatting requirements for a rate increase due to default, delinquency, or as a penalty. These requirements are substantively equivalent to the formatting rule adopted in § 226.9(g)(3)(ii) of the January 2009 Regulation Z Rule and would require the disclosures required under § 226.9(g)(3)(i) to be set forth in the form of a table. As discussed elsewhere in this **Federal Register**, the formatting requirements are not directly compelled by the Credit Card Act, and consequently the Board is considering retaining the original July 1, 2010 effective date of the January 2009 Regulation Z Rule for the tabular formatting requirements.

The Board is proposing to amend Sample G-21 from the January 2009 Regulation Z Rule (redesignated as Sample G-22) and to add a new sample G-23 to illustrate how a card issuer may comply with the requirements of proposed § 226.9(g)(3)(i). The Board would amend references to these samples in comment 9(g)-8 accordingly. Proposed Sample G-22 is a disclosure of a rate increase applicable to a consumer's credit card account based on a late payment that is fewer than 60 days late. The sample explains when the new rate will apply to new transactions and to which balances the current rate will continue to apply. Sample G-23 discloses a rate increase based on a delinquency of more than 60 days, and includes the required content regarding the consumer's ability to cure the penalty pricing by making the next six consecutive minimum payments on time.

9(g)(4) Exceptions

Proposed § 226.9(g)(4) sets forth an exception to the advance notice requirements of § 226.9(g), which is consistent with an analogous exception contained in the January

2009 Regulation Z Rule and July 2009 Regulation Z Interim Final Rule. Proposed § 226.9(g)(4) clarifies the relationship between the notice requirements in § 226.9(c)(vi) and (g)(1) when the creditor decreases a consumer's credit limit and under the terms of the credit agreement a penalty rate may be imposed for extensions of credit that exceed the newly decreased credit limit. This exception is substantively equivalent to § 226.9(g)(4)(ii) of the January 2009 Regulation Z Rule. In addition, it is generally equivalent to § 226.9(g)(4)(ii) of the July 2009 Regulation Z Interim Final Rule, except that the proposal implements content requirements analogous to those in proposed § 226.9(g)(3)(i) that pertain to whether the rate applies to outstanding balances or only to new transactions. See 74 FR 5355 for additional discussion of this exception.

As discussed in the supplementary information to § 226.9(c)(2)(v), a second exception for an increase in an annual percentage rate due to the failure of a consumer to comply with a workout or temporary hardship arrangement contained in the July 2009 Regulation Z Interim Final Rule has been moved to § 226.9(c)(2)(v)(D).

The Board notes that one respect in which proposed § 226.9(g)(4) differs from the January 2009 Regulation Z Rule is that it does not contain an exception to the 45-day advance notice requirement for penalty rate increases if the consumer's account becomes more than 60 days delinquent prior to the effective date of a rate increase applicable to new transactions, for which a notice pursuant to § 226.9(g) has already been provided. As discussed in the supplementary information to proposed § 226.9(g)(3)(i), amended TILA Section 171(b)(4)(A) requires that specific content be disclosed when a consumer's rate is increased based on a failure to make a minimum payment within 60 days of the due date for that payment. Specifically, TILA Section 171(b)(4)(A) requires the notice to state the reasons for the increase and that the increase will terminate no later than six months from the effective date of the change, provided that the consumer makes the minimum payments on time during that period. The Board believes that the intent of this provision is to create a right for consumers whose rate is increased based on a payment that is more than 60 days late to cure that penalty pricing in order to return to a lower interest rate.

The Board believes that the disclosures associated with this ability to cure will be the most useful to consumers if they receive them after they have already triggered such penalty pricing based on a delinquency of more than 60 days. Under the Board's proposed rule, creditors will be required to provide consumers with a notice specifically disclosing a rate increase based on a delinquency of more than 60 days, at least 45 days prior to the effective date of that increase. The notice will state the effective date of the rate increase, which will give consumers certainty as to the applicable 6-month period during which they must make timely payments in order to return to the lower rate. If creditors were permitted to raise the rate applicable to all of a consumer's balances without providing an additional notice, consumers may be unsure exactly when their account became more than 60 days delinquent and therefore may not know the period in which they need to make timely payments in order to return to a lower rate.

In addition, the Board notes that the Credit Card Act, as implemented in proposed § 226.55(b)(4), does not permit a creditor to raise the interest rate applicable to a consumer's existing balances unless that consumer fails to make a minimum payment within 60 days from the due date. This differs from the Board's January 2009 FTC Act Rule, which permitted such a rate increase based on a failure to make a minimum payment within 30 days from the due date. The exception in § 226.9(g)(4)(iii) of the January 2009 Regulation Z Rule reflected the Board's understanding that some creditors might impose penalty pricing on new transactions based on a payment that is one or several days late, and therefore it might be a relatively common occurrence for consumers' accounts to become 30 days delinquent within the 45-day notice period provided for a rate increase applicable to new transactions. The Board believes that, given the 60-day period imposed by the Credit Card Act and § 226.55(b)(4), it will be less common for consumers' accounts to become delinquent within the original 45-day notice period provided for new transactions.

Proposed Changes to Commentary to § 226.9(g)

The commentary to § 226.9(g) generally is consistent with the commentary to § 226.9(g) of the January 2009 Regulation Z Rule, except for technical changes. In addition, the Board is proposing to amend comment 9(g)-1 to reference examples in § 226.55 that illustrate how the advance notice requirements in § 226.9(g) relate to the substantive rule regarding rate increases applicable to existing balances. Because, as discussed in the supplementary information to § 226.55, the Credit Card Act placed the substantive rule regarding rate increases into TILA and Regulation Z, there Board believes that it is not necessary to repeat the examples under § 226.9.

9(h) Consumer Rejection of Certain Significant Changes in Terms

In the July 2009 Regulation Z Interim Final Rule, the Board adopted § 226.9(h), which provides that, in certain circumstances, a consumer may reject significant changes to account terms and increases in annual percentage rates. See 74 FR 36087-36091, 36096, 36099-36101. Section 226.9(h) implemented new TILA Section 127(i)(3) and (4), which – like the other provisions of the Credit Card Act implemented in the July 2009 Regulation Z Interim Final Rule – went into effect on August 20, 2009. See Credit Card Act § 101(a) (new TILA Section 127(i)(3)-(4)). However, several aspects of § 226.9(h) were based on revised TILA Section 171, which – like the other statutory provisions addressed in this proposed rule – goes into effect on February 22, 2010. Accordingly, because the Board is now implementing revised TILA Section 171 in proposed § 226.55, the Board proposes to modify § 226.9(h) for clarity and consistency.

Application of Right to Reject to Increases in Annual Percentage Rate

Because revised TILA Section 171 renders the right to reject redundant in the context of rate increases, the Board proposes to amend § 226.9(h) to apply that right only to other significant changes to an account term. Currently, § 226.9(h) provides that, if a consumer rejects an increase in an annual percentage rate prior to the effective date stated in the § 226.9(c) or (g) notice, the creditor cannot apply the increased rate to transactions that occurred within fourteen days after provision of the notice. See § 226.9(h)(2)(i), (h)(3)(ii). However, under revised TILA Section 171 (as implemented in proposed § 226.55), a creditor is generally prohibited from applying an increased rate to transactions that occurred within fourteen days after provision of a § 226.9(c) or (g) notice regardless of whether the consumer rejects that increase. Similarly, although the exceptions in § 226.9(h)(3)(i) and revised TILA Section 171(b)(4) permit a creditor to apply an increased rate to an existing balance when an account becomes more than 60 days delinquent, revised TILA Section 171(b)(4)(B) (as implemented in proposed § 226.55(b)(4)(ii)) provides that the creditor must terminate the increase if the consumer makes the next six payments on or before the payment due date. Thus, with respect to rate increases, the right to reject does not provide consumers with any meaningful protections beyond those provided by revised TILA Section 171. Accordingly, the Board believes that, on or after February 22, 2010, the right to reject will be unnecessary for rate increases. Indeed, once revised TILA Section 171 becomes effective, notifying consumers that they have a right to reject a rate increase could be misleading insofar as it could imply that a consumer who does so will receive some additional degree of protection (such as protection against increases in the rate that applies to future transactions).

Accordingly, the Board proposes to remove references to rate increases from § 226.9(h) and its commentary. Similarly, because the exception in § 226.9(h)(3)(ii) for transactions that occurred more than fourteen days after provision of the notice is based on revised TILA Section 171(d),[15] the Board proposes to remove that exception from § 226.9(h) and incorporate it into proposed § 226.55. Finally, the Board proposes to redesignate comment 9(h)(3)-1 as comment 9(h)-1 and amend it to clarify that § 226.9(h) does not apply to increases in an annual percentage rate.

Repayment Restrictions

Because the repayment restrictions in § 226.9(h)(2)(iii) are based on revised TILA Section 171(c), the Board believes that those restrictions should be implemented with the rest of revised Section 171 in proposed § 226.55. Section 226.9(h)(2)(iii) implemented new TILA Section 127(i)(4), which expressly incorporated the repayment methods in revised TILA Section 171(c)(2). Because the rest of revised Section 171 would not be effective until February 22, 2010, the July 2009 Regulation Z Interim Final Rule

[15] See 74 FR 36089-36090.

implemented new TILA Section 127(i)(4) by incorporating the repayment restrictions in Section 171(c)(2) into § 226.9(h)(2)(iii). See 74 FR 36089. However, the Board believes that – once revised TILA Section 171 becomes effective on February 22, 2010 – these repayment restrictions should be moved to § 226.55(c). In addition to being duplicative, implementing revised TILA Section 171(c)'s repayment methods in both § 228.9(h) and § 226.55(c) would create the risk of inconsistency. Furthermore, because these restrictions will generally be of greater importance in the context of rate increases than other significant changes in terms, the Board believes they should be located in proposed § 226.55. Accordingly, the Board proposes to move the provisions and commentary regarding repayment to proposed § 226.55(c)(2) and to amend § 226.9(h)(2)(iii) to include a cross-reference to § 226.55(c)(2).

The Board also proposes to amend comment 9(h)(2)(iii)-1 to clarify the application of the repayment methods listed in proposed § 226.55(c)(2) in the context of a rejection of a significant change in terms. As revised, this comment would clarify that, when applying the methods listed in § 226.55(c)(2) pursuant to § 226.9(h)(2)(iii), a creditor may utilize the date on which the creditor was notified of the rejection or a later date (such as the date on which the change would have gone into effect but for the rejection). For example, when a creditor increases an annual percentage rate pursuant to § 226.55(b)(3), § 226.55(c)(2)(ii) permits the creditor to establish an amortization period for a protected balance of not less than five years, beginning no earlier than the effective date of the increase. Accordingly, when a consumer rejects a significant change in terms pursuant to § 226.9(h)(1), § 226.9(h)(2)(iii) permits the creditor to establish an amortization period for the balance on the account of not less than five years, beginning no earlier than the date on which the creditor was notified of the rejection. The comment provides an illustrative example.

In addition, comment 9(h)(2)(iii)-2 would be revised to clarify the meaning of "the balance on the account" that is subject to the repayment restrictions in proposed § 226.55(c)(2). The revised comment would clarify that, when applying the methods listed in § 226.55(c)(2) pursuant to § 226.9(h)(2)(iii), the provisions in § 226.55(c)(2) and the guidance in the commentary to § 226.55(c)(2) regarding protected balances also apply to a balance on the account subject to § 226.9(h)(2)(iii). Furthermore, the revised comment would clarify that, if a creditor terminates or suspends credit availability based on a consumer's rejection of a significant change in terms, the balance on the account for purposes of § 226.9(h)(2)(iii) is the balance at the end of the day on which credit availability was terminated or suspended. However, if a creditor does not terminate or suspend credit availability, the balance on the account for purposes of § 226.9(h)(2)(iii) is the balance on a date that is not earlier than the date on which the creditor was notified of the rejection. An example is provided.

Additional Revisions to Commentary

Consistent with the proposed revisions discussed above, the Board proposes to make non-substantive, technical amendments to the commentary to § 226.9(h). In addition, for organizational reasons, the Board proposes to renumber comments 9(h)(2)(ii)-1 and -2. Finally, the Board proposes to amend comment 9(h)(2)(ii)-2 to clarify the application of the prohibition in § 226.9(h)(2)(ii) on imposing a fee or charge solely as a result of the consumer's rejection of a significant change in terms. In particular, the revised comment would clarify that, if credit availability is terminated or suspended as a result of the consumer's rejection, a creditor is prohibited from imposing a periodic fee that was not charged before the consumer rejected the change (such as a closed account fee).

Section 226.10 Payments

Section 226.10, which implements TILA Section 164, currently contains rules regarding the prompt crediting of payments and is entitled "Prompt crediting of payments." 15 U.S.C. 1666c. As is discussed further in the section-by-section analysis, the Board is proposing to implement several new provisions of the Credit Card Act regarding payments in § 226.10, such as requirements regarding the permissibility of certain fees to make expedited payments. Several of these rules do not pertain directly to the prompt crediting of payments, but more generally to the conditions that may be imposed upon payments. Accordingly, the Board is proposing to amend the title of § 226.10 to "Payments" to more accurately reflect the content of amended § 226.10.

226.10(b) Specific Requirements for Payments

Cut-Off Times for Payments

TILA Section 164 states that payments received by the creditor from a consumer for an open-end consumer credit plan shall be posted promptly to the account as specified in regulations of the Board. The Credit Card Act amended TILA Section 164 to state that the Board's regulations shall prevent a finance charge from being imposed on any consumer if the creditor has received the consumer's payment in readily identifiable form, by 5 p.m. on the date on which such payment is due, in the amount, manner, and location indicated by the creditor to avoid the imposition of such a finance charge. While amended TILA Section 164 generally mirrors current TILA Section 164, the Credit Card

Act added the reference to a 5 p.m. cut-off time for payments received on the due date.

TILA Section 164 is implemented in § 226.10. The Board's January 2009 Regulation Z Rule addressed cut-off times by providing that a creditor may specify reasonable requirements for payments that enable most consumers to make conforming payments. Section 226.10(b)(2)(ii) of the January 2009 Regulation Z Rule stated that a creditor may set reasonable cut-off times for payments to be received by mail, by electronic means, by telephone, and in person. Amended § 226.10(b)(2)(ii) provided a safe harbor for the reasonable cut-off time requirement, stating that it would be reasonable for a creditor to set a cut-off time for payments by mail of 5 p.m. on the payment due date at the location specified by the creditor for the receipt of such payments. While this safe harbor referred only to payments received by mail, the Board noted in the supplementary information to the January 2009 Regulation Z Rule that it would continue to monitor other methods of payment in order to determine whether similar guidance was necessary. See 74 FR 5357.

As amended by the Credit Card Act, TILA Section 164 differs from § 226.10 of the January 2009 Regulation Z Rule in several respects. First, amended TILA Section 164 applies the requirement that a creditor treat a payment received by 5 p.m. on the due date as timely to all forms of payment, not only payments received by mail. In contrast, the safe harbor regarding cut-off times that the Board provided in § 226.10(b)(2)(ii) of the January 2009 Regulation Z Rule directly addressed only mailed payments. Second, while the Board's January 2009 Regulation Z Rule left open the possibility that in some circumstances, cut-off times earlier than 5 p.m. might be considered reasonable, amended

TILA Section 164 prohibits cut-off times earlier than 5 p.m. on the due date in all circumstances.

The Board proposes to implement amended TILA Section 164 in a revised § 226.10(b)(2)(ii). Proposed § 226.10(b)(2)(ii) would state that a creditor may set reasonable cut-off times for payments to be received by mail, by electronic means, by telephone, and in person, provided that such cut-off times must be no earlier than 5 p.m. on the payment due date at the location specified by the creditor for the receipt of such payments. Creditors would be free to set later cut-off times; however, no cut-off time would be permitted to be earlier than 5 p.m. This paragraph, in accordance with amended TILA Section 164, would apply to payments received by mail, electronic means, telephone, or in person, not only payments received by mail.

Consistent with the January 2009 Regulation Z Rule, proposed § 226.10(b)(2)(ii) refers to the time zone of the location specified by the creditor for the receipt of payments. The Board believes that this clarification is necessary to provide creditors with certainty regarding how to comply with the proposed rule, given that consumers may reside in different time zones from the creditor. The Board believes that a rule requiring a creditor to process payments differently based on the time zone at each consumer's billing address could impose significant operational burdens on creditors. The Board solicits comment on whether this clarification continues to be appropriate for payments made by methods other than mail.

The Board notes that proposed § 226.10(b)(2)(ii) would generally apply to payments made in person. However, as discussed below, the Credit Card Act amends TILA Section 127(b)(12) to establish a special rule for payments on credit card accounts made in person at branches of financial institutions, which the Board proposes to implement in new § 226.10(b)(3). Notwithstanding the general rule in proposed § 226.10(b)(2)(ii), card issuers that are financial institutions that accept payments in person at a branch or office may not impose a cut-off time earlier than the close of business of that office or branch, even if the office or branch closes later than 5 p.m. Accordingly, a financial institution that accepts payments at a branch or office that closes at 6 p.m. would be required to treat all payments received in person at the branch or office prior to 6 p.m. on the due date as timely. The Board notes that this rule refers only to payments made in person at the branch or office. Payments made by other means such as by telephone, electronically, or by mail would be subject to the general rule prohibiting cut-off times prior to 5 p.m., regardless of when a financial institution's branches or offices close. The Board notes that there may be creditors that are not financial institutions that accept payments in person, such as at a retail location, and believes that it is necessary for proposed § 226.10(b)(2)(ii) to refer to payments made in person in order to address cut-off times for such creditors that are not also subject to proposed § 226.10(b)(3).

The Board notes that the Credit Card Act applies the 5 p.m. cut-off time requirement to all open-end credit plans, including open-end (home-secured) credit. Accordingly, proposed § 226.10(b)(2)(ii) would apply to all open-end credit. This is consistent with current § 226.10, which applies to all open-end credit.

Payments Made at Financial Institution Branches

The Credit Card Act amends TILA Section 127(b)(12) to provide that, for creditors that are financial institutions which maintain branches or offices at which payments on credit card accounts are accepted in person, the date on which a consumer makes a payment on the account at the branch or office is the date on which the payment is considered to have been made for purposes of determining whether a late fee or charge may be imposed. 15 U.S.C. 1637(b)(12). The Board is proposing to implement the requirements of amended TILA Section 127(b)(12) that pertain to payments made at branches or offices of a financial institution in new § 226.10(b)(3). Section 226.10(b)(3), as adopted in the January 2009 Regulation Z Rule, would accordingly be renumbered as § 226.10(b)(4).

Proposed § 226.10(b)(3)(i) states that a card issuer that is a financial institution shall not impose a cut-off time earlier than the close of business for payments made in person on a credit card account under an open-end (not home-secured) consumer credit plan at any branch or office of the card issuer at which such payments are accepted. The proposed regulation further states that payments made in person at a branch or office of the financial institution during the business hours of that branch or office shall be considered received on the date on which the consumer makes the payment. Proposed § 226.10(b)(3) interprets amended TILA Section 127(b)(12) as requiring card issuers that are financial institutions to treat in-person payments they receive at branches or offices during business hours as conforming payments that must be credited as of the day the consumer makes the in-person payment. The Board believes that this is the appropriate reading of amended TILA Section 127(b)(12) because it is consistent with consumer expectations that in-person payments made at a branch of the financial institution will be credited on the same day that they are made.

The Board notes that neither the Credit Card Act nor TILA defines "financial institution." In order to give clarity to card issuers, the Board proposes to adopt a definition of "financial institution," for purposes of § 226.10(b)(3), in a new § 226.10(b)(3)(ii). Proposed § 226.10(b)(3)(ii) would state that "financial institution" has the same meaning as "depository institution" as defined in the Federal Deposit Insurance Act (12 U.S.C. 1813(c)). The Board believes that this definition effectuates the purposes of amended TILA Section 127(b)(12) by including all banks and savings associations, while excluding entities such as retailers that should not be considered "financial institutions" for purposes of proposed § 226.10(b)(3). The Board solicits comment on whether an alternative definition would be appropriate. In particular, the Board solicits comment on whether there are other credit card issuers that should be considered "financial institutions" for purposes of the rule.

The Board also is proposing a new comment 10(b)-5 to clarify the application of proposed § 226.10(b)(3) for payments made at point of sale. Proposed comment 10(b)-5 would state that if a creditor that is a financial institution issues a credit card that can be used only for transactions with a particular merchant or merchants, and a consumer is able to make a payment on that credit card account at a retail location maintained by such a merchant, that retail location is not considered to be a branch or office of the creditor for purposes of § 226.10(b)(3). The Board believes that the intent of TILA Section 127(b)(12) is to apply only to payments made at a branch or office of the creditor, not to payments made at a location maintained by a third party that is not the creditor. This comment is intended to clarify that this rule does not apply when a retailer accepts payments at its stores for a co-branded or private label credit card that is issued by a separate financial institution.

Finally, the Board also is proposing a new comment 10(b)-6 to clarify what constitutes a payment made "in person" at a branch or office of a financial institution. Proposed comment 10(b)-6 would state that for purposes of § 226.10(b)(3), payments made in person at a branch or office of a financial institution include payments made with the direct assistance of, or to, a branch or office employee, for example a teller at a bank branch. In contrast, the comment would provide that a payment made at the bank branch without the direct assistance of a branch or office employee, for example a payment placed in a branch or office mail slot, is not a payment made in person for purposes of § 226.10(b)(3). The Board believes that this is consistent with consumer expectations that payments made with the assistance of a financial institution employee will be credited immediately, while payments that are placed in a mail slot or other receptacle at the branch or office may require additional processing time.

10(d) Crediting of Payments When Creditor Does Not Receive or Accept Payments on Due Date

The Credit Card Act adopted a new TILA Section 127(o) that provides, in part, that if the payment due date for a credit card account under an open-end consumer credit plan is a day on which the creditor does not receive or accept payments by mail (including weekends and holidays), the creditor may not treat a payment received on the next business day as late for any purpose. 15 U.S.C. 1637(o). New TILA Section 127(o) is similar to § 226.10(d) of the Board's January 2009 Regulation Z Rule, with two notable differences. Amended § 226.10(d) of the January 2009 Regulation Z Rule stated that if the due date for payments is a day on which the creditor does not receive or accept payments by mail, the creditor may not treat a payment received by mail the next business day as late for any purpose. In contrast, new TILA Section 127(o) provides that if the due date is a day on which the creditor does not receive or accept payments by mail, the creditor may not treat a payment received the next business day as late for any purpose. TILA Section 127(o) applies to payments made by any method on a due date which is a day on which the creditor does not receive or accept mailed payments, and is not limited to payments received the next business day by mail. Second, new TILA Section 127(o) applies only to credit card accounts under an open-end consumer plan, while § 226.10(d) of the January 2009 rule applies to all open-end consumer credit.

The Board is proposing to implement new TILA Section 127(o) in an amended § 226.10(d). The general rule in proposed § 226.10(d) would track the statutory language of new TILA Section 127(o) to state that if the due date for payments is a day on which the creditor does not receive or accept payments by mail, the creditor may generally not treat a payment received by any method the next business day as late for any purpose. The Board is proposing, however, to provide that if the creditor accepts or receives payments made by a method other than mail, such as electronic or telephone payments, a due date on which the creditor does not receive or accept payments by mail, it is not required to treat a payment made by that method on the next business day as timely. The Board is proposing this clarification using its authority under TILA Section 105(a) to make adjustments necessary to effectuate the purposes of TILA. 15 U.S.C. 1604(a).

The Board believes that it is not the intent of new TILA Section 127(o) to permit consumers who can make timely payments by methods other than mail, such as payments by phone, to have an extra day after the due date to make payments using those methods without those payments being treated as late. Rather, the Board believes that new TILA Section 127(o) was intended to address those limited circumstances in which a consumer cannot make a timely payment on the due date, for example if it falls on a weekend or holiday and the creditor does not accept or receive payments on that date. In those circumstances, without the protections of new TILA Section 127(o), the consumer would have to make a payment one or more days in advance of the due date in order to have that payment treated as timely. The Credit Card Act provides other protections designed to ensure that consumers have adequate time to make payments, such as amended TILA Section 163, which was implemented in § 226.5(b) in the July 2009 Regulation Z Interim Final Rule, which generally requires that creditors mail or deliver periodic statements to consumers at least 21 days in advance of the due date. Therefore, proposed § 226.10(d) would provide that if a creditor receives or accepts payments by a method other than mail on the due date, the creditor need not treat payments made by that method on the next business day as timely, even if the creditor does not receive or accept mailed payments on the due date. For example, if a creditor receives or accepts electronic payments on a Sunday due date, that creditor need not treat as timely an electronic payment made on the following Monday, even if it does not receive or accept payments by mail on that Sunday due date.

Finally, the Board is proposing to apply amended § 226.10(d) to all open-end consumer credit plans, not just credit card accounts, even though new TILA Section 127(o) applies only to credit card accounts. The Board believes that it is appropriate to have one consistent rule regarding the treatment of payments when the due date falls on a date on which the creditor does not receive or accept payments by mail. The Board believes that that Regulation Z should treat payments on an open-end plan that is not a credit card account the same as payments on a credit card account. Regardless of the type of open-end plan, if the payment due date is a day on which the creditor does not accept or receive payments by mail, a consumer should not be required to make payments prior to the due date in order for them to be treated as timely. This is consistent with § 226.10(d) of the January 2009 Regulation Z Rule, which set forth one consistent rule for all open-end credit.

10(e) Limitations on Fees Related to Method of Payment

The Credit Card Act adopted new TILA Section 127(l) which generally prohibits creditors, in connection with a credit card account under an open-end consumer credit plan, from imposing a separate fee to allow a consumer to repay an extension of credit or pay a finance charge, unless the payment involves an expedited service by a customer service representative. 15 U.S.C. 1637(l). The Board is proposing to implement TILA Section 127(l) in § 226.10(e). Proposed § 226.10(e) would generally track the statutory language of new TILA Section 127(l) and would state that, for credit card accounts under an open-end (not home-secured) consumer credit plan, a creditor may not impose a separate fee to allow consumers to make a payment by any method, such as mail, electronic, or telephone payments, unless such payment method involves an expedited service by a customer service representative of the creditor. The text of proposed § 226.10(e) differs from the text of TILA Section 127(l), in order to clarify that a separate fee for any payment made to an account is prohibited, with the exception of a payment involving expedited service by a customer service representative. See 15 U.S.C. 1604(a).

The Board believes that the intent of new TILA Section 127(l) is to prohibit the imposition of a separate fee for making any payment, unless the payment transaction involves expedited service by a customer service representative. Accordingly, the Board notes that proposed § 226.10(e) would cover all methods of payment, such as mail, electronic, and telephone payments. Under proposed § 226.10(e), consistent with TILA Section 127(i), creditors would be permitted to charge a separate fee only for those payment transactions that involve expedited service by a customer service representative. A creditor, however, would not be permitted to charge a separate fee for payment transactions that do not involve a customer service representative, such as payments sent by mail.

The Board is proposing several comments to provide guidance to creditors in complying with § 226.10(e). Proposed comment 10(e)-1 would clarify that the term "separate fee" means any fee imposed on a consumer for making a single payment to the consumer's account. Proposed comment 10(e)-1 would clarify, however, that a fees or charge imposed if payment is made after the due date, such as a late fee or finance charge, is not a "separate fee to allow consumers to make a payment" for purposes of § 226.10(e).

The Board also proposes to adopt comment 10(e)-2, which clarifies that the term "expedited" means crediting a payment to the account the same day or, if the payment is received after the creditor's cut-off time, the next business day.[16] For example, if a creditor accepts a nonconforming payment (such as a payment mailed to a branch office

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[16] The Board notes that any cut-off time specified by the creditor must comply with proposed § 226.10(b)(2)(ii), discussed earlier in the supplementary information. Furthermore, the Board notes that the creditor must also comply with § 226.10(a), which generally requires a creditor to credit payments to the consumer's account as of the date of receipt, except when a delay in crediting does not result in a finance or other charge.

when it had specified the payment be sent to a different location) and a customer service representative credits the payment to the consumer's account the same day, the creditor may impose a separate fee. The Board believes that this standard for determining whether service is expedited will promote consistent practices among different creditors and will provide certainty as to how to comply with proposed § 226.10(e). In contrast, it would be difficult to apply a standard defining expedited service in relation to the time required for a payment to post using standard mail service because the length of time for delivery by mail for a given consumer or creditor may vary. In addition, a standard for determining whether service is expedited based on proximity to the due date would not address those circumstances in which consumers may want to make an expedited payment to the account in advance of the due date, such as in order to increase the amount of available credit.

Proposed comment 10(e)-3 would clarify that expedited service by a live customer service representative of the creditor would be required in order for a creditor to charge a separate fee to allow consumers to make a payment. Payments made on the account with the assistance of a live representative or agent may include payments made in person, on the telephone, or by electronic means. The Board understands that automated systems, such as a voice response unit or an interactive voice response system, are widely used to permit customers to make a payment by telephone or other electronic means. The proposed comment clarifies that a customer service representative does not include automated payment systems because these transactions do not involve a live customer service representative.

<u>Section 226.10(f) Changes by Card Issuer</u>

The Credit Card Act adopted new TILA Section 164(c), which provides that a card issuer may not impose any late fee or finance charge for a late payment on a credit card account if a card issuer makes "a material change in the mailing address, office, or procedures for handling cardholder payments, and such change causes a material delay in the crediting of a cardholder payment made during the 60-day period following the date on which the change took effect." 15 U.S.C. 1666c(c). The Board proposes to implement new TILA Section 164(c) in proposed § 226.10(f).

The text of proposed § 226.10(f) generally follows the language provided in new TILA Section 164(c) with a modification to clarify the meaning of "office." With respect to a change in office, the Board believes the intent of Section 164(c) is to apply only to changes in the address of a branch or office at which payments on a credit card account are accepted. <u>See</u> 15 U.S.C. 1604(a). Accordingly, proposed § 226.10(f) would prohibit a credit card issuer from imposing any late fee or finance charge for a late payment on a credit card account if a card issuer makes a material change in the address for receiving cardholder payments or procedures for handling cardholder payments, and such change causes a material delay in the crediting of a payment made during the 60-day period following the date on which the change took effect. As an initial matter, the Board notes that proposed § 226.10(f) would apply only to credit card accounts under an open-end (not home-secured) consumer credit plan, consistent with the approach the Board has taken with regard to other provisions of the Credit Card Act applicable to credit card accounts.

The Board proposes to adopt comment 10(f)-1 to clarify that "address for receiving payment" means a mailing address for receiving payment, such as a post office box, or the address of a branch or office at which payments on credit card accounts are accepted.

The Board is also proposing comment 10(f)-2 to provide guidance to creditors in determining whether a change or delay is material. Proposed comment 10(f)-2 would clarify that "material change" means any change in address for receiving payment or procedures for handling cardholder payments which causes a material delay in the crediting of a payment. Proposed comment 10(f)-2 would further clarify that a "material delay" means any delay in crediting a payment to a consumer's account which would result in a late payment and the imposition of a late fee or finance charge. The Board understands that it may be difficult for a card issuer to ascertain, for any given change in the address for receiving payment or procedures for handling payments, whether that change did in fact cause a material delay in the crediting of a consumer's payment.

Proposed comment 10(f)-3 would provide card issuers with a safe harbor, which the Board believes will give card issuers certainty in how to comply with the proposed rule. The Board requests comment on other reasonable methods that card issuers may use in complying with proposed § 226.10(f). In order to provide additional guidance to creditors in complying with this rule, proposed comment 10(f)-4 provides illustrative examples consistent with proposed § 226.10(f). For example, assume that a card issuer changes the mailing address for receiving payments by mail from one post office box number to another post office box number. The card issuer continues to use both post office box numbers for the collection of payments received by mail. The change in mailing address would not cause a material delay in crediting a payment because payments would be received and credited at both addresses. Therefore, a card issuer may impose a late fee or finance charge for a late payment on the account. Furthermore, for example, assume the same facts as above except the prior post office box number is no longer valid and mail sent to that address would be returned to sender. The change in mailing address is material and the change could cause a material delay in the crediting of a payment because a payment sent to the old address could be delayed past the due date. If, as a result, a consumer makes a late payment on the account during the 60-day period following the date on which the change took effect, a card issuer may not impose any late fee or finance charge for the late payment.

Proposed comment 10(f)-5 would clarify that when an account is not eligible for a grace period, imposing a finance charge due to a periodic interest rate does not constitute imposition of a finance charge for a late payment for the purposes of § 226.10(f). Notwithstanding the proposed rule, a card issuer may impose a finance charge due to a periodic interest rate in those circumstances.

Section 226.11 Treatment of Credit Balances; Account Termination

11(c) Timely Settlement of Estate Debts

New TILA Section 140A requires that the Board, in consultation with the Federal Trade Commission and each other agency referred to in § 108(a) of TILA, prescribe regulations requiring creditors, with respect to credit card accounts under an open-end consumer credit plan, to establish procedures to ensure that any administrator of an estate can resolve the outstanding credit balance of a deceased accountholder in a timely manner. 15 U.S.C. 1651. The Board proposes to implement TILA Section 140A in new

§ 226.11(c). In developing this proposal, the Board consulted with the Federal Trade Commission and the agencies referred to in § 108(a) of TILA. Proposed § 226.11(c)(1) requires creditors to adopt reasonable procedures designed to ensure that any administrator or executor of an estate of a deceased accountholder can determine the amount of and pay any balance on the decedent's credit card account in a timely manner. Proposed § 226.11(c) would apply only to credit card accounts under an open-end (not home-secured) consumer credit plan, consistent with the approach the Board has taken with regard to other provisions of the Credit Card Act applicable to credit card accounts.

Proposed § 226.11(c) generally follows the language in TILA Section 140A with some modification. For clarity, the Board proposes to interpret the term "resolve" for purposes of § 226.11(c) to mean determine the amount of and pay any balance on a deceased consumer's account. In addition, in order to ensure that the rule applies consistently to any personal representative of an estate who has the duty to settle any estate debt, the Board proposes to include "executor" in proposed § 226.11(c). The Board notes that the duties and responsibilities of administrators and executors are generally the same; however, it is the Board's understanding that administrators are distinct from executors in the manner in which they are appointed. Specifically, an executor is designated by the decedent's will while an administrator is typically appointed by a court in accordance with state law. The Board believes that TILA Section 140A is intended to apply to any deceased accountholder's estate, regardless of whether an administrator or executor is responsible for the estate.

In addition, the Board is proposing to require creditors to adopt "reasonable procedures designed to ensure" that administrators or executors can determine the amount of and pay any balance in a timely manner. The Board recognizes that some creditors may already have established procedures for the resolution of a deceased accountholder's balance. Thus, a "reasonable procedures" standard would permit creditors to retain, to the extent appropriate, procedures which may already be in place, in complying with proposed § 226.11(c), as well as applicable state and federal laws governing probate. Proposed comment 11(c)-1 provides examples of reasonable procedures consistent with proposed § 226.11(c).

In addition to the general rule, the Board is proposing § 226.11(c)(2)(i), which would prohibit creditors from imposing fees and charges on a deceased consumer's account upon receiving a request for the amount of any balance from an administrator or executor of an estate. The intent of new TILA Section 140A is to ensure the timely settlement of a deceased accountholder's credit card balance. The Board understands that establishing and administering an estate may be a complex, time-consuming process, which is subject to various state law requirements and can involve a probate court. Furthermore, the Board understands that some administrators and executors currently may be unable to obtain the amount of a deceased accountholder's balance in a timely manner, which in turn, delays the settlement of estate debts. If balances cannot be obtained and settled in a timely manner, fees and other charges, such as a late fee or finance charge, may continue to accrue on the account balance. Under these circumstances, the Board believes that the estate and its assets may be disadvantaged if fees and charges continue to accrue on the account. Accordingly, proposed § 226.11(c)(2)(i) would prohibit a creditor from imposing fees and charges on the deceased consumer's account upon receiving a request for the amount of the balance on the account from an administrator or executor of an estate. The Board believes that this prohibition is necessary to provide certainty for all parties as to the balance amount and to ensure the timely settlement of estate debts. Proposed comment 11(c)-2 would clarify that a creditor may impose finance charges based on balances for days that precede the date on which the creditor receives a request pursuant to proposed § 226.11(c)(3). The Board solicits comment on whether a creditor should be permitted to resume the imposition of fees and charges if the administrator or executor of an estate has not paid the account balance within a specified period of time.

Proposed § 226.11(c)(2)(ii) would provide that a creditor may impose fees and charges on a deceased consumer's account if a joint accountholder remains on the account. For joint accounts, a joint accountholder remains liable for the account. In contrast, because an authorized user is not liable for the account, proposed § 226.11(c)(2)(ii) would not extend to such users. Accordingly, a creditor may not impose fees and charges on the account if only an authorized user remains on the account. Proposed comment 11(c)-3 would clarify that a creditor may impose fees and charges on a deceased consumer's account if a joint accountholder remains on the account. The proposed comment would further clarify that a creditor may not impose fees and charges on a deceased consumer's account if an authorized user remains on the account.

The Board is also proposing comment 11(c)-4 to clarify that a creditor may receive a request for the amount of the balance on the account in writing or by telephone call from the administrator or executor of an estate. If a request is made in writing, such as by mail, the request is received when the creditor receives the correspondence.

Under proposed § 226.11(c)(3)(i), a creditor would be required to disclose the amount of the balance on the account in a timely manner, upon request by the administrator or executor of the estate. The Board believes a timely statement reflecting the deceased accountholder's balance is necessary to assist administrators and executors with the settlement of estate debts. Proposed comment 11(c)-5 provides guidance to creditors in complying with § 226.11(c)(3). Creditors may provide the amount of the balance, if any, by a written statement or by telephone. Proposed comment 11(c)-5 also clarifies that proposed § 226.11(c)(3) would not preclude a creditor from providing the balance amount to appropriate persons, other than the administrator or executor of an estate. For example, the Board notes that the proposed rule would not preclude creditors, subject to applicable federal and state laws, from providing a spouse or family members who indicate that they will pay the decedent's debts from obtaining a balance amount for that purpose.

Proposed § 226.11(c)(3)(ii) provides creditors with a safe harbor for disclosing the balance amount in a timely manner, stating that it would be reasonable for a creditor to provide the balance on the account within 30 days of receiving a request by the administrator or executor of an estate. The Board believes that 30 days is reasonable to ensure that transactions and charges have been accounted for and calculated and to provide a written statement or confirmation. The Board seeks comment as to whether 30 days provides creditors with sufficient time to provide a statement of the balance on the deceased consumer's account.

Section 226.16 Advertising

16(f) Misleading Terms

See the supplementary information to § 226.5(a)(2)(iii) for a discussion of the Board's proposals regarding use of the term "fixed" in advertisements for open-end plans set forth in proposed § 226.16(f).

16(h) Deferred Interest or Similar Offers

In May 2009, the Board proposed to use its authority under TILA Section 143(3) to implement new advertising requirements related to deferred interest or similar offers for open-end (not home-secured) credit plans. 15 U.S.C. 1663(3). These requirements, which the Board proposed to implement in a new § 226.16(h), were similar to those originally proposed by the Board in May 2009. See 73 FR 28866, 28884-28886 The Board continues to believe that these requirements would better inform consumers of the terms of deferred interest or similar offers and that these advertising requirements will complement the proposed periodic statement disclosures for such programs that are discussed in the supplementary information to § 226.7(b). Therefore, the Board is republishing these same requirements for additional comment in this **Federal Register** notice.

Specifically, these disclosure requirements would apply to advertisements that use terms such as "no interest," "no payments," "deferred interest," "same as cash," or similar terms in describing these offers.[17] Proposed § 226.16(h)(1) would limit these requirements to advertisements of open-end (not home-secured) credit, and proposed § 226.16(h)(2) would define terms applicable to the section. 74 FR 20793-20794.

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[17] For ease of reference, the supplementary information to proposed § 226.16(h) refers generically to these terms as "deferred interest triggering terms."

Proposed § 226.16(h)(3) would require that the deferred interest period be disclosed in immediate proximity to each deferred interest triggering term. Also, under proposed § 226.16(h)(3), for advertisements stating "no interest" or a similar term, the fact that the balance must be paid in full by the end of the deferred interest period also would need to be disclosed in immediate proximity to that term. 74 FR 20794. Proposed § 226.16(h)(4) also would require that certain additional information about the terms of the deferred interest or similar offer be disclosed in close proximity to the first statement of a deferred interest triggering term. 74 FR 20794. To facilitate compliance with this provision, the Board proposed model language in Sample G-22 in Appendix G. 74 FR 20797. Sample G-22 from the May 2009 Regulation Z Proposed Clarifications has been renumbered as Sample G-24 in this proposal. Proposed § 226.16(h)(4) would require that advertisements of deferred interest or similar offers use language similar to Sample G-24. Finally, under proposed § 226.16(h)(5), most of these requirements would not apply to envelopes or other enclosures in which an application or solicitation is mailed, or banner advertisements or pop-up advertisements linked to an electronic application or solicitation, bearing the triggering terms. 74 FR 20794.

In addition, the Board proposed new commentary to provide further guidance on the requirements under proposed § 226.16(h), and also proposed to amend comments 16-1 and 16-2 to clarify the clear and conspicuous requirements for these disclosures. 74 FR 20800. Proposed comment 16(h)-1 provided further clarification on what types of offers were included as deferred interest or similar offers, while proposed comment 16(h)-2 further clarified the meaning of "deferred or waived interest period."[18] 74 FR 20800. Similar to guidance adopted in the January 2009 Regulation Z Rule for advertisements of promotional rates under § 226.16(g), the Board proposed comment 16(h)-3 to further clarify the meaning of "immediate proximity," comment 16(h)-4 to further clarify the meaning of "prominent location closely proximate," and comment 16(h)-5 to further clarify the meaning of "first listing." 74 FR 20800. The Board also proposed comment 16(h)-6 to clarify that the information required under proposed § 226.16(h)(4) need not be segregated from other information the advertisement discloses about the deferred interest or similar offer. 74 FR 20800. Finally, proposed comment 16(h)-7 provided examples of phrases that could be used to comply with proposed 226.16(h)(3). 74 FR 20801.

Section 226.51 Ability to Pay

51(a) General Ability to Pay

Section 109 of the Credit Card Act adds new TILA Section 150 prohibiting a card issuer from opening a credit card account for a consumer, or increasing the credit limit applicable to a credit card account, unless the card issuer considers the consumer's ability to make the required payments under the terms of such account. 15 U.S.C. 1665e. The Board proposes to implement TILA Section 150 in § 226.51(a).

Proposed § 226.51(a)(1) generally follows the language provided in TILA Section 150 with two modifications. First, because the minimum payment is the amount that a consumer is required to pay each billing cycle under the terms of the contract with the

[18] While the May 2009 Regulation Z Proposed Clarifications referred to a "deferred or waived interest" offer, this proposal refers to such promotional programs more generally as deferred interest or similar offers.

card issuer, the Board proposes to interpret the term "required payments" to mean the required minimum periodic payment.

Second, the Board believes an evaluation of a consumer's current ability to pay must include a review of the consumer's income or assets as well as the consumer's current obligations. Therefore, proposed § 226.51(a)(1) would provide that the card issuer's consideration of the ability of the consumer to make the required minimum periodic payments must be based on the consumer's income or assets and the consumer's current obligations. Proposed § 226.51(a)(1) would also require that card issuers have reasonable policies and procedures in place to consider this information. A card issuer has not complied with this provision if, for example, a card issuer does not review any information about a consumer's income, assets, or current obligations, or issues a credit card to a consumer who does not have any income or assets. In addition, the Board believes that other factors may be useful for card issuers to evaluate a consumer's ability to pay. Accordingly, proposed comment 51(a)-1 would clarify that card issuers may also consider credit reports or credit scores, and any other factors that are consistent with the Board's Regulation B (12 CFR Part 202).

Because the minimum payments a consumer is required to pay each billing cycle may vary depending on the amount of the balance as well as the finance and other charges a consumer incurs during the billing cycle, card issuers would be required to estimate the minimum payments a consumer might be obligated to pay before the account is opened or the credit line is increased. Proposed § 226.51(a)(2)(i) would require card issuers to use a reasonable method for estimating the required minimum periodic payments, and proposed § 226.51(a)(2)(ii) would provide a safe harbor that card issuers could use to comply with this requirement. Specifically, the safe harbor requires the card issuer to assume utilization of the full credit line that the issuer is considering offering to the consumer from the first day of the billing cycle. The safe harbor also requires the issuer to use a minimum payment formula employed by the issuer for the product the issuer is considering offering to the consumer or, in the case of an existing account, the minimum payment formula that currently applies to that account. For example, in evaluating an application to open a new account, if the minimum payment formula used by the card issuer for the product is 2% of the outstanding balance, the estimated required minimum periodic payment for a $10,000 credit line would be $200 under the safe harbor.

However, if the applicable minimum payment formula includes interest charges, the safe harbor requires the card issuer to estimate those charges using an interest rate that the issuer is considering offering to the consumer for purchases or, in the case of an existing account, the interest rate that currently applies to purchases. For example, if the minimum payment formula that applies to an existing consumer's account is 3% plus interest and fees, the current purchase rate for the account is 10%, and the card issuer is considering increasing the consumer's credit line to $10,000, the estimated required minimum periodic payment would be approximately $380 under the safe harbor. Finally, if the applicable minimum payment formula includes fees, the card issuer may assume that no fees have been charged to the account.

In developing the proposed safe harbor, the Board considered a number of different approaches. The Board recognizes that consumers generally do not use the full credit line, and consequently, the Board's proposed safe harbor approach could have the effect of overstating the consumer's likely required payments. The Board, however, believes that since card issuers are qualifying consumers for a certain credit line, of which consumers presumably have full use, card issuers should be expected to underwrite based on required payments on the full amount under the safe harbor. Furthermore, although estimating a consumer's required minimum periodic payments may be more accurate with the addition of some estimated fees when using a minimum payment formula that includes the interest and fees, the Board believes that estimating the amount of fees that a typical consumer might incur could be speculative. As a result the Board's proposed safe harbor does not require issuers to estimate fees. The Board seeks comment on other reasonable methods that card issuers may use in estimating minimum payments.

Proposed comment 51(a)-2 would clarify that in considering a consumer's ability to pay, a card issuer must base the consideration on facts and circumstances known to the card issuer at the time the consumer applies to open the credit card account or when the card issuer considers increasing the credit line on an existing account. This guidance is similar to comment 34(a)(4)-5 addressing a creditor's requirement to consider a consumer's repayment ability for certain closed-end mortgage loans based on facts and circumstances known to the creditor at loan consummation. Furthermore, since credit line increases can occur at the request of a consumer or through a unilateral decision by the card issuer, proposed comment 51(a)-3 would clarify that § 226.51(a) applies in both situations.

Proposed comment 51(a)-4 would provide examples of assets and income the card issuer may consider in evaluating a consumer's ability to pay. The comment would provide similar guidance to comment 34(a)(4)-6 regarding the requirement for creditors to consider a consumer's repayment ability with respect to certain closed-end mortgage loans. The Board also proposes comment 51(a)-5 to clarify that in considering a consumer's current obligations, a card issuer may rely on information provided by the consumer or in a consumer's credit report.

Finally, for several reasons, the proposal does not require that card issuers verify information before the account is opened or the credit line is increased. First, TILA Section 150 does not require verification of a consumer's ability to make required payments. Second, verification can be burdensome for both consumers and card issuers, especially when accounts are opened at point of sale or by telephone. For example, because consumers generally do not have documentation readily available to verify their income, assets, or obligations at point of sale, a verification requirement would restrict consumers' ability to open a new credit card account at point of sale. As a result, the Board believes that card issuers need flexibility to determine instances when they need to verify information. Furthermore, since these accounts are generally unsecured, the Board believes that card issuers have reasons to verify the information when either the information supplied by the applicant is inconsistent with the data the card issuers already have or are able to gather on the consumer or when the risk in the amount of the credit line warrants such verification. While the Board has required creditors to verify information before credit is extended for certain mortgage loans, the Board's decision with respect to such loans was based on evidence that borrower income was inflated for these types of mortgage loans and that lending decisions based on overstated incomes contributed to the recent substantial increase in mortgage delinquencies. In contrast, the Board does not have evidence that this is the case in the credit card market. As a result, the Board believes a verification requirement before a credit card account is opened or credit line increased would not be necessary and could burden consumers. The Board, however, seeks comment on whether there is evidence that warrants a requirement to verify information before a credit card account is opened or a credit line is increased.

51(b) Rules Affecting Young Consumers

Currently, card issuers may grant credit to young consumers on the assumption that a parent or guardian of the consumer will pay the debt, even if the issuer does not obtain the express agreement of such parent or guardian to assume liability. Sections 301 and 303 of the Credit Card Act are meant to address this situation. Under new Section 127(c)(8)(A) of TILA, as adopted by Section 301 of the Credit Card Act, no credit card may be issued to, or open-end consumer credit plan established by, or on behalf of a consumer, who has not attained the age of 21 unless the consumer has submitted a written application to the card issuer that meets certain requirements. 15 U.S.C. 1637(c)(8)(A). New TILA Section 127(c)(8)(B) further provides that an application to open a credit card account by a consumer who has not attained the age of 21 as of the date of submission of the application shall require either: (1) the signature of a cosigner who has attained the age of 21 having a means to repay debts incurred by the consumer in connection with the account, indicating joint liability for debts incurred by the consumer in connection with the account before the consumer has attained the age of 21; or (2) the submission by the consumer of financial information, including through an application, indicating an independent means of repaying any obligation arising from the proposed extension of credit in connection with the account. 15 U.S.C. 1637(c)(8)(B).

Section 303 of the Credit Card Act adds new TILA Section 127(p). 15 U.S.C. 1637(p). TILA Section 127(p) states that no increase may be made in the amount of credit authorized to be extended under a credit card account for which an individual has assumed joint liability for debts incurred by the consumer in connection with the account before the consumer attains the age of 21, unless that individual approves in writing, and assumes joint liability for, such increase.

The Board proposes to implement these provisions in proposed § 226.51(b) and associated commentary. Proposed § 226.51(b)(1) would provide that a card issuer may not open a credit card account under an open-end (not home-secured) consumer credit plan for a consumer less than 21 years old, unless the consumer submits a written application and provides either a signed agreement of a cosigner, guarantor, or joint applicant pursuant to § 226.51(b)(1)(i) or financial information consistent with § 226.51(b)(1)(ii), as further discussed below. The language in § 226.51(b)(1) has been modified from the statutory language in TILA Section 127(c)(8)(A) for consistency with § 226.51(a) and to clarify that the provision applies only to credit card accounts and only in connection with the opening of the account. Furthermore, the language has been modified to improve readability.

Although the text of TILA Section 127(c)(8)(A) references open-end consumer credit plans other than credit cards, the Board believes that the intent of the provision, read as a whole, is to apply only to credit card accounts. While the provision references other open-end consumer credit plans, the requirements under the provision apply only to "card issuers." Based on the fact that the requirements of the provision are limited to card issuers as well as language in other related sections of the Credit Card Act and the location of the provision in TILA, the Board believes that the restrictions in TILA Section 127(c)(8)(A) are meant to apply only to credit card accounts.

First, TILA Section 127(c)(8)(B), which discusses the requirements for an application submitted by a consumer who has not attained the age of 21, refers solely to an application to open a credit card account. Second, TILA Section 127(p), which restricts credit line increases for accounts in which an individual assumes joint liability for debts incurred by the consumer in connection with the account before the consumer attains the age of 21, refers only to a credit card account. Third, these provisions have been placed in TILA Section 127(c), a section that deals exclusively with credit card accounts. Therefore, the Board believes it is appropriate to apply proposed § 226.51(b)(1) only to credit card accounts.

Furthermore, proposed § 226.51(b)(1) refers to the opening of a credit card account, which differs from the statute's reference to the issuance of a credit card. The "issuance" of a credit card can refer to a card sent to the consumer as a replacement card or upon renewal of the card. See § 226.12(a). As a result, the Board believes that limiting the scope of § 226.51(b) to the opening of a credit card account is appropriate. Otherwise, the provision could be construed to require card issuers to evaluate a cardholder's ability or obtain the signature of a cosigner even when a card is being sent to an existing cardholder to replace an expired card. The Board notes that the renewal of an existing account or change in the terms of an existing account generally does not constitute the opening of an account for purposes of Regulation Z.

The Board proposes to implement the specific application requirements detailed in TILA Section 127(c)(8)(B) in § 226.51(b)(1)(i) and (ii). Proposed § 226.51(b)(1)(i) and (ii) generally follow the language in TILA Section 127(c)(8)(B) with some changes. While most of these modifications are minor and are meant to improve the readability of the regulation without any substantive change in meaning, the Board also proposes to clarify the meaning of cosigner and joint liability.

The terms cosigner and joint liability can have several meanings. For example, a cosigner can refer to a guarantor who has no credit privileges on the account but is secondarily liable for a consumer's debt if the consumer defaults. A cosigner can also mean a joint accountholder who shares credit privileges with the consumer on the account and is jointly liable on the debt incurred by either the consumer or the joint accountholder. The Board believes it is appropriate to modify the language used in the regulation from the statutory language to make clear that all types of cosigners and joint liability arrangements would be included. Accordingly, proposed § 226.51(b)(1)(i) states that a consumer who is less than 21 years old can provide the signed agreement of a cosigner, guarantor, or joint applicant who is at least 21 years old to be either secondarily liable for any debt on the account incurred by the consumer before the consumer has attained the age of 21 in the event the consumer defaults on the account or jointly liable with the consumer for any debt on the account incurred by either party.

Furthermore, to maintain consistency, the Board proposes to interpret the phrase "means to repay" or "means of repaying" as equivalent to evaluating a consumer's ability to make the required payments under TILA Section 150, which the Board proposes to implement in § 226.51(a), as discussed above. Therefore, § 226.51(b)(1)(i) and (ii) both reference § 226.51(a) in discussing the ability of a cosigner, guarantor, or joint applicant to make the minimum payments on the consumer's debts and the consumer's independent ability to make the minimum payments on any obligations arising under the account.

Proposed § 226.51(b)(2) generally follows the language in TILA Section 127(p), though the Board has modified some of the wording used in the statute. These changes are meant to improve readability without any substantive change in meaning. For example, TILA Section 127(p) states that a parent, guardian, or spouse must approve the credit line increase in writing; however, the statute also concedes that an individual who is not a parent, guardian, or spouse may have assumed liability for debts incurred by the consumer. In those cases, that individual should be the one to approve the credit line increase, and assume liability for that increased amount. Therefore, proposed § 226.51(b)(2) eliminates the reference to parent, guardian, or spouse to apply the provision more generally to cosigners, guarantors, or joint accountholders.

The Board also proposes several comments to provide guidance to card issuers in complying with § 226.51(b). Proposed comment 51(b)-1 would clarify that § 226.51(b)(1) and (b)(2) apply only to a consumer who has not attained the age of 21 as of the date of submission of the application under § 226.51(b)(1) or the date the credit line increase is requested by the consumer under § 226.51(b)(2). If no request has been made (for example, for unilateral credit line increases by the card issuer), the provision would apply only to a consumer who has not attained the age of 21 as of the date the credit line increase is considered by the card issuer.

Proposed comment 51(b)-2 would address the ability of a card issuer to require a cosigner, guarantor, or joint accountholder to assume liability for debts incurred after the consumer has attained the age of 21. While § 226.51(b)(1)(i) and (b)(2) require, at a minimum, that a cosigner, guarantor, or joint accountholder assume liability for any debt on the account incurred by the consumer before the consumer has attained the age of 21, proposed comment 51(b)-2 would clarify that § 226.51(b)(1)(i) and (b)(2) do not restrict a card issuer from extending this liability to debt incurred by the consumer after the consumer has attained the age of 21, at the card issuer's option, consistent with any agreement made between the parties.

The Board proposes comment 51(b)-3 to clarify that § 226.51(b)(1) and (b)(2) do not apply to a consumer under the age of 21 who is being added to another person's account as an authorized user and has no liability for debts incurred on the account. The Board believes that the protections under TILA Sections 127(c)(8) and 127(p) would not be necessary if the consumer under the age of 21 is not assuming any liability, and would therefore not be legally obligated to make any payments on the account.

Proposed comment 51(b)-4 would provide card issuers with guidance concerning electronic applications and explain how the Electronic Signatures in Global and National Commerce Act (E-Sign Act) (15 U.S.C. 7001 et seq.) would govern the submission of such an application. TILA Section 127(c)(8) requires a consumer who has not attained the age of 21 to submit a written application. In addition, under TILA Section 127(p), a cosigner, guarantor, or joint accountholder must approve a credit line increase in writing. However, in accordance with the purposes of the E-Sign Act, contracts and other records cannot be denied legal effect, validity or enforceability solely because they are in electronic form. See 15 U.S.C. 7001(a). Therefore, the Board believes that, consistent with the purposes of the E-Sign Act, applications submitted under TILA Section 127(c)(8) and approvals under TILA Section 127(p), which must be provided in writing, may also be submitted electronically. Moreover, the E-Sign Act requires that before any disclosure that is required to be in writing is provided to a consumer electronically, the consumer must affirmatively consent to the provision of the information electronically, among other things. Since the submission of an application or approval by a consumer, cosigner, guarantor, or joint accountholder is not a disclosure to a consumer, the consumer consent and other requirements necessary to provide consumer disclosures electronically pursuant to the E-Sign Act would not apply. Furthermore, § 226.5(a)(1)(iii), which was adopted in the January 2009 Regulation Z Rule, provides that an application may be provided to a consumer in electronic form without regard to the consumer consent or other provisions of the E-Sign Act in the circumstances set forth in § 226.5a.

Proposed comment 51(b)(1)-1 explains that when evaluating an application to open a credit card account or credit line increase for a consumer under the age of 21, creditors must comply with applicable rules in Regulation B (12 CFR Part 202). Given that age is generally a prohibited basis for any creditor to take into account in any system evaluating the creditworthiness of applicants under Regulation B, the Board believes that Regulation B prohibits card issuers from refusing to consider the application of a consumer solely because the applicant has not attained the age of 21 (assuming the consumer has the legal ability to enter into a contract). Furthermore, because TILA Section 127(c)(8) permits card issuers to open a credit card account for a consumer who has not attained the age of 21 if either of the conditions under TILA Section 127(c)(8)(B) are met, the Board believes that a card issuer may choose to evaluate an application of a consumer who is less than 21 years old solely on the basis of the information provided under § 226.51(b)(1)(ii). Therefore, the Board believes, a card issuer is not required to accept an application from a consumer less than 21 years old with the signature of a cosigner, guarantor, or joint applicant pursuant to § 226.51(b)(1)(i), unless refusing such applications would violate Regulation B. For example, if the card issuer permits other applicants of non-business credit card accounts who have attained the age of 21 to provide the signature of a cosigner, guarantor, or joint applicant, the card issuer must provide this option to applicants of non-business credit card accounts who have not attained the age of 21 (assuming the consumer has the legal ability to enter into a contract).

Proposed comment 51(b)(2)-1 would provide that the requirement under § 226.51(b)(2) that a cosigner, guarantor, or joint accountholder for a credit card account opened pursuant to § 226.51(b)(1)(ii) must agree in writing to assume liability for a credit line increase does not apply if the cosigner, guarantor or joint accountholder who is at least 21 years old requests the increase. Because the party that must approve the increase is the one that is requesting the increase in this situation, the Board believes that § 226.51(b)(2) would be redundant.

Section 226.52 Limitations on Fees

52(a) Limitations During First Year After Account Opening

New TILA Section 127(n)(1) applies "[i]f the terms of a credit card account under an open end consumer credit plan require the payment of any fees (other than any late fee, over-the-limit fee, or fee for a payment returned for insufficient funds) by the consumer in the first year during which the account is opened in an aggregate amount in excess of 25 percent of the total amount of credit authorized under the account when the account is opened." 15 U.S.C. 1637(n)(1). If the 25 percent threshold is met, then "no payment of any fees (other than any late fee, over-the-limit fee, or fee for a payment returned for insufficient funds) may be made from the credit made available under the terms of the account." However, new TILA Section 127(n)(2) provides that Section 127(n) may not be construed as authorizing any imposition or payment of advance fees prohibited by any other provision of law. The Board is proposing to implement new TILA Section 127(n) in § 226.52(a).[19]

Subprime credit cards often charge substantial fees at account opening and during the first year after the account is opened. For example, these cards may impose multiple one-time fees when the consumer opens the account (such as an application fee, a program fee, and an annual fee) as well as a monthly maintenance fee, fees for using the account for certain types of transactions, and fees for increasing the credit limit. The account-opening fees are often billed to the consumer on the first periodic statement, substantially reducing from the outset the amount of credit that the consumer has available to make purchases or other transactions on the account. For example, some subprime credit card issuers assess $250 in fees at account opening on accounts with credit limits of $300, leaving the consumer with only $50 of available credit with which to make purchases or other transactions. In addition, the consumer may pay interest on the fees until they are paid in full.

Because of concerns that some consumers were not aware of how fees would affect their ability to use the card for its intended purpose of engaging in transactions, the Board's January 2009 Regulation Z Rule enhanced the disclosure requirements for

[19] In a subsequent rulemaking, the Board intends to implement new TILA Section 149 in § 226.52(b). New TILA Section 149, which is effective August 22, 2010, requires that credit card penalty fees and charges be reasonable and proportional to the consumer's violation of the cardholder agreement.

these types of fees and clarified the circumstances under which a consumer who has been notified of the fees in the account-opening disclosures (but has not yet used the account or paid a fee) may reject the plan and not be obligated to pay the fees. See § 226.5(b)(1)(iv), 74 FR 5402; § 226.5a(b)(14), 74 FR 5404; § 226.6(b)(1)(xiii), 74 FR 5408. In addition, because the Board and the other Agencies were concerned that disclosure alone was insufficient to protect consumers from unfair practices regarding high-fee subprime credit cards, the January 2009 FTC Act Rule prohibited institutions from charging certain types of fees during the first year after account opening that, in the aggregate, constituted the majority of the credit limit. In addition, these fees were limited to 25 percent of the initial credit limit in the first billing cycle with any additional amount (up to 50 percent) spread equally over the next five billing cycles. Finally, institutions were prohibited from circumventing these restrictions by providing the consumer with a separate credit account for the payment of additional fees. See 12 CFR 227.26, 74 FR 5561, 5566; see also 74 FR 5538-5543.[20]

52(a)(1) General Rule

As noted above, new TILA Section 127(n)(1) applies when "the terms of a credit card account . . . require the payment of any fees (other than any late fee, over-the-limit fee, or fee for a payment returned for insufficient funds) by the consumer in the first year during which the account is opened in an aggregate amount in excess of 25 percent of the total amount of credit authorized under the account when the account is opened." Congress's use of "require" could be construed to mean that Section 127(n)(1) applies

[20] Although the Board, OTS, and NCUA adopted substantively identical rules under the FTC Act, each agency placed its rules in its respective part of Title 12 of the Code of Federal Regulations. Specifically, the Board placed its rules in part 227, the OTS in part 535, and the NCUA in part 706. For simplicity, this supplementary information cites to the Board's rules and official staff commentary.

only to fees that are unconditional requirements of the account—in other words, fees that all consumers are required to pay regardless of how the account is used (such as account-opening fees, annual fees, and monthly maintenance fees). However, such a narrow reading would be inconsistent with the words "any fees," which indicate that Congress intended the provision to apply to a broader range of fees. Furthermore, categorically excluding fees that are conditional (in other words, fees that consumers are only required to pay in certain circumstances) would enable card issuers to circumvent the 25 percent limit by, for example, requiring consumers to pay fees in order to receive a particular credit limit or to use the account for purchases or other transactions. Finally, new TILA Section 127(n)(1) specifically excludes three fees that are conditional (late payment fees, over-the-limit fees, and fees for a payment returned for insufficient funds), which suggests that Congress otherwise intended Section 127(n)(1) to apply to fees that a consumer is required to pay only in certain circumstances (such as fees for other violations of the account terms or fees for using the account for transactions).

New TILA Section 127(n)(1) further provides that, if the 25 percent threshold is met, "no payment of any fees (other than any late fee, over-the-limit fee, or fee for a payment returned for insufficient funds) may be made from the credit made available under the terms of the account." Although this language could be read to require card issuers to determine at account opening the total amount of fees that will be charged during the first year, the Board does not believe this was Congress's intent because the total amount of fees charged during the first year will depend on how the account is used. For example, most card issuers currently require consumers who use a credit card account for cash advances, balance transfers, or foreign transactions to pay a fee that is equal to a percentage of the transaction. Thus, the total amount of fees charged during the first year will depend on, among other things, the number and amount of cash advances, balance transfers, or foreign transactions. Although card issuers could address this uncertainty by ceasing to charge such fees, card issuers that did so would also likely reduce consumers' ability to use their credit cards for these types of transactions, which could be detrimental for some consumers. Accordingly, the Board believes Section 127(n)(1) should be interpreted to limit the fees charged to a credit card account during the first year to 25 percent of the initial credit limit and to prevent card issuers from collecting additional fees by other means (such as directly from the consumer or by providing a separate credit account). In order to effectuate this purpose and to facilitate compliance, the Board proposes to use its authority under TILA Section 105(a) to implement new TILA Section 127(n) as set forth below.

Proposed § 226.52(a)(1)(i) provides that, if a card issuer charges any fees to a credit card account under an open-end (not home-secured) consumer credit plan during the first year after account opening, those fees must not in total constitute more than 25 percent of the credit limit in effect when the account is opened. Proposed comment 52(a)(1)(i)-1 provides an illustrative example of the application of the rule.

Proposed comment 52(a)(1)(i)-2 clarifies that a card issuer that charges a fee to a credit card account that exceeds the 25 percent limit complies with § 226.52(a)(1)(i) 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 at the end of the billing cycle during which the fee was charged. Thus, if a card issuer's systems automatically assess a fee based on certain account activity (such as automatically assessing a cash advance fee when the account is used for a cash advance) and, as a result, the total amount of fees subject to § 226.52(a) that have been charged to the account during the first year exceeds the 25 percent limit, the card issuer can comply with § 226.52(a)(1)(i) by removing the fee and any interest charged on that fee at the end of the billing cycle.

Proposed comment 52(a)(1)(i)-3 clarifies that, because the limitation in § 226.52(a)(1)(i) is based on the credit limit in effect when the account is opened, a subsequent increase in the credit limit during the first year does not permit the card issuer to charge to the account additional fees that would otherwise be prohibited (such as a fee for increasing the credit limit). An illustrative example is provided.

Proposed § 226.52(a)(1)(ii) would prevent card issuers from circumventing proposed § 226.52(a)(1)(i) by providing that a card issuer that charges fees to the account during the first year after account opening must not require the consumer to pay any fees in excess of the 25 percent limit with respect to the account during the first year. Proposed comment 52(a)(1)(ii)-1 clarifies that § 226.52(a)(1)(ii) prohibits a card issuer that charges to a credit card account fees during the first year that total 25 percent of the initial credit limit from requiring the consumer to pay any additional fees through other means during the first year (such as through a payment from the consumer to the card issuer or from another credit account provided by the card issuer). An illustrative example is provided.

52(a)(2) Fees Not Subject to Limitations

Proposed § 226.52(a)(2)(i) implements the exception in new TILA Section 127(n)(1) for late payment fees, over-the-limit fees, and fees for payments returned for insufficient funds. However, pursuant to the Board's authority under TILA Section 105(a), proposed § 226.52(a)(2)(i) applies to all fees for returned payments because a payment may be returned for reasons other than insufficient funds (such as because the account on which the payment is drawn has been closed or because the consumer has instructed the institution holding that account not to honor the payment).

As discussed above, new TILA Section 127(n)(1) applies to fees that a consumer is required to pay with respect to a credit card account. Accordingly, proposed § 226.52(a)(2)(ii) would create an exception to § 226.52(a) for fees that a consumer is not required to pay with respect to the account. The proposed commentary to § 226.52(a) illustrates the distinction between fees the consumer is required to pay and those the consumer is not required to pay. Proposed comment 52(a)(2)-1 clarifies that, except as provided in § 226.52(a)(2), the limitations in § 226.52(a)(1) apply to any fees that a card issuer will or may require the consumer to pay with respect to a credit card account during the first year after account opening. The comment lists several types of fees as examples of fees covered by § 226.52(a). First, fees that the consumer is required to pay for the issuance or availability of credit described in § 226.5a(b)(2), including any fee based on account activity or inactivity and any fee that a consumer is required to pay in order to receive a particular credit limit. Second, fees for insurance described in § 226.4(b)(7) or debt cancellation or debt suspension coverage described in § 226.4(b)(10) written in connection with a credit transaction, if the insurance or debt cancellation or debt suspension coverage is required by the terms of the account. Third, fees that the consumer is required to pay in order to engage in transactions using the account (such as cash advance fees, balance transfer fees, foreign transaction fees, and other fees for using the account for purchases). And fourth, fees that the consumer is required to pay for violating the terms of the account (except to the extent specifically excluded by § 226.52(a)(2)(i)).

Proposed comment 52(a)(2)-2 provides as examples of fees that generally fall within the exception in § 226.52(a)(2)(ii) fees for making an expedited payment (to the extent permitted by § 226.10(e)), fees for optional services (such as travel insurance), fees for reissuing a lost or stolen card, and statement reproduction fees.

Finally, proposed comment 52(a)(2)-3 clarifies that a security deposit that is charged to a credit card account is a fee for purposes of § 226.52(a). However, the comment also clarifies that § 226.52(a) would not prohibit a creditor from providing a secured credit card that requires a consumer to provide a cash collateral deposit that is equal to the credit line for the account.

52(a)(3) Rule of Construction

New TILA Section 127(n)(2) states that "[n]o provision of this subsection may be construed as authorizing any imposition or payment of advance fees otherwise prohibited by any provision of law." 15 U.S.C. 1637(n)(2). The Board proposes to implement this provision in § 226.52(a)(3). As an example of a provision of law limiting the payment of advance fees, proposed comment 52(a)(3)-1 cites 16 CFR § 310.4(a)(4), which prohibits any telemarketer or seller from "[r]equesting or receiving payment of any fee or consideration in advance of obtaining a loan or other extension of credit when the seller or telemarketer has guaranteed or represented a high likelihood of success in obtaining or arranging a loan or other extension of credit for a person."

<u>Section 226.53 Allocation of Payments</u>

As amended by the Credit Card Act, TILA Section 164(b)(1) provides that, "[u]pon receipt of a payment from a cardholder, the card issuer shall apply amounts in excess of the minimum payment amount first to the card balance bearing the highest rate of interest, and then to each successive balance bearing the next highest rate of interest, until the payment is exhausted." 15 U.S.C. 1666c(b)(1). However, amended Section 164(b)(2) provides the following exception to this general rule: "A creditor shall allocate the entire amount paid by the consumer in excess of the minimum payment amount to a balance on which interest is deferred during the last 2 billing cycles immediately preceding expiration of the period during which interest is deferred." As discussed in detail below, the Board proposes to implement amended TILA Section 164(b) in a new § 226.53.

As an initial matter, however, the Board proposes to interpret amended TILA Section 164(b) to apply to credit card accounts under an open-end (not home-secured) consumer credit plan rather than to all open-end consumer credit plans. Although the requirements in amended TILA Section 164(a) regarding the prompt crediting of payments apply to "[p]ayments received from [a consumer] under an open end consumer credit plan," the general payment allocation rule in amended TILA Section 164(b)(1) applies "[u]pon receipt of a payment from a <u>cardholder</u>." Furthermore, the exception for deferred interest plans in amended Section 164(b)(1) requires "the <u>card</u> <u>issuer</u> [to] apply amounts in excess of the minimum payment amount first to the <u>card</u> <u>balance</u> bearing the highest rate of interest. . . ." Based on this language, it appears that Congress intended to apply the payment allocation requirements in amended Section 164(b) only to credit card accounts. This is consistent with the approach taken by the Board and the other Agencies in the January 2009 FTC Act Rule. See 74 FR 5560. Furthermore, the Board is not aware of concerns regarding payment allocation with respect to other open-end credit products, likely because such products generally do not apply different annual percentage rates to different balances.

53(a) General Rule

The Board proposes to implement amended TILA Section 164(b)(1) in § 226.53(a), which would state that, except as provided in § 226.53(b), when a consumer makes a payment in excess of the required minimum periodic payment for a credit card account under an open-end (not home-secured) consumer credit plan, the card issuer must allocate the excess amount first to the balance with the highest annual percentage rate and any remaining portion to the other balances in descending order based on the applicable annual percentage rate. The Board and the other Agencies adopted a similar provision in the January 2009 FTC Act Rule in response to concerns that card issuers were applying consumers' payments in a manner that inappropriately maximized interest charges on credit card accounts with balances at different annual percentage rates. See 12 CFR 227.23, 74 FR 5512-5520, 5560. Specifically, most card issuers currently allocate consumers' payments first to the balance with the lowest annual percentage rate, resulting in the accrual of interest at higher rates on other balances (unless all balances are paid in full). Because many card issuers offer different rates for purchases, cash advances, and balance transfers, this practice can result in consumers who do not pay the balance in full each month incurring higher finance charges than they would under any other allocation method.[21]

The Board is also proposing comment 53-1, which would clarify that proposed § 226.53 does not limit or otherwise address the card issuer's ability to determine, consistent with applicable law and regulatory guidance, the amount of the required minimum periodic payment or how that payment is allocated. It would further clarify that a card issuer may, but is not required to, allocate the required minimum periodic payment consistent with the requirements in proposed § 226.53 to the extent consistent with other applicable law or regulatory guidance.

Comment 53-2 would clarify that proposed § 226.53 permits a card issuer to allocate an excess payment based on the annual percentage rates and balances on the date the preceding billing cycle ends, on the date the payment is credited to the account, or on any day in between those two dates. Because the rates and balances on an account affect how excess payments will be applied, this comment is intended to provide flexibility regarding the point in time at which payment allocation determinations required by proposed § 226.53 can be made. For example, it is possible that, in certain circumstances, the annual percentage rates may have changed between the close of a billing cycle and the date on which payment for that billing cycle is received.

Comment 53-3 addresses the relationship between the dispute rights in § 226.12(c) and the payment allocation requirements in proposed § 226.53. This

[21] For example, assume that a credit card account charges annual percentage rates of 12% on purchases and 20% on cash advances. Assume also that, in the same billing cycle, the consumer uses the account for purchases totaling $3,000 and cash advances totaling $300. If the consumer makes an $800 payment, most card issuers would apply the entire excess payment to the purchase balance and the consumer would incur interest charges on the more costly cash advance balance. Under these circumstances, the consumer is effectively prevented from paying off the balance with the higher interest rate (cash advances) unless the consumer pays the total balance (purchases and cash advances) in full.

comment would clarify that, when a consumer has asserted a claim or defense against the card issuer pursuant to § 226.12(c), the card issuer must apply the consumer's payment in a manner that avoids or minimizes any reduction in the amount of that claim or defense. See footnote 25 to current § 226.12(c) (redesignated in January 2009 Regulation Z Rule as comment 12(c)-4, 74 FR 5488).

Comment 53-4 addresses circumstances in which the same annual percentage rate applies to more than one balance on a credit card account but a different rate applies to at least one other balance on that account. For example, an account could have a $500 cash advance balance at 20%, a $1,000 purchase balance at 15%, and a $2,000 balance also at 15% that was previously at a 5% promotional rate. The comment would clarify that, in these circumstances, proposed § 226.53 generally does not require that any particular method be used when allocating among the balances with the same rate and that the card issuer may treat the balances with the same rate as a single balance or separate balances.[22]

However, this comment would further clarify that, when a balance on a credit card account is subject to a deferred interest or similar program that provides that a consumer will not be obligated to pay interest that accrues on the balance if the balance is paid in full prior to the expiration of a specified period of time, that balance must be treated as a balance with an annual percentage rate of zero for purposes of proposed § 226.53 during that period of time rather than a balance with the rate at which interest accrues (the accrual rate).[23] As an initial matter, treating the rate as zero is consistent

[22] An example of how excess payments could be applied in these circumstances is provided in proposed comment 53(a)-1.iv.

[23] For example, if an account has a $1,000 purchase balance and a $2,000 balance that is subject to a deferred interest program that expires on July 1 and a 15% annual percentage rate applies to both, the balances must be treated as balances with different rates for purposes of proposed § 226.53 until July 1. In addition, for purposes of allocating pursuant to proposed § 226.53, any amount paid by the consumer in

with the nature of deferred interest and similar programs insofar as the consumer will not be obligated to pay any accrued interest if the balance is paid in full prior to expiration. In addition, treating the rate on a balance subject to a deferred interest or similar program as zero until the program expires ensures that excess payments will generally be applied first to balances on which interest is being charged, which will generally result in lower interest charges if the consumer pays the balance in full prior to expiration. Although treating the rate on this type of balance as zero could prevent consumers who wish to pay off that balance in installments over the course of the program from doing so, the Board believes that this treatment produces the best overall outcome for consumers and is consistent with amended TILA Section 164(b)(2) (as discussed below).

Finally, proposed comment 53(a)-1 provides examples of allocating excess payments consistent with proposed § 226.53. The proposed commentary discussed above is similar to commentary adopted by the Board and the other Agencies in the January 2009 FTC Act Rule as well as to amendments to that commentary proposed in May 2009. See 74 FR 5561-5562; 74 FR 20815-20816.

53(b) Special Rule for Balances Subject to Deferred Interest or Similar Programs

The Board proposes to implement amended TILA Section 164(b)(2) in § 226.53(b), which would provide that, when a balance on a credit card account under an open-end (not home-secured) consumer credit plan is subject to a deferred interest or similar program, the card issuer must allocate any amount paid by the consumer in excess of the required minimum periodic payment first to that balance during the two billing cycles immediately preceding expiration of the deferred interest period and any

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excess of the required minimum periodic payment must be applied first to the $1,000 purchase balance except during the last two billing cycles of the deferred interest period (when it must be applied first to any remaining portion of the $2,000 balance). See proposed comment 53(a)-1.v.

remaining portion to any other balances consistent with proposed § 226.53(a). See 15 U.S.C. 1666c(b)(2).

The Board and the other Agencies proposed a similar exception to the January 2009 FTC Act Rule's payment allocation provision in the May 2009 proposed clarifications and amendments. See proposed 12 CFR 227.23(b), 74 FR 20814. This exception was based on the Agencies' concern that, if the deferred interest balance was not the only balance on the account, the general payment allocation rule could prevent consumers from paying off the deferred interest balance prior to expiration of the deferred interest period unless they also paid off all other balances on the account.[24] If the consumer is unaware of the need to pay off the entire balance, the consumer would be charged interest on the deferred interest balance and thus would not obtain the benefits of the deferred interest program. See 74 FR 20807-20808.

The Board is also proposing comment 53(b)-1, which clarifies the application of proposed § 226.53(b) in circumstances where the deferred interest or similar program expires during a billing cycle (rather than at the end of a billing cycle). The comment would clarify that, for purposes of § 226.53(b), a billing cycle does not constitute one of the two billing cycles immediately preceding expiration of a deferred interest or similar program if the expiration date for the program precedes the payment due date in that billing cycle. An example is provided. The Board believes that this interpretation is consistent with the purpose of amended TILA Section 164(b)(2) insofar as it ensures that,

[24] For example, assume that a credit card account has a $2,000 purchase balance with a 20% annual percentage rate and a $1,000 balance on which interest accrues at a 15% annual percentage rate, but the consumer will not be obligated to pay that interest if that balance is paid in full by a specified date. If the general rule in proposed § 226.53(a) applied, the consumer would be required to pay $3,000 in order to avoid interest charges on the $1,000 balance.

at a minimum, the consumer will receive two complete billing cycles to avoid accrued interest charges by paying off a balance subject to a deferred interest or similar program.

In addition, the Board is proposing comment 53(b)-2, which clarifies that a grace period during which any credit extended may be repaid without incurring a finance charge due to a periodic interest rate is not a deferred interest or similar program for purposes of § 226.53(b). The Board and the other Agencies proposed a similar comment in May 2009. See 12 CFR 227.23 proposed comment 23(b)-1, 74 FR 20816.

Section 226.54 Limitations on the Imposition of Finance Charges

The Credit Card Act creates a new TILA Section 127(j), which applies when a consumer loses any time period provided by the creditor with respect to a credit card account within which the consumer may repay any portion of the credit extended without incurring a finance charge (i.e., a grace period). 15 U.S.C. 1637(j). In these circumstances, new TILA Section 127(j)(1)(A) prohibits the creditor from imposing a finance charge with respect to any balances for days in billing cycles that precede the most recent billing cycle (a practice that is sometimes referred to as “two-cycle” or “double-cycle” billing). Furthermore, in these circumstances, Section 127(j)(1)(B) prohibits the creditor from imposing a finance charge with respect to any balances or portions thereof in the current billing cycle that were repaid within the grace period. However, Section 127(j)(2) provides that these prohibitions do not apply to any adjustment to a finance charge as a result of the resolution of a dispute or the return of a payment for insufficient funds. As discussed below, the Board proposes to implement new TILA Section 127(j) in § 226.54.

54(a) Limitations on Imposing Finance Charges as a Result of the Loss of a Grace Period

54(a)(1) General Rule

Prohibition on Two-Cycle Billing

As noted above, new TILA Section 127(j)(1)(A) prohibits the balance computation method sometimes referred to as "two-cycle billing" or "double-cycle billing." The January 2009 FTC Act Rule contained a similar prohibition. See 12 CFR 227.25, 74 FR 5560-5561; see also 74 FR 5535-5538. The two-cycle balance computation method has several permutations but, generally speaking, a card issuer using the two-cycle method assesses interest not only on the balance for the current billing cycle but also on balances on days in the preceding billing cycle. This method generally does not result in additional finance charges for a consumer who consistently carries a balance from month to month (and therefore does not receive a grace period) because interest is always accruing on the balance. Nor does the two-cycle method affect consumers who pay their balance in full within the grace period every month because interest is not imposed on their balances. The two-cycle method does, however, result in greater interest charges for consumers who pay their balance in full one month but not the next month (and therefore lose the grace period).

The following example illustrates how the two-cycle method results in higher costs for these consumers than other balance computation methods: Assume that the billing cycle on a credit card account starts on the first day of the month and ends on the last day of the month. The payment due date for the account is the twenty-fifth day of the month. Under the terms of the account, the consumer will not be charged interest on purchases if the balance at the end of a billing cycle is paid in full by the following payment due date (in other words, if the consumer receives a grace period). The consumer uses the credit card to make a $500 purchase on March 15. The consumer pays the balance for the February billing cycle in full on March 25. At the end of the March billing cycle (March 31), the consumer's balance consists only of the $500 purchase and the consumer will not be charged interest on that balance if it is paid in full by the following due date (April 25). The consumer pays $400 on April 25, leaving a $100 balance. Because the consumer did not pay the balance for the March billing cycle in full on April 25, the consumer would lose the grace period and most card issuers would charge interest on the $500 purchase from the start of the April billing cycle (April 1) through April 24 and interest on the remaining $100 from April 25 through the end of the April billing cycle (April 30). Card issuers using the two-cycle method, however, would also charge interest on the $500 purchase from the date of purchase (March 15) to the end of the March billing cycle (March 31).

The Board proposes to implement new TILA Section 127(j)(1)(A)'s prohibition on two-cycle billing in proposed § 226.54(a)(1)(i), which states that, except as provided in proposed § 226.54(b), a card issuer must not impose finance charges as a result of the loss of a grace period on a credit card account if those finance charges are based on balances for days in billing cycles that precede the most recent billing cycle. The Board also proposes to adopt § 226.54(a)(2), which would define "grace period" for purposes of § 226.54(a)(1) as having the same meaning as in § 226.5(b)(2)(ii). Section 226.5(b)(2)(ii) was amended by the July 2009 Regulation Z Interim Final Rule to define "grace period" as a period within which any credit extended may be repaid without incurring a finance charge due to a periodic interest rate. 74 FR 36094. Finally, proposed comment 54(a)(1)-4 explains that § 226.54(a)(1)(i) prohibits use of the two-cycle average daily balance computation method.

Partial Grace Period Requirement

As discussed above, many credit card issuers that provide a grace period currently require the consumer to pay off the entire balance on the account or the entire balance subject to the grace period before the period expires. However, new TILA Section 127(j)(1)(B) limits this practice. Specifically, Section 127(j)(1)(B) provides that a creditor may not impose any finance charge on a credit card account as a result of the loss of any time period provided by the creditor within which the consumer may repay any portion of the credit extended without incurring a finance charge with respect to any balances or portions thereof in the current billing cycle that were repaid within such time period. The Board proposes to implement this prohibition in proposed § 226.54(a)(1)(ii), which states that, except as provided in proposed § 226.54(b), a card issuer must not impose finance charges as a result of the loss of a grace period on a credit card account if those finance charges are based on any portion of a balance subject to a grace period that was repaid prior to the expiration of the grace period.

The Board also proposes to adopt comment 54(a)(1)-5, which would clarify that card issuers are not required to use a particular method to comply with § 226.54(a)(1)(ii) but provides an example of a method that is consistent with the requirements of § 226.54(a)(1)(ii). Specifically, it states that a card issuer can comply with the requirements of § 226.54(a)(1)(ii) by applying the consumer's payment to the balance subject to the grace period at the end of the prior billing cycle (in a manner consistent with the payment allocation requirements in § 226.53) and then calculating interest charges based on the amount of that balance that remains unpaid. An example of the application of this method is provided in proposed comment 54(a)(1)-6 along with other examples of the application of § 226.54(a)(1)(i) and (ii).

In addition to the commentary clarifying the specific prohibitions in § 226.54(a)(1)(i) and (ii), the Board is proposing to adopt three comments clarifying the general scope and applicability of § 226.54. First, proposed comment 54(a)(1)–1 would clarify that § 226.54 does not require the card issuer to provide a grace period or prohibit a card issuer from placing limitations and conditions on a grace period to the extent consistent with § 226.54. Currently, neither TILA nor Regulation Z requires a card issuer to provide a grace period. Nevertheless, for competitive and other reasons, many credit card issuers choose to do so, subject to certain limitations and conditions. For example, credit card grace periods generally apply to purchases but not to other types of transactions (such as cash advances). In addition, as noted above, card issuers that provide a grace period generally require the consumer to pay off all balances on the account or the entire balance subject to the grace period before the period expires.

Although new TILA Section 127(j) prohibits the imposition of finance charges as a result of the loss of a grace period in certain circumstances, the Board does not interpret this provision to mandate that card issuers provide such a period or to limit card issuers' ability to place limitations and conditions on a grace period to the extent consistent with the statute. Instead, Section 127(j)(1) refers to "<u>any time provided by the creditor</u> within which the [consumer] may repay any portion of the credit extended without incurring a finance charge." This language indicates that card issuers retain the ability to determine when and under what conditions to provide a grace period on a credit card account so long as card issuers that choose to provide a grace period do so consistent with the requirements of new TILA Section 127(j).

The Board also proposes to adopt comment 54(a)(1)-2, which would clarify that proposed § 226.54 does not prohibit the card issuer from charging accrued interest at the expiration of a deferred interest or similar promotional program. Specifically, the comment would state that, when a card issuer offers a deferred interest or similar promotional program, § 226.54 does not prohibit the card issuer from charging that accrued interest to the account if the balance is not paid in full prior to expiration of the period (consistent with § 226.55 and other applicable law and regulatory guidance). A contrary interpretation of proposed § 226.54 (and new TILA Section 127(j)) would effectively eliminate deferred interest and similar programs by prohibiting the card issuer from charging interest based on the deferred interest balance during the deferred interest period if that balance was not paid in full at expiration. However, as discussed above with respect to proposed § 226.53, the Credit Card Act's revisions to TILA Section 164 specifically create an exception to the general rule governing payment allocation for deferred interest programs, which indicates that Congress did not intend to ban such programs. See Credit Card Act § 104(1) (revised TILA Section 164(b)(2)).

Finally, proposed comment 54(a)(1)-3 would clarify that card issuers must comply with the payment allocation requirements in § 226.53 even if doing so will result in the loss of a grace period. For example, as illustrated in proposed comment 54(a)(1)-6.ii, a card issuer must generally allocate a payment in excess of the required minimum periodic payment to a cash advance balance with a 25% rate before a purchase balance with a purchase balance with a 15% rate even if this will result in the loss of a grace period on the purchase balance. Although there could be a narrow set of circumstances in which – depending on the size of the balances and the amount of the difference between the rates – this allocation would result in higher interest charges than if the excess payment were applied in a way that preserved the grace period, Congress did not create an exception for these circumstances in the provisions of the Credit Card Act specifically addressing payment allocation.

54(b) Exceptions

New TILA Section 127(j)(2) provides that the prohibitions in Section 127(j)(1) do not apply to any adjustment to a finance charge as a result of resolution of a dispute or as a result of the return of a payment for insufficient funds. The Board proposes to implement these exceptions in proposed § 226.54(b).

The Board interprets the exception for the "resolution of a dispute" in new TILA Section 127(j)(2)(A) to apply when the dispute is resolved pursuant to TILA's dispute resolution procedures. Accordingly, proposed § 226.54(b)(1) would permit adjustments to finance charges when a dispute is resolved under § 226.12 (which governs the right of a cardholder to assert claims or defenses against the card issuer) or § 226.13 (which governs resolution of billing errors).

In addition, because a payment may be returned for reasons other than insufficient funds (such as because the account on which the payment is drawn has been closed or because the consumer has instructed the institution holding that account not to honor the payment), the Board proposes to use its authority under TILA Section 105(a) to apply the exception in new TILA Section 127(j)(2)(B) to all circumstances in which adjustments to finance charges are made as a result of the return of a payment.

Section 226.55 Limitations on Increasing Annual Percentage Rates, Fees, and Charges

As revised by the Credit Card Act, TILA Section 171(a) generally prohibits creditors from increasing any annual percentage rate, fee, or finance charge applicable to any outstanding balance on a credit card account under an open-end consumer credit plan. See 15 U.S.C. 1666i-1. Revised TILA Section 171(b), however, provides exceptions to this rule for temporary rates that expire after a specified period of time and rates that vary with an index. Revised TILA Section 171(b) also provides exceptions in circumstances where the creditor has not received the required minimum periodic payment within 60 days after the due date and where the consumer completes or fails to comply with the terms of a workout or temporary hardship arrangement. Revised TILA Section 171(c) limits a creditor's ability to change the terms governing repayment of an outstanding balance. The Credit Card Act also creates a new TILA Section 172, which provides that a creditor generally cannot increase a rate, fee, or finance charge during the first year after account opening and that a promotional rate (as defined by the Board) generally cannot expire earlier than six months after it takes effect. As discussed in detail below, the Board proposes to implement both revised TILA Section 171 and new TILA Section 172 in § 226.55.

55(a) General Rule

As noted above, revised TILA Section 171(a) generally prohibits increases in annual percentage rates, fees, and finance charges on outstanding balances. Revised

TILA Section 171(d) defines "outstanding balance" as the amount owed as of the end of the fourteenth day after the date on which the creditor provides notice of an increase in the annual percentage rate, fee, or finance charge in accordance with TILA Section 127(i).[25] TILA Section 127(i)(1) and (2), which went into effect on August 20, 2009, generally require creditors to notify consumers 45 days before an increase in an annual percentage rate or any other significant change in the terms of a credit card account (as determined by rule of the Board).

In the July 2009 Regulation Z Interim Final Rule, the Board implemented new TILA Section 127(i)(1) and (2) in § 226.9(c) and (g). In addition to increases in annual percentage rates, § 226.9(c)(2)(ii) lists the fees and other charges for which an increase constitutes a significant change to the account terms necessitating 45 days' advance notice, including annual or other periodic fees, fixed finance charges, minimum interest charges, transaction charges, cash advance fees, late payment fees, over-the-limit fees, balance transfer fees, returned-payment fees, and fees for required insurance, debt cancellation, or debt suspension coverage. As discussed above, however, the Board is proposing to amend § 226.9(c)(2)(ii) to identify these significant account terms by a cross-reference to the account-opening disclosure requirements in § 226.6(b). Because the definition of outstanding balance in revised TILA Section 171(d) is expressly conditioned on the provision of the 45-day advance notice, the Board believes that it is consistent with the purposes of the Credit Card Act to limit the general prohibition in

[25] As discussed in the July 2009 Regulation Z Interim Final Rule (at 74 FR 36090), the Board believes that this fourteen-day period is intended to balance the interests of consumers and creditors. On the one hand, the fourteen-day period ensures that the increased rate, fee, or charge will not apply to transactions that occur before the consumer has received the notice and had a reasonable amount of time to review it and decide whether to use the account for additional transactions. On the other hand, the fourteen-day period reduces the potential that a consumer – having been notified of an increase for new transactions – will use the 45-day notice period to engage in transactions to which the increased rate, fee, or charge cannot be applied.

revised TILA Section 171(a) on increasing fees and finance charges to increases in fees and charges for which a 45-day notice is required under § 226.9.

Furthermore, because revised TILA Section 171(a) prohibits the application of increased fees and charges to outstanding balances rather than to new transactions or to the account as a whole, the Board believes that it is appropriate to apply that prohibition only to fees and charges that could be applied to an outstanding balance. For example, increased cash advance or balance transfer fees would apply only to new cash advances or balance transfers, not to existing balances. Similarly, increased penalty fees such as late payment fees, over-the-limit fees, and returned-payment fees would apply to the account as a whole rather than any specific balance.[26] Accordingly, the Board proposes to use its authority under TILA Section 105(a) to limit the general prohibition in revised TILA Section 171(a) to increases in annual percentage rates and in fees and charges required to be disclosed under § 226.6(b)(2)(ii) (fees for the issuance or availability of credit), § 226.6(b)(2)(iii) (fixed finance charges and minimum interest charges), or § 226.6(b)(2)(xii) (fees for required insurance, debt cancellation, or debt suspension coverage).[27]

In addition, for clarity and organizational purposes, proposed § 226.55(a) generally prohibits increases in annual percentage rates and fees and charges required to be disclosed under § 226.6(b)(2)(ii), (b)(2)(iii), or (b)(2)(xii) with respect to all transactions, rather than just increases on existing balances. The Board does not intend to alter the substantive requirements in revised TILA Section 171. Instead, the Board

[26] However, the Board notes that a consumer that does not want to accept an increase in these types of fees may reject the increase pursuant to § 226.9(h).

[27] As discussed below with respect to proposed § 226.55(b)(3), a card issuer may still increase these types of fees and charges so long as the increased fee or charge is not applied to the outstanding balance.

believes that revised TILA Section 171 can be more clearly and effectively implemented if increases in rates, fees, and charges that apply to transactions that occur more than fourteen days after provision of a § 226.9(c) or (g) notice are addressed in an exception to the general prohibition rather than placed outside that prohibition. The Board and the other Agencies adopted a similar approach in the January 2009 FTC Act Rule. See 12 CFR 227.24, 74 FR 5560. Accordingly, proposed § 226.55(a) states that, except as provided in § 226.55(b), a card issuer must not increase an annual percentage rate or a fee or charge required to be disclosed under § 226.6(b)(2)(ii), (b)(2)(iii), or (b)(2)(xii).

Proposed comment 55(a)-1 provides examples of the general application of § 226.55(a) and the exceptions in § 226.55(b). Additional examples illustrating specific aspects of the exceptions in § 226.55(b) are provided in the commentary to those exceptions.

Proposed comment 55(a)-2 clarifies that nothing in § 226.55 prohibits a card issuer from assessing interest due to the loss of a grace period to the extent consistent with § 226.54. In addition, the comment states that a card issuer has not reduced an annual percentage rate on a credit account for purposes of § 226.55 if the card issuer does not charge interest on a balance or a portion thereof based on a payment received prior to the expiration of a grace period. For example, if the annual percentage rate for purchases on an account is 15% but the card issuer does not charge any interest on a $500 purchase balance because that balance was paid in full prior to the expiration of the grace period, the card issuer has not reduced the 15% purchase rate to 0% for purposes of § 226.55.

<u>55(b) Exceptions</u>

Revised TILA Section 171(b) lists the exceptions to the general prohibition in revised Section 171(a). Similarly, proposed § 226.55(b) lists the exceptions to the general prohibition in proposed § 226.55(a). In addition, proposed § 226.55(b) clarifies that the listed exceptions are not mutually exclusive. In other words, a card issuer may increase an annual percentage rate or a fee or charge required to be disclosed under § 226.6(b)(2)(ii), (b)(2)(iii), or (b)(2)(xii) pursuant to an exception set forth in § 226.55(b) even if that increase would not be permitted under a different exception. Proposed comment 55(b)-1 claries that, for example, although a card issuer cannot increase an annual percentage rate pursuant to § 226.55(b)(1) unless that rate is provided for a specified period of at least six months, the card issuer may increase an annual percentage rate during a specified period due to an increase in an index consistent with § 226.55(b)(2). Similarly, although § 226.55(b)(3) does not permit a card issuer to increase an annual percentage rate during the first year after account opening, the card issuer may increase the rate during the first year after account opening pursuant to § 226.55(b)(4) if the required minimum periodic payment is not received within 60 days after the due date.

Proposed comment 55(b)-2 addresses circumstances where the date on which a rate, fee, or charge may be increased pursuant to an exception in § 226.55(b) does not fall on the first day of a billing cycle. Because the Board understands that it may be operationally difficult for some card issuers to apply an increased rate, fee, or charge in the middle of a billing cycle, the comment clarifies that, in these circumstances, the card issuer may delay application of the increased rate, fee, or charge until the first day of the following billing cycle without relinquishing the ability to apply that rate, fee, or charge. An illustrative example is provided.

Proposed comment 55(b)-3 clarifies that, although nothing in § 226.55 prohibits a card issuer from lowering an annual percentage rate or a fee or charge required to be disclosed under § 226.6(b)(2)(ii), (b)(2)(iii), or (b)(2)(xii), a card issuer that does so cannot subsequently increase the rate, fee, or charge unless permitted by one of the exceptions in § 226.55(b). The Board believes that this interpretation is consistent with the intent of revised TILA Section 171 insofar as it ensures that consumers are informed of the key terms and conditions associated with a lowered rate, fee, or charge before relying on that rate, fee, or charge. For example, revised Section 171(b)(1)(A) requires creditors to disclose how long a temporary rate will apply and the rate that will apply after the temporary rate expires before the consumer engages in transactions in reliance on the temporary rate. Similarly, revised Section 171(b)(3)(B) requires the creditor to disclose the terms of a workout or temporary hardship arrangement before the consumer agrees to the arrangement. The comment provides examples illustrating the application of § 226.55 when an annual percentage rate is lowered.

As discussed below, several of the exceptions in proposed § 226.55 require the creditor to determine when a transaction occurred. For example, consistent with revised TILA Section 171(d)'s definition of "outstanding balance," proposed § 226.55(b)(3)(ii) provides that a card issuer that discloses an increased rate pursuant to § 226.9(c) or (g) may not apply that increased rate to transactions that occurred prior to or within fourteen days after provision of the notice. Accordingly, proposed comment 55(b)-4 clarifies that when a transaction occurred for purposes of § 226.55 is generally determined by the date of the transaction. The Board understands that, in certain circumstances, a short delay can occur between the date of the transaction and the date on which the merchant charges that transaction to the account. As a general matter, the Board believes that these delays should not affect the application of § 226.55. However, to address the operational difficulty for card issuers in the rare circumstance where a transaction that occurred within fourteen days after provision of a § 226.9(c) or (g) notice is not charged to the account prior to the effective date of the increase or change, this comment would clarify that the card issuer may treat the transaction as occurring more than fourteen days after provision of the notice for purposes of § 226.55. In addition, the comment would clarify that, when a merchant places a "hold" on the available credit on an account for an estimated transaction amount because the actual transaction amount will not be known until a later date, the date of the transaction for purposes of § 226.55 is the date on which the card issuer receives the actual transaction amount from the merchant. Illustrative examples are provided in proposed comment 55(b)(3)-4.iii. This comment is based on comment 9(h)(3)(ii)-2, which was adopted in the July 2009 Regulation Z Interim Final Rule. See 74 FR 36101.

Proposed comment 55(b)-5 clarifies the meaning of the term "category of transactions," which is used in some of the exceptions in § 226.55(b). This comment states that, for purposes of § 226.55, a "category of transactions" is a type or group of transactions to which an annual percentage rate applies that is different than the annual percentage rate that applies to other transactions.[28] For example, purchase transactions, cash advance transactions, and balance transfer transactions are separate categories of

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[28] Similarly, a type or group of transactions is a "category of transactions" for purposes of § 226.55 if a fee or charge required to be disclosed under § 226.6(b)(2)(ii), (b)(2)(iii), or (b)(2)(xii) applies to those transactions that is different than the fee or charge that applies to other transactions.

transactions for purposes of § 226.55 if a card issuer applies different annual percentage rates to each. Furthermore, if, for example, the card issuer applies different annual percentage rates to different types of purchase transactions (such as one rate for purchases of gasoline or purchases over $100 and a different rate for all other purchases), each type constitutes a separate category of transactions for purposes of § 226.55.

Proposed comment 55(b)-6 clarifies the relationship between the exceptions in § 226.55(b) and the 45-day advance notice requirements in § 226.9(c) and (g). Specifically, it states that nothing in § 226.55 alters the requirements in § 226.9(c) and (g) that creditors provide written notice at least 45 days prior to the effective date of certain increases in annual percentage rates, fees, and charges. For example, although proposed § 226.55(b)(3)(ii) permits a card issuer that discloses an increased rate pursuant to § 226.9(c) or (g) to apply that rate to transactions that occurred more than fourteen days after provision of the notice, the card issuer cannot begin to accrue interest at the increased rate until that increase goes into effect, consistent with § 226.9(c) or (g). Illustrative examples are provided in proposed comment 55(b)(3)-4. Similarly, the comment clarifies that, on or after the effective date, the card issuer cannot calculate interest charges for days before the effective date based on the increased rate.[29]

<u>55(b)(1) Temporary Rate Exception</u>

Revised TILA Section 171(b)(1) provides that a creditor may increase an annual percentage rate upon the expiration of a specified period of time, subject to three

[29] The Board understands that, when the effective date for an increased rate falls in the middle of a billing cycle, some card issuers are unable to begin accruing interest at the increased rate on the effective date without applying that increased rate for the entire billing cycle (including to balances on days preceding the effective date). Although neither § 226.9 nor § 226.55 permits a card issuer to accrue interest at the increased rate for days that precede the effective date, proposed comment 55(b)-2 acknowledges this operational difficulty by clarifying that card issuers may delay application of the increased rate until the first day of the following billing cycle without relinquishing the ability to apply that rate.

conditions. First, prior to commencement of the period, the creditor must have disclosed to the consumer, in a clear and conspicuous manner, the length of the period and the increased annual percentage rate that will apply after expiration of the period. Second, at the end of the period, the creditor must not apply a rate that exceeds the increased rate that was disclosed prior to commencement of the period. Third, at the end of the period, the creditor must not apply the previously-disclosed increased rate to transactions that occurred prior to commencement of the period. Thus, under this exception, a creditor that, for example, discloses at account opening that a 5% rate will apply to purchases for six months and that a 15% rate will apply thereafter would be permitted to increase the rate on the purchase balance to 15% after six months.

Proposed § 226.55(b)(1) implements the exception in revised TILA Section 171(b)(1) regarding temporary rates as well as the requirements in new TILA Section 172(b) regarding promotional rates. New TILA Section 172(b) provides that "[n]o increase in any . . . promotional rate (as that term is defined by the Board) shall be effective before the end of the 6-month period beginning on the date on which the promotional rate takes effect, subject to such reasonable exceptions as the Board may establish by rule." Pursuant to this authority, the Board believes that promotional rates should be subject to the same requirements and exceptions as other temporary rates that expire after a specified period of time. In particular, the Board believes that consumers who rely on promotional rates should receive the disclosures and protections set forth in revised TILA Section 171(b)(1) and proposed § 226.55(b)(1). This will ensure that a consumer will receive disclosure of the terms of the promotional rate before engaging in transactions in reliance on that rate and that, at the expiration of the promotion, the rate will only be increased consistent with those terms. Accordingly, the Board has incorporated the requirement that promotional rates last at least six months into proposed § 226.55(b)(1), which would permit a card issuer to increase a temporary annual percentage rate upon the expiration of a specified period that is six months or longer.

Furthermore, pursuant to its authority under new TILA Section 172(b) to establish reasonable exceptions to the six-month requirement for promotional rates, the Board believes that it is appropriate to apply the other exceptions in revised TILA Section 171(b) and proposed § 226.55(b) to promotional rate offers. For example, the Board believes that a card issuer should be permitted to offer a consumer a promotional rate that varies with an index consistent with revised TILA Section 171(b)(2) and proposed § 226.55(b)(2) (such as a rate that is one percentage point over a prime rate that is not under the card issuer's control). Similarly, the Board believes that a card issuer should be permitted to increase a promotional rate if the account becomes more than 60 days delinquent during the promotional period consistent with revised TILA Section 171(b)(4) and proposed § 226.55(b)(4). Thus, the Board would apply to promotional rates the general proposition in proposed § 226.55(b) that a rate may be increased pursuant to an exception in § 226.55(b) even if that increase would not be permitted under a different exception.

The Board proposes to implement the requirement in revised TILA Section 171(b)(1)(A) that creditors disclose the length of the period and the annual percentage rate that will apply after the expiration of that period in proposed § 226.55(b)(1)(i). This language tracks § 226.9(c)(2)(v)(B)(1), which the Board adopted in the July 2009 Regulation Z Interim Final Rule as part of an exception to the general requirement that creditors provide 45 days notice before an increase in annual percentage rate. Because the disclosure requirements in § 226.9(c)(2)(v)(B)(1) and proposed § 226.55(b)(1)(i) implement the same statutory provision (revised TILA Section 171(b)(1)(A)), the Board believes a single set of disclosures should satisfy both requirements. Accordingly, proposed comment 55(b)(1)-1 clarifies that a card issuer that has complied with the disclosure requirements in § 226.9(c)(2)(v)(B) has also complied with the disclosure requirements in § 226.55(b)(2)(i). In other words, the expiration of a temporary rate cannot be used as a reason to apply an increased rate to a balance that preceded application of the temporary rate. For example, assume that a credit card account has a $5,000 purchase balance at a 15% rate and that the card issuer reduces the rate that applies to all purchases (including the $5,000 balance) to 10% for six months with a 22% rate applying thereafter. Under proposed § 226.55(b)(1)(ii)(A), the card issuer could not apply the 22% rate to the $5,000 balance upon expiration of the six-month period (although the card issuer could apply the original 15% rate to that balance).

The Board proposes to implement in § 226.55(b)(1)(ii) the limitations in revised TILA Section 171(b)(1)(B) and (C) on the application of increased rates following expiration of the specified period. First, proposed § 226.55(b)(1)(ii)(A) states that, upon expiration of the specified period, a card issuer must not apply an annual percentage rate to transactions that occurred prior to the period that exceeds the rate that applied to those transactions prior to the period.

Second, proposed § 226.55(b)(1)(ii)(B) states that, if the disclosures required by § 226.55(b)(1)(i) are provided pursuant to § 226.9(c), the card issuer must not – upon expiration of the specified period – apply an annual percentage rate to transactions that occurred within fourteen days after provision of the notice that exceeds the rate that applied to that category of transactions prior to provision of the notice. The Board believes that this clarification is necessary to ensure that card issuers do not apply an increased rate to an outstanding balance (as defined in revised TILA Section 171(d)) upon expiration of the specified period. Accordingly, consistent with the purpose of revised TILA Section 171(d), proposed § 226.55(b)(1)(ii)(B) would ensure that a consumer will have fourteen days to receive the § 226.9(c) notice and review the terms of the temporary rate (including the increased rate that will apply upon expiration of the specified period) before engaging in transactions to which that increased rate may eventually apply.

Third, proposed § 226.55(b)(1)(ii)(C) states that, upon expiration of the specified period, the card issuer must not apply an annual percentage rate to transactions that occurred during the specified period that exceeds the increased rate disclosed pursuant to § 226.55(b)(1)(i). In other words, the card issuer can only increase the rate consistent with the previously-disclosed terms. Examples illustrating the application of proposed § 226.55(b)(1)(ii)(A), (B), and (C) are provided in comments 55(a)-1 and 55(b)-3.

Proposed comment 55(b)(1)-2 clarifies when the specified period begins for purposes of the six-month requirement in § 226.55(b)(1). As a general matter, proposed comment 55(b)(1)-1 states that that the specified period must expire no less than six months after the date on which the creditor discloses to the consumer the length of the period and rate that will apply thereafter (as required by § 226.55(b)(1)(i)). However, if the card issuer provides these disclosures before the consumer can use the account for transactions to which the temporary rate will apply, the temporary rate must expire no less than six months from the date on which it becomes available. For example, assume that on January 1 a card issuer offers a 5% annual percentage rate for six months on purchases (with a 15% rate applying thereafter). If a consumer may begin making purchases at the 5% rate on January 1, § 226.55(b)(1) would permit the issuer to begin accruing interest at the 15% rate on July 1. However, if a consumer may not begin making purchases at the 5% rate until February 1, § 226.55(b)(1) would not permit the issuer to begin accruing interest at the 15% rate until August 1.

The Board understands that card issuers often limit the application of a promotional rate to particular categories of transactions (such as balance transfers or purchases over $100). The Board does not believe that the six-month requirement in new TILA Section 172(b) was intended to prohibit this practice so long as the consumer receives the benefit of the promotional rate for at least six months. Accordingly, proposed comment 55(b)(1)-2 clarifies that § 226.55(b)(1) does not prohibit these types of limitations. However, the comment also clarifies that, in circumstances where the card issuer limits application of the temporary rate to a particular transaction, the temporary rate must expire no less than six months after the date on which that transaction occurred. For example, if on January 1 a creditor offers a 0% temporary rate on the purchase of an appliance and the consumer uses the account to purchase a $1,000 appliance on March 1, the creditor cannot increase the rate on that $1,000 purchase until September 1.

The Board believes that this application of the six-month requirement is consistent with the intent of new TILA Section 172(b). Although the six-month requirement could be interpreted as requiring a separate six-month period for every transaction to which the temporary rate applies, the Board believes this interpretation would create a level of complexity that would be not only confusing for consumers but also operationally burdensome for card issuers, potentially leading to a reduction in promotional rate offers that provide significant consumer benefit.

Proposed comment 55(b)(1)-3 clarifies that the general prohibition in § 226.55(a) applies to the imposition of accrued interest upon the expiration of a deferred interest or similar promotional program under which the consumer is not obligated to pay interest that accrues on a balance if that balance is paid in full prior to the expiration of a specified period of time. As discussed in the January 2009 FTC Act Rule, the assessment of deferred interest is effectively an increase in rate on an existing balance. See 74 FR 5527-5528. However, if properly disclosed, deferred interest programs can provide substantial benefits to consumers. See 74 FR 20812-20813. Furthermore, as discussed above with respect to proposed comment 54(a)(1)-2, the Board does not believe that the Credit Card Act was intended to ban properly-disclosed deferred interest programs. Accordingly, proposed comment 55(b)(1)-3 further clarifies that card issuers may continue to offer such programs consistent with the requirements of § 226.55(b)(1). In particular, prior to the commencement of the deferred interest period, § 226.55(b)(1)(i) requires the card issuer to disclose the length of the period and the rate that will apply to the balance subject to the deferred interest program if that balance is not paid in full prior to expiration of the period. The comment provides examples illustrating the application of § 226.55 to deferred interest and similar programs.

Finally, proposed comment 55(b)(1)-4 clarifies that § 226.55(b)(1) does not permit a card issuer to apply an increased rate that is contingent on a particular event or occurrence or that may be applied at the card issuer's discretion. The comment provides examples of rate increases that are not permitted by § 226.55.

55(b)(2) Variable Rate Exception

Revised TILA Section 171(b)(2) provides that a card issuer may increase "a variable annual percentage rate in accordance with a credit card agreement that provides for changes in the rate according to operation of an index that is not under the card issuer's control and is available to the general public." The Board proposes to implement this exception in § 226.55(b)(2), which states that a creditor may increase an annual percentage rate that varies according to an index that is not under the creditor's control and is available to the general public when the increase in rate is due to an increase in the index.

The proposed commentary to § 226.55(b)(2) is modeled on commentary adopted by the Board and the other Agencies in the January 2009 FTC Act Rule as well as § 226.5b(f) and its commentary. See 12 CFR 227.24 comments 24(b)(2)-1 through 6, 74 FR 5531, 5564; § 226.5b(f)(1), (3)(ii); comment 5b(f)(1)-1 and -2; comment 5b(f)(3)(ii)-1. Proposed comment 55(b)(2)-1 clarifies that § 226.55(b)(2) does not permit a card issuer to increase a variable annual percentage rate by changing the method used to determine that rate (such as by increasing the margin), even if that change will not result in an immediate increase. However, consistent with existing comment 5b(f)(3)(v)-2, the comment also clarifies that a card issuer may change the day of the month on which index values are measured to determine changes to the rate.

Proposed comment 55(b)(1)–2 further clarifies that a card issuer may not increase a variable rate based on its own prime rate or cost of funds. A card issuer is permitted, however, to use a published prime rate, such as that in the Wall Street Journal, even if the card issuer's own prime rate is one of several rates used to establish the published rate. In addition, proposed comment 55(b)(2)-3 clarifies that a publicly-available index need not be published in a newspaper, but it must be one the consumer can independently obtain (by telephone, for example) and use to verify the annual percentage rate applied to the credit card account.

Because the conversion of a non-variable rate to a variable rate could lead to future increases in the rate that applies to an existing balance, proposed comment 55(b)(2)-4 clarifies that a non-variable rate may be converted to a variable rate only when specifically permitted by one of the exceptions in § 226.55(b). For example, under § 226.55(b)(1), a card issuer may convert a non-variable rate to a variable rate at the expiration of a specified period if this change was disclosed prior to commencement of the period.

Because § 226.55 applies only to increases in annual percentage rates, proposed comment 55(b)(2)-5 clarifies that nothing in § 226.55 prohibits a card issuer from changing a variable rate to an equal or lower non-variable rate. Whether the non-variable rate is equal to or lower than the variable rate is determined at the time the card issuer provides the notice required by § 226.9(c). An illustrative example is provided.

Proposed comment 55(b)(2)-6 clarifies that a card issuer may change the index and margin used to determine a variable rate if the original index becomes unavailable, so long as historical fluctuations in the original and replacement indices were substantially similar and the replacement index and margin will produce a rate similar to the rate that was in effect at the time the original index became unavailable. This comment further clarifies that, if the replacement index is newly established and therefore does not have any rate history, it may be used if it produces a rate substantially similar to the rate in effect when the original index became unavailable.

<u>55(b)(3) Advance Notice Exception</u>

Proposed § 226.55(a) prohibits increases in annual percentage rates and fees and charges required to be disclosed under § 226.6(b)(2)(ii), (b)(2)(iii), or (b)(2)(xii) with respect to both existing balances and new transactions. However, as discussed above, the prohibition on increases in rates, fees, and finance charges in revised TILA Section 171 applies only to "outstanding balances" as defined in Section 171(d). Accordingly, proposed § 226.55(b)(3) provides that a card issuer may generally increase an annual percentage rate or a fee or charge required to be disclosed under § 226.6(b)(2)(ii), (b)(2)(iii), or (b)(2)(xii) with respect to new transactions after complying with the notice requirements in § 226.9(b), (c), or (g).

Because § 226.9 applies different notice requirements in different circumstances, proposed § 226.55(b)(3) clarifies that the transactions to which an increased rate, fee, or charge may be applied depend on the type of notice required. As a general matter, when an annual percentage rate, fee, or charge is increased pursuant to § 226.9(c) or (g), proposed § 226.55(b)(3)(ii) provides that the card issuer must not apply the increased rate, fee, or charge to transactions that occurred within fourteen days after provision of the notice. This is consistent with revised TILA Section 171(d), which defines the outstanding balance to which an increased rate, fee, or finance charge may not be applied as the amount due at the end of the fourteenth day after notice of the increase is provided.

However, pursuant to its authority under TILA Section 105(a), the Board proposes to establish a different approach for increased rates, fees, and charges disclosed pursuant to § 226.9(b). As discussed in the July 2009 Regulation Z Interim Final Rule, the Board believes that the fourteen-day period is intended, in part, to ensure that an increased rate, fee, or charge will not apply to transactions that occur before the consumer has received the notice of the increase and had a reasonable amount of time to review it and decide whether to engage in transactions to which the increased rate, fee, or charge will apply. See 74 FR 36090. The Board does not believe that a fourteen-day period is necessary for increases disclosed pursuant to § 226.9(b), which requires card issuers to disclose any new finance charge terms applicable to supplemental access devices (such as convenience checks) and additional features added to the account after account opening before the consumer uses the device or feature for the first time. For example, § 226.9(b)(3)(i)(A) requires that card issuers providing checks that access a credit card account to which a temporary promotional rate applies disclose key terms on the front of the page containing the checks, including the promotional rate, the period during which the promotional rate will be in effect, and the rate that will apply after the promotional rate expires. Thus, unlike increased rates, fees, and charges disclosed pursuant to a § 226.9(c) and (g) notice, the fourteen-day period is not necessary for increases disclosed pursuant to § 226.9(b) because the device or feature will not be used before the consumer has received notice of the applicable terms. Accordingly, proposed § 226.55(b)(3)(i) provides that, if a card issuer discloses an increased annual percentage rate, fee, or charge pursuant to § 226.9(b), the card issuer must not apply that rate, fee, or charge to transactions that occurred prior to provision of the notice.

Proposed § 226.55(b)(3)(iii) provides that the exception in § 226.55(b)(3) does not permit a card issuer to increase an annual percentage rate or a fee or charge required to be disclosed under § 226.6(b)(2)(ii), (b)(2)(iii), or (b)(2)(xii) during the first year after the credit card account is opened. This provision implements new TILA Section 172(a), which generally prohibits increases in annual percentage rates, fees, and finance charges during the one-year period beginning on the date the account is opened.

Proposed comment 55(b)(3)-1 clarifies that a card issuer may not increase a fee or charge required to be disclosed under § 226.6(b)(2)(ii), (b)(2)(iii), or (b)(2)(xii) pursuant to § 226.55(b)(3) if the consumer has rejected the increased fee or charge pursuant to § 226.9(h). In addition, proposed comment 55(b)(3)-2 clarifies that, if an increased annual percentage rate, fee, or charge is disclosed pursuant to both § 226.9(b) and (c), the requirements in § 226.55(b)(3)(ii) control and the rate, fee, or charge may only be applied to transactions that occur more than fourteen days after provision of the § 226.9(c) notice.

Proposed comment 55(b)(3)-3 clarifies whether certain changes to a credit card account constitute an "account opening" for purposes of the prohibition in § 226.55(b)(3)(iii) on increasing annual percentage rates and fees and charges required to be disclosed under § 226.6(b)(2)(ii), (b)(2)(iii), or (b)(2)(xii) during the first year after account opening. In particular, the comment would distinguish between circumstances in which a card issuer opens multiple accounts for the same consumer and circumstances in which a card issuer substitutes, replaces, or consolidates one account with another. As an initial matter, this comment would clarify that, when a consumer has a credit card account with a card issuer and the consumer opens a new credit card account with the same card issuer (or its affiliate or subsidiary), the opening of the new account constitutes the opening of a credit card account for purposes of § 226.55(b)(3)(iii) if, more than 30 days after the new account is opened, the consumer has the option to obtain additional extensions of credit on each account. Thus, for example, if a consumer opens a credit card account with a card issuer on January 1 of year one and opens a second credit card account with that card issuer on July 1 of year one, the opening of the second account constitutes an account opening for purposes of § 226.55(b)(3)(iii) so long as, on August 1, the consumer has the option to engage in transactions using either account. This is the case even if the consumer transfers a balance from the first account to the second. Thus, because the card issuer has two separate account relationships with the consumer, the prohibition in § 226.55(b)(3)(iii) on increasing annual percentage rates and fees and charges required to be disclosed under § 226.6(b)(2)(ii), (b)(2)(iii), or (b)(2)(xii) during the first year after account opening would apply to the opening of the second account.[30]

In contrast, the comment would clarify that an account has not been opened for purposes of § 226.55(b)(3)(iii) when a card issuer substitutes or replaces one credit card account with another credit card account (such as when a retail credit card is replaced with a cobranded general purpose card that can be used at a wider number of merchants) or when a card issuer consolidates or combines a credit card account with one or more

[30] This comment is based on commentary to the January 2009 FTC Act Rule proposed by the Board and the other Agencies in May 2009. See 12 CFR 227.24, proposed comment 24-4, 74 FR 20816; see also 74 FR 20809. In that proposal, the Board recognized that the process of replacing one account with another generally is not instantaneous. If, for example, a consumer requests that a credit card account with a $1,000 balance be upgraded to a credit card account that offers rewards on purchases, the second account may be opened immediately or within a few days but, for operational reasons, there may be a delay before the $1,000 balance can be transferred and the first account can be closed. For this reason, the Board sought comment on whether 15 or 30 days was the appropriate amount of time to complete this process. In response, industry commenters generally stated that at least 30 days was required. Accordingly, the Board is proposing a 30-day period in comment 55(b)(3)-3.

other credit card accounts into a single credit card account. As discussed below with respect to proposed § 226.55(d)(2), the Board believes that these transfers should be treated as a continuation of the existing account relationship rather than the creation of a new account relationship. Similarly, the comment would also clarify that the substitution or replacement of an acquired credit card account does not constitute an "account opening" for purposes of § 226.55(b)(3)(iii). Thus, in these circumstances, the prohibition in § 226.55(b)(3)(iii) would not apply. However, when a substitution, replacement or consolidation occurs during the first year after account opening, proposed comment 55(b)(3)-3.ii.B would clarify that the card issuer may not increase an annual percentage rate, fee, or charge in a manner otherwise prohibited by § 226.55.[31]

Proposed comment 55(b)(3)-4 provides illustrative examples of the application of the exception in proposed § 226.55(b)(3). Proposed comment 55(b)(3)-5 contains a cross-reference to proposed comment 55(c)(1)-3, which clarifies the circumstances in which increased fees and charges required to be disclosed under § 226.6(b)(2)(ii), (b)(2)(iii), or (b)(2)(xii) may be imposed consistent with § 226.55.

<u>55(b)(4) Delinquency Exception</u>

Revised TILA Section 171(b)(4) permits a creditor to increase an annual percentage rate, fee, or finance charge "due solely to the fact that a minimum payment by the [consumer] has not been received by the creditor within 60 days after the due date for such payment." However, this exception is subject to two conditions. First, revised

[31] For example, assume that, on January 1 of year one, a consumer opens a credit card account with a purchase rate of 15%. On July 1 of year one, the account is replaced with a credit card account issued by the same card issuer, which offers different features (such as rewards on purchases). Under these circumstances, the card issuer could not increase the annual percentage rate for purchases to a rate that is higher than 15% pursuant to § 226.55(b)(3) until January 1 of year two (which is one year after the first account was opened).

Section 171(b)(4)(A) provides that the notice of the increase must include "a clear and conspicuous written statement of the reason for the increase and that the increase will terminate not later than 6 months after the date on which it is imposed, if the creditor receives the required minimum payments on time from the [consumer] during that period." Second, revised Section 171(b)(4)(B) provides that the creditor must "terminate [the] increase not later than 6 months after the date on which it is imposed, if the creditor receives the required minimum payments on time during that period."

The Board proposes to implement this exception in § 226.55(b)(4). The additional notice requirements in revised TILA Section 171(b)(4)(A) are set forth in proposed § 226.55(b)(4)(i). The requirement in revised Section 171(b)(4)(B) that the increase be terminated if the card issuer receives timely payments during the six months following the increase is implemented in proposed § 226.55(b)(4)(ii), although the Board proposes three adjustments to the statutory requirement pursuant to its authority under TILA Section 105(a).

First, proposed § 226.55(b)(4)(ii) interprets the requirement that the creditor "terminate" the increase as a requirement that the card issuer reduce the annual percentage rate, fee, or charge to the rate, fee, or charge that applied prior to the increase. The Board believes that this interpretation is consistent with the intent of revised TILA Section 171(b)(4)(B) insofar as the effect of the increase will be undone. The Board does not interpret revised TILA Section 171(b)(4)(B) to require the card issuer to refund or credit the account for amounts charged as a result of the increase prior to the termination.

Second, for clarity, proposed § 226.55(b)(4)(ii) provides that the card issuer must reduce the annual percentage rate, fee, or charge after receiving six consecutive required minimum periodic payments on or before the payment due date beginning with the first payment due following the effective date of the increase. The Board believes that shifting the focus from months to minimum payments provides more specificity and clarity for both consumers and card issuers as to what is required to obtain the reduction. Furthermore, the Board believes that limiting this requirement to the period immediately following the increase is consistent with revised TILA Section 171(b)(4)(B), which requires a creditor to terminate an increase "6 months after the date on which it is imposed, if the creditor receives the required minimum payments on time during that period." Thus, as clarified in proposed comment 55(b)(4)-3 (which is discussed below), proposed § 226.55(b)(4)(ii) would not require a card issuer to terminate an increase if, at some later point in time, the card issuer receives six consecutive required minimum periodic payments on or before the payment due date.

Third, proposed § 226.55(b)(4)(ii) provides that the card issuer must also reduce the annual percentage rate, fee, or charge with respect to transactions that occurred within fourteen days after provision of the § 226.9(c) or (g) notice. This requirement is consistent with the definition of "outstanding balance" in revised TILA Section 171(d), as applied in proposed § 226.55(b)(1)(ii)(B) and proposed § 226.55(b)(3)(ii)..

Proposed comment 55(b)(4)-1 clarifies that, in order to satisfy the condition in § 226.55(b)(4) that the card issuer has not received the consumer's required minimum periodic payment within 60 days after the payment due date, a card issuer that requires monthly minimum payments generally must not have received two consecutive minimum payments. The comment further clarifies that whether a required minimum periodic payment has been received for purposes of § 226.55(b)(4) depends on whether the amount received is equal to or more than the first outstanding required minimum periodic payment. The comment provides the following example: Assume that the required minimum periodic payments for a credit card account are due on the fifteenth day of the month. On May 13, the card issuer has not received the $50 required minimum periodic payment due on March 15 or the $150 required minimum periodic payment due on April 15. If the card issuer receives a $50 payment on May 14, § 226.55(b)(4) does not apply because the payment is equal to the required minimum periodic payment due on March 15 and therefore the account is not more than 60 days delinquent. However, if the card issuer instead received a $40 payment on May 14, § 226.55(b)(4) would apply because the payment is less than the required minimum periodic payment due on March 15. Furthermore, if the card issuer received the $50 payment on May 15, § 226.55(b)(4) would apply because the card issuer did not receive the required minimum periodic payment due on March 15 within 60 days after the due date for that payment.

As discussed above, proposed § 226.9(g)(3)(i)(B) would require that the written notice provided to consumers 45 days before an increase in rate due to delinquency or default or as a penalty include the information required by revised Section 171(b)(4)(A). Accordingly, proposed comment 55(b)(4)-2 clarifies that a card issuer that has complied with the disclosure requirements in § 226.9(g)(3)(i)(B) has also complied with the disclosure requirements in § 226.55(b)(4)(i).

Proposed comment 55(b)(4)-3 clarifies the requirements in § 226.55(b)(4)(ii) regarding the reduction of annual percentage rates, fees, or charges that have been increased pursuant to § 226.55(b)(4). First, as discussed above, the comment clarifies that § 226.55(b)(4)(ii) does not apply if the card issuer does not receive six consecutive required minimum periodic payments on or before the payment due date beginning with the payment due immediately following the effective date of the increase, even if, at some later point in time, the card issuer receives six consecutive required minimum periodic payments on or before the payment due date.

Second, the comment states that, although § 226.55(b)(4)(ii) requires the card issuer to reduce an annual percentage rate, fee, or charge increased pursuant to § 226.55(b)(4) to the annual percentage rate, fee, or charge that applied prior to the increase, this provision does not prohibit the card issuer from applying an increased annual percentage rate, fee, or charge consistent with any of the other exceptions in § 226.55(b). For example, if a temporary rate applied prior to the § 226.55(b)(4) increase and the temporary rate expired before a reduction in rate pursuant to § 226.55(b)(4), the card issuer may apply an increased rate to the extent consistent with § 226.55(b)(1). Similarly, if a variable rate applied prior to the § 226.55(b)(4) increase, the card issuer may apply any increase in that variable rate to the extent consistent with § 226.55(b)(2). This is consistent with proposed § 226.55(b), which provides that a card issuer may increase an annual percentage rate or a fee or charge required to be disclosed under § 226.6(b)(2)(ii), (b)(2)(iii), or (b)(2)(xii) pursuant to one of the exceptions in § 226.55(b) even if that increase would not be permitted under a different exception.

Third, the comment states that, if § 226.55(b)(4)(ii) requires a card issuer to reduce an annual percentage rate, fee, or charge on a date that is not the first day of a billing cycle, the card issuer may delay application of the reduced rate, fee, or charge until the first day of the following billing cycle. This is consistent with proposed comment 55(b)-2, which clarifies that a card issuer may delay application of an increase in a rate, fee, or charge until the start of the next billing cycle without relinquishing its ability to apply that rate, fee, or charge. Finally, the comment provides examples illustrating the application of § 226.55(b)(4)(ii).

55(b)(5) Workout and Temporary Hardship Arrangement Exception

Revised TILA Section 171(b)(3) permits a creditor to increase an annual percentage rate, fee, or finance charge "due to the completion of a workout or temporary hardship arrangement by the [consumer] or the failure of a [consumer] to comply with the terms of a workout or temporary hardship arrangement." However, like the exception for delinquencies of more than 60 days in revised TILA Section 171(b)(4), this exception is subject to two conditions. First, revised Section 171(b)(3)(A) provides that "the annual percentage rate, fee, or finance charge applicable to a category of transactions following any such increase does not exceed the rate, fee, or finance charge that applied to that category of transactions prior to commencement of the arrangement." Second, revised Section 171(b)(3)(B) provides that the creditor must have "provided the [consumer], prior to the commencement of such arrangement, with clear and conspicuous disclosure of the terms of the arrangement (including any increases due to such completion or failure)."

The Board proposes to implement this exception in § 226.55(b)(5). The notice requirements in revised Section 171(b)(3)(B) are set forth in proposed § 226.55(b)(5)(i). The limitation on increases following completion or failure of a workout or temporary hardship arrangement is set forth in proposed § 226.55(b)(5)(ii).

Proposed comment 55(b)(5)-1 clarifies that nothing in § 226.55(b)(5) permits a card issuer to alter the requirements of § 226.55 pursuant to a workout or temporary hardship arrangement. For example, a card issuer cannot increase an annual percentage rate or a fee or charge required to be disclosed under § 226.6(b)(2)(ii), (b)(2)(iii), or (b)(2)(xii) pursuant to a workout or temporary hardship arrangement unless otherwise permitted by § 226.55. In addition, a card issuer cannot require the consumer to make payments with respect to a protected balance that exceed the payments permitted under § 226.55(c).[32]

Proposed comment 55(b)(5)-2 clarifies that a card issuer that has complied with the disclosure requirements in § 226.9(c)(2)(v)(D) has also complied with the disclosure requirements in § 226.55(b)(5)(i). The comment also contains a cross-reference to proposed comment 9(c)(2)(v)-8, which the Board adopted in the July 2009 Regulation Z Interim Final Rule to clarify the terms a creditor is required to disclose prior to commencement of a workout or temporary hardship arrangement for purposes of § 226.9(c)(2)(v)(D), which is an exception to the general requirement that a creditor provide 45 days advance notice of an increase in annual percentage rate. See 74 FR 36099. Because the disclosure requirements in § 226.9(c)(2)(v)(D) and proposed § 226.55(b)(5)(i) implement the same statutory provision (revised TILA Section 171(b)(3)(B)), the Board believes a single set of disclosures should satisfy the requirements of all three provisions.

Similar to the commentary to proposed § 226.55(b)(4), proposed comment 55(b)(5)-3 states that, although the card issuer may not apply an annual percentage rate, fee, or charge to transactions that occurred prior to commencement of the arrangement that exceeds the rate, fee, or charge that applied to those transactions prior to commencement of the arrangement, § 226.55(b)(5)(ii) does not prohibit the card issuer

[32] The definition of "protected balance" and the permissible repayment methods for such a balance are discussed in detail below with respect to proposed § 226.55(c).

from applying an increased rate, fee, or charge upon completion or failure of the arrangement to the extent consistent with any of the other exceptions in § 226.55(b) (such as an increase in a variable rate consistent with proposed § 226.55(b)(2)). Finally, proposed comment 55(b)(5)-4 provides illustrative examples of the application of this exception.

55(b)(6) Servicemembers Civil Relief Act Exception

The Board proposes to use its authority under TILA Section 105(a) to clarify the relationship between the general prohibition on increasing annual percentage rates in revised TILA Section 171 and certain provisions of the Servicemembers Civil Relief Act (SCRA), 50 U.S.C. app. 501 et seq. Specifically, 50 U.S.C. app. 527(a)(1) provides that "[a]n obligation or liability bearing interest at a rate in excess of 6 percent per year that is incurred by a servicemember, or the servicemember and the servicemember's spouse jointly, before the servicemember enters military service shall not bear interest at a rate in excess of 6 percent. * * *" With respect to credit card accounts, this restriction applies during the period of military service. See 50 U.S.C. app. 527(a)(1)(B).[33]

Under revised TILA Section 171, a creditor that complies with the SCRA by lowering the annual percentage rate that applies to an existing balance on a credit card account when the consumer enters military service arguably would not be permitted to increase the rate for that balance once the period of military service ends and the protections of the SCRA no longer apply. In May 2009, the Board and the other Agencies proposed to create an exception to the general prohibition in the January 2009 FTC Act Rule on applying increased rates to existing balances for these circumstances,

[33] 50 U.S.C. app. 527(a)(1)(B) applies to obligations or liabilities that do not consist of a mortgage, trust deed, or other security in the nature of a mortgage.

provided that the increased rate does not exceed the rate that applied prior to the period of military service. See 12 CFR 227.24(b)(6), 74 FR 20814; see also 74 FR 20812. Revised TILA Section 171 does not contain a similar exception. However, the Board does not believe that Congress intended to prohibit creditors from returning an annual percentage rate that has been reduced by operation of the SCRA to its pre-military service level once the SCRA no longer applies. Accordingly, the Board proposes to create § 226.55(b)(6), which states that, if an annual percentage rate has been decreased pursuant to the SCRA, a card issuer may increase that annual percentage rate once the SCRA no longer applies. However, the card issuer would not be permitted to apply an annual percentage rate to any transactions that occurred prior to the decrease that exceeds the rate that applied to those transactions prior to the decrease. Furthermore, because the Board believes that a consumer leaving military service should receive 45 days advance notice of this increase in rate, the Board has not proposed a corresponding exception to § 226.9.

Proposed comment 55(b)(6)-1 clarifies that, although § 226.55(b)(6) requires the card issuer to apply to any transactions that occurred prior to a decrease in annual percentage rate pursuant to 50 U.S.C. app. 527 a rate that does not exceed the rate that applied to those transactions prior to the decrease, the card issuer may apply an increased rate once 50 U.S.C. app 527 no longer applies, to the extent consistent with any of the other exceptions in § 226.55(b). For example, if the rate that applied prior to the decrease was a variable rate, the card issuer may apply any increase in that variable rate to the extent consistent with § 226.55(b)(2). This comment mirrors similar commentary to proposed § 226.55(b)(4) and (b)(5). An illustrative example is provided in proposed comment 26(b)(6)-2.

55(c) Treatment of Protected Balances

Revised TILA Section 171(c)(1) states that "[t]he creditor shall not change the terms governing the repayment of any outstanding balance, except that the creditor may provide the [consumer] with one of the methods described in [revised Section 171(c)(2)] . . . or a method that is no less beneficial to the [consumer] than one of those methods." Revised TILA Section 171(c)(2) lists two methods of repaying an outstanding balance: first, an amortization period of not less than five years, beginning on the effective date of the increase set forth in the Section 127(i) notice; and, second, a required minimum periodic payment that includes a percentage of the outstanding balance that is equal to not more than twice the percentage required before the effective date of the increase set forth in the Section 127(i) notice.

For clarity, proposed § 226.55(c)(1) defines the balances subject to the protections in revised TILA Section 171(c) as "protected balances." Under this definition, a "protected balance" is the amount owed for a category of transactions to which an increased annual percentage rate or an increased fee or charge required to be disclosed under § 226.6(b)(2)(ii), (b)(2)(iii), or (b)(2)(xii) cannot be applied after the annual percentage rate, fee, or charge for that category of transactions has been increased pursuant to § 226.55(b)(3). For example, when a card issuer notifies a consumer of an increase in the annual percentage rate that applies to new purchases pursuant to § 226.9(c), the protected balance is the purchase balance at the end of the fourteenth day after provision of the notice. See § 226.55(b)(3)(ii). The Board and the other Agencies adopted a similar definition in the January 2009 FTC Act Rule. See 12 CFR 227.24(c), 74 FR 5560; see also 74 FR 5532.

Proposed comment 55(c)(1)-1 would provide an illustrative example of a protected balance. Proposed comment 55(c)(1)-2 would clarify that, because § 226.55(b)(3)(iii) does not permit a card issuer to increase an annual percentage rate or a fee or charge required to be disclosed under § 226.6(b)(2)(ii), (b)(2)(iii), or (b)(2)(xii) during the first year after account opening, § 226.55(c) does not apply to balances during the first year after account opening.

Proposed comment 55(c)(1)-3 clarifies that, although § 226.55(b)(3) does not permit a card issuer to apply an increased fee or charge required to be disclosed under § 226.6(b)(2)(ii), (b)(2)(iii), or (b)(2)(xii) to a protected balance, a card issuer is not prohibited from increasing a fee or charge that applies to the account as a whole or to balances other than the protected balance. For example, a card issuer may add a new annual or a monthly maintenance fee to an account or increase such a fee so long as the fee is not based solely on the protected balance. However, if the consumer rejects an increase in a fee or charge pursuant to § 226.9(h), the card issuer is prohibited from applying the increased fee or charge to the account and from imposing any other fee or charge solely as a result of the rejection. See § 226.9(h)(2)(i) and (ii); comment 9(h)(2)(ii)-2.

Proposed § 226.55(c)(2) implements the restrictions on accelerating the repayment of protected balances in revised TILA Section 171(c). As discussed above with respect to § 226.9(h), the Board previously implemented these restrictions in the July 2009 Regulation Z Interim Final Rule as § 226.9(h)(2)(iii). However, for clarity and consistency, the Board proposes to move these restrictions to proposed § 226.55(c)(2). Proposed § 226.55(c)(2) is consistent with current § 226.9(h)(2)(iii), except that the repayment methods in § 226.55(c)(2) focus on the effective date of the increase (rather than the date on which the card issuer is notified of the rejection pursuant to § 226.9(h)).

Similarly, for the reasons discussed above with respect to § 226.9(h), the Board proposes to move the commentary clarifying the application of these repayment methods from current § 226.9(h)(2)(iii) to § 226.55(c) and to adjust that commentary for consistency with § 226.55(c). In addition, proposed comment 55(c)(2)(iii)-1 would clarify that, although § 226.55(c)(2)(iii) limits the extent to which the portion of the required minimum periodic payment based on the protected balance may be increased, it does not limit or otherwise address the creditor's ability to determine the amount of the required minimum periodic payment based on other balances on the account or to apply that portion of the minimum payment to the balances on the account. Proposed comment 55(c)(2)(iii)-2 would provide an illustrative example.

55(d) Continuing Application of § 226.55

Pursuant to its authority under TILA Section 105(a), the Board proposes to adopt § 226.55(d), which provides that the limitations in § 226.55 continue to apply to a balance on a credit card account after the account is closed or acquired by another card issuer or the balance is transferred from a credit card account issued by a card issuer to another credit account issued by the same card issuer or its affiliate or subsidiary (unless the account to which the balance is transferred is subject to § 226.5b). This provision is based on commentary to the January 2009 FTC Act Rule proposed by the Board and the other Agencies in May 2009, primarily in response to concerns that permitting card issuers to apply an increased rate to an existing balance in these circumstances could lead to circumvention of the general prohibition on such increases. See 12 CFR 227.21

comments 21(c)-1 through -3, 74 FR 20814-20815; see also 74 FR 20805-20807.

Because the protections in revised TILA Section 171 and new TILA Section 172 cannot be waived or forfeited, proposed § 226.55(d) does not distinguish between closures or transfers initiated by the card issuer and closures or transfers initiated by the consumer. Although there may be circumstances in which individual consumers could make informed choices about the benefits and costs of waiving the protections in revised Section 171 and new Section 172, an exception for those circumstances would create a significant loophole that could be used to deny the protections to other consumers. For example, if a card issuer offered to transfer its cardholder's existing balance to a credit product that would reduce the rate on the balance for a period of time in exchange for the cardholder accepting a higher rate after that period, the cardholder would have to determine whether the savings created by the temporary reduction would offset the cost of the subsequent increase, which would depend on the amount of the balance, the amount and length of the reduction, the amount of the increase, and the length of time it would take the consumer to pay off the balance at the increased rate. Based on extensive consumer testing conducted during the preparation of the January 2009 Regulation Z Rule and the January 2009 FTC Act Rule, the Board believes that it would be very difficult to ensure that card issuers disclosed this information in a manner that will enable most consumers to make informed decisions about whether to accept the increase in rate. Although some approaches to disclosure may be effective, others may not and it would be impossible to distinguish among such approaches in a way that would provide clear guidance for card issuers. Furthermore, consumers might be presented with choices that are not meaningful (such as a choice between accepting a higher rate on an existing balance or losing credit privileges on the account).

Proposed 226.55(d)(1) provides that § 226.55 continues to apply to a balance on a credit card account after the account is closed or acquired by another card issuer. In some cases, the acquiring institution may elect to close the acquired account and replace it with its own credit card account. See comment 12(a)(2)-3. The acquisition of an account does not involve any choice on the part of the consumer, and the Board believes that consumers whose accounts are acquired should receive the same level of protection against increases in annual percentage rates after acquisition as they did beforehand.[34] Proposed comment 55(d)-1 clarifies that § 226.55 continues to apply regardless of whether the account is closed by the consumer or the card issuer and provides illustrative examples of the application of § 226.55(d)(1). Proposed comment 55(d)-2 clarifies the application of § 226.55(d)(1) to circumstances in which a card issuer acquires a credit card account with a balance by, for example, merging with or acquiring another institution or by purchasing another institution's credit card portfolio.

Proposed 226.55(d)(2) provides that § 226.55 continues to apply to a balance on a credit card account after the balance is transferred from a credit card account issued by a card issuer to another credit account issued by the same card issuer or its affiliate or subsidiary (unless the account to which the balance is transferred is subject to § 226.5b). Proposed comment 55(d)-3.i provides examples of circumstances in which balances may

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[34] Thus, as discussed in the proposed commentary to § 226.55(b)(2), a card issuer that acquires a credit card account with a balance to which a variable rate applies would not be permitted to substitute a new index for the index used the determine the variable rate if the change could result in an increase in the annual percentage rate. However, the proposed commentary to § 226.55(b)(2) does clarify that a card issuer that does not utilize the index used to determine the variable rate for an acquired balance may convert that rate to an equal or lower non-variable rate, subject to the notice requirements of § 226.9(c).

be transferred from one credit card account issued by a card issuer to another credit card account issued by the same card issuer (or its affiliate or subsidiary), such as when the consumer's account is converted from a retail credit card that may only be used at a single retailer or an affiliated group of retailers to a co-branded general purpose credit card which may be used at a wider number of merchants. Because of the concerns discussed above regarding circumvention and informed consumer choice and for consistency with the issuance rules regarding card renewals or substitutions for accepted credit cards under § 226.12(a)(2), the Board believes – and proposed § 226.55(d)(2) provides – that these transfers should be treated as a continuation of the existing account relationship rather than the creation of a new account relationship. See comment 12(a)(2)-2.

Proposed § 226.55(d)(2) does not apply to balances transferred from a credit card account issued by a card issuer to a credit account issued by the same card issuer (or its affiliate or subsidiary) that is subject to § 226.5b (which applies to open-end credit plans secured by the consumer's dwelling). The Board believes that excluding transfers to such accounts is appropriate because § 226.5b provides protections that are similar to – and, in some cases, more stringent than – the protections in § 226.55. For example, a card issuer may not change the annual percentage rate on a home-equity plan unless the change is based on an index that is not under the card issuer's control and is available to the general public. See 12 CFR 226.5b(f)(1).

Proposed comment 55(d)-3.ii clarifies that, when a consumer chooses to transfer a balance to a credit card account issued by a different card issuer, § 226.55 does not prohibit the card issuer to which the balance is transferred from applying its account terms to that balance, provided those terms comply with 12 CFR part 226. For example, if a credit card account issued by card issuer A has a $1,000 purchase balance at an annual percentage rate of 15% and the consumer transfers that balance to a credit card account with a purchase rate of 17% issued by card issuer B, card issuer B may apply the 17% rate to the $1,000 balance. However, card issuer B may not subsequently increase the rate that applies to that balance unless permitted by one of the exceptions in § 226.55(b).

Although balance transfers from one card issuer to another raise some of the same concerns as balance transfers involving the same card issuer, the Board believes that transfers between card issuer s are not contrary to the intent of revised TILA Section 171 and proposed § 226.55 because the card issuer to which the balance is transferred is not increasing the cost of credit it previously extended to the consumer. For example, assume that card issuer A has extended a consumer $1,000 of credit at a rate of 15%. Because proposed § 226.55 generally prohibits card issuer A from increasing the rate that applies to that balance, it would be inconsistent with § 226.55 to allow card issuer A to reprice that balance simply by transferring it to another of its accounts. In contrast, in order for the $1,000 balance to be transferred to card issuer B, card issuer B must provide the consumer with a new $1,000 extension of credit in an arms-length transaction and should be permitted to price that new extension consistent with its evaluation of prevailing market rates, the risk presented by the consumer, and other factors. Thus, the transfer from card issuer A to card issuer B does not appear to raise concerns about circumvention of proposed § 226.55 because card issuer B is not increasing the cost of credit it previously extended.

The Board understands from comments on the May 2009 proposal that drawing this distinction between balance transfers involving the same card issuer and balance transfers involving different card issuers may limit a card issuer's ability to offer its existing cardholders the same terms that it would offer another issuer's cardholders. As noted in that proposal, however, the Board understands that currently card issuers generally do not make promotional balance transfer offers available to their existing cardholders for balances held by the issuer because it is not cost-effective to do so. Furthermore, although many card issuers do offer existing cardholders the opportunity to upgrade to accounts offering different terms or features (such as upgrading to an account that offers a particular type of rewards), the Board understands that these offers generally are not conditioned on a balance transfer, which indicates that it may be cost-effective for card issuers to make these offers without repricing an existing balance. Nevertheless, the Board again solicits comment on the extent to which proposed § 226.55(d)(2) would affect card issuers' ability to make offers to their own cardholders.

Section 226.56 Requirements for Over-the-Limit Transactions

When a consumer seeks to engage in a credit card transaction that may cause his or her credit limit to be exceeded, the creditor may, at its discretion, authorize the over-the-limit transaction. If the creditor pays an over-the-limit transaction, the consumer is typically assessed a fee or charge for the service.[35] In addition, the over-the-limit transaction may also be considered a default under the terms of the credit card agreement

[35] According to the GAO, the average over-the-limit fee assessed by issuers in 2005 was $30.81, an increase of 138 percent since 1995. See Credit Cards: Increased Complexity in Rates and Fees Heightens Need for More Effective Disclosures to Consumers, GAO Report 06-929, at 20 (September 2006) (citing data reported by CardWeb.com). The GAO also reported that among cards issued by the six largest issuers in 2005, most charged an over-the-limit fee amount between $35 and $39. Id. at 21.

and trigger a rate increase, in some cases up to the default, or penalty, rate on the account.[36]

The Credit Card Act adds new TILA Section 127(k) and requires a creditor to obtain a consumer's express election, or opt-in, before the creditor may impose any fees on a consumer's credit card account for making an extension of credit that exceeds the consumer's credit limit. 15 U.S.C. 1637(k). TILA Section 127(k)(2) further provides that no election shall take effect unless the consumer, before making such election, has received a notice from the creditor of any fees that may be assessed for an over-the-limit transaction. If the consumer opts in to the service, the creditor is also required to provide notice of the consumer's right to revoke that election on any periodic statement that reflects the imposition of an over-the-limit fee during the relevant billing cycle. The Board is proposing to implement the over-the-limit consumer consent requirements in § 226.56.

The Credit Card Act directs the Board to issue rules governing the disclosures required by TILA Section 127(k), including rules regarding (i) the form, manner and timing of the initial opt-in notice and (ii) the form of the subsequent notice describing how an opt-in may be revoked. See TILA Section 127(k)(2). In addition, the Board must prescribe rules to prevent unfair or deceptive acts or practices in connection with the manipulation of credit limits designed to increase over-the-limit fees or other penalty fees. See TILA Section 127(k)(5)(B).

56(a) Definition

Proposed § 226.56(a) defines "over-the-limit transaction" to mean any extension of credit by a creditor to complete a transaction that causes a consumer's credit card

[36] See id. at 25.

account balance to exceed the consumer's credit limit. The proposed term is limited to extensions of credit required to complete a transaction that has been requested by a consumer (for example, to make a purchase at a point of sale or on-line, or to transfer a balance from another account). The term is not intended to cover the assessment of fees or interest charges by the creditor that may cause the consumer to exceed the credit limit. See, however, proposed § 226.56(j)(4), discussed below.

56(b) Opt-In Requirement

General rule. Proposed § 226.56(b)(1) sets forth the general rule prohibiting a creditor from assessing a fee or charge on a consumer's account for paying an over-the-limit transaction unless the consumer is given notice and a reasonable opportunity to affirmatively consent, or opt in, to the creditor's payment of over-the-limit transactions and the consumer has opted in. If the consumer affirmatively consents, or "opts in," to the service, the creditor must provide the consumer notice of the right to revoke that consent after assessing an over-the-limit fee or charge on the consumer's account.

Under the proposed rule, the creditor may provide the opt-in notice orally, electronically, or in writing. Compliance with the consumer consent provisions or other requirements necessary to provide consumer disclosures electronically pursuant to the E-Sign Act would not be required if the creditor elects to provide the opt-in notice electronically. See also proposed § 226.5(a)(1)(ii)(A). However, as discussed below under proposed § 226.56(d)(1)(ii), before the consumer may consent orally or electronically, the creditor must also have provided the opt-in notice immediately prior to and contemporaneously with obtaining that consent. In addition, while the opt-in notice may be provided orally, electronically, or in writing, the revocation notice must be provided to the consumer in writing, consistent with the statutory requirement that such notice appear on the periodic statement reflecting the assessment of an over-the-limit fee or charge on the consumer's account. See TILA Section 127(k)(2), and proposed § 226.56(d)(2), discussed below.

The proposed notice and opt-in requirements would apply only to credit card accounts under an open-end (not home-secured) consumer credit plan, and would therefore not apply to credit cards that access a home equity line of credit or to debit cards linked to an overdraft line of credit. See proposed § 226.2(a)(15)(ii). Although creditors must obtain consumer consent before any over-the-limit fees or charges are assessed on a consumer's account, the rule would not require that the creditor obtain the consumer's separate consent for each extension of credit that causes the consumer to exceed his or her credit limit. Such an approach is not compelled by the Credit Card Act. Proposed comment 56(b)-1 also explains, however, that even if a consumer has affirmatively consented or opted in to a creditor's over-the-limit service, the creditor is not required or obligated to pay or authorize any over-the-limit transactions.

Proposed comment 56(b)-2 clarifies that a creditor that has a policy and practice of declining to pay or authorize any transactions that the creditor reasonably believes would cause the consumer to exceed the credit limit is not subject to the requirements of this section and would therefore not be required to provide the consumer notice or an opt-in right. This "reasonable belief" standard recognizes that creditors generally do not have real-time information regarding a consumer's prior transactions or credits that may have posted to the consumer's credit card account. As discussed below in proposed § 226.56(b)(2), however, that if an over-the-limit transaction is paid without the consumer providing affirmative consent, the institution would not be permitted to charge a fee for paying the transaction.

Proposed comment 56(b)-3 provides that the opt-in requirement applies whether a creditor assesses over-the-limit fees or charges on a per transaction basis or as a periodic account or maintenance fee that is imposed each cycle for the creditor's payment of over-the-limit transactions regardless of whether the consumer has exceeded the credit limit during a particular cycle (for example, a monthly "over-the-limit protection" fee).

As further discussed below, the proposal would require creditors to obtain consumer consent for all credit card accounts, including those opened prior to the effective date of the rule, before the creditor could assess any fees or charges on a consumer's account for paying over-the-limit transactions.

Reasonable opportunity to opt in. Proposed § 226.56(b)(1)(ii) requires a creditor to provide a reasonable opportunity for the consumer to affirmatively consent to the creditor's payment of over-the-limit transactions. TILA Section 127(k)(3) provides that the consumer's affirmative consent (and revocation) may be completed orally, electronically, or in writing, pursuant to regulations prescribed by the Board. See also proposed § 226.56(e), discussed below. Proposed comment 56(b)-4 contains examples to illustrate what would constitute providing a consumer a reasonable opportunity to affirmatively consent using the specified methods.

The first example provides that a creditor may include the notice on an application form that a consumer may fill out to request the service as part of the application process. See proposed comment 56(b)-4.i. Alternatively, after the consumer has been approved for the card, the creditor could provide a form with the account-opening disclosures that can be filled out separately and mailed to affirmatively request the service. See proposed comment 56(b)-4.ii and proposed Model Form G-25(A) in Appendix G, discussed below.

Proposed comment 56(b)-4.iii illustrates that a creditor may obtain consumer consent through a readily available telephone line. Proposed comment 56(b)-4.iv illustrates that a creditor may provide an electronic means for the consumer to affirmatively consent. For example, a creditor could provide a form on its Web site that enables the consumer to check a box to indicate his or her agreement to the over-the-limit service and confirm that opt-in choice by clicking on a consent box. See also proposed § 226.56(d)(1)(ii) (requiring the opt-in notice to be provided immediately prior to and contemporaneous with the consumer's consent).

Comment is requested regarding whether creditors should be required to segregate the opt-in notice from other account disclosures. Such a requirement may ensure that the information is not obscured within other account documents and overlooked by the consumer, for example, in preprinted language in the account-opening disclosures, leading the consumer to inadvertently consent to having over-the-limit transactions paid or authorized by the creditor.

Notwithstanding the manner in which notice of the opt-in right may be provided, proposed comment 56(b)-5 would clarify that the consumer's consent must be obtained separately from other consents or acknowledgments provided by the consumer. For example, a consumer's signature on an application for a credit card alone would not sufficiently evidence the consumer's consent to the creditor's payment of over-the-limit transactions. Under the proposal, the consumer must initial, sign, or otherwise make a separate request for the over-the-limit service. However, the proposed comment would not preclude a creditor from including a separate check box or signature line for requesting the over-the-limit service in the signature block on a credit application, provided that the check box or signature is used solely to indicate the consumer's opt-in decision and not for any other purpose, such as to also obtain consumer consents for other account services or features. Under Regulation Z's record retention rules, creditors would be required to retain evidence of the consumer's consent or opt-in for a period of at least two years, regardless of the means by which consent is obtained. See § 226.25.

The Board also solicits comment on whether creditors should be required to provide the consumer with written confirmation once the consumer has opted in under proposed § 226.56(b)(1)(iii) to verify that the consumer intended to make the election. In the case of telephone or in person requests in particular, written confirmation may be appropriate to evidence the consumer's intent to opt in to the service. A creditor could comply with such a requirement, for example, by sending a letter to the consumer acknowledging that the consumer has elected to opt in to the creditor's service, or, in the case of a mailed request, the creditor could provide a copy of the consumer's completed opt-in form.

Payment of over-the-limit transactions where consumer has not opted in. Proposed § 226.56(b)(2) provides that a creditor may pay an over-the-limit transaction even if the consumer has not provided affirmative consent, so long as the creditor does not impose a fee or charge for paying the transaction. Proposed comment 56(b)(2)-1 contains further guidance stating that the prohibition on imposing fees for paying an over-the-limit transaction where the consumer has not opted in applies even in circumstances where the creditor is unable to avoid paying a transaction that exceeds the consumer's credit limit. Nothing in the statute suggests that Congress intended to permit an exception to allow any over-the-limit fees to be charged in these circumstances absent consumer consent. Proposed comment 56(b)(2)-1 contains illustrative examples of this provision.

For example, in some cases, a merchant may not submit a credit card transaction to the creditor for authorization. Such an event may occur, for instance, because the transaction is below the floor limits established by the card network rules requiring authorization or because the small dollar amount of the transaction does not pose significant payment risk to the merchant. If the transaction exceeds the consumer's credit limit, the creditor would not be permitted to assess an over-the-limit fee if the consumer has not consented to the creditor's payment of over-the-limit transactions.

Similarly, the proposed rule does not permit the creditor to assess a fee for an over-the-limit transaction that occurs because the final transaction amount exceeds the amount submitted for authorization. For example, a consumer may use his or her credit card at a pay-at-the-pump fuel dispenser to purchase $50 of fuel. At the time of authorization, the gas station may request an authorization hold of $1 to verify the validity of the card. Even if the subsequent $50 transaction amount exceeds the consumer's credit limit, § 226.56(b)(2) would prohibit the creditor from assessing an over-the-limit fee if the consumer has not opted in to the creditor's over-the-limit service.

Proposed comment 56(b)(2)-2 clarifies that a creditor is not precluded from assessing other fees and charges unrelated to the payment of the over-the-limit transaction itself even where the consumer has not provided consent to the creditor's over-the-limit service, to the extent permitted under applicable law. For example, if a consumer has not opted in, a creditor could permissibly assess a balance transfer fee for a balance transfer, provided that such a fee is assessed whether or not the transfer exceeds the credit limit. The creditor could also continue to assess interest charges for the over-the-limit transaction.[37]

56(c) Method of Election

TILA Section 127(k)(2) provides that a consumer may make or revoke consent to permit over-the-limit transactions orally, electronically, or in writing, and directs the Board to prescribe rules to ensure that the same options are available for both making and revoking such election. Proposed § 226.56(c) implements this requirement. Proposed comment 56(c)-1 clarifies that the creditor may determine the means by which consumers may provide affirmative consent. The creditor could decide, for example, whether to obtain consumer consents in writing, electronically, by telephone, or to offer some or all of these options. The proposed rule recognizes that creditors have a strong interest in facilitating a consumer's ability to opt in, and thus would permit them to determine the most effective means in obtaining such consent.

Notwithstanding the creditor's choice(s), however, proposed § 226.56(c) requires that whatever method a creditor provides for obtaining consent, such method must be equally available to the consumer to revoke the prior consent. See TILA Section 127(k)(3). Proposed comment 56(c)-2 provides guidance that because consumer consent or revocation requests are not consumer disclosures for purposes of the E-Sign Act,

[37] The proposed rule does not prohibit a creditor from increasing the consumer's interest rate as a result of an over-the-limit transaction, subject to the creditor's compliance with the 45-day advance notice requirement in § 226.9(g), the limitations on applying an increased rate to an existing balance in § 226.55, and other provisions of the Credit Card Act.

creditors would not be required to comply with the consumer consent or other requirements for providing disclosures electronically pursuant to the E-Sign Act for consumer requests submitted electronically. Comment is requested whether the Board should require creditors to allow consumers to opt in and to revoke that consent using each of the three methods (that is, orally, electronically, and in writing).

56(d) Timing

Proposed § 226.56(d)(1)(i) establishes a general requirement that a creditor provide an opt-in notice before the creditor assesses any fee or charge on the consumer's account for paying an over-the-limit transaction. For example, a creditor could include the notice as part of the credit card application. See proposed comment 56(b)-4.i. Alternatively, the creditor could include the notice with other account-opening documents, either within the account-opening disclosures under § 226.6 or in a stand-alone document. See proposed comment 56(b)-4.ii.

The proposed rule would require that all consumers, including existing account holders, receive notice regarding the opt-in right if the creditor imposes a fee or charge for paying an over-the-limit transaction. The Board believes that had Congress intended to permit existing customers to continue to have over-the-limit transactions paid or authorized without their prior consent, it would have so specified. Nothing in the statute or the legislative history suggests that Congress intended that existing account holders should not have the same rights regarding consumer choice for over-the-limit transactions as those afforded to new customers. As a result, the proposal would apply the over-the-limit consumer consent requirements to credit card accounts opened prior to February 22, 2010.

For credit card accounts opened prior to the effective date of the final rule, a creditor may elect to provide an opt-in notice to all of its account holders on or with the first periodic statement sent after the effective date of the final rule. Creditors that choose to do so would be prohibited from assessing any over-the-limit fees or charges after the effective date of the rule and prior to providing the opt-in notice, and subsequently could not assess any such fees or charges unless and until the consumer opts in.

Comment is requested regarding whether a creditor should be permitted to obtain consumer consent for the payment of over-the-limit transactions prior to the effective date of the final rule and, if so, under what circumstances. Such an approach could allow creditors to phase in their processing of consumer opt-ins and alleviate the compliance burden that may otherwise occur if notices could not be sent, and opt-ins obtained until February 22, 2010.

In addition to the general requirement that the creditor provide an opt-in notice prior to imposing any fee or charge for an over-the-limit transaction, proposed § 226.56(d)(1)(ii) states that if the consumer decides to consent orally or electronically, the opt-in notice must be given by the creditor immediately before and contemporaneously with a consumer's election. For example, if a consumer calls the creditor to consent to the creditor's payment of over-the-limit transactions, the creditor must provide the opt-in notice immediately prior to obtaining the consumer's consent. This proposed requirement is intended to ensure that a consumer has full information regarding the opt-in right at a time that is most likely to be meaningful to the consumer, that is, when the opt-in decision is made.

Proposed § 226.56(d)(2) provides that notice of the consumer's right to revoke a prior election for the creditor's over-the-limit service must appear on each periodic statement that reflects the assessment of an over-the-limit fee or charge on a consumer's account. See TILA Section 127(k)(2). A revocation notice would be required regardless of whether the fee was imposed due to an over-the-limit transaction initiated by the consumer in the prior cycle or because the consumer failed to reduce the account balance below the credit limit in the next cycle. To ensure that the revocation notice is clear and conspicuous to the consumer, the proposed rule requires that the notice appear on the front of any page of the periodic statement. Proposed comment 56(d)-1 clarifies that creditors have flexibility regarding how often a revocation notice must be provided. At the creditor's option, it may, but is not required to, include the revocation notice on every periodic statement sent to the consumer, even if the consumer has not incurred an over-the-limit fee or charge during a particular billing cycle.

56(e) Content and Format

TILA Section 127(k)(2) provides that a consumer's election to permit a creditor to extend credit that would exceed the credit limit may not take effect unless the consumer receives notice from the creditor of any over-the-limit fee "in the form and manner, and at the time, determined by the Board." TILA Section 127(k)(2) also requires that the creditor provide notice to the consumer of the right to revoke the election, "in the form prescribed by the Board," in any periodic statement reflecting the imposition of an over-the-limit fee. Proposed § 226.56(e) sets forth the content requirements for both notices. See also proposed Model Forms G-25(A) and G-25(B) in Appendix G.

Initial notice content. Proposed § 226.56(e)(1) sets forth the information that must be included in the opt-in notice provided to consumers before a creditor may assess any fees or charges for paying an over-the-limit transaction. To ensure that consumers can make an informed decision regarding whether and how to affirmatively consent to a creditor's payment of over-the-limit transactions, creditors would be required to provide in the opt-in notice certain information in addition to the amount of the over-the-limit fee. The additional information would be prescribed pursuant to the Board's authority under TILA Section 105(a) to make adjustments that are necessary to effectuate the purposes of TILA. 15 U.S.C. 1604(a).

Proposed § 226.56(e)(1)(i) would require the opt-in notice to include information about the dollar amount of any fees or charges assessed on a consumer's credit card account for an over-the-limit transaction. The proposed requirement to state the fee amount on the opt-in notice itself is separate from other required disclosures regarding the amount of the over-the-limit fee. See, e.g., § 226.5a(b)(10). Because a creditor could comply with the opt-in notice requirement in several forms, such as providing the notice in the application or solicitation, in the account-opening disclosures, or as a stand-alone document, the Board believes that including the fee disclosure in the opt-in notice itself is necessary to ensure that consumers can easily determine the amounts they could be charged for an over-the-limit transaction.

Some creditors may wish to vary the fee amount that may be imposed based upon the number of times the consumer has gone over the limit, the amount the consumer has exceeded the credit limit, or due to other factors. Under these circumstances, the creditor may disclose the maximum fee that may be imposed or a range of fees. Proposed comment 56(e)-1 provides that the creditor may indicate that the consumer may be assessed a fee "up to" the maximum fee or provide the range of fees. Comment is requested whether additional guidance is necessary if an over-the-limit fee is determined by other means, such as a percentage of the over-the-limit transaction.

In addition to disclosing the amount of the fee or charge that may be imposed for an over-the-limit transaction, proposed § 226.56(e)(1)(ii) would require creditors to disclose any increased rate that may apply if consumers exceed their credit limit. The Board believes the additional requirement is necessary to ensure consumers fully understand the potential consequences of exceeding their credit limit, particularly as a rate increase can be more costly than the imposition of a fee. This requirement is consistent with the content required to be disclosed regarding the consequences of a late payment. See TILA Section 127(b)(12); § 226.7(b)(11) of the January 2009 Regulation Z Rule. Accordingly, if, under the terms of the account agreement, an over-the-limit transaction could result in the loss of a promotional rate, the imposition of a penalty rate, or both, this fact must be included in the opt-in notice.

Proposed § 226.56(e)(1)(iii) requires creditors to explain the consumer's right to affirmatively consent to the creditor's payment of over-the-limit transactions, including the methods that the consumer may use to exercise the right to opt in.

In addition to providing the required content, some creditors may wish to include more information about the effects of opting in, including potential benefits. Proposed comment 56(e)-2 provides that creditors may briefly describe these benefits. For example, the creditor may state that if the consumer consents, or opts in, to the payment of over-the-limit transactions, the consumer may avoid having transactions declined if a transaction may exceed the credit limit. Creditors may also wish to disclose that over-the-limit transactions may be paid at the creditor's discretion or that the payment of over-the-limit transactions is not guaranteed. Comment is requested regarding whether the rule should permit or require any other information to be included in the opt-in notice.

The Board notes that permitting creditors to include additional content in the opt-in notice could lead to the potential consequence that the additional information may overwhelm the required content in the notice. Thus, comment is also requested regarding whether creditors should be permitted to include any information in the opt-in notice beyond the content specified in the rule.

Revocation notice. Proposed § 226.56(e)(2) would implement the requirement in TILA Section 127(k)(2) that a creditor must provide notice of the right to revoke consent that was previously granted for paying over-the-limit transactions. The proposed rule states that the notice must describe the consumer's right to revoke any consent previously granted, including the methods by which the consumer may revoke the service. As discussed above, creditors may include this notice on every periodic statement after the consumer has opted in to the creditor's payment of over-the-limit transactions or only on statements that reflect the imposition of an over-the-limit fee. See proposed comment 56(d)-1.

Model forms. Proposed Model Forms G-25(A) and (B) include sample language that creditors may use to comply with the proposed notice content requirement. Use of the model forms, or substantially similar notices, would provide creditors a safe harbor for compliance under proposed § 226.56(e)(3).

56(f)-(i) Additional Provisions Addressing Consumer Opt-in Right

Joint accounts. Proposed § 226.56(f) requires a creditor to treat affirmative consent provided by any joint consumer of a credit card account as affirmative consent for the account from all of the joint consumers. This provision recognizes the operational difficulties that would otherwise arise if a creditor had to determine which account holder was responsible for a particular transaction and then decide whether to authorize or pay an over-the-limit transaction based on that account-holder's opt-in choice. Moreover, because the same credit limit presumably applies to a joint account, one joint account holder's decision to opt in to the payment of over-the-limit transactions would also necessarily impact the other account holder. Accordingly, if one joint consumer opts in to the creditor's payment of over-the-limit transactions, the creditor must treat the consent as applying to all over-the-limit transactions for that account. The proposed rule also provides that a creditor shall treat a revocation of consent by any of the joint consumers as revocation of consent for the joint account. Proposed § 226.56(f) applies only to consumer consent and revocation requests from consumers that are jointly liable on a credit card account. Accordingly, creditors would not be required or permitted to honor a request by an authorized user on an account to opt in or revoke a prior consent with respect to the creditor's over-the-limit transaction. Proposed comment 56(f)-1 provides this guidance.

Continuing right to opt in or revoke opt-in. Proposed § 226.56(g) provides that a consumer may affirmatively consent to a creditor's payment of over-the-limit transactions at any time in the manner described in the opt-in notice. Similarly, a consumer may revoke a prior consent at any time in the manner described in the revocation notice provided under § 226.56(b)(1)(iv). See TILA Section 127(k)(4).

Proposed comment 56(g)-1 clarifies that a consumer's decision to revoke a prior consent would not require the creditor to waiver or reverse any over-the-limit fee or charges assessed to the consumer's account prior to the creditor's implementation of the consumer's revocation request. In addition, the proposed rule does not prevent the creditor from assessing over-the-limit fees in a subsequent cycle if the consumer's account balance continues to exceed the credit limit as a result of an over-the-limit transaction that was completed prior to the consumer's revocation of consent.

Duration of opt-in. Proposed § 226.56(h) provides that a consumer's affirmative consent is generally effective until revoked by the consumer. Proposed comment 56(h)-1 clarifies, however, that a creditor may cease paying over-the-limit transactions at any time and for any reason even if the consumer has consented to the service. For example, a creditor may wish to stop providing the service in response to changes in the credit risk presented by the consumer.

Time to implement consumer revocation. Proposed § 226.56(i) requires that a creditor must implement a consumer's revocation request as soon as reasonably practicable after the creditor receives the request. The proposed requirement recognizes that while creditors will presumably want to implement a consumer's consent request as soon as possible, the same incentives may not apply if the consumer subsequently decides to revoke that request. The Board is not proposing to prescribe a specific period of time within which the creditor must honor the consumer's revocation request, however, because the appropriate time period may depend on a number of variables, including the method used by the consumer to communicate the revocation request (for example, in writing or orally) and the channel in which the request is received (for example, if a consumer sends a written request to the creditor's general address for receiving correspondence or to an address specifically designated to receive consumer opt-in and revocation requests). Comment is requested whether a safe harbor for implementing revocation requests, such as five business days from the date of the request, may be helpful to facilitate compliance with the proposed rule.

The Board also solicits comment on the merits of an alternative approach which would require creditors to implement revocation requests within the same time period that a creditor generally takes to implement opt-in requests. Such a timing rule could be dependent upon the method of the consumer's request. For example under the alternative approach, if the creditor typically takes three business days to implement a consumer's written opt-in request, it should take no more than three business days to implement the consumer's later written request to revoke that consent. However, if a creditor typically implements written consent requests within three business days and telephone requests within one business day, the alternative approach would provide that the creditor could implement a written revocation request within three business days, even if the consumer had previously opted into the service by telephone.

56(j) Prohibited Practices

Proposed § 226.56(j) prohibits certain creditor practices in connection with the assessment of over-the-limit fees or charges. These prohibitions implement separate requirements set forth in TILA Sections 127(k)(5) and 127(k)(7), and apply even if the consumer has affirmatively consented to the creditor's payment of over-the-limit transactions.

56(j)(1) Fees Imposed Per Billing Cycle

New TILA Section 127(k)(7) provides that a creditor may not impose more than one over-the-limit fee during a billing cycle. In addition, Section 127(k)(7) generally provides that an over-the-limit fee may be imposed "only once in each of the 2 subsequent billing cycles" for the same over-the-limit transaction. Proposed § 226.56(j)(1) implements these restrictions.

Proposed § 226.56(j)(1)(i) would prohibit a creditor from imposing more than one over-the-limit fee or charge on a consumer's credit card account in any billing cycle. In addition, a creditor must not impose an over-the-limit fee or charge on the account for the same over-the-limit transaction or transactions in more than three billing cycles. As a further limitation, however, fees may not be imposed for the second or third cycle unless the consumer has failed to reduce the account balance below the credit limit by the payment due date of either cycle. The Board believes that this interpretation of TILA Section 127(k)(7) is consistent with Congress's general intent to limit a creditor's ability to impose multiple over-the-limit fees for the same transaction as well as the requirement in TILA Section 106(b) that consumers be given a sufficient amount of time to make payments. Moreover, as discussed below, a creditor's failure to provide a consumer sufficient time to reduce his or her balance below the credit limit would appear to be an unfair or deceptive act or practice. See TILA Section 127(k)(5) and discussion below.

As discussed above, the proposed rule would give a consumer until the payment due date to reduce the account balance below the credit limit to avoid over-the-limit fees during the second and third billing cycles. Although new TILA Section 127(k)(7) could be construed as providing until the end of the billing cycle to make a payment that reduces the account balance below the credit limit, the Board believes that using the payment due date as the relevant date will facilitate compliance.

Under current billing practices, the end of the billing cycle serves as the statement cut-off date and occurs a certain number of days after the due date for payment on the prior cycle's activity. The time period between the payment due date and the end of the billing cycle allows the creditor sufficient time to reflect timely payments on the subsequent periodic statement and to determine the fees and interest charges for the statement period. If the rule were to give consumers until the end of the billing cycle to reduce the account balance below the credit limit, creditors would have difficulty determining whether or not they could impose another over-the-limit fee for the statement cycle, which could delay the generation and mailing of the periodic statement and impede their ability to comply with the 21-day requirement for mailing statements in advance of the payment due date.

Moreover, tying the time in which a consumer could make payment to reduce the account balance below the credit limit to the payment due date would cause minimal if any adverse harm to consumers. Because a consumer is likely to make payment by the due date to avoid other adverse financial consequences (such as a late payment fee or increased APRs for new transactions), the additional time to make payment to avoid successive over-the-limit fees would appear to be unnecessary from a consumer protection perspective. Such a date also could confuse consumers by providing two distinct dates , each with different consequences (that is, penalties for late payment or the assessment of over-the-limit fees) For these reasons, the Board is proposing to exercise its TILA Section 105(a) authority to provide that a creditor may not impose an over-the-limit fee or charge on the account for a consumer's failure to reduce the account balance below the credit limit during the second or third billing cycle unless the consumer has not done so by the payment due date.

To illustrate the proposed limitation, assume that a consumer has exceeded the credit limit and is assessed an over-the-limit fee on the January billing statement for a transaction in the December billing cycle. Under this circumstance, the creditor must not assess additional over-the-limit fees on the consumer's credit card account for the February or March billing statements for the same over-the-limit transaction unless the consumer has not make sufficient payment by the January or February payment due dates to reduce the account balance below the credit limit.

Proposed § 226.56(j)(1)(ii) provides that the limitation on imposing over-the-limit fees for more than three billing cycles does not apply if a consumer engages in an additional over-the-limit transaction in either of the two billing cycles following the cycle in which the consumer is first assessed a fee for exceeding the credit limit. The assessment of fees or interest charges by the creditor would not constitute an additional over-the-limit transaction for purposes of this exception, consistent with the definition of "over-the-limit transaction" under proposed § 226.56(a). In addition, the proposed exception would not permit a creditor to impose fees for both the initial over-the-limit transaction as well as the additional over-the-limit transaction(s), as the general restriction on assessing more than one over-the-limit fee in the same billing cycle would continue to apply. Proposed comment 56(j)-1 contains examples illustrating the general rule and the exception.

Proposed Prohibitions on Unfair or Deceptive Over-the-Limit Acts or Practices

Proposed § 226.56(j) includes additional substantive limitations and restrictions on certain creditor acts or practices regarding the imposition of over-the-limit fees. These proposed limitations and restrictions are based on the Board's authority under TILA Section 127(k)(5)(B) which directs the Board to prescribe regulations that prevent unfair or deceptive acts or practices in connection with the manipulation of credit limits designed to increase over-the-limit fees or other penalty fees.

Legal Authority

The Credit Card Act does not set forth a standard for what is an "unfair or deceptive act or practice" and the legislative history for the Credit Card Act is similarly silent. Congress has elsewhere codified standards developed by the Federal Trade Commission for determining whether acts or practices are unfair under Section 5(a) of the Federal Trade Commission Act, 15 U.S.C. 45(a).[38] Specifically, the FTC Act provides that an act or practice is unfair when it causes or is likely to cause substantial injury to consumers which is not reasonably avoidable by consumers themselves and not outweighed by countervailing benefits to consumers or to competition. In addition, in determining whether an act or practice is unfair, the FTC may consider established public policy, but public policy considerations may not serve as the primary basis for its determination that an act or practice is unfair. 15 U.S.C. 45(a).

[38] See 15 U.S.C. 45(n); Letter from FTC to the Hon. Wendell H. Ford and the Hon. John C. Danforth, S. Comm. On Commerce, Science & Transp. (Dec. 17, 1980) (FTC Policy Statement on Unfairness) (available at http://www.ftc.gov/bcp/policystmt/ad-unfair.htm).

According to the FTC, an unfair act or practice will almost always represent a market failure or market imperfection that prevents the forces of supply and demand from maximizing benefits and minimizing costs.[39] Not all market failures or imperfections constitute unfair acts or practices, however. Instead, the central focus of the FTC's unfairness analysis is whether the act or practice causes substantial consumer injury.[40]

The FTC has also adopted standards for determining whether an act or practice is deceptive, although these standards, unlike unfairness standards, have not been incorporated in to the FTC Act.[41] Under the FTC's standards, an act or practice is deceptive where: (1) there is a representation or omission of information that is likely to mislead consumers acting reasonably under the circumstances; and (2) that information is material to consumers.[42]

Many states also have adopted statutes prohibiting unfair or deceptive acts or practices, and these statutes may employ standards that are different from the standards currently applied to the FTC Act.[43] In proposing rules under TILA Section 127(k)(5), the Board has considered the standards currently applied to the FTC Act's prohibition against

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[39] Statement of Basis and Purpose and Regulatory Analysis for Federal Trade Commission Credit Practices Rule (Statement for FTC Credit Practices Rule), 49 FR 7740, 7744 (Mar. 1, 1984).

[40] Id. at 7743.

[41] Letter from the FTC to the Hon. John H. Dingell, H. Comm. on Energy & Commerce (Oct. 14, 1983) (FTC Policy Statement on Deception) (available at http://www.ftc.gov/bcp/policystmt/ad-decept.html).

[42] Id. at 1-2. The FTC views deception as a subset of unfairness but does not apply the full unfairness analysis because deception is very unlikely to benefit consumers or competition and consumers cannot reasonably avoid being harmed by deception.

[43] For example, a number of states follow an unfairness standard formerly used by the FTC. Under this standard, an act or practice is unfair where it offends public policy; or is immoral, unethical, oppressive, or unscrupulous; and causes substantial injury to consumers. See, e.g., Kenai Chrysler Ctr., Inc. v. Denison, 167 P.3d 1240, 1255 (Alaska 2007) (quoting FTC v. Sperry & Hutchinson Co., 405 U.S. 233, 244-45 n.5 (1972)); State v. Moran, 151 N.H. 450, 452, 861 A.2d 763, 755-56 (N.H. 2004); Robinson v. Toyota Motor Credit Corp., 201 Ill. 2d 403, 417-418, 775, N.E.2d 951, 961-62 (2002).

unfair or deceptive acts or practices, as well as the standards applied to similar state statutes. These proposals should not, however, be construed as a definitive conclusion by the Board that a particular practice is unfair or deceptive.

Insufficient Time to Reduce Excess Credit

As discussed above, proposed § 226.56(j)(1) would generally prohibit a creditor from assessing an over-the-limit fee on a consumer's credit card account in a subsequent billing cycle unless the consumer has not reduced the account balance below the credit limit by the payment due date. This provision, which implements a statutory restriction set forth in TILA Section 127(k)(7), is intended to ensure that a consumer who has been assessed an over-the-limit fee or charge in one billing cycle does not incur a second over-the-limit fee or charge in the next billing cycle solely because the consumer has not made payment on or before the due date. For example, a creditor would be prohibited from assessing a second over-the-limit fee or charge on the first day of the next billing cycle before the consumer has had an opportunity to reduce the account balance. Assessing an over-the-limit fee in a subsequent billing cycle without providing the consumer sufficient time to reduce the account balance would also appear to be an unfair or deceptive act or practice.

Legal Analysis

Potential injury that is not reasonably avoidable. Consumers may incur substantial monetary injury due to the fees assessed in connection with the payment of over-the-limit transactions. In addition to costly per transaction fees, consumers may also trigger rate increases if the over-the-limit transaction is deemed to be a violation of the credit card contract. A 2006 Government Accountability Office (GAO) report on credit cards indicates that the average cost to consumers resulting from over-the-limit transactions exceeded $30 in 2005.[44] The GAO also reported that in the majority of credit card agreements that it surveyed, default rates could apply if a consumer exceeded the credit limit on the card.[45]

Although consumers can reduce the risk of exceeding their credit limit by carefully tracking their credit card transactions and payments made, consumers often lack sufficient information about key aspects of their credit card accounts. For example, a consumer cannot know with any degree of certainty when a payment will be credited to his or her account and the credit limit replenished or when a credit for a returned purchase will be made available. Equally, given the lack of real-time information available to the authorization system, even the creditor's decision to authorize a transaction does not necessarily indicate at the time of the authorization that the creditor has knowingly authorized an over-the-limit transaction.[46]

Potential costs and benefits. There appears to be little if any direct benefit to consumers from receiving insufficient time to bring their account balances below their credit limit. While requiring creditors to wait an additional period of time before assessing over-the-limit fees or charges may reduce revenue for some institutions and those institutions may replace that revenue by charging consumers higher annual percentage rates or fees, it appears that consumers will benefit overall from having a

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[44] See U.S. Gov't Accountability Office, Credit Cards: Increased Complexity in Rates and Fees Heightens Need for More Effective Disclosures to Consumers at 20-21 (Sept. 2006) (GAO Credit Card Report) (available at http://www.gao.gov/new.items/d06929.pdf).

[45] See id. at 25.

[46] See Household Credit Servs. v. Pfennig, 541 U.S. 232, 244 (2004) (recognizing that a creditor's "authorization" of a point of sale transaction "does not represent a final determination that a particular transaction is within a consumer's credit limit because the authorization system is not suited to identify instantaneously and accurately over-limit transactions").

reasonable period of time in which to reduce their account balances below the credit limit and avoiding additional penalties such as the assessment of an over-the-limit fee or application of a rate increase.

56(j)(2) Failure to Promptly Replenish

Section 226.10 generally requires creditors to credit consumer payments as of the date of receipt, except when a delay in crediting does not result in a finance or other charge. This provision does not address, however, when a creditor must replenish the consumer's credit limit after receiving payment. Thus, a consumer may submit payment sufficient to reduce his or her account balance below the credit limit and make additional purchases during the next cycle on the assumption that the credit line will be replenished once the payment is credited. If the creditor does not promptly replenish the credit line, the additional transactions may cause the consumer to exceed the credit limit and incur fees. Proposed § 226.56(j)(2) would prohibit a creditor from assessing an over-the-limit fee or charge that is caused by the creditor's failure to promptly replenish the consumer's available credit.

Legal Analysis

Potential injury that is not reasonably avoidable. In most cases, creditors replenish the available credit on a credit card account shortly after the payment has been credited to the account to enable the cardholder to make new transactions on the account. As a result, a consumer that has used all or most of the available credit during one billing cycle would again be able to make transactions using the credit card once the consumer has made payments on the account balance and the available credit is restored to the account. If, however, the creditor delays replenishment on the account after crediting the payment to the consumer's account, the consumer could inadvertently exceed the credit limit if the cardholder uses the credit card account for new transactions and such transactions are authorized by the creditor. In addition to the potential assessment of over-the-limit fees, the resulting over-the-limit transaction may also cause the consumer to trigger increased rates due to default on the credit agreement. In those circumstances, it appears that consumers cannot reasonably avoid the injury caused by the over-the-limit fee and rate increase because they will be unaware of the creditor's delay in restoring the consumer's credit line particularly if the payment has been credited to the consumer's account.

Potential costs and benefits. The prohibited practice would not appear to create benefits for consumers and competition that outweigh the injury. While a creditor may reasonably decide to delay replenishing a consumer's available credit, for example, in the case of potential fraud on the account, there does not appear to be any benefit to the consumer from permitting the creditor to assess over-the-limit fees that may be incurred as a result of the delay in replenishment.

Proposal

Proposed § 226.56(j)(2) prohibits a creditor from imposing any over-the-limit fee or charge solely because of the creditor's failure to promptly replenish the consumer's available credit after the creditor has credited the consumer's payment under § 226.10. Proposed comment 56(j)(2)-1 clarifies that the proposed prohibition is not intended to require creditors to immediately replenish the available credit upon crediting a consumer's payment, or to prevent creditors from delaying replenishment where appropriate, for example, in cases of suspected fraud. Nor does the proposed prohibition require creditors to decline all transactions for consumers who have opted in to the creditor's payment of over-the-limit transactions until the available credit has been restored. Rather, the creditor would only be prohibited from assessing any over-the-limit fees or charges caused by the creditor's decision not to replenish the available credit after posting the consumer's payment to the account. Comment is requested regarding whether the rule should provide a safe harbor specifying the number of days following crediting of a consumer's payment by which a creditor must replenish a consumer's available credit.

56(j)(3) Conditioning

Proposed § 226.56(j)(3) would prohibit a creditor from conditioning the amount of available credit provided on the consumer's affirmative consent to the creditor's payment of over-the-limit transactions. The proposed provision addresses concerns that a creditor may seek to tie the amount of credit provided to the consumer affirmatively consenting to the creditor's payment of over-the-limit transactions.

Legal Analysis

Potential injury that is not reasonably avoidable. As the Board has previously stated elsewhere, consumers receive considerable benefits from receiving credit cards that provide a meaningful amount of available credit. For example, credit cards enable consumers to engage in certain types of transactions, such as making purchases by telephone or on-line, or renting a car or hotel room. Given these benefits, some consumers might be compelled to opt in to a creditor's payment of over-the-limit transactions if not doing so may result in the consumer otherwise obtaining a minimal amount of credit or failing to qualify for credit altogether. Thus, it would appear that such consumers would be prevented from exercising a meaningful choice regarding the creditor's payment of over-the-limit transactions. Moreover, the practice of conditioning the amount of credit provided based on whether the consumer opts in to the creditor's payment of over-the-limit transactions would also appear to raise significant concerns under the Equal Credit Opportunity Act. See 15 U.S.C. 1691(a)(3).

Potential costs and benefits. There do not appear to be any significant benefits to consumers or competition from conditioning or linking the amount of credit available to the consumer based on the consumer consenting to the creditor's payment of over-the-limit transactions. While some creditors may seek to replace the revenue from over-the-limit fees by charging consumers higher annual percentage rates or fees, overall, consumers will benefit from having a meaningful choice regarding whether to have over-the-limit transactions approved by the creditor.

Proposal

Proposed § 226.56(j)(3) is intended to prevent creditors from effectively circumventing the consumer choice requirement by prohibiting a creditor from conditioning or otherwise linking the amount of credit granted on the consumer opting in to the creditor's payment of over-the-limit transactions. Under the proposed rule, a creditor could not, for example, require a consumer to opt in to the creditor's fee-based over-the-limit service in order to receive a higher credit limit for the account. Similarly, a creditor would be prohibited from denying a consumer's credit card application solely because the consumer did not opt in to the creditor's over-the-limit service. The proposed rule is illustrated by way of example in proposed comment 56(j)-1.

<u>56(j)(4) Over-the-Limit Fees Attributed to Fees or Interest</u>

Proposed § 226.56(j)(4) would prohibit the imposition of any over-the-limit fees or charges if the credit limit is exceeded solely because of the creditor's assessment of accrued interest charges or fees on the consumer's credit card account.

<u>Legal Analysis</u>

<u>Potential injury that is not reasonably avoidable</u>. As discussed above, consumers may incur substantial monetary injury due to the fees assessed in connection with the payment of over-the-limit transactions. In addition to per transaction fees, consumers may also trigger rate increases if the over-the-limit transaction is deemed to be a violation of the credit card contract.

The injury from over-the-limit fees and potential rate increases would not appear to be reasonably avoidable in these circumstances because consumers are, as a general matter, unlikely to be aware of the amount of interest charges or fees that may be added to their account balance when deciding whether or not to engage in a credit card transaction. With respect to accrued interest charges, these additional amounts are typically added to a consumer's account balance at the end of the billing cycle after the consumer has completed his or her transactions for the cycle and thus are unlikely to have been taken into account when the consumer engages in the transactions.

<u>Potential costs and benefits</u>. Although prohibition of the assessment of over-the-limit fees caused by accrued finance charges and fees may reduce creditor revenues and lead creditors to replace lost revenue by charging consumers higher rates or fees, it appears that the proposal will result in a net benefit to consumers because some consumers are likely to benefit substantially while the adverse effects on others are likely

to be small. Because permitting fees and interest charges to trigger over-the-limit fees may have the effect of retroactively reducing a consumer's available credit for prior transactions, prohibiting such a practice would protect consumers against unexpected over-the-limit fees and rate increases which could substantially add to their cost of credit. Moreover, consumers will be able to more accurately manage their credit lines without having to factor additional costs that cannot be easily determined. While some consumers may pay higher fees and initial rates, consumers are likely to benefit overall through more transparent pricing.

Proposal

Proposed § 226.56(j)(4) would prohibit creditors from imposing an over-the-limit fee or charge if a consumer exceeds a credit limit solely because of fees or interest charged by the creditor to the consumer's account during the billing cycle. The proposed prohibition is generally intended to prohibit creditors from assessing over-the-limit fees or charges on consumer credit card accounts unless the credit limit was exceeded solely by transactions or charges that were not initiated by the consumer during the billing cycle.

For purposes of this prohibition, the fees or interest charges that may not trigger the imposition of an over-the-limit fee would be considered charges imposed as part of the plan under § 226.6(b)(3)(i). Thus, the proposed rule would also prohibit the assessment of an over-the-limit fee or charge even if the credit limit was exceeded due to fees for services requested by the consumer if such fees would constitute charges imposed as part of the plan (for example, fees for voluntary debt cancellation or suspension coverage).

The proposed prohibition would not restrict creditors from assessing over-the-limit fees due to accrued finance charges or fees from prior cycles that have subsequently been added to the account balance. Comment is requested regarding the operational issues that may arise from the proposed prohibition.

Notice of Reduction of the Credit Limit

In the July 2009 Regulation Z Interim Final Rule, the Board adopted a provision applicable to credit card accounts under an open-end (not home-secured) plan that addresses notices of changes in a consumer's credit limit. As set forth in the interim final rule, § 226.9(c)(2)(vi) requires a creditor to provide a consumer with 45 days' advance notice that a credit limit is being decreased or will be decreased prior to the imposition of any over-the-limit fee or penalty rate imposed solely as the result of the balance exceeding the newly decreased credit limit.[47] The new provision is intended to protect consumers against costly surprises potentially associated with a reduction in the credit limit, specifically, fees and rate increases, while giving a consumer adequate time to mitigate the effect of the credit line reduction. See 74 FR 36077.

Neither § 226.9(c)(2)(vi) nor the restrictions proposed pursuant to the Board's authority under TILA Section 127(k)(5) would limit a creditor's ability to use line reductions to address safety and soundness concerns when a borrower's risk increases. As stated in the July 2009 Regulation Z Interim Final Rule, the Board recognizes that creditors have a legitimate interest in mitigating the risk of a loss when a consumer's creditworthiness deteriorates and that it may be appropriate in some cases for creditors to reduce the credit limit as a risk mitigation tool.

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[47] A substantively similar provision was adopted in the January 2009 Regulation Z Rule. See § 226.9(c)(2)(v).

<u>Section 226.57 Special Rules for Marketing Open-End Credit to College Students</u>

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.

<u>57(a) Definitions</u>

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). <u>See</u> 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.[48]

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

[48] 74 FR 41194 (Aug. 14, 2009)

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 school,[49] 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, as defined by the institution of higher education, be considered near the campus of an institution of higher education.

[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).

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.

Section 226.58 Internet Posting of Credit Card Agreements

Section 204 of the Credit Card Act adds new TILA Section 122(d) to require creditors to post agreements for open-end consumer credit card plans on the creditors' Web sites and to submit those agreements to the Board for posting on a publicly-available Web site established and maintained by the Board. 15 U.S.C. 1632(d). The Board proposes to implement these provisions in new § 226.58.

58(a) Applicability

Proposed § 226.58(a) would make proposed § 226.58 applicable to any card issuer that issues a credit card under a credit card account under an open-end (not home-secured) consumer credit plan, as defined in proposed revised § 226.2(a)(15). Thus, consistent with the approach the Board is proposing in implementing other sections of the Credit Card Act, home-equity lines of credit accessible by credit cards and overdraft lines of credit accessed by debit cards would not be covered by proposed § 226.58.

58(b) Definitions

Proposed § 226.58(b)(1) defines “agreement” or “credit card agreement” as a written document or documents evidencing the terms of the legal obligation or the prospective legal obligation between a card issuer and a consumer for a credit card account under an open-end (not home-secured) consumer credit plan. As proposed, § 226.58(b)(1) states and proposed comment 58(b)(1)-1 further clarifies that the agreement is deemed to include certain information, such as annual percentage rates and fees, even if the issuer does not otherwise technically include this information in the document evidencing the terms of the legal obligation. This information is listed under the defined term “pricing information” in § 226.58(b)(4). The Board believes that, to enable consumers to shop for credit cards and compare information about various credit card plans in an effective manner, it is necessary that the credit card agreements posted on the Board’s Web site include information such as rates and fees, in addition to other terms and conditions of the agreements. However, the Board solicits comment on the definition of agreement and on whether more or less information should be included. As proposed comment 58(b)(1)-2 would clarify, the agreement would not include documents that may be sent to the consumer along with the credit card or credit card agreement, such as a cover letter, a validation sticker on the card, other information about card security, offers for credit insurance or other optional products, advertisements, and disclosures required under federal or state law that are not incorporated into the agreement itself.

Proposed § 226.58(b)(2) defines "business day" as a day on which the creditor's offices are open to the public for carrying on substantially all of its business functions. This is consistent with the definition of business day used in most other sections of Regulation Z.

Proposed § 226.58(b)(3) states that an issuer "offers" or "offers to the public" an agreement if the issuer is soliciting or accepting applications for new accounts that would be subject to that agreement. As proposed comment 58(b)(3)-1 would clarify, a card issuer is deemed to offer a credit card agreement to the public even if the issuer solicits, or accepts applications from, only a limited group of persons. For example, an issuer may market affinity cards to students and alumni of a particular educational institution or solicit only high-net-worth individuals for a particular card, but the corresponding card agreements would be considered to be offered to the public. Proposed comment 58(b)(3)-2 would clarify that a card issuer is deemed to offer a credit card agreement to the public even if the terms of the agreement are changed immediately upon opening of an account to terms not offered to the public.

Proposed § 226.58(b)(4) defines the term "pricing information" to include: (1) the information under § 226.6(b)(2)(i) through (b)(2)(xii), (b)(3) and (b)(4) that is required to be disclosed in writing pursuant to § 226.5(a)(1)(ii); (2) the credit limit; and (3) the method used to calculate required minimum payments. This definition makes reference to the provisions of § 226.6(b) as revised by the January 2009 Regulation Z Rule. While the effective date of proposed § 226.58 would be February 22, 2010, the

Board is soliciting comment regarding whether the July 1, 2010 mandatory compliance date of revised § 226.6 should be retained, as discussed elsewhere in this proposal. If the July 1, 2010 mandatory compliance date for revised § 226.6(b) is retained, the Board may make technical and conforming changes to proposed § 226.58(b)(4) to account for the difference in mandatory compliance dates. However, the definition of pricing information for purposes of proposed § 226.58 would conform to the requirements of revised § 226.6(b)(2)(i) through (b)(2)(xii), (b)(3) and (b)(4) beginning on February 22, 2010, even if compliance with portions of revised § 226.6(b) is not mandatory until July 1, 2010.

58(c) Registration with Board

Proposed § 226.58(c) would require any card issuer that offered one or more credit card agreements as of December 31, 2009 to register with the Board, in the form and manner prescribed by the Board, no later than February 1, 2010. However, a card issuer that would have qualified for the de minimis exception under proposed § 226.58(e) as of December 31, 2009, if proposed § 226.58 had been in effect on that date, would not be required to register.

The Board expects to provide additional details regarding the registration process in a document setting forth technical specifications for the credit card agreement posting requirements, to be posted on the Board's public Web site. The Board anticipates that issuers will register online through the Board's Web site and that registration will capture basic identifying information about each issuer, such as the issuer's name, address, and identifying number (e.g., RSSD ID number or tax identification number), and the name, phone number and email address of a contact person at the issuer. The Board will contact the issuer to confirm that the issuer in fact authorized the registration.

Proposed § 226.58(c)(2) would provide that any issuer that is required to make a submission to the Board under § 226.58(d) that has not previously registered with the Board must register with the Board at least 21 days before the quarterly submission deadline specified in § 226.58(d)(1) on which the card issuer's first submission is due. As proposed comment 58(c)-1 would clarify, this provision would apply, for example, if a new credit card issuer is organized or if an existing issuer that previously qualified for the de minimis exception under § 226.58(e) ceased to qualify. For example, a card issuer that previously qualified for the de minimis exception ceases to qualify as of September 30. That issuers first submission to the Board is due on October 31, the next quarterly submission deadline. The issuer must register with the Board at least 21 days before October 31.

Proposed § 226.58(c)(3) would require card issuers that have registered with the Board under § 226.58(c)(1) or (c)(2) to provide updated registration information to the Board no later than the first quarterly submission deadline specified in § 226.58(d)(1) after the information changes. For example, as described in proposed comment 58(c)-2, a card issuer that has already registered with the Board changes its address on October 15. The issuer must submit revised registration information advising the Board of the address change no later than October 31, the next quarterly submission deadline specified in § 226.58(d)(1) after the change.

58(d) Submission of Agreements to Board

Proposed § 226.58(d) would require that each card issuer electronically submit the credit card agreements, as defined in proposed § 226.58(b)(1), that the issuer offers, as defined in proposed § 226.58(b)(2), to the Board on a quarterly basis. Consistent with new TILA Section 122(d)(3), the Board will post the credit card agreements it receives on its Web site.

New TILA Section 122(d)(5) provides that the Board may establish exceptions to the requirements that credit card agreements be posted on creditors' Web sites and submitted to the Board for posting on its Web site in any case where the administrative burden outweighs the benefit of increased transparency. In addition, TILA Section 105(a) gives the Board authority to prescribe regulations containing provisions necessary or proper to effectuate the purposes of and to facilitate compliance with TILA. The Board believes that, with respect to credit card agreements that are not currently offered to the public, the administrative burden associated with submission for posting on the Board's Web site would outweigh the benefit of increased transparency. The Board also believes that providing an exception for agreements not currently offered to the public is appropriate both to effectuate the purposes of TILA and to facilitate compliance with TILA.

The Board is aware that the number of credit card agreements currently in effect but no longer offered to the public is extremely large, and the Board believes that requiring issuers to prepare and submit these agreements would impose a significant burden on issuers. The Board also believes that the primary benefit of making credit card agreements available on the Board's Web site is to assist consumers in comparing credit card agreements offered by various issuers when shopping for a new credit card. Including agreements that are no longer offered to the public would not facilitate comparison shopping by consumers because consumers could not apply for cards subject to these agreements. In addition, including agreements no longer offered to the public would significantly increase the number of agreements included on the Board's Web site, possibly to include hundreds of thousands of agreements (or more). This volume of data would render the amount of data provided through the Web site too large to be helpful to most consumers. Thus, the Board is proposing that an issuer only submit to the Board under § 226.58(d) those agreements that the issuer currently offers to the public.

58(d)(1) Quarterly Submissions

Proposed § 226.58(d)(1) would require issuers to make quarterly submissions to the Board, in the form and manner specified by the Board, that would contain: (1) the credit card agreements, as described in Appendix N, that the card issuer offered to the public as of the last business day of the preceding calendar quarter that the card issuer has not previously submitted to the Board; (2) any credit card agreement previously submitted to the Board that was modified or amended during the preceding calendar quarter, as described in proposed § 226.58(d)(3); and (3) notification regarding any credit card agreement previously submitted to the Board that the issuer is withdrawing, as described in proposed § 226.58(d)(4) and (e). Quarterly submissions to the Board would be due no later than the first business day on or after January 31, April 30, July 31, and October 31 of each year.

Proposed comment 58(d)-1 would give the following example: a card issuer has already submitted three credit card agreements to the Board. On October 15, the issuer stops offering agreement A. On November 20, the issuer makes changes to the terms of agreement B. On December 1, the issuer starts offering a new agreement D. The issuer must submit to the Board no later than the first business day on or after January 31: (1) notification that the issuer is withdrawing agreement A, because it is no longer offered to the public; (2) the revised version of agreement B; and (3) agreement D.

As proposed comment 58(d)-2 would clarify, under proposed § 226.58(d)(1), an issuer is not required to make any submission to the Board at a particular quarterly submission deadline if, during the previous calendar quarter, the issuer did not take any of the following actions: (1) offering a new credit card agreement that was not submitted to the Board previously; (2) revising or amending an agreement previously submitted to the Board; and (3) ceasing to offer an agreement previously submitted to the Board. For example, a card issuer offers five agreements to the public as of September 30 and submits these to the Board by October 31, as required by proposed § 226.58(d)(1). Between September 30 and December 31, the issuer continues to offer all five of these agreements to the public without amending or revising them and does not begin offering any new agreements. The issuer is not required to make any submission to the Board by the following January 31.

The Board expects to provide additional details regarding the electronic submission process in the technical specifications document to be posted on the Board's public Web site.

58(d)(2) Timing of First Two Submissions

Proposed § 226.58(d)(2) would specify timing requirements for the first two submissions to the Board following the effective date. As described above, quarterly submissions to the Board generally are due no later than the first business day on or after January 31, April 30, July 31, and October 31 of each year. However, Section 3 of the Credit Card Act provides that new TILA Section 122(d) becomes effective on February 22, 2010, nine months after the date of enactment of the Credit Card Act. Thus, consistent with Section 3 of the Credit Card Act, proposed § 226.58(d)(2) would require issuers to send their initial submissions, containing credit card agreements offered to the public as of December 31, 2009, to the Board no later than February 22, 2010. Proposed § 226.58(d)(2) would provide that the next submission must be sent to the Board no later than August 2, 2010 (the first business day on or after July 31, 2010), and must contain: (1) any credit card agreements that the card issuer offered to the public as of June 30, 2010, that the card issuer has not previously submitted to the Board; (2) any credit card agreement previously submitted to the Board that was modified or amended after December 31, 2009, and on or before June 30, 2010, as described in proposed § 226.58(d)(3); and (3) notification regarding any credit card agreement previously submitted to the Board that the issuer is withdrawing as of June 30, 2010, as described in proposed § 226.58(d)(4) and (e).

For example, as of December 31, 2009, a card issuer offers three agreements. The issuer is required to submit these agreements to the Board no later than February 22, 2010. On March 10, 2010, the issuer begins offering a new agreement. In general, an issuer that begins offering a new agreement on March 10 of a given year would be required to submit that agreement to the Board no later than April 30 of that year. However, under proposed § 226.58(d)(2), no submission to the Board would be due on

April 30, 2010, and the issuer instead would be required to submit the new agreement no later than August 2, 2010.

58(d)(3) Changes to Agreements

Under proposed § 226.58(d)(3), if a credit card agreement has been submitted to the Board, no changes have been made to the agreement, and the card issuer continues to offer the agreement to the public, no additional submission of that agreement is required. For example, as described in proposed comment 58(d)-3, a credit card issuer begins offering an agreement in October and submits the agreement to the Board the following January 31, as required by proposed § 226.58(d)(1). As of March 31, the issuer has not revised or amended the agreement and is still offering the agreement to the public. The issuer is not required to submit anything to the Board regarding that agreement by April 30.

If an issuer makes changes to a credit card agreement previously submitted to the Board (including changes to the provisions of the agreement, the pricing information, or both), proposed § 226.58(d)(3) would require the card issuer to submit the entire revised agreement to the Board by the first quarterly submission deadline after the last day of the calendar quarter in which the change becomes effective. Proposed comment 58(d)-4 would give the following example: an issuer submits an agreement to the Board on October 31. On November 15, the issuer changes the method used to calculate required minimum payments under the agreement. Because an element of the pricing information has changed, the issuer must submit the entire revised agreement to the Board no later than January 31 of the following year.

As proposed, § 226.58(d)(3) would require credit card issuers to resubmit agreements following any change, regardless of whether that change affects the substance of the agreement. The Board recognizes that requiring issuers to resubmit agreements following nonsubstantive changes could impose a substantial burden on issuers with no corresponding benefit to consumers. The Board solicits comment on whether issuers are likely to make technical changes to agreements without simultaneously making substantive changes, whether requiring issuers to resubmit agreements following any change (however minor) would impose a significant burden, and what standard the Board should use to determine what changes merit resubmission of an agreement.

As proposed comment 58(d)-5 would explain, an issuer may not fulfill the requirement to submit the entire revised agreement to the Board by submitting a change-in-terms or similar notice covering only the terms that have changed. Amendments and revisions would be required to be integrated into the text of the agreement (or the single addendum described in proposed Appendix N, if applicable), not provided as separate riders. For example, an issuer changes the purchase APR associated with an agreement the issuer has previously submitted to the Board. The purchase APR for that agreement was included in an addendum of pricing information as described in proposed Appendix N. The issuer may not submit a change-in-terms or similar notice reflecting the change in APR, either alone or accompanied by the original text of the agreement and original addendum of pricing information. Instead, the issuer must revise the addendum of pricing information to reflect the change in APR and submit to the Board the entire text of the agreement and the entire revised addendum, even though no changes have been made to the provisions of the agreement and only one item on the addendum has changed.

The Board believes that permitting issuers to submit change-in-terms notices or riders containing amendments and revisions would make it difficult for consumers to determine what provisions and pricing information are currently offered by issuers. Consumers would be required to sift through change-in-terms notices and riders in an attempt to assemble a coherent picture of the terms currently offered. The Board believes that issuers are better placed than consumers to assemble this information. While the Board understands that this may somewhat increase the burden on issuers, the Board believes that the corresponding benefit of increased transparency for consumers outweighs this burden.

58(d)(4) Withdrawal of Agreements

Proposed § 226.58(d)(4) would require an issuer to notify the Board if any agreement previously submitted to the Board by that issuer is no longer offered to the public by the first quarterly submission deadline after the last day of the calendar quarter in which the issuer ceased to offer the agreement. For example, as described in proposed comment 58(d)-6, on January 5 an issuer stops offering to the public an agreement it previously submitted to the Board. The issuer must notify the Board that the agreement is being withdrawn by April 30, the first quarterly submission deadline after March 31, the last day of the calendar quarter in which the issuer stopped offering the agreement.

58(e) De Minimis Exception

New TILA Section 122(d)(5) provides that the Board may establish exceptions to the requirements that credit card agreements be posted on creditors' Web sites and submitted to the Board for posting on the Board's Web site in any case where the administrative burden outweighs the benefit of increased transparency, such as where a credit card plan has a de minimis number of consumer account holders. The Board believes that a de minimis exception to these requirements is appropriate, but believes that it may not be feasible to base such an exception on the number of accounts under a credit card plan. In particular, the Board is not aware of a way to define "credit card plan" that would not divide issuer's portfolios into such small units that large numbers of credit card agreements could fall under the de minimis exception.

The Board therefore proposes to establish a de minimis exception in proposed § 226.58(e) based on an issuer's total number of open accounts. Under proposed § 226.58(e)(1), an issuer would not be required to submit any credit card agreements to the Board under proposed § 226.58(d) if the card issuer has fewer than 10,000 open credit card accounts under open-end (not home-secured) consumer credit plans, as of the last business day of the calendar quarter. For example, as described in proposed comment 58(e)-1, an issuer offers five credit card agreements to the public as of September 30. However, the issuer has only 2,000 open credit card accounts under open-end (not home-secured) consumer credit plans as of September 30. The issuer is not required to submit any agreements to the Board by October 31 because the issuer qualifies for the de minimis exception.

Proposed comment 58(e)-2 would clarify that, for purposes of the de minimis exception, a credit card account is considered to be open even if the account is inactive, as long as the account has not been closed by the cardholder or the card issuer and the cardholder can obtain extensions of credit on the account. If an account has been closed for new activity (for example, due to default by the cardholder), but the cardholder is still making payments to pay off the outstanding balance, the account need not be considered open. If an account has only temporarily been suspended (for example, due to a report of unauthorized use), the account is considered open.

As proposed comment 58(e)-3 would clarify, whether an issuer qualifies for the de minimis exception would be determined as of the last business day of each calendar quarter. For example, as of December 31, an issuer offers three agreements to the public and has 9,500 open credit card accounts under open end (not home secured) consumer credit plans. As of January 30, the issuer still offers three agreements, but has 10,100 open accounts. As of March 31, the issuer still offers three agreements, but has only 9,700 open accounts. Even though the issuer had 10,100 open accounts at one time during the calendar quarter, the issuer qualifies for the de minimis exception because the number of open accounts was less than 10,000 as of March 31. The issuer therefore is not required to submit any agreements to the Board under § 226.58(d) by April 30.

The Board believes that the administrative burden on issuers of preparing and submitting such agreements would outweigh the benefit of increased transparency from including those agreements on the Board's Web site, but the Board solicits comment on the 10,000 open accounts threshold for the de minimis exception. In addition, the Board recognizes that the proposed de minimis exception would not alleviate the administrative burden on large issuers of submitting agreements for credit card plans with a very small number of open accounts. The Board solicits comments on whether the Board should create a de minimis exception applicable to a small credit card plan offered by an issuer of any size, and if so how the Board should define "credit card plan" for purposes of such an exception.

Proposed § 226.58(e)(2) would specify that if an issuer that previously qualified for the de minimis exception ceases to qualify, the card issuer must begin making quarterly submissions to the Board under § 226.58(d) no later than the first quarterly submission deadline after the date as of which the issuer ceased to qualify. As proposed comment 58(e)-4 would clarify, whether an issuer has ceased to qualify for the de minimis exception under proposed § 226.58(e)(2) would be determined as of the last business day of the calendar quarter, as indicated in proposed § 226.58(e)(1). For example, as of June 30, an issuer offers three agreements to the public and has 9,500 credit card accounts under open-end (not home-secured) consumer credit plans. The issuer is not required to submit any agreements to the Board under § 226.58(d) because the issuer qualifies for the de minimis exception. As of July 15, the issuer still offers the same three agreements, but now has 10,000 open accounts. The issuer is not required to take any action at this time, because whether an issuer qualifies for the de minimis exception under proposed § 226.58(e)(1) is determined as of the last business day of the calendar quarter. As of September 30, the issuer still offers the same three agreements and still has 10,000 open accounts. Because the issuer had 10,000 open accounts as of September 30, the issuer ceased to qualify for the de minimis exception and must submit the three agreements it offers to the Board by October 31, the next quarterly submission deadline.

Proposed § 226.58(e)(3) would provide that if a card issuer that did not previously qualify comes within the de minimis exception, the card issuer may, but is not required to, notify the Board that the card issuer is withdrawing each agreement the card issuer previously submitted to the Board. Until the issuer notifies the Board that each agreement it previously submitted is being withdrawn, the issuer must continue to make quarterly submissions to the Board under § 226.58(d) and to provide updated registration information under § 226.58(c)(3). Proposed comment 58(e)-5 would give the following example: an issuer has 10,001 open accounts and offers three agreements to the public as of December 31. The issuer has registered with the Board and submitted each of the three agreements to the Board as required under § 226.58(c) and (d). As of March 31, the issuer has only 9,999 open accounts. The issuer has two options. First, the issuer may notify the Board that the issuer is withdrawing each of the three agreements it previously submitted. Once the issuer has notified the Board, the issuer is no longer required to make quarterly submissions to the Board under § 226.58(d) or to provide updated registration information to the Board under § 226.58(c)(3). Alternatively, the issuer may choose not to notify the Board that it is withdrawing its agreements. In this case, the issuer must continue making quarterly submissions to the Board under § 226.58(d) and providing updated registration information to the Board under § 226.58(c)(3). The issuer might choose not to withdraw its agreements if, for example, the issuer believes that it will likely cease to qualify for the de minimis exception again in the near future.

58(f) Agreements Posted on Card Issuer's Web Site

In addition to requiring that card issuers submit credit card agreements to the Board for posting on the Board's Web site, new TILA Section 122(d) requires that each issuer post the credit card agreements to which it is a party on its own Web site. The Board proposes to implement this requirement in proposed § 226.58(f).

Proposed § 226.58(f) would set out two requirements. First, under proposed § 226.58(f)(1), each issuer would be required to post on its publicly available Web site the same agreements it is required to submit to the Board under proposed § 226.58(d) (i.e., the agreements the issuer offers to the public). An issuer that is not required to submit agreements to the Board under proposed § 226.58(d) because it qualifies for the de minimis exception under proposed § 226.58(e) would not be subject to this requirement.

Second, under proposed § 226.58(f)(2), each issuer would be required to provide each individual cardholder with access to his or her specific credit card agreement, by either: (1) posting and maintaining the individual cardholder's agreement on the issuer's Web site; or (2) making a copy of each cardholder's agreement available to the cardholder upon that cardholder's request. If a card issuer chooses to make agreements available upon request, the issuer would be required to provide the cardholder with the ability to request a copy of the agreement both: (1) by using the issuer's Web site (such as by clicking on a clearly identified box to make the request); and (2) by calling a toll free telephone number displayed on the Web site and clearly identified as to purpose. Proposed comment 58(f)(2)-1 would clarify that agreements provided upon request may be provided in either electronic or paper form, regardless of the form of the cardholder's request. Whether provided electronically or in paper form, agreements must be provided in a typeface that is clear and legible.

As proposed comment 58(f)-2 would clarify, the requirement to provide access to credit card agreements under proposed § 226.58(f)(2) would apply to all open credit card accounts under open-end (not home-secured) consumer credit plans, regardless of whether such agreements are required to be submitted to the Board pursuant to proposed § 226.58(d). For example, an issuer that is not required to submit agreements to the Board because it qualifies for the de minimis exception under § 226.58(e) would still be required to provide cardholders with access to their specific agreements under § 226.58(f)(2). Similarly, an agreement that is no longer offered to the public would not be required to be submitted to the Board under § 226.58(d), but would still need to be provided to the cardholder to whom it applies under § 226.58(f)(2).

As described above, the Board proposes to exercise its authority to create exceptions from the requirements of new TILA Section 122(d) with respect to the submission of certain agreements to the Board for posting on the Board's Web site. However, the Board believes that it would not be appropriate to apply these exceptions to the requirement that issuers provide cardholders with access to their specific credit card agreement through the issuer's Web site. In particular, the Board believes that, for the reasons discussed above, posting credit card agreements that are not currently offered to the public on the Board's Web site would not be beneficial to consumers. However, the Board believes that the benefit of increased transparency of providing an individual cardholder access to his or her specific credit card agreement is substantial regardless of whether the cardholder's agreement continues to be offered by the issuer. The Board believes that this benefit outweighs the administrative burden on issuers of providing such access, and the Board therefore is not proposing to exempt agreements that are not offered to the public from the requirements of proposed § 226.58(f)(2). Similarly, the proposal provides that card issuers with fewer than 10,000 open credit card accounts under open-end (not home-secured) consumer credit plans would not be required to submit agreements to the Board. However, the Board believes that the benefit of increased transparency associated with providing an individual cardholder with access to his or her specific credit card agreement is substantial regardless of the number of the card issuer's open accounts. The Board believes that this benefit of increased transparency for consumers outweighs the administrative burden on issuers of providing such access, and the Board therefore is not proposing to apply the de minimis exception to the requirements of proposed § 226.58(f)(2).

The Board is providing issuers with the option to make copies of cardholder agreements available on request because the Board believes that the benefit of increased transparency associated with immediate access to cardholder agreements, as compared to access after a brief waiting period, would not outweigh the administrative burden on issuers of providing immediate access. The Board believes that the administrative burden associated with posting each cardholder's credit card agreement on the issuer's Web site may be substantial for some issuers. In particular, the Board notes that some smaller institutions with limited information technology resources could find a requirement to post all cardholder's agreements to be a significant burden. The Board understands that it is important that all cardholders be able to obtain copies of their credit card agreements promptly, and proposed § 226.58(f)(2) would ensure that this occurs.

If a card issuer chooses to make agreements available upon request under proposed § 226.58(f)(2)(ii), the card issuer would be required to send to the cardholder or otherwise make available to the cardholder a copy of the cardholder's agreement no later than 10 business days after the issuer receives the cardholder's request. As proposed comment 58(f)(2)-3 would clarify, if, for example, an issuer chooses to respond to a cardholder's request by mailing a paper copy of the cardholder's agreement, the issuer would be required to mail the agreement no later than 10 business days after receipt of the cardholder's request. Alternatively, if an issuer chooses to respond to a cardholder's request by posting the cardholder's agreement on the issuer's Web site, the issuer must post the agreement on its Web site no later than 10 business days after receipt of the cardholder's request. The Board believes that requiring issuers to provide cardholder's agreements within 10 business days gives card issuers adequate time to respond to requests while providing cardholders with prompt access to their credit card agreements. The Board solicits comments regarding whether issuers should have a shorter or longer period in which to respond to cardholder requests.

Proposed § 226.58(f)(3) would state that credit card issuers may provide credit card agreements in electronic form under § 226.58(f)(1) and (f)(2) without regard to the consumer notice and consent requirements of Section 101(c) of the E-Sign Act. Because new TILA Section 122(d) specifies that credit card issuers must provide access to cardholder agreements on the issuer's Web site, the Board believes that the requirements of the E-Sign Act do not apply.

Appendix M1 – Repayment Disclosures

As discussed in the section-by-section analysis to proposed § 226.7(b)(12), TILA Section 127(b)(11), as added by Section 1301(a) of the Bankruptcy Act, required creditors, the FTC and the Board to establish and maintain toll-free telephone numbers in certain instances in order to provide consumers with an estimate of the time it will take to repay the consumer's outstanding balance, assuming the consumer makes only minimum payments on the account and the consumer does not make any more draws on the account. 15 U.S.C. 1637(b)(11)(F). The Act required creditors, the FTC and the Board to provide estimates that are based on tables created by the Board that estimate repayment periods for different minimum monthly payment amounts, interest rates, and outstanding balances. In the January 2009 Regulation Z Rule, instead of issuing a table, the Board issued guidance in Appendix M1 to part 226 to card issuers and the FTC for how to calculate this generic repayment estimate. The Board would use the same guidance to calculate the generic repayment estimates given through its toll-free telephone number.

TILA Section 127(b)(11), as added by Section 1301(a) of the Bankruptcy Act, provided that a creditor may use a toll-free telephone number to provide the actual number of months that it will take consumers to repay their outstanding balance instead of providing an estimate based on the Board-created table ("actual repayment disclosure"). 15 U.S.C. 1637(b)(11)(I)-(K). In the January 2009 Regulation Z Rule, the Board implemented that statutory provision and also provided card issuers with the option to provide the actual repayment disclosure on the periodic statement instead of through a toll-free telephone number. In the January 2009 Regulation Z Rule, the Board adopted new Appendix M2 to part 226 to provide guidance to issuers on how to calculate the actual repayment disclosure.

As discussed in more detail in the section-by-section analysis to proposed § 226.7(b)(12), the Credit Card Act substantially revised Section 127(b)(11) of TILA. Specifically, Section 201 of the Credit Card Act amends TILA Section 127(b)(11) to provide that creditors that extend open-end credit must provide the following disclosures on each periodic statement: (1) a "warning" statement indicating that making only the minimum payment will increase the interest the consumer pays and the time it takes to repay the consumer's balance; (2) the number of months that it would take to repay the outstanding balance if the consumer pays only the required minimum monthly payments and if no further advances are made; (3) the total cost to the consumer, including interest and principal payments, of paying that balance in full, if the consumer pays only the required minimum monthly payments and if no further advances are made; (4) the monthly payment amount that would be required for the consumer to pay off the outstanding balance in 36 months, if no further advances are made, and the total cost to the consumer, including interest and principal payments, of paying that balance in full if the consumer pays the balance over 36 months; and (5) a toll-free telephone number at which the consumer may receive information about credit counseling and debt management services. For ease of reference, this supplementary information will refer to the above disclosures in the Credit Card Act as "the repayment disclosures."

As discussed in more detail in the section-by-section analysis to proposed § 226.7(b)(12), the Board proposes to limit the repayment disclosure requirements to credit card accounts under open-end (not home-secured) consumer credit plans, as that term is defined in proposed § 226.2(a)(15)(ii). The Board proposes to adopt in proposed Appendix M1 to part 226 guidance for calculating the repayment disclosures.

Calculating the minimum payment repayment estimate. The minimum payment repayment estimate would be an estimate of the number of months that it would take to pay the outstanding balance shown on the periodic statement, if the consumer pays only the required minimum monthly payments and if no further advances are made. The guidance in proposed Appendix M1 to part 226 for calculating the minimum payment repayment estimate would be similar to the guidance that the Board adopted in Appendix

M2 to part 226 in the January 2009 Regulation Z Rule for calculating the actual repayment disclosure. The Board proposes that credit card issuers generally calculate the minimum payment repayment estimate for a consumer based on the minimum payment formula(s), the APRs and the outstanding balance currently applicable to a consumer's account. For other terms that may impact the calculation of the minimum payment repayment estimate, the Board proposes to allow issuers to make certain assumption about these terms.

1. Minimum payment formulas. When calculating the minimum payment repayment estimate, the Board proposes that credit card issuers generally must use the minimum payment formula(s) that apply to a cardholder's account. Proposed Appendix M1 to part 226 provides that in calculating the minimum payment repayment estimate, if more than one minimum payment formula applies to an account, the issuer must apply each minimum payment formula to the portion of the balance to which the formula applies. In providing the minimum payment repayment estimate, an issuer must disclose the longest repayment period calculated. For example, assume that an issuer uses one minimum payment formula to calculate the minimum payment amount for a general revolving feature, and another minimum payment formula to calculate the minimum payment amount for special purchases, such as a "club plan purchase." Also, assume that based on a consumer's balances in these features, the repayment period calculated pursuant to proposed Appendix M1 to part 226 for the general revolving feature is 5 years, while the repayment period calculated for the special purchase feature is 3 years. This issuer must disclose 5 years as the repayment period for the entire balance to the consumer. This proposal differs from the approach adopted in the January 2009

Regulation Z Rule, which permitted card issuers the option to disclose either the longest repayment period calculated or the repayment period calculated for each minimum payment formula, when disclosing the actual repayment disclosures through a toll-free telephone number. The Board believes that allowing card issuers to disclose on the periodic statement the repayment period calculated for each minimum payment formula might create "information overload" for consumers and might distract the consumer from other important information that is contained on the periodic statement.

Under proposed Appendix M1 to part 226, card issuers would be allowed to disregard promotional terms related to payments, such as deferred billing promotional plans and skip payment features. The Board notes that allowing issuers to disregard promotional payment terms on accounts where the promotional payment terms apply only for a limited amount of time eases compliance burden on issuers, without a significant impact on the accuracy of the repayment estimates for consumers.

2. Annual percentage rates. Generally, when calculating the minimum payment repayment estimate, the proposal would require credit card issuers to use each of the APRs that currently apply to a consumer's account, based on the portion of the balance to which that rate applies.

TILA Section 127(b)(11), as revised by the Credit Card Act, specifically requires that in calculating the minimum payment repayment estimate, if the interest rate in effect on the date on which the disclosure is made is a temporary rate that will change under a contractual provision applying an index or formula for subsequent interest rate adjustments, the creditor must apply the interest rate in effect on the date on which the disclosure is made for as long as that interest rate will apply under that contractual provision, and then apply an interest rate based on the index or formula in effect on the applicable billing date.

Consistent with TILA Section 127(b)(11), as revised by the Credit Card Act, under proposed Appendix M1 to part 226, the term "promotional terms" would be defined as "terms of a cardholder's account that will expire in a fixed period of time, as set forth by the card issuer." The term "deferred interest or similar plan" would mean a plan where a consumer will not be obligated to pay interest that accrues on balances or transactions if those balances or transactions are paid in full prior to the expiration of a specified period of time. If any promotional APRs apply to a cardholder's account, other than deferred interest or similar plans, a credit card issuer in calculating the minimum payment repayment estimate would be required to apply the promotional APR(s) until it expires and then must apply the rate that applies after the promotional rate(s) expires. If the rate that applies after the promotional rate(s) expires is a variable rate, a card issuer would be required to calculate that rate based on the applicable index or formula. This variable rate would be considered accurate if it was in effect within the last 30 days before the minimum payment repayment estimate is provided.

For deferred interest or similar plans, if minimum payments under the plan will repay the balances or transactions prior to the expiration of the specified period of time, a card issuer must assume that the consumer will not be obligated to pay the accrued interest. This means, in calculating the minimum payment repayment estimate, the card issuer must apply a zero percent APR to the balance subject to the deferred interest or similar plan. If, however, minimum payments under the deferred interest or similar plan may not repay the balances or transactions in full prior to the expiration of the specified period of time, a credit card issuer must assume that a consumer will not repay the balances or transactions in full prior to the expiration of the specified period and thus the consumer will be obligated to pay the accrued interest. This means, in calculating the minimum payment repayment estimate, the card issuer must apply the APR at which interest is accruing to the balance subject to the deferred interest or similar plan.

For example, assume under a deferred interest plan, a card issuer will not charge interest on a certain purchase if the consumer repays that purchase amount within 12 months. Also, assume that under the account agreement, the minimum payments for the deferred interest plan are calculated as 1/12 of the purchase amount, such that if the consumer makes timely minimum payments each month for 12 months, the purchase amount will be paid off by the end of the deferred interest period. In this case, the card issuer must assume that the consumer will not be obligated to pay the deferred interest. This means, in calculating the minimum payment repayment estimate, the card issuer must apply a zero percent APR to the balance subject to the deferred interest plan. On the other hand, if under the account agreement, the minimum payments for the deferred interest plan may not necessarily repay the purchase balance within the deferred interest period (such as where the minimum payments are calculated as 3 percent of the outstanding balance), a credit card issuer must assume that a consumer will not repay the balances or transactions in full by the specified date and thus the consumer will be obligated to pay the deferred interest. This means, in calculating the minimum payment repayment estimate, the card issuer must apply the APR at which deferred interest is accruing to the balance subject to the deferred interest plan.

This proposed approach with respect to deferred interest or similar plans is consistent with the assumption that only minimum payments are made in repaying the balance on the account.

3. Outstanding balance. When calculating the minimum payment repayment estimate, the Board proposes that credit card issuers must use the outstanding balance on a consumer's account as of the closing date of the last billing cycle. Issuers would not be required to take into account any transactions consumers may have made since the last billing cycle. The Board believes that this proposed approach would make it easier for consumers to understand the minimum payment repayment estimate, because the outstanding balance used to calculate the minimum payment repayment estimate would be the same as the outstanding balance shown on the periodic statement. Under the proposal, issuers would be allowed to round the outstanding balance to the nearest whole dollar to calculate the minimum payment repayment estimate.

4. Other terms. As discussed above, the Board proposes in Appendix M1 to part 226 that issuers must calculate the minimum payment repayment estimate for a consumer based on the minimum payment formulas(s), the APRs and the outstanding balance currently applicable to a consumer's account. For other terms that may impact the calculation of the minimum payment repayment estimate, the Board proposes to allow issuers to make certain assumptions about these terms.

a. Balance computation method. The Board proposes to allow issuers to use the average daily balance method for purposes of calculating the minimum payment repayment estimate. The average daily balance method is commonly used by issuers to compute the balance on credit card accounts. Nonetheless, requiring use of the average daily balance method makes other assumptions necessary, including the length of the billing cycle, and when payments are made. The Board proposes to allow an issuer to assume a monthly or daily periodic rate applies to the account. If a daily periodic rate is used, the issuer would be allowed to assume either (1) a year is 365 days long, and all months are 30.41667 days long, or (2) a year is 360 days long, and all months are 30 days long. Both sets of assumptions about the length of the year and months would yield the same repayment estimates. The Board also proposes to allow issuers to assume that payments are credited on the last day of the month.

b. Grace period. In proposed Appendix M1 to part 226, the Board proposes to allow issuers to assume that no grace period exists. The required disclosures about the effect of making minimum payments are based on the assumption that the consumer will be "revolving" or carrying a balance. Thus, it seems reasonable to assume that the account is already in a revolving condition at the time the minimum payment repayment estimate is disclosed on the periodic statement, and that no grace period applies. This proposed assumption about the grace period is also consistent with the proposed rule to exempt issuers from providing the minimum payment repayment estimate to consumers that have paid their balances in full for two consecutive months.

c. Residual interest. When the consumer's account balance at the end of a billing cycle is less than the required minimum payment, the Board proposes to allow an issuer to assume that no additional transactions occurred after the end of the billing cycle, that the account balance will be paid in full, and that no additional finance charges will be applied to the account between the date the statement was issued and the date of the final payment. These assumptions are necessary to have a finite solution to the repayment period calculation. Without these assumptions, the repayment period could be infinite.

d. Minimum payments are made each month. In proposed Appendix M1 to part 226, issuers would be allowed to assume that minimum payments are made each month and any debt cancellation or suspension agreements or skip payment features do not apply to a consumer's account. The Board believes that this assumption will ease compliance burden on issuers, without a significant impact on the accuracy of the repayment estimates for consumers.

e. APR will not change. TILA Section 127(b)(11), as revised by the Credit Card Act, provides that in calculating the minimum payment repayment estimate, a creditor must apply the interest rate or rates in effect on the date on which the disclosure is made until the date on which the balance would be paid in full. Nonetheless, if the interest rate in effect on the date on which the disclosure is made is a temporary rate that will change under a contractual provision applying an index or formula for subsequent interest rate adjustment, the creditor must apply the interest rate in effect on the date on which the disclosure is made for as long as that interest rate will apply under that contractual provision, and then apply an interest rate based on the index or formula in effect on the applicable billing date. As discussed above, if any promotional APRs apply to a cardholder's account, other than deferred interest or similar plans, a credit card issuer in calculating the minimum payment repayment estimate would be required to apply the promotional APR(s) until it expires and then must apply the rate that applies after the promotional rate(s) expires. If the rate that applies after the promotional rate(s) expires is a variable rate, a card issuer would be required to calculate that rate based on the applicable index or formula. This variable rate would be considered accurate if it was in effect within the last 30 days before the minimum payment repayment estimate is provided. For deferred interest or similar plans, if minimum payments under the plan will repay the balances or transactions in full prior to the expiration of the specified period of time, a card issuer must assume that the consumer will not be obligated to pay the accrued interest. This means, in calculating the minimum payment repayment estimate, the card issuer must apply a zero percent APR to the balance subject to the deferred interest or similar plan. If, however, minimum payments under the deferred interest or similar plan may not repay the balances or transactions in full by the expiration of the specified period of time, a credit card issuer must assume that a consumer will not repay the balances or transactions in full prior to the expiration of the specified period of time and thus the consumer will be obligated to pay the accrued interest. This means, in calculating the minimum payment repayment estimate, the card issuer must apply the APR at which interest is accruing (or deferred interest is accruing) to the balance subject to the deferred interest or interest waiver plan.

Consistent with TILA Section 127(b)(11), as revised by the Credit Card Act, the Board proposes to allow issuers to assume that the APR on the account will not change either through the operation of a variable rate or the change to a rate, except with respect to promotional APRs as discussed above. For example, if a penalty APR currently applies to a consumer’s account, an issuer would be allowed to assume that the penalty APR will apply to the consumer’s account indefinitely, even if the consumer may potentially return to a non-penalty APR in the future under the account agreement.

f. Payment allocation. In proposed Appendix M1 to part 226, the Board proposes to allow issuers to assume that payments are allocated to lower APR balances before higher APR balances when multiple APRs apply to an account. As discussed in the section-by-section analysis to proposed § 226.53, the proposed rule would permit issuers to allocated minimum payment amounts as they choose; however, issuers would be restricted in how they may allocate payments above the minimum payment amount. The Board assumes that issuers are likely to allocate the minimum payment amount to lower APR balances before higher APR balances, and issuers may assume that is the case in calculating the minimum payment repayment estimate.

g. Account not past due and the account balance does not exceed the credit limit. The proposed rule would allow issuers to assume that the consumer's account is not past due and the account balance is not over the credit limit. The Board believes that this assumption will ease compliance burden on issuers, without a significant impact on the accuracy of the repayment estimates for consumers.

h. Rounding assumed payments, current balance and interest charges to the nearest cent. Under proposed Appendix M1 to part 226, when calculating the minimum payment repayment estimate, an issuer would be permitted to round to the nearest cent the assumed payments, current balance and interest charges for each month, as shown in proposed Appendix M2 to part 226.

5. Tolerances. The Board proposes to provide that the minimum payment repayment estimate calculated by an issuer will be considered accurate if it is not more than 2 months above or below the minimum payment repayment estimate determined in accordance with the guidance in proposed Appendix M1 to part 226, prior to rounding.

This proposed tolerance would prevent small variations in the calculation of the minimum payment repayment estimate from causing a disclosure to be inaccurate. Take, for example, a minimum payment formula of the greater of 2 percent or $20 and two separate amortization calculations that, at the end of 28 months, arrived at remaining balances of $20 and $20.01 respectively. The $20 remaining balance would be paid off in the 29th month, resulting in the disclosure of a 2-year repayment period due to the Board's proposed rounding rule set forth in proposed § 226.7(b)(12)(i)(B). The $20.01 remaining balance would be paid off in the 30th month, resulting in the disclosure of a 3-year repayment period due to the Board's proposed rounding rule. Thus, in the example above, an issuer would be in compliance with the guidance in proposed Appendix M1 to part 226 by disclosing 3 years, instead of 2 years, because the issuer's estimate is within the 2 months' tolerance, prior to rounding. In addition, the proposed rule also provides that even if an issuer's estimate is more than 2 months above or below the minimum payment repayment estimate calculated using the guidance in proposed Appendix M1 to part 226, so long as the issuer discloses the correct number of years to the consumer based on the rounding rule set forth in proposed § 226.7(b)(12)(i)(B), the issuer would be in compliance with the guidance in proposed Appendix M1 to part 226. For example, assume the minimum payment repayment estimate calculated using the guidance in proposed Appendix M1 to part 226 is 32 months (2 years, 8 months), and the minimum payment repayment estimate calculated by the issuer is 38 months (3 years, 2 months). Under the proposed rounding rule set forth in proposed § 226.7(b)(12)(i)(B), both of these estimates would be rounded and disclosed to the consumer as 3 years. Thus, if the issuer disclosed 3 years to the consumer, the issuer would be in compliance with the guidance in proposed Appendix M1 to part 226 even through the minimum payment repayment estimate calculated by the issuer is outside the 2 months' tolerance amount.

The Board recognizes that the minimum payment repayment estimates, the minimum payment total cost estimates, the estimated monthly payments for repayment in 36 months, and the total cost estimates for repayment in 36 months, as calculated in proposed Appendix M1 to part 226, are estimates. The Board would expect that issuers would not be liable under federal or state unfair or deceptive practices laws for providing inaccurate or misleading information, when issuers provide to consumers these disclosures calculated according to guidance provided in proposed Appendix M1 to part 226, as required by TILA.

Calculating the minimum payment total cost estimate. Under proposed Appendix M1 to part 226, when calculating the minimum payment total cost estimate, a credit card issuer would be required to total the dollar amount of the interest and principal that the consumer would pay if he or she made minimum payments for the length of time calculated as the minimum payment repayment estimate using the guidance in proposed Appendix M1 to part 226. Under the proposal, the minimum payment total cost estimate would be deemed to be accurate if it is based on a minimum payment repayment estimate that is within the tolerance guidance set forth in proposed Appendix M1 to part 226, as discussed above. For example, assume the minimum payment repayment estimate calculated using the guidance in proposed Appendix M1 to part 226 is 28 months (2 years, 4 months), and the minimum payment repayment estimate calculated by the issuer is 30 months (2 years, 6 months). The minimum payment total cost estimate will be deemed accurate even if it is based on the 30 month estimate for length of repayment, because the issuer's minimum payment repayment estimate is within the 2 months' tolerance, prior to rounding. In addition, assume the minimum payment repayment estimate calculated using the guidance in proposed Appendix M1 to part 226 is 32 months (2 years, 8 months), and the minimum payment repayment estimate calculated by the issuer is 38 months (3 years, 2 months). Under the proposed rounding rule set forth in proposed § 226.7(b)(12)(i)(B), both of these estimates would be rounded and disclosed to the consumer as 3 years. If the issuer based the minimum payment total cost estimate on 38 months (or any other minimum payment repayment estimate that would be rounded to 3 years), the minimum payment total cost estimate would be deemed to be accurate.

<u>Calculating the estimated monthly payment for repayment in 36 months</u>. Under proposed Appendix M1 to part 226, when calculating the estimated monthly payment for repayment in 36 months, a credit card issuer would be required to calculate the estimated monthly payment amount that would be required to pay off the outstanding balance shown on the statement within 36 months, assuming the consumer paid the same amount each month for 36 months.

In calculating the estimated monthly payment for repayment in 36 months, the Board proposes to require an issuer to use a weighted APR that is based on the APRs that apply to a cardholder's account and the portion of the balance to which the rate applies, as shown in proposed Appendix M2 to part 226. The Board believes that requiring use of a weighted APR to calculate the estimated monthly payment for repayment in 36 month when multiple APRs apply to an account will ease compliance burden on issuers by significantly simplifying the calculation of the estimated monthly payment, without a significant impact on the accuracy of the estimated monthly payments for consumers.

Proposed Appendix M1 to part 226 would provide guidance on how to calculate the weighted APR if promotional APRs apply. If any promotional terms related to APRs apply to a cardholder's account, other than deferred interest or similar plans, in calculating the weighted APR, the issuer must calculate a weighted average of the promotional rate and the rate that will apply after the promotional rate expires based on the percentage of 36 months each rate will apply, as shown in proposed Appendix M2 to part 226.

Under proposed Appendix M1 to part 226, for deferred interest or similar plans, if minimum payments under the plan will repay the balances or transactions in full prior to the expiration of the specified period of time, a card issuer must assume that the consumer will not be obligated to pay the accrued interest. This means, in calculating the weighted APR, the card issuer must apply a zero percent APR to the balance subject to the deferred interest or similar plan. If, however, minimum payments under the deferred interest or similar plan may not repay the balances or transactions in full prior to the expiration of the specified period of time, a credit card issuer in calculating the weighted APR must assume that a consumer will not repay the balances or transactions in full prior to the expiration of the specified period and thus the consumer will be obligated to pay the accrued interest. This means, in calculating the weighted APR, the card issuer must apply the APR at which interest is accruing to the balance subject to the deferred interest or similar plan. To simplify the calculation of the repayment estimates, this proposed approach focuses on whether minimum payments will repay the balances or transactions in full prior to the expiration of the specified period of time instead of whether the estimated monthly payment for repayment in 36 months will repay the balances or transaction prior to the expiration of the specified period. The Board believes that if minimum payments under the deferred interest or similar plan will not repay the balances or transactions in full prior to the expiration of the specified period of time, it is not likely that the estimated monthly payment for repayment in 36 months will repay the balances or transactions in full prior to the expiration of the specified period, given that (1) under proposed § 226.53, card issuers generally may not allocate payments in excess of the minimum payment to deferred interest or similar balances before other balances on which interest is being charged except in the last two months before a deferred interest or similar period is set to expire, and (2) deferred interest or similar periods typically are shorter than 3 years.

The Board requests comment on whether the Board should adopt specific tolerances for calculation and disclosure of the estimated monthly payment for repayment in 36 months, and if so, what those tolerances should be.

Calculating the total cost estimate for repayment in 36 months. Under proposed Appendix M1 to part 226, when calculating the total cost estimate for repayment in 36 months, a credit card issuer would be required to total the dollar amount of the interest and principal that the consumer would pay if he or she made the estimated monthly payment for repayment in 36 months calculated under proposed Appendix M1 to part 226 each month for 36 months. The Board requests comment on whether the Board should adopt specific tolerances for calculation and disclosure of the total cost estimate for repayment in 36 months, and if so, what those tolerances should be.

Calculating savings estimate for repayment in 36 months. Under proposed Appendix M1 to part 226, when calculating the savings estimate for repayment in 36 months, a credit card issuer would be required to subtract the total cost estimate for repayment in 36 months calculated under paragraph (e) of Appendix M1 (rounded to the nearest whole dollar as set forth in proposed § 226.7(b)(12)(i)(F)(3)) from the minimum payment total cost estimate calculated under paragraph (c) of Appendix M1 (rounded to the nearest whole dollar as set forth in proposed § 226.7(b)(12)(i)(C)). The Board requests comment on whether the Board should adopt specific tolerances for calculation and disclosure of the savings estimate for repayment in 36 months, and if so, what those tolerances should be.

Appendix M2 – Sample Calculations of Repayment Disclosures

In proposed Appendix M2, the Board proposes to provide sample calculations for the minimum payment repayment estimate, the total cost repayment estimate, the estimated monthly payment for repayment in 36 months, the total cost estimate for repayment in 36 months, and the savings estimate for repayment in 36 months discussed in proposed Appendix M1 to part 226.

Appendix N – Specifications for Internet Posting of Credit Card Agreements

Proposed Appendix N would provide additional details regarding the content of agreements submitted to the Board under proposed § 226.58(d) and posting of agreements offered to the public on the card issuer's Web site and availability of agreements for all open accounts under § 226.58(f).

Agreements Submitted to the Board Under § 226.58(d)

Under proposed Appendix N, each agreement submitted to the Board must contain the provisions of the agreement and the pricing information in effect as of the last business day of the preceding calendar quarter.

Proposed Appendix N also would specify that information that is not uniform for all cardholders under an agreement, but that instead may vary from one cardholder to another depending upon a cardholder's creditworthiness, state of residence, or other factors, such as the pricing information, must be set forth in an addendum to the agreement. The addendum would be required to provide the information either by setting forth all the possible variations (such as purchase APRs of 6.9 percent, 8.9 percent, 10.9 percent, or 12.9 percent), or by providing a range (such as purchase APR ranging from 6.9 percent to 12.9 percent).

Proposed Appendix N also would clarify that an issuer would not be required to submit with an agreement any disclosures required by state or federal law such as affiliate marketing notices, privacy policies, or disclosures under the E-Sign Act, except to the extent that those disclosures are included in the provisions of the agreement or the pricing information. Similarly, issuers would not be required to submit solicitation materials or periodic statements.

As described in proposed Appendix N, agreements submitted to the Board would not contain any personally identifiable information (such as name, address, telephone number, or account number) relating to any cardholder.

Finally, proposed Appendix N would clarify that issuers may not provide provisions of the agreement or pricing information in the form of change-in-terms notices or riders (other than the single addendum described above, if applicable). Changes in provisions or pricing information must be integrated into the body of the agreement (or into the single addendum described above, if applicable). For example, it would be impermissible for an issuer to submit to the Board an agreement in the form of a terms and conditions document dated January 1, 2005, four subsequent change in terms notices, and 2 addenda showing variations in pricing information. Instead, the issuer must submit a document that integrates the changes made by each of the change in terms notices into the body of the original terms and conditions document and a single addendum displaying variations in pricing information as described above.

The Board believes that permitting issuers to submit agreements that include change-in-terms notices or riders containing amendments and revisions would be confusing for consumers and would greatly lessen the usefulness of agreements posted on the Board's Web site. Consumers would be required to sift through change-in-terms notices and riders in an attempt to assemble a coherent picture of the terms currently offered. The Board believes that issuers are better placed than consumers to assemble this information. While the Board understands that this may somewhat increase the burden on issuers, the Board believes that the corresponding benefit of increased transparency for consumers outweighs this burden.

Posting of Agreements Offered to the Public on Card Issuer's Web Site Under § 226.58(f)(1)

Proposed Appendix N would clarify that, with respect to posting on the issuer's Web site the agreements the issuer is required to submit to the Board under proposed § 226.58(f)(1), the agreements need not conform to the electronic format required for submission to the Board under proposed § 226.58(d). For example, assume the Board requires that agreements submitted to the Board under proposed § 226.58(d) be submitted in plain text format. When posting the agreements on its own Web site under § 226.58(f)(1), an issuer may post the agreements in plain text format, in PDF format, in

HTML format or in some other electronic format, provided the format is readily usable by the general public.

Proposed Appendix N specifies that, under proposed § 226.58(f)(1), the content of the agreements posted on the issuer's Web site must be the same as the content of the agreements submitted to the Board, as described in the first part of proposed Appendix N. Under proposed Appendix N, an issuer would be required to update the agreements posted on its Web site under § 226.58(f)(1) at least as frequently as the quarterly schedule required for submission of agreements to the Board under § 226.58(d). If the issuer chooses to update the agreements on its Web site more frequently, the agreements posted on the issuer's Web site would be permitted to contain the provisions of the agreement and the pricing information in effect as of a date other than the last business day of the preceding calendar quarter.

Proposed Appendix N also would specify that the agreements must be posted on the issuer's Web site in a location that is prominent and easily accessible by the public and must be presented in a clear and legible typeface.

Availability of Agreements for All Open Accounts Under § 226.58(f)(2)

With respect to cardholder agreements posted on the issuer's Web site under proposed § 226.58(f)(2), proposed Appendix N would specify that such agreements may be posted in any electronic format that is readily usable by the general public and must be placed in a location that is prominent and easily accessible to the cardholder.

With respect to any agreement provided under § 226.58(f)(2), whether posted on the card issuer's Web site under § 226.58(f)(2)(i) or made available upon the cardholder's request under § 226.58(f)(2)(ii), proposed Appendix N would provide that the agreement generally must conform to the content requirements for agreements submitted to the Board. However, the agreement would be required to set forth the specific provisions and pricing information applicable to the particular cardholder. The agreement also would be permitted to contain personally identifiable information relating to the cardholder, such as name address, telephone number, or account number, provided that the issuer takes appropriate measures to make the agreement accessible only to the cardholder or other authorized person. Issuers would be permitted to provide pricing information in the text of the agreement or in a single attached addendum. All agreements would be required to be presented in a clear and legible typeface.

Agreements provided under § 226.58(f)(2) would be required under proposed Appendix N to include provisions and pricing information that is complete and accurate as of a date no more than 60 days prior to the date on which the agreement is posted on the card issuer's Web site under § 226.58(f)(2)(i) or the date the cardholder's request is received under § 226.58(f)(2)(ii). For example, an issuer posts cardholder agreements on its Web site under § 226.58(f)(2)(i). The agreement posted on the Web site for a particular cardholder on May 1 must contain the provisions and pricing information applicable to that cardholder as of March 2 or later. The Board believes that 60 days gives issuers a reasonable amount of time to update provisions and pricing information, while providing cardholders with card agreements that are current and accurate. However, the Board solicits comments on whether this period should be shorter or longer.

Finally, proposed Appendix N would clarify that issuers may not provide provisions of the agreement or pricing information in the form of change-in-terms notices or riders (other than the single addendum described above, if applicable). Changes in provisions or pricing information must be integrated into the text of the agreement (or into the single addendum described above, if applicable). For example, it would be not be permissible for an issuer to send to a cardholder under § 226.58(f)(2)(ii) an agreement consisting of a terms and conditions document dated January 1, 2005, and four subsequent change-in-terms notices. Instead, the issuer would be required to send to the cardholder a single document that integrates the changes made by each of the change-in-terms notices into the body of the terms and conditions document.

As described above, the Board believes that requiring consumers to sift through change in-terms notices and riders in an attempt to assemble the agreement to which they are currently subject would be burdensome for consumers. The Board believes that issuers are better placed than consumers to assemble this information. While the Board understands that this may somewhat increase the burden on issuers, the Board believes that the corresponding benefit of increased transparency for consumers would outweigh this burden.

VI. Regulatory Flexibility Analysis

The Regulatory Flexibility Act (5 U.S.C. 601 et seq.) (RFA) requires an agency to perform an initial and final regulatory flexibility analysis on the impact a rule is expected to have on small entities.

Prior to proposing this rule, the Board conducted initial and final regulatory flexibility analyses and ultimately concluded that the rules in the Board's January 2009 Regulation Z Rule and July 2009 Regulation Z Interim Final Rule would have a significant economic impact on a substantial number of small entities. See 72 FR 33033-

33034 (June 14, 2007); 74 FR 5390-5392; 74 FR 36092-36093. As discussed in **I. Background and Implementation of the Credit Card Act** and **V. Section-by-Section Analysis**, several of the provisions of the Credit Card Act are similar to provisions in the Board's January 2009 Regulation Z Rule and July 2009 Regulation Z Interim Final Rule. To the extent that the provisions in the proposed rule are substantially similar to provisions in those rules, the Board continues to rely on the regulatory flexibility analyses conducted for the Board's January 2009 Regulation Z Rule and July 2009 Regulation Z Interim Final Rule. The Credit Card Act, however, also addresses practices or mandates disclosures that were not addressed in the Board's January 2009 Regulation Z Rules and July 2009 Regulation Z Interim Final Rule. The Board anticipates that these proposed provisions would impose additional requirements and burden on small entities. Therefore, based on its prior analyses and for the reasons stated below, the Board believes that this proposed rule would have a significant economic impact on a substantial number of small entities. Accordingly, the Board has prepared the following initial regulatory flexibility analysis pursuant to section 604 of the RFA. A final regulatory flexibility analysis will be conducted after consideration of comments received during the public comment period.

1. Statement of the need for, and objectives of, the proposed rule. The proposed rule implements a number of new substantive and disclosure provisions required by the Credit Card Act, which establishes fair and transparent practices relating to the extension of open-end consumer credit plans. The supplementary information above describes in detail the reasons, objectives, and legal basis for each component of the proposed rule.

2. Small entities affected by the proposed rule. All creditors that offer open-end credit plans are subject to the proposed rule, although several provisions apply only to credit card accounts under an open-end (not home-secured) plan. In addition, institutions of higher education are subject to proposed § 226.57(b), regarding public disclosure of agreements for purposes of marketing a credit card. The Board is relying on its analysis in the January 2009 Regulation Z Rule, in which the Board provided data on the number of entities which may be affected because they offer open-end credit plans. The Board acknowledges, however, that the total number of small entities likely to be affected by the proposed rule is unknown, because the open-end credit provisions of the Credit Card Act and Regulation Z have broad applicability to individuals and businesses that extend even small amounts of consumer credit. In addition, the total number of institutions of higher education likely to be affected by the proposed rule is unknown because the number of institutions of higher education that are small entities and have a credit card marketing contract or agreement with a card issuer or creditor cannot be determined. (For a detailed description of the Board's analysis of small entities subject to the January 2009 Regulation Z Rule, see 74 FR 5391.) The Board invites comment on the effect of the proposed rule on small entities.

3. Recordkeeping, reporting, and compliance requirements. The proposed rule does not impose any new recordkeeping requirements. The proposed rule would, however, impose new reporting and compliance requirements. The reporting and compliance requirements of this proposed rule are described above in **V. Section-by-Section Analysis**. The Board notes that the precise costs to small entities to conform their open-end credit disclosures to the proposed rule and the costs of updating their

systems to comply with the rule are difficult to predict. These costs will depend on a number of factors that are unknown to the Board, including, among other things, the specifications of the current systems used by such entities to prepare and provide disclosures and administer open-end accounts, the complexity of the terms of the open-end credit products that they offer, and the range of such product offerings. The Board seeks information and comment on any costs, compliance requirements, or changes in operating procedures arising from the application of the proposed rule to small entities.

Proposals regarding consumer credit card accounts

This subsection summarizes several of the proposed amendments to Regulation Z and their likely impact on small entities that are card issuers. More information regarding these and other proposed changes can be found in **V. Section-by-Section Analysis**.

Proposed § 226.7(b)(11) would generally require the payment due date for credit card accounts under an open-end (not home-secured) consumer credit plan be the same day of the month for each billing cycle. Small entities that are card issuers may be required to update their systems to comply with this provision.

Proposed § 226.7(b)(12) would generally require card issuers that are small entities to include on each periodic statement certain disclosures regarding repayment, such as a minimum payment warning statement, a minimum payment repayment estimate, and the monthly payment based on repayment in 36 months. Compliance with this provision would require card issuers that are small entities to calculate certain minimum payment estimates for each account. The Board, however, seeks to reduce the burden on small entities by proposing model forms which can be used to ease compliance with the proposed rule.

Proposed § 226.9(g)(3) would require card issuers that are small entities to provide notice regarding an increase in rate based on a consumer's failure to make a minimum periodic payment within 60 days from the due date and disclose that the increase will cease to apply if the small entity is a card issuer and receives six consecutive required minimum period payments on or before the payment due date. The Board anticipates that small entities subject to § 226.9(g), with little additional burden, will incorporate the proposed disclosure requirement with the disclosure already required under § 226.9(g).

Proposed § 226.10(e) would limit fees related to certain methods of payment for credit card accounts under an open-end (not home-secured) consumer credit plan, with the exception of payments involving expedited service by a customer service representative. Proposed § 226.10(e) may reduce revenue that some small entities derive from fees associated with certain payment methods.

Proposed § 226.52 would generally limit the imposition of fees by card issuers during the first year after account opening. This provision may reduce revenue that some entities derive from fees.

Proposed § 226.54 would prohibit a card issuer from imposing certain finance charges as a result of the loss of a grace period on a credit card account, except in certain circumstances. This provision may reduce revenue that some small entities derive from finance charges.

Proposed § 226.55(a) would generally prohibit small entities that are card issuers from increasing an annual percentage rate or any fee or charge required to be disclosed under § 226.6(b)(2)(ii), (b)(2)(iii), or (b)(2)(xii) on a credit card account unless specifically permitted by one of the exceptions in § 226.55(b). This provision may reduce interest revenue and other revenue that certain small entities derive from fees and charges.

Proposed § 226.55(b)(3) would require small entities that are card issuers to disclose, prior to the commencement of a specified period of time, an increased annual percentage rate that would apply after the period as a condition for an exception to § 226.55(a). However, § 226.9(c)(2)(v)(B) as adopted in the July 2009 Regulation Z Interim Final Rule already requires card issuers to disclose this information so the Board does not anticipate any significant additional burden on small entities.

Proposed § 226.55(b)(5) would require small entities that are card issuers to disclose, prior to commencement of the arrangement, the terms of a workout and temporary hardship arrangement as a condition for an exception to § 226.55(a). However, § 226.9(c)(2)(v)(D) and (g)(4)(i) as adopted in the July 2009 Regulation Z Interim Final Rule already require card issuers to disclose this information so the Board does not anticipate any significant additional burden on small entities.

Proposed § 226.56 would prohibit small entities that are card issuers from imposing fees or charges for an over-the-limit transaction unless the card issuer provides the consumer with notice and obtains the consumer's affirmative consent, or opt-in. Compliance with this provision may impose additional costs on small entities in order to provide notice and obtain consent, if the small entity elects to impose fees or charges for over-the-limit transactions. Proposed § 226.56 may reduce revenue that certain small entities derive from fees and charges related to over-the-limit transaction. In addition, proposed § 226.56 may require some small entities to alter their systems in order to comply with the provision. The cost of such change will depend on the size of the institution and the composition of its portfolio.

Proposed § 226.58 would require small entities that are card issuers to post agreements for open-end consumer credit card plans on the card issuer's Web site and to submit those agreements to the Board for posting in a publicly-available on-line repository established and maintained by the Board. The cost of compliance will depend on the size of the institution and the composition of its portfolio. Proposed § 226.58(e), however, provides a de minimis exception, which would reduce the economic impact and compliance burden on small entities. Under proposed § 226.58(e), a card issuer would not be required to submit an agreement to the Board if the card issuer has fewer than 10,000 open accounts under open-end consumer credit card plans subject to § 226.5a as of the last business day of the calendar quarter.

Accordingly, the Board believes that, in the aggregate, the provisions of its proposed rule would have a significant economic impact on a substantial number of small entities.

4. Other federal rules. Other than the January 2009 FTC Act Rule and similar rules adopted by other Agencies, the Board has not identified any federal rules that duplicate, overlap, or conflict with the proposed revisions to TILA. As discussed in the supplementary information to this proposed rule, the Board intends to withdraw its January 2009 FTC Act Rule when finalizing this proposal.

5. Significant alternatives to the proposed revisions. The provisions of the proposed rule would implement the statutory requirements of the Credit Card Act that go into effect on February 22, 2010. The Board has sought to avoid imposing additional

burden, while effectuating the statute in a manner that is beneficial to consumers. The Board welcomes comment on any significant alternatives, consistent with the Credit Card Act, which would minimize impact of the proposed rule on small entities.

VII. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3506; 5 CFR Part 1320 Appendix A.1), the Board reviewed the proposed rule under the authority delegated to the Board by the Office of Management and Budget (OMB). The collection of information that is required by this proposed rule is found in 12 CFR part 226. The Federal Reserve may not conduct or sponsor, and an organization is not required to respond to, this information collection unless the information collection displays a currently valid OMB control number. The OMB control number is 7100-0199.[50]

This information collection is required to provide benefits for consumers and is mandatory (15 U.S.C. 1601 et seq.). The respondents/recordkeepers are creditors and other entities subject to Regulation Z, including for-profit financial institutions, small businesses, and institutions of higher education. TILA and Regulation Z are intended to ensure effective disclosure of the costs and terms of credit to consumers. For open-end credit, creditors are required to, among other things, disclose information about the initial costs and terms and to provide periodic statements of account activity, notices of changes in terms, and statements of rights concerning billing error procedures. Regulation Z requires specific types of disclosures for credit and charge card accounts and home-equity plans. For closed-end loans, such as mortgage and installment loans, cost disclosures are

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[50] The information collection will be re-titled - Reporting, Recordkeeping and Disclosure Requirements associated with Regulation Z (Truth in Lending) and Regulation AA (Unfair or Deceptive Acts or Practices).

required to be provided prior to consummation. Special disclosures are required in connection with certain products, such as reverse mortgages, certain variable-rate loans, and certain mortgages with rates and fees above specified thresholds. TILA and Regulation Z also contain rules concerning credit advertising. Creditors are required to retain evidence of compliance for twenty-four months (§ 226.25), but Regulation Z does not specify the types of records that must be retained.

Under the PRA, the Federal Reserve accounts for the paperwork burden associated with Regulation Z for the state member banks and other creditors supervised by the Federal Reserve that engage in lending covered by Regulation Z and, therefore, are respondents under the PRA. Appendix I of Regulation Z defines the Federal Reserve-regulated institutions as: state member banks, branches and agencies of foreign banks (other than federal branches, federal agencies, and insured state branches of foreign banks), commercial lending companies owned or controlled by foreign banks, and organizations operating under section 25 or 25A of the Federal Reserve Act. Other federal agencies account for the paperwork burden on other entities subject to Regulation Z. To ease the burden and cost of complying with Regulation Z (particularly for small entities), the Federal Reserve provides model forms, which are appended to the regulation.

As discussed in **I. Background and Implementation of the Credit Card Act** and **V. Section-by-Section Analysis**, several of the provisions of the Credit Card Act are similar to provisions in the Board's January 2009 Regulation Z Rules. To the extent that the provisions in the proposed rule are substantially similar to provisions in the January 2009 Regulation Z Rule, the Board continues to rely on the substance of its PRA analysis in the January 2009 Regulation Z Rule. See 74 FR 5392-5393. The Credit Card Act, however, also addresses practices or mandates disclosures that were not addressed in the Board's January 2009 Regulation Z Rules. The Board anticipates increased burden caused by additional disclosure requirements in the proposed rule and therefore, revises its prior PRA analysis accordingly.

Under proposed § 226.7(b)(12), creditors are generally required to include on each periodic statement certain disclosures regarding repayment, such as a minimum payment warning statement, a minimum payment repayment estimate, and the monthly payment based on repayment in 36 months. As mentioned in the preamble, in an effort to reduce burden the Board is proposing guidance in Appendix M1 on how to calculate repayment estimates. Appendix M2 to part 226 provides sample calculations of repayment estimates using guidance in Appendix M1. The Board estimates that 1,138 respondents would take, on average, 80 hours (two business weeks) to update their systems to comply with the proposed disclosure requirements in § 226.7(b)(12). This one-time revision would increase the burden by 91,040 hours. The Board does not anticipate any additional burden on a continuing basis.

Under proposed § 226.9(g)(3), if a rate is increased based on a consumer's failure to make a minimum periodic payment within 60 days from the due date, a creditor is required to provide notice containing a statement of the reason for the increase and that the increase will cease to apply if the creditor receives six consecutive required minimum period payments on or before the payment due date. The Board anticipates that creditors, with little additional burden, will incorporate the proposed disclosure requirement with the disclosure already required under § 226.9(g). The Board estimates that 1,138 respondents would take, on average, 8 hours to update their systems to comply with the proposed disclosure requirements in § 226.9(g)(3) and estimates the one-time burden to be 9,104 hours.

Under proposed § 226.55(b)(3), a card issuer must disclose, prior to the commencement of a specified period of time, an increased annual percentage rate that would apply after the period as a condition for an exception to § 226.55(a). However, § 226.9(c)(2)(v)(B) as adopted in the July 2009 Regulation Z Interim Final Rule already requires card issuers to disclose this information so the Board does not anticipate any additional burden.

Under proposed § 226.55(b)(5), a card issuer must disclose, prior to commencement of the arrangement, the terms of a workout and temporary hardship arrangement as a condition for an exception to § 226.55(a). However, § 226.9(c)(2)(v)(D) and (g)(4)(i) as adopted in the July 2009 Regulation Z Interim Final Rule already require card issuers to disclose this information so the Board does not anticipate any additional burden.

Under proposed § 226.57(b), an institution of higher education is required to publicly disclose any contract or other agreement made with a card issuer or creditor for the purpose of marketing a credit card. Since the regulation does not specify a required method for public disclosure the Board estimates that 4,276 respondents[51] would take, on average, 8 hours to comply with the proposed disclosure requirements and estimates the annual burden to be 34,208 hours.

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[51] The number of institutions of higher learning that granted college degrees in 2005. See Upcoming Statistical Abstract of the United States: 2008. (available at www.census.gov/Press-Release/www/2007/cb07ff-11.pdf).

Under proposed § 226.57(d), creditors that are a party to one or more college credit card agreements would be required to register with the Board and to submit annual reports to the Board regarding those agreements. Creditor registration requirements would comprise primarily of contact information. In addition, creditors would be required to provide specific information related to the agreements. The Board estimates that 2,200 creditors[52] would take, on average, 160 hours (one month) to comply with the proposed disclosure requirements in § 226.57(d) and estimates the one-time annual burden to be 352,000 hours. To avoid double counting the burden estimate for creditor registration and updates to all agreements is accounted for under proposed § 226.58.

Under proposed § 226.58, a creditor is required to post agreements for open-end consumer credit card plans on the creditor's Web site and to submit those agreements to the Board for posting in a publicly-available on-line repository established and maintained by the Board. Creditors would be required to register with the Board and submit to the Board all agreements for open-end consumer credit card plans. The Board estimates that 2,200 creditors[53] would take, on average, 30 minutes to register their contact information and estimates the one-time annual burden to be 1,100 hours. In addition, the Board estimates that 2,200 creditors would take, on average, 40 hours (one business week) to comply with the proposed disclosure requirements in § 226.58 and estimates the annual burden to be 88,000 hours. On a continuing basis, the Board

[52] The number of creditors that are a party to one or more college credit card agreements is unknown.

[53] Creditors with credit card activity. Under proposed § 226.58, the Board will assume burden for creditors regulated by the: Office of the Comptroller of the Currency (OCC), Office of Thrift Supervision (OTS), Federal Deposit Insurance Corporation (FDIC), National Credit Union Administration (NCUA), and Federal Trade Commission.

estimates creditors would take, on average, 8 hours (quarterly) to update agreements and estimates the annual burden to be 70,400 hours.

Based on these adjustments to the Board's prior estimates and the Board's PRA analysis in the January 2009 Regulation Z Rule, the proposed rule would impose a one-time increase in the total annual burden under Regulation Z for all respondents regulated by the Federal Reserve by 575,452 hours, from 1,008,962 to 1,584,414 hours. The total one-time burden increase represents averages for all respondents regulated by the Federal Reserve. The Federal Reserve expects that the amount of time required to implement each of the proposed changes for a given financial institution or entity may vary based on the size and complexity of the respondent. In addition, the Federal Reserve estimates that, on a continuing basis, the proposed revisions to the rules would increase the total annual burden on a continuing basis from 1,008,962 to 1,079,362 hours. The total annual burden for the Regulation Z information collection is estimated to increase from 1,008,962 to 1,654,814 hours.[54]

The other federal financial agencies: Office of the Comptroller of the Currency (OCC), Office of Thrift Supervision (OTS), the Federal Deposit Insurance Corporation (FDIC), and the National Credit Union Administration (NCUA) are responsible for estimating and reporting to OMB the total paperwork burden for the domestically chartered commercial banks, thrifts, and federal credit unions and U.S. branches and agencies of foreign banks for which they have primary administrative enforcement jurisdiction under TILA Section 108(a), 15. U.S.C. 1607(a). These agencies are permitted, but are not required, to use the Board's burden estimation methodology.

[54] The burden estimate for this rulemaking does not include the burden addressing changes to implement provisions of Closed-End Mortgages (Docket No. R-1366) or the Home-Equity Lines of Credit (Docket No. R-1367), as announced in separate proposed rulemakings. See 74 FR 43232 and 74 FR 43428.

Using the Board’s method, the total current estimated annual burden for the approximately 17,200 domestically chartered commercial banks, thrifts, and federal credit unions and U.S. branches and agencies of foreign banks supervised by the Federal Reserve, OCC, OTS, FDIC, and NCUA under TILA would be approximately 13,568,725 hours. The proposed rule would impose a one-time increase in the estimated annual burden for such institutions by 4,274,200 hours to 17,842,925 hours. On a continuing basis the proposed rule would impose an increase in the estimated annual burden by 137,600 to 13,706,325 hours. The above estimates represent an average across all respondents; the Board expects variations between institutions based on their size, complexity, and practices.

Comments are invited on: (1) whether the proposed collection of information is necessary for the proper performance of the Board's functions; including whether the information has practical utility; (2) the accuracy of the Board's estimate of the burden of the proposed information collection, including the cost of compliance; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of information collection on respondents, including through the use of automated collection techniques or other forms of information technology. Comments on the collection of information should be sent to Michelle Shore, Federal Reserve Board Clearance Officer, Division of Research and Statistics, Mail Stop 95-A, Board of Governors of the Federal Reserve System, Washington, DC 20551, with copies of such comments sent to the Office of Management and Budget, Paperwork Reduction Project (7100-0199), Washington, DC 20503.

List of Subjects in 12 CFR Part 226

Advertising, Consumer protection, Federal Reserve System, Reporting and recordkeeping requirements, Truth in Lending.

Text of Interim Final Revisions

For the reasons set forth in the preamble, the Board proposes to amend Regulation Z, 12 CFR part 226, as set forth below:

PART 226—TRUTH IN LENDING (REGULATION Z)

1. The authority citation for part 226 continues to read as follows:

Authority: 12 U.S.C. 3806; 15 U.S.C. 1604, 1637(c)(5), and 1639(l); Pub. L. No. 111-24 § 2, 123 Stat. 1734.

2. Section 226.1 is revised to read as follows:

SUBPART A − GENERAL

§ 226.1 Authority, purpose, coverage, organization, enforcement, and liability.

(a) Authority. This regulation, known as Regulation Z, is issued by the Board of Governors of the Federal Reserve System to implement the federal Truth in Lending Act, which is contained in title I of the Consumer Credit Protection Act, as amended (15 U.S.C. 1601 et seq.). This regulation also implements title XII, section 1204 of the Competitive Equality Banking Act of 1987 (Pub. L. 100-86, 101 Stat. 552). Information-collection requirements contained in this regulation have been approved by the Office of Management and Budget under the provisions of 44 U.S.C. 3501 et seq. and have been assigned OMB No. 7100-0199.

(b) Purpose. The purpose of this regulation is to promote the informed use of consumer credit by requiring disclosures about its terms and cost. The regulation also gives consumers the right to cancel certain credit transactions that involve a lien on a consumer's principal dwelling, regulates certain credit card practices, and provides a means for fair and timely resolution of credit billing disputes. The regulation does not govern charges for consumer credit. The regulation requires a maximum interest rate to be stated in variable-rate contracts secured by the consumer's dwelling. It also imposes limitations on home-equity plans that are subject to the requirements of § 226.5b and mortgages that are subject to the requirements of § 226.32. The regulation prohibits certain acts or practices in connection with credit secured by a consumer's principal dwelling. The regulation also regulates certain practices of creditors who extend private education loans as defined in § 226.46(b)(5).

(c) Coverage. (1) In general, this regulation applies to each individual or business that offers or extends credit when four conditions are met: (i) the credit is offered or extended to consumers; (ii) the offering or extension of credit is done regularly;[1] (iii) the credit is subject to a finance charge or is payable by a written agreement in more than four installments; and (iv) the credit is primarily for personal, family, or household purposes.

(2) If a credit card is involved, however, certain provisions apply even if the credit is not subject to a finance charge, or is not payable by a written agreement in more than four installments, or if the credit card is to be used for business purposes.

(3) In addition, certain requirements of § 226.5b apply to persons who are not creditors but who provide applications for home-equity plans to consumers.

(4) Furthermore, certain requirements of § 226.57 apply to institutions of higher education.

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[1] [Reserved]

(d) Organization. The regulation is divided into subparts and appendices as follows:

(1) Subpart A contains general information. It sets forth: (i) the authority, purpose, coverage, and organization of the regulation; (ii) the definitions of basic terms; (iii) the transactions that are exempt from coverage; and (iv) the method of determining the finance charge.

(2) Subpart B contains the rules for open-end credit. It requires that account-opening disclosures and periodic statements be provided, as well as additional disclosures for credit and charge card applications and solicitations and for home-equity plans subject to the requirements of § 226.5a and § 226.5b, respectively. It also describes special rules that apply to credit card transactions, treatment of payments and credit balances, procedures for resolving credit billing errors, annual percentage rate calculations, rescission requirements, and advertising.

(3) Subpart C relates to closed-end credit. It contains rules on disclosures, treatment of credit balances, annual percentages rate calculations, rescission requirements, and advertising.

(4) Subpart D contains rules on oral disclosures, disclosures in languages other than English, record retention, effect on state laws, state exemptions, and rate limitations.

(5) Subpart E contains special rules for certain mortgage transactions. Section 226.32 requires certain disclosures and provides limitations for loans that have rates and fees above specified amounts. Section 226.33 requires disclosures, including the total annual loan cost rate, for reverse mortgage transactions. Section 226.34 prohibits specific acts and practices in connection with mortgage transactions that are subject to

§ 226.32. Section 226.35 prohibits specific acts and practices in connection with higher-priced mortgage loans, as defined in § 226.35(a). Section 226.36 prohibits specific acts and practices in connection with credit secured by a consumer's principal dwelling.

(6) Subpart F relates to private education loans. It contains rules on disclosures, limitations on changes in terms after approval, the right to cancel the loan, and limitations on co-branding in the marketing of private education loans.

(7) Subpart G relates to credit card accounts under an open-end (not home-secured) consumer credit plan (except for § 226.57(c), which applies to all open-end credit plans). Section 226.51 contains rules on evaluation of a consumer's ability to make the required payments under the terms of an account. Section 226.52 limits the fees that can be charged to an open-end (not home-secured) consumer credit plan during the first year after account opening. Section 226.53 contains rules on allocation of payments in excess of the minimum payment. Section 226.54 sets forth certain limitations on the imposition of finance charges as the result of a loss of a grace period. Section 226.55 contains limitations on increases in annual percentage rates, fees, and charges for credit card accounts. Section 226.56 prohibits the assessment of fees or charges for over-the-limit transactions unless the consumer affirmatively consents to the creditor's paying of over-the-limit transactions. Section 226.57 sets forth rules for marketing of open-end credit to college students. Section 226.58 sets for requirements for the Internet posting of credit card accounts under an open-end (not home-secured) consumer credit plan.

(6) Several appendices contain information such as the procedures for determinations about state laws, state exemptions and issuance of staff interpretations,

special rules for certain kinds of credit plans, a list of enforcement agencies, and the rules for computing annual percentage rates in closed-end credit transactions and total-annual-loan-cost rates for reverse mortgage transactions.

(e) Enforcement and liability. Section 108 of the act contains the administrative enforcement provisions. Sections 112, 113, 130, 131, and 134 contain provisions relating to liability for failure to comply with the requirements of the act and the regulation. Section 1204 (c) of title XII of the Competitive Equality Banking Act of 1987, Pub. L. No. 100-86, 101 Stat. 552, incorporates by reference administrative enforcement and civil liability provisions of sections 108 and 130 of the act.

3. Section 226.2 is revised to read as follows:

§ 226.2 Definitions and rules of construction.

(a) Definitions. For purposes of this regulation, the following definitions apply:

(1) Act means the Truth in Lending Act (15 U.S.C. 1601 et seq.).

(2) Advertisement means a commercial message in any medium that promotes, directly or indirectly, a credit transaction.

(3) [Reserved][2]

(4) Billing cycle or cycle means the interval between the days or dates of regular periodic statements. These intervals shall be equal and no longer than a quarter of a year. An interval will be considered equal if the number of days in the cycle does not vary more than four days from the regular day or date of the periodic statement.

(5) Board means the Board of Governors of the Federal Reserve System.

(6) Business day means a day on which the creditor's offices are open to the public for carrying on substantially all of its business functions. However, for purposes

[2] [Reserved]

of rescission under §§ 226.15 and 226.23, and for purposes of §§ 226.19(a)(1)(ii), 226.19(a)(2), 226.31, and 226.46(d)(4), the term means all calendar days except Sundays and the legal public holidays specified in 5 U.S.C. 6103(a), such as New Year's Day, the Birthday of Martin Luther King, Jr., Washington's Birthday, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans Day, Thanksgiving Day, and Christmas Day.

(7) Card issuer means a person that issues a credit card or that person's agent with respect to the card.

(8) Cardholder means a natural person to whom a credit card is issued for consumer credit purposes, or a natural person who has agreed with the card issuer to pay consumer credit obligations arising from the issuance of credit card to another natural person. For purposes of § 226.12(a) and (b), the term includes any person to whom a credit card is issued for any purpose, including business, commercial or agricultural use, or a person who has agreed with the card issuer to pay obligations arising from the issuance of such a credit card to another person.

(9) Cash price means the price at which a creditor, in the ordinary course of business, offers to sell for cash property or service that is the subject of the transaction. At the creditor's option, the term may include the price of accessories, services related to the sale, service contracts and taxes and fees for license, title, and registration. The term does not include any finance charge.

(10) Closed-end credit means consumer credit other than "open-end credit" as defined in this section.

(11) <u>Consumer</u> means a cardholder or natural person to whom consumer credit is offered or extended. However, for purposes of rescission under §§ 226.15 and 226.23, the term also includes a natural person in whose principal dwelling a security interest is or will be retained or acquired, if that person's ownership interest in the dwelling is or will be subject to the security interest.

(12) <u>Consumer credit</u> means credit offered or extended to a consumer primarily for personal, family, or household purposes.

(13) <u>Consummation</u> means the time that a consumer becomes contractually obligated on a credit transaction.

(14) <u>Credit</u> means the right to defer payment of debt or to incur debt and defer its payment.

(15)(i) <u>Credit card</u> means any card, plate, or other single credit device that may be used from time to time to obtain credit.

(ii) <u>Credit card account under an open-end (not home-secured) consumer credit plan</u> means any credit account accessed by a credit card, except:

(A) A credit card that accesses a home-equity plan subject to the requirements of § 226.5b; or

(B) An overdraft line of credit accessed by a debit card.

(iii) <u>Charge card</u> means a credit card on an account for which no periodic rate is used to compute a finance charge.

(16) <u>Credit sale</u> means a sale in which the seller is a creditor. The term includes a bailment or lease (unless terminable without penalty at any time by the consumer) under which the consumer–

(i) Agrees to pay as compensation for use a sum substantially equivalent to, or in excess of, the total value of the property and service involved; and

(ii) Will become (or has the option to become), for no additional consideration or for nominal consideration, the owner of the property upon compliance with the agreement.

(17) Creditor means:

(i) A person (A) who regularly extends consumer credit[3] that is subject to a finance charge or is payable by written agreement in more than four installments (not including a down payment), and (B) to whom the obligation is initially payable, either on the face of the note or contract, or by agreement when there is no note or contract.

(ii) For purposes of §§ 226.4(c)(8) (Discounts), 226.9(d) (Finance charge imposed at time of transaction), and 226.12(e) (Prompt notification of returns and crediting of refunds), a person that honors a credit card.

(iii) For purposes of subpart B, any card issuer that extends either open-end credit or credit that is not subject to a finance charge and is not payable by written agreement in more than four installments.

(iv) For purposes of subpart B (except for the credit and charge card disclosures contained in §§ 226.5a and 226.9(e) and (f), the finance charge disclosures contained in § 226.6(a)(1) and (b)(3)(i) and § 226.7(a)(4) through (7) and (b)(4) through (6) and the right of rescission set forth in § 226.15) and subpart C, any card issuer that extends closed-end credit that is subject to a finance charge or is payable by written agreement in more than four installments.

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[3] [Reserved]

(v) A person regularly extends consumer credit only if it extended credit (other than credit subject to the requirements of § 226.32) more than 25 times (or more than 5 times for transactions secured by a dwelling) in the preceding calendar year. If a person did not meet these numerical standards in the preceding calendar year, the numerical standards shall be applied to the current calendar year. A person regularly extends consumer credit if, in any 12-month period, the person originates more than one credit extension that is subject to the requirements of § 226.32 or one or more such credit extensions through a mortgage broker.

(18) Downpayment means an amount, including the value of property used as a trade-in, paid to a seller to reduce the cash price of goods or services purchased in a credit sale transaction. A deferred portion of a downpayment may be treated as part of the downpayment if it is payable not later than the due date of the second otherwise regularly scheduled payment and is not subject to a finance charge.

(19) Dwelling means a residential structure that contains one to four units, whether or not that structure is attached to real property. The term includes an individual condominium unit, cooperative unit, mobile home, and trailer, if it is used as a residence.

(20) Open-end credit means consumer credit extended by a creditor under a plan in which:

(i) The creditor reasonably contemplates repeated transactions;

(ii) The creditor may impose a finance charge from time to time on an outstanding unpaid balance; and

(iii) The amount of credit that may be extended to the consumer during the term of the plan (up to any limit set by the creditor) is generally made available to the extent that any outstanding balance is repaid.

(21) Periodic rate means a rate of finance charge that is or may be imposed by a creditor on a balance for a day, week, month, or other subdivision of a year.

(22) Person means a natural person or an organization, including a corporation, partnership, proprietorship, association, cooperative, estate, trust, or government unit.

(23) Prepaid finance charge means any finance charge paid separately in cash or by check before or at consummation of a transaction, or withheld from the proceeds of the credit at any time.

(24) Residential mortgage transaction means a transaction in which a mortgage, deed of trust, purchase money security interest arising under an installment sales contract, or equivalent consensual security interest is created or retained in the consumer's principal dwelling to finance the acquisition or initial construction of that dwelling.

(25) Security interest means an interest in property that secures performance of a consumer credit obligation and that is recognized by state or federal law. It does not include incidental interests such as interests in proceeds, accessions, additions, fixtures, insurance proceeds (whether or not the creditor is a loss payee or beneficiary), premium rebates, or interests in after-acquired property. For purposes of disclosures under §§ 226.6 and 226.18, the term does not include an interest that arises solely by operation of law. However, for purposes of the right of rescission under §§ 226.15 and 226.23, the term does include interests that arise solely by operation of law.

(26) State means any state, the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession of the United States.

(b) Rules of construction. For purposes of this regulation, the following rules of construction apply:

(1) Where appropriate, the singular form of a word includes the plural form and plural includes singular.

(2) Where the words obligation and transaction are used in the regulation, they refer to a consumer credit obligation or transaction, depending upon the context. Where the work credit is used in the regulation, it means consumer credit unless the context clearly indicates otherwise.

(3) Unless defined in this regulation, the words used have the meanings given to them by state law or contract.

(4) Footnotes have the same legal effect as the text of the regulation.

(5) Where the word amount is used in this regulation to describe disclosure requirements, it refers to a numerical amount.

4. Section 226.3 is revised to read as follows:

§ 226.3 Exempt transactions.

This regulation does not apply to the following:[4]

(a) Business, commercial, agricultural, or organizational credit.

(1) An extension of credit primarily for a business, commercial or agricultural purpose.

[4] [Reserved]

(2) An extension of credit to other than a natural person, including credit to government agencies or instrumentalities.

(b) Credit over $25,000 not secured by real property or a dwelling. An extension of credit in which the amount financed exceeds $25,000 or in which there is an express written commitment to extend credit in excess of $25,000, unless the extension of credit is:

(1) Secured by real property, or by personal property used or expected to be used as the principal dwelling of the consumer; or

(2) A private education loan as defined in § 226.46(b)(5).

(c) Public utility credit. An extension of credit that involves public utility services provided through pipe, wire, other connected facilities, or radio or similar transmission (including extensions of such facilities), if the charges for service, delayed payment, or any discounts for prompt payment are filed with or regulated by any government unit. The financing of durable goods or home improvements by a public utility is not exempt.

(d) Securities or commodities accounts. Transactions in securities or commodities accounts in which credit is extended by a broker-dealer registered with the Securities and Exchange Commission or the Commodity Futures Trading Commission.

(e) Home fuel budget plans. An installment agreement for the purchase of home fuels in which no finance charge is imposed.

(f) Student loan programs. Loans made, insured, or guaranteed pursuant to a program authorized by title IV of the Higher Education Act of 1965 (20 U.S.C. 1070 et seq.).

(g) Employer-sponsored retirement plans. An extension of credit to a participant in an employer-sponsored retirement plan qualified under Section 401(a) of the Internal Revenue Code, a tax-sheltered annuity under Section 403(b) of the Internal Revenue Code, or an eligible governmental deferred compensation plan under Section 457(b) of the Internal Revenue Code (26 U.S.C. 401(a); 26 U.S.C. 403(b); 26 U.S.C. 457(b)), provided that the extension of credit is comprised of fully vested funds from such participant's account and is made in compliance with the Internal Revenue Code (26 U.S.C. 1 et seq.).

5. Section 226.4 is revised to read as follows:

§ 226.4 Finance charge.

(a) Definition. The finance charge is the cost of consumer credit as a dollar amount. It includes any charge payable directly or indirectly by the consumer and imposed directly or indirectly by the creditor as an incident to or a condition of the extension of credit. It does not include any charge of a type payable in a comparable cash transaction.

(1) Charges by third parties. The finance charge includes fees and amounts charged by someone other than the creditor, unless otherwise excluded under this section, if the creditor:

(i) Requires the use of a third party as a condition of or an incident to the extension of credit, even if the consumer can choose the third party; or

(ii) Retains a portion of the third-party charge, to the extent of the portion retained.

(2) Special rule; closing agent charges. Fees charged by a third party that conducts the loan closing (such as a settlement agent, attorney, or escrow or title company) are finance charges only if the creditor—

(i) Requires the particular services for which the consumer is charged;

(ii) Requires the imposition of the charge; or

(iii) Retains a portion of the third-party charge, to the extent of the portion retained.

(3) Special rule; mortgage broker fees. Fees charged by a mortgage broker (including fees paid by the consumer directly to the broker or to the creditor for delivery to the broker) are finance charges even if the creditor does not require the consumer to use a mortgage broker and even if the creditor does not retain any portion of the charge.

(b) Examples of finance charges. The finance charge includes the following types of charges, except for charges specifically excluded by paragraphs (c) through (e) of this section:

(1) Interest, time price differential, and any amount payable under an add-on or discount system of additional charges.

(2) Service, transaction, activity, and carrying charges, including any charge imposed on a checking or other transaction account to the extent that the charge exceeds the charge for a similar account without a credit feature.

(3) Points, loan fees, assumption fees, finder's fees, and similar charges.

(4) Appraisal, investigation, and credit report fees.

(5) Premiums or other charges for any guarantee or insurance protecting the creditor against the consumer's default or other credit loss.

(6) Charges imposed on a creditor by another person for purchasing or accepting a consumer's obligation, if the consumer is required to pay the charges in cash, as an addition to the obligation, or as a deduction from the proceeds of the obligation.

(7) Premiums or other charges for credit life, accident, health, or loss-of-income insurance, written in connection with a credit transaction.

(8) Premiums or other charges for insurance against loss of or damage to property, or against liability arising out of the ownership or use of property, written in connection with a credit transaction.

(9) Discounts for the purpose of inducing payment by a means other than the use of credit.

(10) Charges or premiums paid for debt cancellation or debt suspension coverage written in connection with a credit transaction, whether or not the coverage is insurance under applicable law.

(c) Charges excluded from the finance charge. The following charges are not finance charges:

(1) Application fees charged to all applicants for credit, whether or not credit is actually extended.

(2) Charges for actual unanticipated late payment, for exceeding a credit limit, or for delinquency, default, or a similar occurrence.

(3) Charges imposed by a financial institution for paying items that overdraw an account, unless the payment of such items and the imposition of the charge were previously agreed upon in writing.

(4) Fees charged for participation in a credit plan, whether assessed on an annual or other periodic basis.

(5) Seller's points.

(6) Interest forfeited as a result of an interest reduction required by law on a time deposit used as security for an extension of credit.

(7) <u>Real-estate related fees</u>. The following fees in a transaction secured by real property or in a residential mortgage transaction, if the fees are bona fide and reasonable in amount:

(i) Fees for title examination, abstract of title, title insurance, property survey, and similar purposes.

(ii) Fees for preparing loan-related documents, such as deeds, mortgages, and reconveyance or settlement documents.

(iii) Notary and credit-report fees.

(iv) Property appraisal fees or fees for inspections to assess the value or condition of the property if the service is performed prior to closing, including fees related to pest-infestation or flood-hazard determinations.

(v) Amounts required to be paid into escrow or trustee accounts if the amounts would not otherwise be included in the finance charge.

(8) Discounts offered to induce payment for a purchase by cash, check, or other means, as provided in section 167(b) of the act.

(d) Insurance and debt cancellation and debt suspension coverage.

(1) Voluntary credit insurance premiums. Premiums for credit life, accident, health, or loss-of-income insurance may be excluded from the finance charge if the following conditions are met:

(i) The insurance coverage is not required by the creditor, and this fact is disclosed in writing.

(ii) The premium for the initial term of insurance coverage is disclosed in writing. If the term of insurance is less than the term of the transaction, the term of insurance also shall be disclosed. The premium may be disclosed on a unit-cost basis only in open-end credit transactions, closed-end credit transactions by mail or telephone under § 226.17(g), and certain closed-end credit transactions involving an insurance plan that limits the total amount of indebtedness subject to coverage.

(iii) The consumer signs or initials an affirmative written request for the insurance after receiving the disclosures specified in this paragraph, except as provided in paragraph (d)(4) of this section. Any consumer in the transaction may sign or initial the request.

(2) Property insurance premiums. Premiums for insurance against loss of or damage to property, or against liability arising out of the ownership or use of property, including single interest insurance if the insurer waives all right of subrogation against the consumer,[5] may be excluded from the finance charge if the following conditions are met:

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[5] [Reserved]

(i) The insurance coverage may be obtained from a person of the consumer's choice,[6] and this fact is disclosed. (A creditor may reserve the right to refuse to accept, for reasonable cause, an insurer offered by the consumer.)

(ii) If the coverage is obtained from or through the creditor, the premium for the initial term of insurance coverage shall be disclosed. If the term of insurance is less than the term of the transaction, the term of insurance shall also be disclosed. The premium may be disclosed on a unit-cost basis only in open-end credit transactions, closed-end credit transactions by mail or telephone under § 226.17(g), and certain closed-end credit transactions involving an insurance plan that limits the total amount of indebtedness subject to coverage.

(3) Voluntary debt cancellation or debt suspension fees. Charges or premiums paid for debt cancellation coverage for amounts exceeding the value of the collateral securing the obligation or for debt cancellation or debt suspension coverage in the event of the loss of life, health, or income or in case of accident may be excluded from the finance charge, whether or not the coverage is insurance, if the following conditions are met:

(i) The debt cancellation or debt suspension agreement or coverage is not required by the creditor, and this fact is disclosed in writing;

(ii) The fee or premium for the initial term of coverage is disclosed in writing. If the term of coverage is less than the term of the credit transaction, the term of coverage also shall be disclosed. The fee or premium may be disclosed on a unit-cost basis only in open-end credit transactions, closed-end credit transactions by mail or telephone under

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[6] [Reserved]

§ 226.17(g), and certain closed-end credit transactions involving a debt cancellation agreement that limits the total amount of indebtedness subject to coverage;

(iii) The following are disclosed, as applicable, for debt suspension coverage: That the obligation to pay loan principal and interest is only suspended, and that interest will continue to accrue during the period of suspension.

(iv) The consumer signs or initials an affirmative written request for coverage after receiving the disclosures specified in this paragraph, except as provided in paragraph (d)(4) of this section. Any consumer in the transaction may sign or initial the request.

(4) Telephone purchases. If a consumer purchases credit insurance or debt cancellation or debt suspension coverage for an open-end (not home-secured) plan by telephone, the creditor must make the disclosures under paragraphs (d)(1)(i) and (ii) or (d)(3)(i) through (iii) of this section, as applicable, orally. In such a case, the creditor shall:

(i) Maintain evidence that the consumer, after being provided the disclosures orally, affirmatively elected to purchase the insurance or coverage; and

(ii) Mail the disclosures under paragraphs (d)(1)(i) and (ii) or (d)(3)(i) through (iii) of this section, as applicable, within three business days after the telephone purchase.

(e) Certain security interest charges. If itemized and disclosed, the following charges may be excluded from the finance charge:

(1) Taxes and fees prescribed by law that actually are or will be paid to public officials for determining the existence of or for perfecting, releasing, or satisfying a security interest.

(2) The premium for insurance in lieu of perfecting a security interest to the extent that the premium does not exceed the fees described in paragraph (e)(1) of this section that otherwise would be payable.

(3) Taxes on security instruments. Any tax levied on security instruments or on documents evidencing indebtedness if the payment of such taxes is a requirement for recording the instrument securing the evidence of indebtedness.

(f) Prohibited offsets. Interest, dividends, or other income received or to be received by the consumer on deposits or investments shall not be deducted in computing the finance charge.

6. Section 226.5 is revised to read as follows:

SUBPART B—OPEN-END CREDIT

§ 226.5 General disclosure requirements.

(a) Form of disclosures. (1) General. (i) The creditor shall make the disclosures required by this subpart clearly and conspicuously.

(ii) The creditor shall make the disclosures required by this subpart in writing,[7] in a form that the consumer may keep[8], except that:

(A) The following disclosures need not be written: Disclosures under § 226.6(b)(3) of charges that are imposed as part of an open-end (not home-secured) plan that are not required to be disclosed under § 226.6(b)(2) and related disclosures under

[7] [Reserved]

[8] [Reserved]

§ 226.9(c)(2)(iii)(B) of charges; disclosures under § 226.9(c)(2)(vi); disclosures under § 226.9(d) when a finance charge is imposed at the time of the transaction; and disclosures under § 226.56(b)(1)(i).

(B) The following disclosures need not be in a retainable form: Disclosures that need not be written under paragraph (a)(1)(ii)(A) of this section; disclosures for credit and charge card applications and solicitations under § 226.5a; home-equity disclosures under § 226.5b(d); the alternative summary billing-rights statement under § 226.9(a)(2); the credit and charge card renewal disclosures required under § 226.9(e); and the payment requirements under § 226.10(b), except as provided in § 226.7(b)(13).

(iii) The disclosures required by this subpart may be provided to the consumer in electronic form, subject to compliance with the consumer consent and other applicable provisions of the Electronic Signatures in Global and National Commerce Act (E-Sign Act) (15 U.S.C. 7001 et seq.). The disclosures required by §§ 226.5a, 226.5b, and 226.16 may be provided to the consumer in electronic form without regard to the consumer consent or other provisions of the E-Sign Act in the circumstances set forth in those sections.

(2) Terminology. (i) Terminology used in providing the disclosures required by this subpart shall be consistent.

(ii) For home-equity plans subject to § 226.5b, the terms finance charge and annual percentage rate, when required to be disclosed with a corresponding amount or percentage rate, shall be more conspicuous than any other required disclosure.[9] The terms need not be more conspicuous when used for periodic statement disclosures under § 226.7(a)(4) and for advertisements under § 226.16.

[9] [Reserved]

(iii) If disclosures are required to be presented in a tabular format pursuant to paragraph (a)(3) of this section, the term penalty APR shall be used, as applicable. The term penalty APR need not be used in reference to the annual percentage rate that applies with the loss of a promotional rate, assuming the annual percentage rate that applies is not greater than the annual percentage rate that would have applied at the end of the promotional period; or if the annual percentage rate that applies with the loss of a promotional rate is a variable rate, the annual percentage rate is calculated using the same index and margin as would have been used to calculate the annual percentage rate that would have applied at the end of the promotional period. If credit insurance or debt cancellation or debt suspension coverage is required as part of the plan, the term required shall be used and the program shall be identified by its name. If an annual percentage rate is required to be presented in a tabular format pursuant to paragraph (a)(3)(i) or (a)(3)(iii) of this section, the term fixed, or a similar term, may not be used to describe such rate unless the creditor also specifies a time period that the rate will be fixed and the rate will not increase during that period, or if no such time period is provided, the rate will not increase while the plan is open.

(3) Specific formats. (i) Certain disclosures for credit and charge card applications and solicitations must be provided in a tabular format in accordance with the requirements of § 226.5a(a)(2).

(ii) Certain disclosures for home-equity plans must precede other disclosures and must be given in accordance with the requirements of § 226.5b(a).

(iii) Certain account-opening disclosures must be provided in a tabular format in accordance with the requirements of § 226.6(b)(1).

(iv) Certain disclosures provided on periodic statements must be grouped together in accordance with the requirements of § 226.7(b)(6) and (b)(13).

(v) Certain disclosures provided on periodic statements must be given in accordance with the requirements of § 226.7(b)(12).

(vi) Certain disclosures accompanying checks that access a credit card account must be provided in a tabular format in accordance with the requirements of § 226.9(b)(3).

(vii) Certain disclosures provided in a change-in-terms notice must be provided in a tabular format in accordance with the requirements of § 226.9(c)(2)(iv)(C).

(viii) Certain disclosures provided when a rate is increased due to delinquency, default or as a penalty must be provided in a tabular format in accordance with the requirements of § 226.9(g)(3)(ii).

(b) Time of disclosures. (1) Account-opening disclosures. (i) General rule. The creditor shall furnish account-opening disclosures required by § 226.6 before the first transaction is made under the plan.

(ii) Charges imposed as part of an open-end (not home-secured) plan. Charges that are imposed as part of an open-end (not home-secured) plan and are not required to be disclosed under § 226.6(b)(2) may be disclosed after account opening but before the consumer agrees to pay or becomes obligated to pay for the charge, provided they are disclosed at a time and in a manner that a consumer would be likely to notice them. This provision does not apply to charges imposed as part of a home-equity plan subject to the requirements of § 226.5b.

(iii) Telephone purchases. Disclosures required by § 226.6 may be provided as soon as reasonably practicable after the first transaction if:

(A) The first transaction occurs when a consumer contacts a merchant by telephone to purchase goods and at the same time the consumer accepts an offer to finance the purchase by establishing an open-end plan with the merchant or third-party creditor;

(B) The merchant or third-party creditor permits consumers to return any goods financed under the plan and provides consumers with a sufficient time to reject the plan and return the goods free of cost after the merchant or third-party creditor has provided the written disclosures required by § 226.6; and

(C) The consumer's right to reject the plan and return the goods is disclosed to the consumer as a part of the offer to finance the purchase.

(iv) Membership fees. (A) General. In general, a creditor may not collect any fee before account-opening disclosures are provided. A creditor may collect, or obtain the consumer's agreement to pay, membership fees, including application fees excludable from the finance charge under § 226.4(c)(1), before providing account-opening disclosures if, after receiving the disclosures, the consumer may reject the plan and have no obligation to pay (1) these fees (including application fees) or (2) any other fee or charge. A membership fee for purposes of this paragraph has the same meaning as a fee for the issuance or availability of credit described in § 226.5a(b)(2). If the consumer rejects the plan, the creditor must promptly refund the membership fee if it has been paid, or take other action necessary to ensure the consumer is not obligated to pay that fee or any other fee or charge.

(B) Home-equity plans. Creditors offering home-equity plans subject to the requirements of § 226.5b are not subject to the requirements of paragraph (b)(1)(iv)(A) of this section.

(v) Application fees. A creditor may collect an application fee excludable from the finance charge under § 226.4(c)(1) before providing account-opening disclosures. However, if a consumer rejects the plan after receiving account-opening disclosures, the consumer must have no obligation to pay such an application fee, or if the fee was paid, it must be refunded. See § 226.5(b)(1)(iv).

(2) Periodic statements. (i) The creditor shall mail or deliver a periodic statement as required by § 226.7 for each billing cycle at the end of which an account has a debit or credit balance of more than $1 or on which a finance charge has been imposed. A periodic statement need not be sent for an account if the creditor deems it uncollectible, if delinquency collection proceedings have been instituted, if the creditor has charged off the account in accordance with loan-loss provisions and will not charge any additional fees or interest on the account, or if furnishing the statement would violate federal law.

(ii) Creditors must adopt reasonable procedures designed to ensure that periodic statements are mailed or delivered at least 21 days prior to the payment due date and the date on which any grace period expires.[10] A creditor that fails to meet this requirement shall not treat a payment as late for any purpose or collect any finance or other charge imposed as a result of such failure. For purposes of this paragraph, "grace period" means a period within which any credit extended may be repaid without incurring a finance charge due to a periodic interest rate.

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[10] [Reserved]

(iii) The timing requirement under this paragraph (b)(2) does not apply if the creditor is unable to meet the requirement because of an act of God, war, civil disorder, natural disaster, or strike.

(3) Credit and charge card application and solicitation disclosures. The card issuer shall furnish the disclosures for credit and charge card applications and solicitations in accordance with the timing requirements of § 226.5a.

(4) Home-equity plans. Disclosures for home-equity plans shall be made in accordance with the timing requirements of § 226.5b(b).

(c) Basis of disclosures and use of estimates. Disclosures shall reflect the terms of the legal obligation between the parties. If any information necessary for accurate disclosure is unknown to the creditor, it shall make the disclosure based on the best information reasonably available and shall state clearly that the disclosure is an estimate.

(d) Multiple creditors; multiple consumers. If the credit plan involves more than one creditor, only one set of disclosures shall be given, and the creditors shall agree among themselves which creditor must comply with the requirements that this regulation imposes on any or all of them. If there is more than one consumer, the disclosures may be made to any consumer who is primarily liable on the account. If the right of rescission under § 226.15 is applicable, however, the disclosures required by §§ 226.6 and 226.15(b) shall be made to each consumer having the right to rescind.

(e) Effect of subsequent events. If a disclosure becomes inaccurate because of an event that occurs after the creditor mails or delivers the disclosures, the resulting inaccuracy is not a violation of this regulation, although new disclosures may be required under § 226.9(c).

7. Section 226.5a is revised to read as follows:

§ 226.5a Credit and charge card applications and solicitations.

(a) General rules. The card issuer shall provide the disclosures required under this section on or with a solicitation or an application to open a credit or charge card account.

(1) Definition of solicitation. For purposes of this section, the term solicitation means an offer by the card issuer to open a credit or charge card account that does not require the consumer to complete an application. A "firm offer of credit" as defined in section 603(l) of the Fair Credit Reporting Act (15 U.S.C. 1681a(l)) for a credit or charge card is a solicitation for purposes of this section.

(2) Form of disclosures; tabular format.

(i) The disclosures in paragraphs (b)(1) through (5) (except for (b)(1)(iv)(B)) and (b)(7) through (15) of this section made pursuant to paragraph (c), (d)(2), (e)(1) or (f) of this section generally shall be in the form of a table with headings, content, and format substantially similar to any of the applicable tables found in G-10 in appendix G to this part.

(ii) The table described in paragraph (a)(2)(i) of this section shall contain only the information required or permitted by this section. Other information may be presented on or with an application or solicitation, provided such information appears outside the required table.

(iii) Disclosures required by paragraphs (b)(1)(iv)(B) and (b)(6) of this section must be placed directly beneath the table.

(iv) When a tabular format is required, any annual percentage rate required to be disclosed pursuant to paragraph (b)(1) of this section, any introductory rate required to be disclosed pursuant to paragraph (b)(1)(ii) of this section, any rate that will apply after a premium initial rate expires required to be disclosed under paragraph (b)(1)(iii) of this section, and any fee or percentage amounts required to be disclosed pursuant to paragraphs (b)(2), (b)(4), (b)(8) through (b)(13) of this section must be disclosed in bold text. However, bold text shall not be used for: Any maximum limits on fee amounts disclosed in the table that do not relate to fees that vary by state; the amount of any periodic fee disclosed pursuant to paragraph (b)(2) of this section that is not an annualized amount; and other annual percentage rates or fee amounts disclosed in the table.

(v) For an application or a solicitation that is accessed by the consumer in electronic form, the disclosures required under this section may be provided to the consumer in electronic form on or with the application or solicitation.

(vi)(A) Except as provided in paragraph (a)(2)(vi)(B) of this section, the table described in paragraph (a)(2)(i) of this section must be provided in a prominent location on or with an application or a solicitation.

(B) If the table described in paragraph (a)(2)(i) of this section is provided electronically, it must be provided in close proximity to the application or solicitation.

(3) <u>Fees based on a percentage</u>. If the amount of any fee required to be disclosed under this section is determined on the basis of a percentage of another amount, the percentage used and the identification of the amount against which the percentage is applied may be disclosed instead of the amount of the fee.

(4) Fees that vary by state. Card issuers that impose fees referred to in paragraphs (b)(8) through (12) of this section that vary by state may, at the issuer's option, disclose in the table (i) the specific fee applicable to the consumer's account, or (ii) the range of the fees, if the disclosure includes a statement that the amount of the fee varies by state and refers the consumer to a disclosure provided with the table where the amount of the fee applicable to the consumer's account is disclosed. A card issuer may not list fees for multiple states in the table.

(5) Exceptions. This section does not apply to:

(i) Home-equity plans accessible by a credit or charge card that are subject to the requirements of § 226.5b;

(ii) Overdraft lines of credit tied to asset accounts accessed by check-guarantee cards or by debit cards;

(iii) Lines of credit accessed by check-guarantee cards or by debit cards that can be used only at automated teller machines;

(iv) Lines of credit accessed solely by account numbers;

(v) Additions of a credit or charge card to an existing open-end plan;

(vi) General purpose applications unless the application, or material accompanying it, indicates that it can be used to open a credit or charge card account; or

(vii) Consumer-initiated requests for applications.

(b) Required disclosures. The card issuer shall disclose the items in this paragraph on or with an application or a solicitation in accordance with the requirements of paragraphs (c), (d), (e)(1) or (f) of this section. A credit card issuer shall disclose all applicable items in this paragraph except for paragraph (b)(7) of this section. A charge card issuer shall disclose the applicable items in paragraphs (b)(2), (4), (7) through (12), and (15) of this section.

(1) Annual percentage rate. Each periodic rate that may be used to compute the finance charge on an outstanding balance for purchases, a cash advance, or a balance transfer, expressed as an annual percentage rate (as determined by § 226.14(b)). When more than one rate applies for a category of transactions, the range of balances to which each rate is applicable shall also be disclosed. The annual percentage rate for purchases disclosed pursuant to this paragraph shall be in at least 16-point type, except for the following: Oral disclosures of the annual percentage rate for purchases; or a penalty rate that may apply upon the occurrence of one or more specific events.

(i) Variable rate information. If a rate disclosed under paragraph (b)(1) of this section is a variable rate, the card issuer shall also disclose the fact that the rate may vary and how the rate is determined. In describing how the applicable rate will be determined, the card issuer must identify the type of index or formula that is used in setting the rate. The value of the index and the amount of the margin that are used to calculate the variable rate shall not be disclosed in the table. A disclosure of any applicable limitations on rate increases or decreases shall not be included in the table.

(ii) Discounted initial rate. If the initial rate is an introductory rate, as that term is defined in § 226.16(g)(2)(ii), the card issuer must disclose in the table the introductory rate, the time period during which the introductory rate will remain in effect, and must use the term "introductory" or "intro" in immediate proximity to the introductory rate. The card issuer also must disclose the rate that would otherwise apply to the account pursuant to paragraph (b)(1) of this section. Where the rate is not tied to an index or formula, the card issuer must disclose the rate that will apply after the introductory rate expires. In a variable-rate account, the card issuer must disclose a rate based on the applicable index or formula in accordance with the accuracy requirements set forth in paragraphs (c), (d), or (e) of this section, as applicable.

(iii) Premium initial rate. If the initial rate is temporary and is higher than the rate that will apply after the temporary rate expires, the card issuer must disclose the premium initial rate pursuant to paragraph (b)(1) of this section and the time period during which the premium initial rate will remain in effect. Consistent with paragraph (b)(1) of this section, the premium initial rate for purchases must be in at least 16-point type. The issuer must also disclose in the table the rate that will apply after the premium initial rate expires in at least 16-point type.

(iv) Penalty rates. (A) In general. Except as provided in paragraph (b)(1)(iv)(B), if a rate may increase as a penalty for one or more events specified in the account agreement, such as a late payment or an extension of credit that exceeds the credit limit, the card issuer must disclose pursuant to paragraph (b)(1) of this section the increased rate that may apply, a brief description of the event or events that may result in the increased rate, and a brief description of how long the increased rate will remain in effect.

(B) Introductory rates. If the issuer discloses an introductory rate, as that term is defined in § 226.16(g)(2)(ii), in the table or in any written or electronic promotional materials accompanying applications or solicitations subject to paragraph (c) or (e) of this section, the issuer must briefly disclose directly beneath the table the circumstances, if any, under which the introductory rate may be revoked, and the type of rate that will apply after the introductory rate is revoked.

(v) Rates that depend on consumer's creditworthiness. If a rate cannot be determined at the time disclosures are given because the rate depends, at least in part, on a later determination of the consumer's creditworthiness, the card issuer must disclose the specific rates or the range of rates that could apply and a statement that the rate for which the consumer may qualify at account opening will depend on the consumer's creditworthiness, and other factors if applicable. If the rate that depends, at least in part, on a later determination of the consumer's creditworthiness is a penalty rate, as described in paragraph (b)(1)(iv) of this section, the card issuer at its option may disclose the highest rate that could apply, instead of disclosing the specific rates or the range of rates that could apply.

(vi) APRs that vary by state. Issuers imposing annual percentage rates that vary by state may, at the issuer's option, disclose in the table (A) the specific annual percentage rate applicable to the consumer's account, or (B) the range of the annual percentage rates, if the disclosure includes a statement that the annual percentage rate varies by state and refers the consumer to a disclosure provided with the table where the annual percentage rate applicable to the consumer's account is disclosed. A card issuer may not list annual percentage rates for multiple states in the table.

(2) Fees for issuance or availability. (i) Any annual or other periodic fee that may be imposed for the issuance or availability of a credit or charge card, including any fee based on account activity or inactivity; how frequently it will be imposed; and the annualized amount of the fee.

(ii) Any non-periodic fee that relates to opening an account. A card issuer must disclose that the fee is a one-time fee.

(3) Fixed finance charge; minimum interest charge. Any fixed finance charge and a brief description of the charge. Any minimum interest charge if it exceeds $1.00 that could be imposed during a billing cycle, and a brief description of the charge. The $1.00 threshold amount shall be adjusted periodically by the Board to reflect changes in the Consumer Price Index. The Board shall calculate each year a price level adjusted minimum interest charge using the Consumer Price Index in effect on the 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 minimum interest charge threshold has risen by a whole dollar, the minimum interest charge will be increased by $1.00. The issuer may, at its option, disclose in the table minimum interest charges below this threshold.

(4) Transaction charges. Any transaction charge imposed by the card issuer for the use of the card for purchases.

(5) Grace period. The date by which or the period within which any credit extended for purchases may be repaid without incurring a finance charge due to a periodic interest rate and any conditions on the availability of the grace period. If no grace period is provided, that fact must be disclosed. If the length of the grace period varies, the card issuer may disclose the range of days, the minimum number of days, or the average number of days in the grace period, if the disclosure is identified as a range, minimum, or average. In disclosing in the tabular format a grace period that applies to all types of purchases, the phrase "How to Avoid Paying Interest on Purchases" shall be

used as the heading for the row describing the grace period. If a grace period is not offered on all types of purchases, in disclosing this fact in the tabular format, the phrase "Paying Interest" shall be used as the heading for the row describing this fact.

(6) Balance computation method. The name of the balance computation method listed in paragraph (g) of this section that is used to determine the balance for purchases on which the finance charge is computed, or an explanation of the method used if it is not listed. In determining which balance computation method to disclose, the card issuer shall assume that credit extended for purchases will not be repaid within the grace period, if any.

(7) Statement on charge card payments. A statement that charges incurred by use of the charge card are due when the periodic statement is received.

(8) Cash advance fee. Any fee imposed for an extension of credit in the form of cash or its equivalent.

(9) Late payment fee. Any fee imposed for a late payment.

(10) Over-the-limit fee. Any fee imposed for exceeding a credit limit.

(11) Balance transfer fee. Any fee imposed to transfer an outstanding balance.

(12) Returned-payment fee. Any fee imposed by the card issuer for a returned payment.

(13) Required insurance, debt cancellation or debt suspension coverage. (i) A fee for insurance described in § 226.4(b)(7) or debt cancellation or suspension coverage described in § 226.4(b)(10), if the insurance or debt cancellation or suspension coverage is required as part of the plan; and

(ii) A cross reference to any additional information provided about the insurance or coverage accompanying the application or solicitation, as applicable.

(14) Available credit. If a card issuer requires fees for the issuance or availability of credit described in paragraph (b)(2) of this section, or requires a security deposit for such credit, and the total amount of those required fees and/or security deposit that will be imposed and charged to the account when the account is opened is 15 percent or more of the minimum credit limit for the card, a card issuer must disclose the available credit remaining after these fees or security deposit are debited to the account, assuming that the consumer receives the minimum credit limit. In determining whether the 15 percent threshold test is met, the issuer must only consider fees for issuance or availability of credit, or a security deposit, that are required. If fees for issuance or availability are optional, these fees should not be considered in determining whether the disclosure must be given. Nonetheless, if the 15 percent threshold test is met, the issuer in providing the disclosure must disclose the amount of available credit calculated by excluding those optional fees, and the available credit including those optional fees. This paragraph does not apply with respect to fees or security deposits that are not debited to the account.

(15) Web site reference. A reference to the Web site established by the Board and a statement that consumers may obtain on the Web site information about shopping for and using credit cards.

(c) Direct mail and electronic applications and solicitations. (1) General. The card issuer shall disclose the applicable items in paragraph (b) of this section on or with an application or solicitation that is mailed to consumers or provided to consumers in electronic form.

(2) Accuracy. (i) Disclosures in direct mail applications and solicitations must be accurate as of the time the disclosures are mailed. An accurate variable annual percentage rate is one in effect within 60 days before mailing.

(ii) Disclosures provided in electronic form must be accurate as of the time they are sent, in the case of disclosures sent to a consumer's e-mail address, or as of the time they are viewed by the public, in the case of disclosures made available at a location such as a card issuer's Web site. An accurate variable annual percentage rate provided in electronic form is one in effect within 30 days before it is sent to a consumer's e-mail address, or viewed by the public, as applicable.

(d) Telephone applications and solicitations. (1) Oral disclosure. The card issuer shall disclose orally the information in paragraphs (b)(1) through (7) and (b)(14) of this section, to the extent applicable, in a telephone application or solicitation initiated by the card issuer.

(2) Alternative disclosure. The oral disclosure under paragraph (d)(1) of this section need not be given if the card issuer either:

(i)(A) Does not impose a fee described in paragraph (b)(2) of this section; or

(B) Imposes such a fee but provides the consumer with a right to reject the plan consistent with § 226.5(b)(1)(iv); and

(ii) The card issuer discloses in writing within 30 days after the consumer requests the card (but in no event later than the delivery of the card) the following:

(A) The applicable information in paragraph (b) of this section; and

(B) As applicable, the fact that the consumer has the right to reject the plan and not be obligated to pay fees described in paragraph (b)(2) or any other fees or charges until the consumer has used the account or made a payment on the account after receiving a billing statement.

(3) Accuracy. (i) The oral disclosures under paragraph (d)(1) of this section must be accurate as of the time they are given.

(ii) The alternative disclosures under paragraph (d)(2) of this section generally must be accurate as of the time they are mailed or delivered. A variable annual percentage rate is one that is accurate if it was:

(A) In effect at the time the disclosures are mailed or delivered; or

(B) In effect as of a specified date (which rate is then updated from time to time, but no less frequently than each calendar month).

(e) Applications and solicitations made available to general public. The card issuer shall provide disclosures, to the extent applicable, on or with an application or solicitation that is made available to the general public, including one contained in a catalog, magazine, or other generally available publication. The disclosures shall be provided in accordance with paragraph (e)(1) or (e)(2) of this section.

(1) Disclosure of required credit information. The card issuer may disclose in a prominent location on the application or solicitation the following:

(i) The applicable information in paragraph (b) of this section;

(ii) The date the required information was printed, including a statement that the required information was accurate as of that date and is subject to change after that date; and

(iii) A statement that the consumer should contact the card issuer for any change in the required information since it was printed, and a toll-free telephone number or a mailing address for that purpose.

(2) No disclosure of credit information. If none of the items in paragraph (b) of this section is provided on or with the application or solicitation, the card issuer may state in a prominent location on the application or solicitation the following:

(i) There are costs associated with the use of the card; and

(ii) The consumer may contact the card issuer to request specific information about the costs, along with a toll-free telephone number and a mailing address for that purpose.

(3) Prompt response to requests for information. Upon receiving a request for any of the information referred to in this paragraph, the card issuer shall promptly and fully disclose the information requested.

(4) Accuracy. The disclosures given pursuant to paragraph (e)(1) of this section must be accurate as of the date of printing. A variable annual percentage rate is accurate if it was in effect within 30 days before printing.

(f) In-person applications and solicitations. A card issuer shall disclose the information in paragraph (b) of this section, to the extent applicable, on or with an application or solicitation that is initiated by the card issuer and given to the consumer in person. A card issuer complies with the requirements of this paragraph if the issuer provides disclosures in accordance with paragraph (c)(1) or (e)(1) of this section.

(g) Balance computation methods defined. The following methods may be described by name. Methods that differ due to variations such as the allocation of payments, whether the finance charge begins to accrue on the transaction date or the date of posting the transaction, the existence or length of a grace period, and whether the balance is adjusted by charges such as late payment fees, annual fees and unpaid finance charges do not constitute separate balance computation methods.

(1)(i) Average daily balance (including new purchases). This balance is figured by adding the outstanding balance (including new purchases and deducting payments and credits) for each day in the billing cycle, and then dividing by the number of days in the billing cycle.

(ii) Average daily balance (excluding new purchases). This balance is figured by adding the outstanding balance (excluding new purchases and deducting payments and credits) for each day in the billing cycle, and then dividing by the number of days in the billing cycle.

(2) Adjusted balance. This balance is figured by deducting payments and credits made during the billing cycle from the outstanding balance at the beginning of the billing cycle.

(3) Previous balance. This balance is the outstanding balance at the beginning of the billing cycle.

(4) Daily balance. For each day in the billing cycle, this balance is figured by taking the beginning balance each day, adding any new purchases, and subtracting any payment and credits.

8. Section 226.6(b) is amended by revising paragraph (b) to read as follows:

§ 226.6 Account-opening disclosures.

* * * * *

(b) Rules affecting open-end (not home-secured) plans. The requirements of paragraph (b) of this section apply to plans other than home-equity plans subject to the requirements of § 226.5b.

(1) Form of disclosures; tabular format for open-end (not home-secured) plans. Creditors must provide the account-opening disclosures specified in paragraph (b)(2)(i) through (b)(2)(v) (except for (b)(2)(i)(D)(2)) and (b)(2)(vii) through (b)(2)(xiv) of this section in the form of a table with the headings, content, and format substantially similar to any of the applicable tables in G-17 in appendix G.

(i) Highlighting. In the table, any annual percentage rate required to be disclosed pursuant to paragraph (b)(2)(i) of this section; any introductory rate permitted to be disclosed pursuant to paragraph (b)(2)(i)(B) or required to be disclosed under paragraph (b)(2)(i)(F) of this section, any rate that will apply after a premium initial rate expires permitted to be disclosed pursuant to paragraph (b)(2)(i)(C) or required to be disclosed pursuant to paragraph (b)(2)(i)(F), and any fee or percentage amounts required to be disclosed pursuant to paragraphs (b)(2)(ii), (b)(2)(iv), (b)(2)(vii) through (b)(2)(xii) of this section must be disclosed in bold text. However, bold text shall not be used for: Any maximum limits on fee amounts disclosed in the table that do not relate to fees that vary by state; the amount of any periodic fee disclosed pursuant to paragraph (b)(2) of this section that is not an annualized amount; and other annual percentage rates or fee amounts disclosed in the table.

(ii) Location. Only the information required or permitted by paragraphs (b)(2)(i) through (b)(2)(v) (except for (b)(2)(i)(D)(2)) and (b)(2)(vii) through (b)(2)(xiv) of this section shall be in the table. Disclosures required by paragraphs (b)(2)(i)(D)(2), (b)(2)(vi) and (b)(2)(xv) of this section shall be placed directly below the table. Disclosures required by paragraphs (b)(3) through (b)(5) of this section that are not otherwise required to be in the table and other information may be presented with the account agreement or account-opening disclosure statement, provided such information appears outside the required table.

(iii) Fees that vary by state. Creditors that impose fees referred to in paragraphs (b)(2)(vii) through (b)(2)(xi) of this section that vary by state and that provide the disclosures required by paragraph (b) of this section in person at the time the open-end (not home-secured) plan is established in connection with financing the purchase of goods or services may, at the creditor's option, disclose in the account-opening table (A) the specific fee applicable to the consumer's account, or (B) the range of the fees, if the disclosure includes a statement that the amount of the fee varies by state and refers the consumer to the account agreement or other disclosure provided with the account-opening table where the amount of the fee applicable to the consumer's account is disclosed. A creditor may not list fees for multiple states in the account-opening summary table.

(iv) Fees based on a percentage. If the amount of any fee required to be disclosed under this section is determined on the basis of a percentage of another amount, the percentage used and the identification of the amount against which the percentage is applied may be disclosed instead of the amount of the fee.

(2) Required disclosures for account-opening table for open-end (not home-secured) plans. A creditor shall disclose the items in this section, to the extent applicable:

(i) Annual percentage rate. Each periodic rate that may be used to compute the finance charge on an outstanding balance for purchases, a cash advance, or a balance transfer, expressed as an annual percentage rate (as determined by § 226.14(b)). When more than one rate applies for a category of transactions, the range of balances to which each rate is applicable shall also be disclosed. The annual percentage rate for purchases disclosed pursuant to this paragraph shall be in at least 16-point type, except for the following: A penalty rate that may apply upon the occurrence of one or more specific events.

(A) Variable-rate information. If a rate disclosed under paragraph (b)(2)(i) of this section is a variable rate, the creditor shall also disclose the fact that the rate may vary and how the rate is determined. In describing how the applicable rate will be determined, the creditor must identify the type of index or formula that is used in setting the rate. The value of the index and the amount of the margin that are used to calculate the variable rate shall not be disclosed in the table. A disclosure of any applicable limitations on rate increases or decreases shall not be included in the table.

(B) Discounted initial rates. If the initial rate is an introductory rate, as that term is defined in § 226.16(g)(2)(ii), the creditor must disclose the rate that would otherwise apply to the account pursuant to paragraph (b)(2)(i) of this section. Where the rate is not tied to an index or formula, the creditor must disclose the rate that will apply after the introductory rate expires. In a variable-rate account, the card issuer must disclose a rate based on the applicable index or formula in accordance with the accuracy requirements of paragraph (b)(4)(ii)(G) of this section. Except as provided in paragraph (b)(2)(i)(F) of this section, the creditor is not required to, but may disclose in the table the introductory rate along with the rate that would otherwise apply to the account if the creditor also discloses the time period during which the introductory rate will remain in effect, and uses the term "introductory" or "intro" in immediate proximity to the introductory rate.

(C) Premium initial rate. If the initial rate is temporary and is higher than the rate that will apply after the temporary rate expires, the creditor must disclose the premium initial rate pursuant to paragraph (b)(2)(i) of this section. Consistent with paragraph (b)(2)(i) of this section, the premium initial rate for purchases must be in at least 16-point type. Except as provided in paragraph (b)(2)(i)(F) of this section, the creditor is not required to, but may disclose in the table the rate that will apply after the premium initial rate expires if the creditor also discloses the time period during which the premium initial rate will remain in effect. If the creditor also discloses in the table the rate that will apply after the premium initial rate for purchases expires, that rate also must be in at least 16-point type.

(D) Penalty rates. (1) In general. Except as provided in paragraph (b)(2)(i)(D)(2) of this section, if a rate may increase as a penalty for one or more events specified in the account agreement, such as a late payment or an extension of credit that exceeds the credit limit, the creditor must disclose pursuant to paragraph (b)(2)(i) of this section the increased rate that may apply, a brief description of the event or events that may result in the increased rate, and a brief description of how long the increased rate will remain in effect. If more than one penalty rate may apply, the creditor at its option may disclose the highest rate that could apply, instead of disclosing the specific rates or the range of rates that could apply.

(2) Introductory rates. If the creditor discloses in the table an introductory rate, as that term is defined in § 226.16(g)(2)(ii), creditors must briefly disclose directly beneath the table the circumstances under which the introductory rate may be revoked, and the rate that will apply after the introductory rate is revoked.

(E) Point of sale where APRs vary by state or based on creditworthiness. Creditors imposing annual percentage rates that vary by state or based on the consumer's creditworthiness and providing the disclosures required by paragraph (b) of this section in person at the time the open-end (not home-secured) plan is established in connection with financing the purchase of goods or services may, at the creditor's option, disclose pursuant to paragraph (b)(2)(i) of this section in the account-opening table:

(1) The specific annual percentage rate applicable to the consumer's account; or

(2) The range of the annual percentage rates, if the disclosure includes a statement that the annual percentage rate varies by state or will be determined based on the consumer's creditworthiness and refers the consumer to the account agreement or other disclosure provided with the account-opening table where the annual percentage rate applicable to the consumer's account is disclosed. A creditor may not list annual percentage rates for multiple states in the account-opening table.

(F) Credit card accounts under an open-end (not home-secured) consumer credit plan. Notwithstanding paragraphs (b)(2)(i)(B) and (b)(2)(i)(C) of this section, for credit card accounts under an open-end (not home-secured) plan, issuers must disclose in the table (1) any introductory rate that would apply to the account, consistent with the requirements of paragraph (b)(2)(i)(B) of this section, and (2) any rate that would apply upon the expiration of a premium initial rate, consistent with the requirements of paragraph (b)(2)(i)(C) of this section.

(ii) Fees for issuance or availability. (A) Any annual or other periodic fee that may be imposed for the issuance or availability of an open-end plan, including any fee based on account activity or inactivity; how frequently it will be imposed; and the annualized amount of the fee.

(B) Any non-periodic fee that relates to opening the plan. A creditor must disclose that the fee is a one-time fee.

(iii) Fixed finance charge; minimum interest charge. Any fixed finance charge and a brief description of the charge. Any minimum interest charge if it exceeds $1.00 that could be imposed during a billing cycle, and a brief description of the charge. The $1.00 threshold amount shall be adjusted periodically by the Board to reflect changes in the Consumer Price Index. The Board shall calculate each year a price level adjusted minimum interest charge using the Consumer Price Index in effect on the 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 minimum interest charge threshold has risen by a whole dollar, the minimum interest charge will be increased by $1.00. The creditor may, at its option, disclose in the table minimum interest charges below this threshold.

(iv) Transaction charges. Any transaction charge imposed by the creditor for use of the open-end plan for purchases.

(v) Grace period. The date by which or the period within which any credit extended may be repaid without incurring a finance charge due to a periodic interest rate and any conditions on the availability of the grace period. If no grace period is provided, that fact must be disclosed. If the length of the grace period varies, the creditor may disclose the range of days, the minimum number of days, or the average number of the days in the grace period, if the disclosure is identified as a range, minimum, or average. In disclosing in the tabular format a grace period that applies to all features on the account, the phrase "How to Avoid Paying Interest" shall be used as the heading for the row describing the grace period. If a grace period is not offered on all features of the account, in disclosing this fact in the tabular format, the phrase "Paying Interest" shall be used as the heading for the row describing this fact.

(vi) Balance computation method. The name of the balance computation method listed in § 226.5a(g) that is used to determine the balance on which the finance charge is computed for each feature, or an explanation of the method used if it is not listed, along with a statement that an explanation of the method(s) required by paragraph (b)(4)(i)(D) of this section is provided with the account-opening disclosures. In determining which balance computation method to disclose, the creditor shall assume that credit extended will not be repaid within any grace period, if any.

(vii) Cash advance fee. Any fee imposed for an extension of credit in the form of cash or its equivalent.

(viii) Late payment fee. Any fee imposed for a late payment.

(ix) Over-the-limit fee. Any fee imposed for exceeding a credit limit.

(x) Balance transfer fee. Any fee imposed to transfer an outstanding balance.

(xi) <u>Returned-payment fee</u>. Any fee imposed by the creditor for a returned payment.

(xii) <u>Required insurance, debt cancellation or debt suspension coverage</u>. (A) A fee for insurance described in § 226.4(b)(7) or debt cancellation or suspension coverage described in § 226.4(b)(10), if the insurance, or debt cancellation or suspension coverage is required as part of the plan; and

(B) A cross reference to any additional information provided about the insurance or coverage, as applicable.

(xiii) <u>Available credit</u>. If a creditor requires fees for the issuance or availability of credit described in paragraph (b)(2)(ii) of this section, or requires a security deposit for such credit, and the total amount of those required fees and/or security deposit that will be imposed and charged to the account when the account is opened is 15 percent or more of the minimum credit limit for the plan, a creditor must disclose the available credit remaining after these fees or security deposit are debited to the account. The determination whether the 15 percent threshold is met must be based on the minimum credit limit for the plan. However, the disclosure provided under this paragraph must be based on the actual initial credit limit provided on the account. In determining whether the 15 percent threshold test is met, the creditor must only consider fees for issuance or availability of credit, or a security deposit, that are required. If fees for issuance or availability are optional, these fees should not be considered in determining whether the disclosure must be given. Nonetheless, if the 15 percent threshold test is met, the creditor in providing the disclosure must disclose the amount of available credit calculated by excluding those optional fees, and the available credit including those optional fees. The creditor shall also disclose that the consumer has the right to reject the plan and not be obligated to pay those fees or any other fee or charges until the consumer has used the account or made a payment on the account after receiving a periodic statement. This paragraph does not apply with respect to fees or security deposits that are not debited to the account.

(xiv) Web site reference. For issuers of credit cards that are not charge cards, a reference to the Web site established by the Board and a statement that consumers may obtain on the Web site information about shopping for and using credit cards.

(xv) Billing error rights reference. A statement that information about consumers' right to dispute transactions is included in the account-opening disclosures.

(3) Disclosure of charges imposed as part of open-end (not home-secured) plans. A creditor shall disclose, to the extent applicable:

(i) For charges imposed as part of an open-end (not home-secured) plan, the circumstances under which the charge may be imposed, including the amount of the charge or an explanation of how the charge is determined. For finance charges, a statement of when the charge begins to accrue and an explanation of whether or not any time period exists within which any credit that has been extended may be repaid without incurring the charge. If such a time period is provided, a creditor may, at its option and without disclosure, elect not to impose a finance charge when payment is received after the time period expires.

(ii) Charges imposed as part of the plan are:

(A) Finance charges identified under § 226.4(a) and § 226.4(b).

(B) Charges resulting from the consumer's failure to use the plan as agreed, except amounts payable for collection activity after default, attorney's fees whether or not automatically imposed, and post-judgment interest rates permitted by law.

(C) Taxes imposed on the credit transaction by a state or other governmental body, such as documentary stamp taxes on cash advances.

(D) Charges for which the payment, or nonpayment, affect the consumer's access to the plan, the duration of the plan, the amount of credit extended, the period for which credit is extended, or the timing or method of billing or payment.

(E) Charges imposed for terminating a plan.

(F) Charges for voluntary credit insurance, debt cancellation or debt suspension.

(iii) Charges that are not imposed as part of the plan include:

(A) Charges imposed on a cardholder by an institution other than the card issuer for the use of the other institution's ATM in a shared or interchange system.

(B) A charge for a package of services that includes an open-end credit feature, if the fee is required whether or not the open-end credit feature is included and the non-credit services are not merely incidental to the credit feature.

(C) Charges under § 226.4(e) disclosed as specified.

(4) Disclosure of rates for open-end (not home-secured) plans. A creditor shall disclose, to the extent applicable:

(i) For each periodic rate that may be used to calculate interest:

(A) Rates. The rate, expressed as a periodic rate and a corresponding annual percentage rate.

(B) Range of balances. The range of balances to which the rate is applicable; however, a creditor is not required to adjust the range of balances disclosure to reflect the balance below which only a minimum charge applies.

(C) Type of transaction. The type of transaction to which the rate applies, if different rates apply to different types of transactions.

(D) Balance computation method. An explanation of the method used to determine the balance to which the rate is applied.

(ii) Variable-rate accounts. For interest rate changes that are tied to increases in an index or formula (variable-rate accounts) specifically set forth in the account agreement:

(A) The fact that the annual percentage rate may increase.

(B) How the rate is determined, including the margin.

(C) The circumstances under which the rate may increase.

(D) The frequency with which the rate may increase.

(E) Any limitation on the amount the rate may change.

(F) The effect(s) of an increase.

(G) A rate is accurate if it is a rate as of a specified date and this rate was in effect within the last 30 days before the disclosures are provided.

(iii) Rate changes not due to index or formula. For interest rate changes that are specifically set forth in the account agreement and not tied to increases in an index or formula:

(A) The initial rate (expressed as a periodic rate and a corresponding annual percentage rate) required under paragraph (b)(4)(i)(A) of this section.

(B) How long the initial rate will remain in effect and the specific events that cause the initial rate to change.

(C) The rate (expressed as a periodic rate and a corresponding annual percentage rate) that will apply when the initial rate is no longer in effect and any limitation on the time period the new rate will remain in effect.

(D) The balances to which the new rate will apply.

(E) The balances to which the current rate at the time of the change will apply.

(5) Additional disclosures for open-end (not home-secured) plans. A creditor shall disclose, to the extent applicable:

(i) Voluntary credit insurance, debt cancellation or debt suspension. The disclosures in §§ 226.4(d)(1)(i) and (d)(1)(ii) and (d)(3)(i) through (d)(3)(iii) if the creditor offers optional credit insurance or debt cancellation or debt suspension coverage that is identified in § 226.4(b)(7) or (b)(10).

(ii) Security interests. The fact that the creditor has or will acquire a security interest in the property purchased under the plan, or in other property identified by item or type.

(iii) Statement of billing rights. A statement that outlines the consumer's rights and the creditor's responsibilities under §§ 226.12(c) and 226.13 and that is substantially similar to the statement found in Model Form G-3(A) in appendix G to this part.

9. Section 226.7 is amended by republishing the introductory text, revising paragraph (b), removing paragraphs (c), (d), (e), (f), (g), (h), (i), (j), and (k), and removing and reserving footnotes 14 and 15 to read as follows:

§ 226.7 Periodic statement.

The creditor shall furnish the consumer with a periodic statement that discloses the following items, to the extent applicable:

* * * * *

(b) Rules affecting open-end (not home-secured) plans. The requirements of paragraph (b) of this section apply only to plans other than home-equity plans subject to the requirements of § 226.5b.

(1) Previous balance. The account balance outstanding at the beginning of the billing cycle.

(2) Identification of transactions. An identification of each credit transaction in accordance with § 226.8.

(3) Credits. Any credit to the account during the billing cycle, including the amount and the date of crediting. The date need not be provided if a delay in crediting does not result in any finance or other charge.

(4) Periodic rates. (i) Except as provided in paragraph (b)(4)(ii) of this section, each periodic rate that may be used to compute the interest charge expressed as an annual percentage rate and using the term, Annual Percentage Rate, along with the range of balances to which it is applicable. If no interest charge is imposed when the outstanding balance is less than a certain amount, the creditor is not required to disclose that fact, or the balance below which no interest charge will be imposed. The types of transactions to which the periodic rates apply shall also be disclosed. For variable-rate plans, the fact that the annual percentage rate may vary.

(ii) Exception. A promotional rate, as that term is defined in § 226.16(g)(2)(i) is required to be disclosed only in periods in which the offered rate is actually applied.

(5) Balance on which finance charge computed. The amount of the balance to which a periodic rate was applied and an explanation of how that balance was determined, using the term Balance Subject to Interest Rate. When a balance is determined without first deducting all credits and payments made during the billing cycle, the fact and the amount of the credits and payments shall be disclosed. As an alternative to providing an explanation of how the balance was determined, a creditor that uses a balance computation method identified in § 226.5a(g) may, at the creditor's option, identify the name of the balance computation method and provide a toll-free telephone number where consumers may obtain from the creditor more information about the balance computation method and how resulting interest charges were determined. If the method used is not identified in § 226.5a(g), the creditor shall provide a brief explanation of the method used.

(6) Charges imposed. (i) The amounts of any charges imposed as part of a plan as stated in § 226.6(b)(3), grouped together, in proximity to transactions identified under paragraph (b)(2) of this section, substantially similar to Sample G-18(A) in appendix G to this part.

(ii) Interest. Finance charges attributable to periodic interest rates, using the term Interest Charge, must be grouped together under the heading Interest Charged, itemized and totaled by type of transaction, and a total of finance charges attributable to periodic interest rates, using the term Total Interest, must be disclosed for the statement period and calendar year to date, using a format substantially similar to Sample G-18(A) in appendix G to this part.

(iii) Fees. Charges imposed as part of the plan other than charges attributable to periodic interest rates must be grouped together under the heading Fees, identified consistent with the feature or type, and itemized, and a total of charges, using the term Fees, must be disclosed for the statement period and calendar year to date, using a format substantially similar to Sample G-18(A) in appendix G.

(7) Change-in-terms and increased penalty rate summary for open-end (not home-secured) plans. Creditors that provide a change-in-terms notice required by § 226.9(c), or a rate increase notice required by § 226.9(g), on or with the periodic statement, must disclose the information in § 226.9(c)(2)(iv)(A) and (c)(2)(iv)(B) (if applicable) or § 226.9(g)(3)(i) on the periodic statement in accordance with the format requirements in § 226.9(c)(2)(iv)(C), and § 226.9(g)(3)(ii). See Forms G-18(F) and G-18(G) in appendix G to this part.

(8) Grace period. The date by which or the time period within which the new balance or any portion of the new balance must be paid to avoid additional finance charges. If such a time period is provided, a creditor may, at its option and without disclosure, impose no finance charge if payment is received after the time period's expiration.

(9) Address for notice of billing errors. The address to be used for notice of billing errors. Alternatively, the address may be provided on the billing rights statement permitted by § 226.9(a)(2).

(10) Closing date of billing cycle; new balance. The closing date of the billing cycle and the account balance outstanding on that date. The new balance must be disclosed in accordance with the format requirements of paragraph (b)(13) of this section.

(11) Due date; late payment costs. (i) Except as provided in paragraph (b)(11)(ii) of this section and in accordance with the format requirements in paragraph (b)(13) of this section, for a credit card account under an open-end (not home-secured) consumer credit plan, a card issuer must provide on each periodic statement:

(A) The due date for a payment. The due date disclosed pursuant to this paragraph shall be the same day of the month for each billing cycle.

(B) The amount of any late payment fee and any increased periodic rate(s) (expressed as an annual percentage rate(s)) that may be imposed on the account as a result of a late payment. If a range of late payment fees may be assessed, the card issuer may state the range of fees, or the highest fee and at the issuer's option with the highest fee an indication that the fee imposed could be lower. If the rate may be increased for more than one feature or balance, the card issuer may state the range of rates or the highest rate that could apply and at the issuer's option an indication that the rate imposed could be lower.

(ii) Exception. The requirements of paragraph (b)(11)(i)(B) of this section do not apply to periodic statements provided solely for charge card accounts.

(12) Repayment disclosures. (i) In general. Except as provided in paragraphs (b)(12)(ii) and (b)(12)(v), for a credit card account under an open-end (not home-secured) consumer credit plan, a card issuer must provide the following disclosures on each periodic statement:

(A) The following statement with a bold heading: "**Minimum Payment Warning**: If you make only the minimum payment each period, you will pay more in interest and it will take you longer to pay off your balance;"

(B) The minimum payment repayment estimate, as described in Appendix M1 to this part. If the minimum payment repayment estimate is less than 2 years, the card issuers must disclose the estimate in months. Otherwise, the estimate must be disclosed in years and rounded to the nearest whole year;

(C) The minimum payment total cost estimate, as described in Appendix M1 to this part. The minimum payment total cost estimate must be rounded to the nearest whole dollar;

(D) A statement that the minimum payment repayment estimate and the minimum payment total cost estimate are based on the current outstanding balance shown on the periodic statement. A statement that the minimum payment repayment estimate and the minimum payment total cost estimate are based on the assumption that only minimum payments are made and no other amounts are added to the balance;

(E) A toll-free telephone number where the consumer may obtain from the card issuer information about credit counseling services consistent with paragraph (b)(12)(iv) of this section; and

(F) Except if the minimum payment repayment estimate that is disclosed on the periodic statement pursuant to paragraph (b)(12)(i)(B) of this section is three years or less, the following disclosures:

(1) The estimated monthly payment for repayment in 36 months, as described in Appendix M1 to this part. The estimated monthly payment for repayment in 36 months must be rounded to the nearest whole dollar;

(2) A statement that the card issuer estimates that the consumer will repay the outstanding balance shown on the periodic statement in 3 years if the consumer pays the estimated monthly payment each month for 3 years;

(3) The total cost estimate for repayment in 36 months, as described in Appendix M1 to this part. The total cost estimate for repayment in 36 months must be rounded to the nearest whole dollar; and

(4) The savings estimate for repayment in 36 months, as described in Appendix M1 to this part. The savings estimate for repayment in 36 months must be rounded to the nearest whole dollar.

(ii) Negative or no amortization. If negative or no amortization occurs when calculating the minimum payment repayment estimate as described in Appendix M1 of this part, a card issuer must provide the following disclosures on the periodic statement instead of the disclosures set forth in paragraph (b)(12)(i) of this section:

(A) The following statement: "**Minimum Payment Warning:** Even if you make no more charges using this card, if you make only the minimum payment each month we estimate **you will never pay off the balance shown on this statement** because your payment will be less than the interest charged each month;"

(B) The following statement: "If you make more than the minimum payment each period, you will pay less in interest and pay off your balance sooner;"

(C) The estimated monthly payment for repayment in 36 months, as described in Appendix M1 to this part. The estimated monthly payment for repayment in 36 months must be rounded to the nearest whole dollar;

(D) A statement that the card issuer estimates that the consumer will repay the outstanding balance shown on the periodic statement in 3 years if the consumer pays the estimated monthly payment each month for 3 years; and

(E) A toll-free telephone number where the consumer may obtain from the card issuer information about credit counseling services consistent with paragraph (b)(12)(iv) of this section.

(iii) <u>Format requirements</u>. A card issuer must provide the disclosures required by paragraph (b)(12)(i) or (b)(12)(ii) of this section in accordance with the format requirements of paragraph (b)(13) of this section, and in a format substantially similar to Samples G-18(C)(1), G-18(C)(2) and G-18(C)(3) in Appendix G to this part, as applicable.

(iv) <u>Provision of information about credit counseling services</u>. A card issuer must provide the following information about credit counseling services through the toll-free telephone number disclosed pursuant to paragraphs (b)(12)(i) or (b)(12)(ii) of this section:

(A) The name, street address, telephone number, and Web site address for at least three organizations that have been approved by the United States Trustee or a bankruptcy administrator pursuant to 11 U.S.C. 111(a)(1) to provide credit counseling services in the state in which the billing address for the account is located or the state specified by the consumer.

(B) Upon the request of the consumer and to the extent available from the United States Trustee or a bankruptcy administrator, the name, street address, telephone number, and Web site address for at least one organization that satisfies the requirements in paragraph (b)(12)(iv)(A) of this section and provides credit counseling services in a language other than English that is specified by the consumer.

(v) Exemptions. Paragraph (b)(12) of this section does not apply to:

(A) Charge card accounts that require payment of outstanding balances in full at the end of each billing cycle;

(B) A billing cycle immediately following two consecutive billing cycles in which the consumer paid the entire balance in full, had a zero outstanding balance or had a credit balance; and

(C) A billing cycle where paying the minimum payment due for that billing cycle will pay the entire outstanding balance on the account for that billing cycle.

(13) Format requirements. The due date required by paragraph (b)(11) of this section shall be disclosed on the front of the first page of the periodic statement. The amount of the late payment fee and the annual percentage rate(s) required by paragraph (b)(11) of this section shall be stated in close proximity to the due date. The ending balance required by paragraph (b)(10) of this section and the disclosures required by paragraph (b)(12) of this section shall be disclosed closely proximate to the minimum payment due. The due date, late payment fee and annual percentage rate, ending balance, minimum payment due, and disclosures required by paragraph (b)(12) of this section shall be grouped together. Sample G-18(D) in Appendix G to this part sets forth an example of how these terms may be grouped.

(14) Deferred interest or similar transactions. For accounts with an outstanding balance subject to a deferred interest or similar program, the date by which that outstanding balance must be paid in full in order to avoid the obligation to pay finance charges on such balance must be disclosed on the front of the periodic statement for two billing cycles immediately preceding the billing cycle in which such date occurs. The disclosure provided pursuant to this paragraph must be substantially similar to Sample G-18(H) in Appendix G to this part.

10. Section 226.8 is revised to read as follows:

§ 226.8 Identifying transactions on periodic statements.

The creditor shall identify credit transactions on or with the first periodic statement that reflects the transaction by furnishing the following information, as applicable.[16]

(a) Sale credit. (1) Except as provided in paragraph (a)(2) of this section, for each credit transaction involving the sale of property or services, the creditor must disclose the amount and date of the transaction, and either:

(i) A brief identification[17] of the property or services purchased, for creditors and sellers that are the same or related;[18] or

(ii) The seller's name; and the city and state or foreign country where the transaction took place.[19] The creditor may omit the address or provide any suitable designation that helps the consumer to identify the transaction when the transaction took

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[16] [Reserved]

[17] [Reserved]

[18] [Reserved]

[19] [Reserved]

place at a location that is not fixed; took place in the consumer's home; or was a mail, Internet, or telephone order.

(2) Creditors need not comply with paragraph (a)(1) of this section if an actual copy of the receipt or other credit document is provided with the first periodic statement reflecting the transaction, and the amount of the transaction and either the date of the transaction to the consumer's account or the date of debiting the transaction are disclosed on the copy or on the periodic statement.

(b) Nonsale credit. For each credit transaction not involving the sale of property or services, the creditor must disclose a brief identification of the transaction;[20] the amount of the transaction; and at least one of the following dates: The date of the transaction, the date the transaction was debited to the consumer's account, or, if the consumer signed the credit document, the date appearing on the document. If an actual copy of the receipt or other credit document is provided and that copy shows the amount and at least one of the specified dates, the brief identification may be omitted.

(c) Alternative creditor procedures; consumer inquiries for clarification or documentation. The following procedures apply to creditors that treat an inquiry for clarification or documentation as a notice of a billing error, including correcting the account in accordance with § 226.13(e):

(1) Failure to disclose the information required by paragraphs (a) and (b) of this section is not a failure to comply with the regulation, provided that the creditor also maintains procedures reasonably designed to obtain and provide the information. This applies to transactions that take place outside a state, as defined in § 226.2(a)(26),

[20] [Reserved]

whether or not the creditor maintains procedures reasonably adapted to obtain the required information.

(2) As an alternative to the brief identification for sale or nonsale credit, the creditor may disclose a number or symbol that also appears on the receipt or other credit document given to the consumer, if the number or symbol reasonably identifies that transaction with that creditor.

11. Section 226.9 is amended by republishing paragraphs (d) and (f) and revising paragraphs (a), (b), (c)(2), (e), (g), and (h) to read as follows:

§ 226.9 Subsequent disclosure requirements.

(a) Furnishing statement of billing rights. (1) Annual statement. The creditor shall mail or deliver the billing rights statement required by § 226.6(a)(5) and (b)(5)(iii) at least once per calendar year, at intervals of not less than 6 months nor more than 18 months, either to all consumers or to each consumer entitled to receive a periodic statement under § 226.5(b)(2) for any one billing cycle.

(2) Alternative summary statement. As an alternative to paragraph (a)(1) of this section, the creditor may mail or deliver, on or with each periodic statement, a statement substantially similar to Model Form G-4 or Model Form G-4(A) in appendix G to this part, as applicable. Creditors offering home-equity plans subject to the requirements of § 226.5b may use either Model Form, at their option.

(b) Disclosures for supplemental credit access devices and additional features. (1) If a creditor, within 30 days after mailing or delivering the account-opening disclosures under § 226.6(a)(1) or (b)(3)(ii)(A), as applicable, adds a credit feature to the consumer's account or mails or delivers to the consumer a credit access device, including but not limited to checks that access a credit card account, for which the finance charge terms are the same as those previously disclosed, no additional disclosures are necessary. Except as provided in paragraph (b)(3) of this section, after 30 days, if the creditor adds a credit feature or furnishes a credit access device (other than as a renewal, resupply, or the original issuance of a credit card) on the same finance charge terms, the creditor shall disclose, before the consumer uses the feature or device for the first time, that it is for use in obtaining credit under the terms previously disclosed.

(2) Except as provided in paragraph (b)(3) of this section, whenever a credit feature is added or a credit access device is mailed or delivered, and the finance charge terms for the feature or device differ from disclosures previously given, the disclosures required by § 226.6(a)(1) or (b)(3)(ii)(A), as applicable, that are applicable to the added feature or device shall be given before the consumer uses the feature or device for the first time.

(3) Checks that access a credit card account.

(i) Disclosures. For open-end plans not subject to the requirements of § 226.5b, if checks that can be used to access a credit card account are provided more than 30 days after account-opening disclosures under § 226.6(b) are mailed or delivered, or are provided within 30 days of the account-opening disclosures and the finance charge terms for the checks differ from the finance charge terms previously disclosed, the creditor shall disclose on the front of the page containing the checks the following terms in the form of a table with the headings, content, and form substantially similar to Sample G-19 in appendix G to this part:

(A) If a promotional rate, as that term is defined in § 226.16(g)(2)(i) applies to the checks:

(1) The promotional rate and the time period during which the promotional rate will remain in effect;

(2) The type of rate that will apply (such as whether the purchase or cash advance rate applies) after the promotional rate expires, and the annual percentage rate that will apply after the promotional rate expires. For a variable-rate account, a creditor must disclose an annual percentage rate based on the applicable index or formula in accordance with the accuracy requirements set forth in paragraph (b)(3)(ii) of this section; and

(3) The date, if any, by which the consumer must use the checks in order to qualify for the promotional rate. If the creditor will honor checks used after such date but will apply an annual percentage rate other than the promotional rate, the creditor must disclose this fact and the type of annual percentage rate that will apply if the consumer uses the checks after such date.

(B) If no promotional rate applies to the checks:

(1) The type of rate that will apply to the checks and the applicable annual percentage rate. For a variable-rate account, a creditor must disclose an annual percentage rate based on the applicable index or formula in accordance with the accuracy requirements set forth in paragraph (b)(3)(ii) of this section.

(C) Any transaction fees applicable to the checks disclosed under § 226.6(b)(2)(iv); and

(D) Whether or not a grace period is given within which any credit extended by use of the checks may be repaid without incurring a finance charge due to a periodic interest rate. When disclosing whether there is a grace period, the phrase "How to Avoid Paying Interest on Check Transactions" shall be used as the row heading when a grace period applies to credit extended by the use of the checks. When disclosing the fact that no grace period exists for credit extended by use of the checks, the phrase "Paying Interest" shall be used as the row heading.

(ii) Accuracy. The disclosures in paragraph (b)(3)(i) of this section must be accurate as of the time the disclosures are mailed or delivered. A variable annual percentage rate is accurate if it was in effect within 60 days of when the disclosures are mailed or delivered.

(c) Change in terms. (1) Rules affecting home-equity plans.

* * * * *

(2) Rules affecting open-end (not home-secured) plans. (i) Changes where written advance notice is required. For plans other than home-equity plans subject to the requirements of § 226.5b, except as provided in paragraphs (c)(2)(iii) and (c)(2)(v) of this section, when a significant change in account terms as described in paragraph (c)(2)(ii) of this section is made to a term required to be disclosed under § 226.6(b)(3), (b)(4) or (b)(5) is changed or the required minimum periodic payment is increased, 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. The 45-day timing requirement does not apply if the consumer has agreed to a particular change; the notice shall be given, however, before the effective date of the change. Increases in the rate applicable to a

consumer's account due to delinquency, default or as a penalty described in paragraph (g) of this section that are not due to a change in the contractual terms of the consumer's account must be disclosed pursuant to paragraph (g) of this section instead of paragraph (c)(2) of this section.

(ii) Significant changes in account terms. For purposes of this section, a "significant change in account terms" means a change to a term required to be disclosed under § 226.6(b)(1) and (b)(2) or an increase in the required minimum periodic payment.

(iii) Charges not covered by § 226.6(b)(1) and (b)(2). Except as provided in paragraph (c)(2)(vi) of this section, if a creditor increases any component of a charge, or introduces a new charge, required to be disclosed under § 226.6(b)(3) that is not a significant change in account terms as described in paragraph (c)(2)(ii) of this section, a creditor may either, at its option:

(A) Comply with the requirements of paragraph (c)(2)(i) of this section; or

(B) Provide notice of the amount of the charge before the consumer agrees to or becomes obligated to pay the charge, at a time and in a manner that a consumer would be likely to notice the disclosure of the charge. The notice may be provided orally or in writing.

(iv) Disclosure requirements. (A) Significant changes in account terms. If a creditor makes a significant change in account terms as described in paragraph (c)(2)(ii) of this section, the notice provided pursuant to paragraph (c)(2)(i) of this section must provide the following information:

(1) A summary of the changes made to terms required by § 226.6(b)(1) and (b)(2) and a summary of any increase in the required minimum periodic payment;

(2) A statement that changes are being made to the account;

(3) For accounts other than credit card accounts under an open-end (not home-secured) consumer credit plan subject to § 226.9(c)(2)(iv)(B), a statement indicating the consumer has the right to opt out of these changes, if applicable, and a reference to additional information describing the opt-out right provided in the notice, if applicable;

(4) The date the changes will become effective;

(5) If applicable, a statement that the consumer may find additional information about the summarized changes, and other changes to the account, in the notice;

(6) If the creditor is changing a rate on the account, other than a penalty rate, a statement that if a penalty rate currently applies to the consumer's account, the new rate described in the notice will not apply to the consumer's account until the consumer's account balances are no longer subject to the penalty rate; and

(7) If the change in terms being disclosed is an increase in an annual percentage rate, the balances to which the increased rate will be applied. If applicable, a statement identifying the balances to which the current rate will continue to apply as of the effective date of the change in terms.

(B) Credit card accounts under an open-end (not home-secured) consumer credit plan. In addition to the information in paragraph (c)(2)(iv)(A) of this section, if a card issuer makes a significant change in account terms on a credit card account under an open-end (not home-secured) consumer credit plan, the creditor must generally provide the following information on the notice provided pursuant to paragraph (c)(2)(i) of this section. This information is not required to be provided in the case of an increase in the required minimum periodic payment, an increase in an annual percentage rate applicable to a consumer's account, a change in the balance computation method applicable to consumer's account necessary to comply with § 226.54, or when the change results from the creditor not receiving the consumer's required minimum periodic payment within 60 days after the due date for that payment:

(1) A statement that the consumer has the right to reject the change or changes prior to the effective date of the changes, unless the consumer fails to make a required minimum periodic payment within 60 days after the due date for that payment;

(2) Instructions for rejecting the change or changes, and a toll-free telephone number that the consumer may use to notify the creditor of the rejection; and

(3) If applicable, a statement that if the consumer rejects the change or changes, the consumer's ability to use the account for further advances will be terminated or suspended.

(C) Format requirements. (1) Tabular format. The summary of changes described in paragraph (c)(2)(iv)(A)(1) of this section must be in a tabular format (except for a summary of any increase in the required minimum periodic payment), with headings and format substantially similar to any of the account-opening tables found in G-17 in appendix G to this part. The table must disclose the changed term and information relevant to the change, if that relevant information is required by § 226.6(b)(1) and (b)(2). The new terms shall be described in the same level of detail as required when disclosing the terms under § 226.6(b)(2).

(2) Notice included with periodic statement. If a notice required by paragraph (c)(2)(i) of this section is included on or with a periodic statement, the information described in paragraph (c)(2)(iv)(A)(1) of this section must be disclosed on the front of

any page of the statement. The summary of changes described in paragraph (c)(1)(iv)(A)(1) of this section must immediately follow the information described in paragraph (c)(2)(iv)(A)(2) through (c)(2)(iv)(A)(7) and, if applicable, paragraph (c)(2)(iv)(B) of this section, and be substantially similar to the format shown in Sample G-20 or G-21 in appendix G to this part.

(3) Notice provided separately from periodic statement. If a notice required by paragraph (c)(2)(i) of this section is not included on or with a periodic statement, the information described in paragraph (c)(2)(iv)(A)(1) of this section must, at the creditor's option, be disclosed on the front of the first page of the notice or segregated on a separate page from other information given with the notice. The summary of changes required to be in a table pursuant to paragraph (c)(2)(iv)(A)(1) of this section may be on more than one page, and may use both the front and reverse sides, so long as the table begins on the front of the first page of the notice and there is a reference on the first page indicating that the table continues on the following page. The summary of changes described in paragraph (c)(2)(iv)(A)(1) of this section must immediately follow the information described in paragraph (c)(1)(iv)(A)(2) through (c)(1)(iv)(A)(7) and, if applicable, paragraph (c)(2)(iv)(B), of this section, substantially similar to the format shown in Sample G-20 or G-21 in appendix G to this part.

(v) Notice not required. For open-end plans (other than home equity plans subject to the requirements of § 226.5b) a creditor is not required to provide notice under this section:

(A) When the change involves charges for documentary evidence; a reduction of any component of a finance or other charge; suspension of future credit privileges (except as provided in paragraph (c)(2)(vi) of this section) or termination of an account or plan; when the change results from an agreement involving a court proceeding; when the change is an extension of the grace period; or if the change is applicable only to a check or checks that access a credit card account and the changed terms are disclosed on or with the checks in accordance with § 226.9(b)(3);

(B) When the change is an increase in an annual percentage rate upon the expiration of a specified period of time, provided that:

(1) Prior to commencement of that period, the creditor disclosed in writing to the consumer, in a clear and conspicuous manner, the length of the period and the annual percentage rate that would apply after expiration of the period;

(2) The disclosure of the length of the period and the annual percentage rate that would apply after expiration of the period are set forth in close proximity and in equal prominence to the disclosure of the rate that applies during the specified period of time; and

(3) The annual percentage rate that applies after that period does not exceed the rate disclosed pursuant to paragraph (c)(2)(v)(B)(1) of this paragraph or, if the rate disclosed pursuant to paragraph (c)(2)(v)(B)(1) of this section was a variable rate, the rate following any such increase is a variable rate determined by the same formula (index and margin) that was used to calculate the variable rate disclosed pursuant to paragraph (c)(2)(v)(B)(1);

(C) When the change is an increase in a variable annual percentage rate in accordance with a credit card or other account agreement that provides for changes in the rate according to operation of an index that is not under the control of the creditor and is available to the general public; or

(D) When the change is an increase in an annual percentage rate or a fee or charge required to be disclosed under § 226.6(b)(2)(ii), (b)(2)(iii), or (b)(2)(xii) due to the completion of a workout or temporary hardship arrangement by the consumer or the consumer's failure to comply with the terms of such an arrangement, provided that:

(1) The annual percentage rate or fee or charge applicable to a category of transactions following any such increase does not exceed the rate or fee or charge that applied to that category of transactions prior to commencement of the arrangement or, if the rate that applied to a category of transactions prior to the commencement of the workout or temporary hardship arrangement was a variable rate, the rate following any such increase is a variable rate determined by the same formula (index and margin) that applied to the category of transactions prior to commencement of the workout or temporary hardship arrangement; and

(2) The creditor has provided the consumer, prior to the commencement of such arrangement, with a clear and conspicuous written disclosure of the terms of the arrangement (including any increases due to such completion or failure).

(vi) Reduction of the credit limit. For open-end plans that are not subject to the requirements of § 226.5b, if a creditor decreases the credit limit on an account, advance notice of the decrease must be provided before an over-the-limit fee or a penalty rate can be imposed solely as a result of the consumer exceeding the newly decreased credit limit. Notice shall be provided in writing or orally at least 45 days prior to imposing the over-the-limit fee or penalty rate and shall state that the credit limit on the account has been or will be decreased.

(d) Finance charge imposed at time of transaction. (1) Any person, other than the card issuer, who imposes a finance charge at the time of honoring a consumer's credit card, shall disclose the amount of that finance charge prior to its imposition.

(2) The card issuer, other than the person honoring the consumer's credit card, shall have no responsibility for the disclosure required by paragraph (d)(1) of this section, and shall not consider any such charge for the purposes of §§ 226.5a, 226.6 and 226.7.

(e) Disclosures upon renewal of credit or charge card. (1) Notice prior to renewal. A card issuer that imposes any annual or other periodic fee to renew a credit or charge card account of the type subject to § 226.5a, including any fee based on account activity or inactivity or any card issuer that has changed or amended any term of a cardholder's account required to be disclosed under § 226.6(b)(1) and (b)(2) that has not previously been disclosed to the consumer, shall mail or deliver written notice of the renewal to the cardholder. If the card issuer imposes any annual or other periodic fee for renewal, the notice shall be provided at least 30 days or one billing cycle, whichever is less, before the mailing or the delivery of the periodic statement on which any renewal fee is initially charged to the account. If the card issuer has changed or amended any term required to be disclosed under § 226.(b)(1) and (b)(2) and such changed or amended term has not previously been disclosed to the consumer, the notice shall be provided at least 30 days prior to the scheduled renewal date of the consumer's credit or charge card. The notice shall contain the following information:

(i) The disclosures contained in § 226.5a(b)(1) through (b)(7) that would apply if the account were renewed;[20a] and

(ii) How and when the cardholder may terminate credit availability under the account to avoid paying the renewal fee, if applicable.

(2) Notification on periodic statements. The disclosures required by this paragraph may be made on or with a periodic statement. If any of the disclosures are provided on the back of a periodic statement, the card issuer shall include a reference to those disclosures on the front of the statement.

(f) Change in credit card account insurance provider. (1) Notice prior to change. If a credit card issuer plans to change the provider of insurance for repayment of all or part of the outstanding balance of an open-end credit card account of the type subject to § 226.5a, the card issuer shall mail or deliver to the cardholder written notice of the change not less than 30 days before the change in provider occurs. The notice shall also include the following items, to the extent applicable:

(i) Any increase in the rate that will result from the change;

(ii) Any substantial decrease in coverage that will result from the change; and

(iii) A statement that the cardholder may discontinue the insurance.

(2) Notice when change in provider occurs. If a change described in paragraph (f)(1) of this section occurs, the card issuer shall provide the cardholder with a written notice no later than 30 days after the change, including the following items, to the extent applicable:

(i) The name and address of the new insurance provider;

[20a] [Reserved]

(ii) A copy of the new policy or group certificate containing the basic terms of the insurance, including the rate to be charged; and

(iii) A statement that the cardholder may discontinue the insurance.

(3) Substantial decrease in coverage. For purposes of this paragraph, a substantial decrease in coverage is a decrease in a significant term of coverage that might reasonably be expected to affect the cardholder's decision to continue the insurance. Significant terms of coverage include, for example, the following:

(i) Type of coverage provided;

(ii) Age at which coverage terminates or becomes more restrictive;

(iii) Maximum insurable loan balance, maximum periodic benefit payment, maximum number of payments, or other term affecting the dollar amount of coverage or benefits provided;

(iv) Eligibility requirements and number and identity of persons covered;

(v) Definition of a key term of coverage such as disability;

(vi) Exclusions from or limitations on coverage; and

(vii) Waiting periods and whether coverage is retroactive.

(4) Combined notification. The notices required by paragraph (f)(1) and (2) of this section may be combined provided the timing requirement of paragraph (f)(1) of this section is met. The notices may be provided on or with a periodic statement.

(g) Increase in rates due to delinquency or default or as a penalty. (1) Increases subject to this section. For plans other than home-equity plans subject to the requirements of § 226.5b, except as provided in paragraph (g)(4) of this section, a creditor must provide a written notice to each consumer who may be affected when:

(i) A rate is increased due to the consumer's delinquency or default; or

(ii) A rate is increased as a penalty for one or more events specified in the account agreement, such as making a late payment or obtaining an extension of credit that exceeds the credit limit.

(2) <u>Timing of written notice</u>. Whenever any notice is required to be given pursuant to paragraph (g)(1) of this section, the creditor shall provide written notice of the increase in rates at least 45 days prior to the effective date of the increase. The notice must be provided after the occurrence of the events described in paragraphs (g)(1)(i) and (g)(1)(ii) of this section that trigger the imposition of the rate increase.

(3)(i) <u>Disclosure requirements for rate increases</u>. (A) <u>General</u>. If a creditor is increasing the rate due to delinquency or default or as a penalty, the creditor must provide the following information on the notice sent pursuant to paragraph (g)(1) of this section:

(<u>1</u>) A statement that the delinquency or default rate or penalty rate, as applicable, has been triggered;

(<u>2</u>) The date on which the delinquency or default rate or penalty rate will apply;

(<u>3</u>) The circumstances under which the delinquency or default rate or penalty rate, as applicable, will cease to apply to the consumer's account, or that the delinquency or default rate or penalty rate will remain in effect for a potentially indefinite time period;

(<u>4</u>) A statement indicating to which balances the delinquency or default rate or penalty rate will be applied; and

(<u>5</u>) If applicable, a description of any balances to which the current rate will continue to apply as of the effective date of the rate increase, unless a consumer fails to make a minimum periodic payment within 60 days from the due date for that payment.

(B) Rate increases resulting from failure to make minimum periodic payment within 60 days from due date. For a credit card account under an open-end (not home-secured) consumer credit plan, if the rate increase required to be disclosed pursuant to paragraph (g)(1) of this section is an increase pursuant to § 226.55(b)(4) based on the consumer's failure to make a minimum periodic payment within 60 days from the due date for that payment, the notice provided pursuant to paragraph (g)(1) of this section must also contain the following information:

(1) A statement of the reason for the increase; and

(2) That the increase will cease to apply if the creditor receives six consecutive required minimum periodic payments on or before the payment due date, beginning with the first payment due following the effective date of the increase.

(ii) Format requirements. (A) If a notice required by paragraph (g)(1) of this section is included on or with a periodic statement, the information described in paragraph (g)(3)(i) of this section must be in the form of a table and provided on the front of any page of the periodic statement, above the notice described in paragraph (c)(2)(iv) of this section if that notice is provided on the same statement.

(B) If a notice required by paragraph (g)(1) of this section is not included on or with a periodic statement, the information described in paragraph (g)(3)(i) of this section must be disclosed on the front of the first page of the notice. Only information related to the increase in the rate to a penalty rate may be included with the notice, except that this notice may be combined with a notice described in paragraph (c)(2)(iv) or (g)(4) of this section.

(4) <u>Exception for decrease in credit limit</u>. A creditor is not required to provide, prior to increasing the rate for obtaining an extension of credit that exceeds the credit limit, a notice pursuant to paragraph (g)(1) of this section, provided that:

(i) The creditor provides at least 45 days in advance of imposing the penalty rate a notice, in writing, that includes:

(A) A statement that the credit limit on the account has been or will be decreased.

(B) A statement indicating the date on which the penalty rate will apply, if the outstanding balance exceeds the credit limit as of that date;

(C) A statement that the penalty rate will not be imposed on the date specified in paragraph (g)(4)(i)(B) of this section, if the outstanding balance does not exceed the credit limit as of that date;

(D) The circumstances under which the penalty rate, if applied, will cease to apply to the account, or that the penalty rate, if applied, will remain in effect for a potentially indefinite time period;

(E) A statement indicating to which balances the penalty rate may be applied; and

(F) If applicable, a description of any balances to which the current rate will continue to apply as of the effective date of the rate increase, unless the consumer fails to make a minimum periodic payment within 60 days from the due date for that payment; and

(ii) The creditor does not increase the rate applicable to the consumer's account to the penalty rate if the outstanding balance does not exceed the credit limit on the date set forth in the notice and described in paragraph 9(g)(4)(i)(B) of this section.

(iii) (A) If a notice provided pursuant to paragraph (g)(4)(i) of this section is included on or with a periodic statement, the information described in paragraph (g)(4)(i) of this section must be in the form of a table and provided on the front of any page of the periodic statement; or

(B) If a notice required by paragraph (g)(4)(i) of this section is not included on or with a periodic statement, the information described in paragraph (g)(4)(i) of this section must be disclosed on the front of the first page of the notice. Only information related to the reduction in credit limit may be included with the notice, except that this notice may be combined with a notice described in paragraph (c)(2)(iv) or (g)(1) of this section.

(h) Consumer rejection of certain significant changes in terms. (1) Right to reject. If paragraph (c)(2)(iv)(B) of this section requires disclosure of the consumer's right to reject a significant change to an account term, the consumer may reject that change by notifying the creditor of the rejection before the effective date of the change.

(2) Effect of rejection. If a creditor is notified of a rejection of a significant change to an account term as provided in paragraph (h)(1) of this section, the creditor must not:

(i) Apply the change to the account;

(ii) Impose a fee or charge or treat the account as in default solely as a result of the rejection; or

(iii) Require repayment of the balance on the account using a method that is less beneficial to the consumer than one of the methods listed in § 226.55(c)(2).

(3) Exception. Section 226.9(h) does not apply when the creditor has not received the consumer's required minimum periodic payment within 60 days after the

due date for that payment.

12. Section 226.10 is revised to read as follows:

§ 226.10 Payments.

(a) General rule. A creditor shall credit a payment to the consumer's account as of the date of receipt, except when a delay in crediting does not result in a finance or other charge or except as provided in paragraph (b) of this section.

(b) Specific requirements for payments. (1) General rule. A creditor may specify reasonable requirements for payments that enable most consumers to make conforming payments.

(2) Examples of reasonable requirements for payments. Reasonable requirements for making payment may include:

(i) Requiring that payments be accompanied by the account number or payment stub;

(ii) Setting reasonable cut-off times for payments to be received by mail, by electronic means, by telephone, and in person (except as provided in paragraph (b)(3) of this section), provided that such cut-off times shall be no earlier than 5 p.m. on the payment due date at the location specified by the creditor for the receipt of such payments;

(iii) Specifying that only checks or money orders should be sent by mail;

(iv) Specifying that payment is to be made in U.S. dollars; or

(v) Specifying one particular address for receiving payments, such as a post office box.

(3) In-person payments on credit card accounts. (i) General. A card issuer that is a financial institution shall not impose a cut-off time earlier than the close of business for payments on a credit card account under an open-end (not home-secured) consumer credit plan made in person at any branch or office of the card issuer at which such payments are accepted. Any such payment made in person at a branch or office of the card issuer earlier than the close of business of that branch or office shall be considered received on the date on which the consumer makes the payment.

(ii) Financial institution. For purposes of paragraph (b)(3) of this section, “financial institution” shall mean a “depository institution” as defined in 12 U.S.C. 1813(c).

(4) Nonconforming payments. If a creditor specifies, on or with the periodic statement, requirements for the consumer to follow in making payments, but accepts a payment that does not conform to the requirements, the creditor shall credit the payment within five days of receipt.

(c) Adjustment of account. If a creditor fails to credit a payment, as required by paragraphs (a) or (b) of this section, in time to avoid the imposition of finance or other charges, the creditor shall adjust the consumer’s account so that the charges imposed are credited to the consumer’s account during the next billing cycle.

(d) Crediting of payments when creditor does not receive or accept payments on due date. If the due date for payments is a day on which the creditor does not receive or accept payments by mail, the creditor may generally not treat a payment received by any method the next business day as late for any purpose. However, if the creditor accepts or receives payments made on the due date by a method other than mail, such as electronic or telephone payments, the creditor is not required to treat a payment made by that method on the next business day as timely, even if it does not accept mailed payments on the due date.

(e) Limitations on fees related to method of payment. For credit card accounts under an open-end (not home-secured) consumer credit plan, a creditor may not impose a separate fee to allow consumers to make a payment by any method, such as mail, electronic, or telephone payments, unless such payment method involves an expedited service by a customer service representative of the creditor.

(f) Changes by card issuer. If a card issuer makes a material change in the address for receiving payment or procedures for handling cardholder payments, and such change causes a material delay in the crediting of a payment to the consumer's account during the 60-day period following the date on which such change took effect, the card issuer may not impose any late fee or finance charge for a late payment on the credit card account.

13. Section 226.11 is revised to read as follows:

§ 226.11 Treatment of credit balances; account termination.

(a) Credit balances. When a credit balance in excess of $1 is created on a credit account (through transmittal of funds to a creditor in excess of the total balance due on an account, through rebates of unearned finance charges or insurance premiums, or through amounts otherwise owed to or held for the benefit of the consumer), the creditor shall—

(1) Credit the amount of the credit balance to the consumer's account;

(2) Refund any part of the remaining credit balance within seven business days from receipt of a written request from the consumer;

(3) Make a good faith effort to refund to the consumer by cash, check, or money order, or credit to a deposit account of the consumer, any part of the credit balance remaining in the account for more than six months. No further action is required if the consumer's current location is not known to the creditor and cannot be traced through the consumer's last known address or telephone number.

(b) Account termination. (1) A creditor shall not terminate an account prior to its expiration date solely because the consumer does not incur a finance charge.

(2) Nothing in paragraph (b)(1) of this section prohibits a creditor from terminating an account that is inactive for three or more consecutive months. An account is inactive for purposes of this paragraph if no credit has been extended (such as by purchase, cash advance or balance transfer) and if the account has no outstanding balance.

(c) Timely settlement of estate debts. (1) General rule. For credit card accounts under an open-end (not home-secured) consumer credit plan, creditors must adopt reasonable procedures designed to ensure that an administrator or executor of an estate of a deceased accountholder can determine the amount of and pay any balance on the account in a timely manner.

(2) Fees and charges. (i) Limitation on fees and charges. Except as provided in paragraph (c)(2)(ii) of this section, upon receiving a request by the administrator or executor of an estate for the amount of the balance on a decreased consumer's account, a creditor may not impose fees or charges, such as a late fee or finance charge, on the account on or after the date of receiving the request.

(ii) Application to joint accounts. For joint accounts, a creditor may impose fees and charges on an account of a deceased consumer if a joint accountholder remains on the account.

(3) Timely statement of balance. (i) Requirement. Upon request by the administrator or executor of an estate, a creditor must provide the administrator or executor of an estate with the amount of the balance on a deceased consumer's account in a timely manner.

(ii) Safe harbor. For the purposes of paragraph (c)(3)(i) of this section, providing the amount of the balance on the account within 30 days of receiving the request is deemed to be timely.

14. Section 226.12 is revised to read as follows:

§ 226.12 Special credit card provisions.

(a) Issuance of credit cards. Regardless of the purpose for which a credit card is to be used, including business, commercial, or agricultural use, no credit card shall be issued to any person except—

(1) In response to an oral or written request or application for the card; or

(2) As a renewal of, or substitute for, an accepted credit card.[21]

(b) Liability of cardholder for unauthorized use. (1)(i) Definition of unauthorized use. For purposes of this section, the term "unauthorized use" means the use of a credit card by a person, other than the cardholder, who does not have actual, implied, or apparent authority for such use, and from which the cardholder receives no benefit.

[21] [Reserved]

(ii) Limitation on amount. The liability of a cardholder for unauthorized use[22] of a credit card shall not exceed the lesser of $50 or the amount of money, property, labor, or services obtained by the unauthorized use before notification to the card issuer under paragraph (b)(3) of this section.

(2) Conditions of liability. A cardholder shall be liable for unauthorized use of a credit card only if:

(i) The credit card is an accepted credit card;

(ii) The card issuer has provided adequate notice[23] of the cardholder's maximum potential liability and of means by which the card issuer may be notified of loss or theft of the card. The notice shall state that the cardholder's liability shall not exceed $50 (or any lesser amount) and that the cardholder may give oral or written notification, and shall describe a means of notification (for example, a telephone number, an address, or both); and

(iii) The card issuer has provided a means to identify the cardholder on the account or the authorized user of the card.

(3) Notification to card issuer. Notification to a card issuer is given when steps have been taken as may be reasonably required in the ordinary course of business to provide the card issuer with the pertinent information about the loss, theft, or possible unauthorized use of a credit card, regardless of whether any particular officer, employee, or agent of the card issuer does, in fact, receive the information. Notification may be given, at the option of the person giving it, in person, by telephone, or in writing. Notification in writing is considered given at the time of receipt or, whether or not

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[22] [Reserved]

[23] [Reserved]

received, at the expiration of the time ordinarily required for transmission, whichever is earlier.

(4) Effect of other applicable law or agreement. If state law or an agreement between a cardholder and the card issuer imposes lesser liability than that provided in this paragraph, the lesser liability shall govern.

(5) Business use of credit cards. If 10 or more credit cards are issued by one card issuer for use by the employees of an organization, this section does not prohibit the card issuer and the organization from agreeing to liability for unauthorized use without regard to this section. However, liability for unauthorized use may be imposed on an employee of the organization, by either the card issuer or the organization, only in accordance with this section.

(c) Right of cardholder to assert claims or defenses against card issuer.[24]

(1) General rule. When a person who honors a credit card fails to resolve satisfactorily a dispute as to property or services purchased with the credit card in a consumer credit transaction, the cardholder may assert against the card issuer all claims (other than tort claims) and defenses arising out of the transaction and relating to the failure to resolve the dispute. The cardholder may withhold payment up to the amount of credit outstanding for the property or services that gave rise to the dispute and any finance or other charges imposed on that amount.[25]

(2) Adverse credit reports prohibited. If, in accordance with paragraph (c)(1) of this section, the cardholder withholds payment of the amount of credit outstanding for the

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[24] [Reserved]

[25] [Reserved]

disputed transaction, the card issuer shall not report that amount as delinquent until the dispute is settled or judgment is rendered.

(3) Limitations. (i) General. The rights stated in paragraphs (c)(1) and (c)(2) of this section apply only if:

(A) The cardholder has made a good faith attempt to resolve the dispute with the person honoring the credit card; and

(B) The amount of credit extended to obtain the property or services that result in the assertion of the claim or defense by the cardholder exceeds $50, and the disputed transaction occurred in the same state as the cardholder's current designated address or, if not within the same state, within 100 miles from that address.[26]

(ii) Exclusion. The limitations stated in paragraph (c)(3)(i)(B) of this section shall not apply when the person honoring the credit card:

(A) Is the same person as the card issuer;

(B) Is controlled by the card issuer directly or indirectly;

(C) Is under the direct or indirect control of a third person that also directly or indirectly controls the card issuer;

(D) Controls the card issuer directly or indirectly;

(E) Is a franchised dealer in the card issuer's products or services; or

(F) Has obtained the order for the disputed transaction through a mail solicitation made or participated in by the card issuer.

(d) Offsets by card issuer prohibited. (1) A card issuer may not take any action, either before or after termination of credit card privileges, to offset a cardholder's

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[26] [Reserved]

indebtedness arising from a consumer credit transaction under the relevant credit card plan against funds of the cardholder held on deposit with the card issuer.

(2) This paragraph does not alter or affect the right of a card issuer acting under state or federal law to do any of the following with regard to funds of a cardholder held on deposit with the card issuer if the same procedure is constitutionally available to creditors generally: obtain or enforce a consensual security interest in the funds; attach or otherwise levy upon the funds; or obtain or enforce a court order relating to the funds.

(3) This paragraph does not prohibit a plan, if authorized in writing by the cardholder, under which the card issuer may periodically deduct all or part of the cardholder's credit card debt from a deposit account held with the card issuer (subject to the limitations in § 226.13(d)(1)).

(e) Prompt notification of returns and crediting of refunds. (1) When a creditor other than the card issuer accepts the return of property or forgives a debt for services that is to be reflected as a credit to the consumer's credit card account, that creditor shall, within 7 business days from accepting the return or forgiving the debt, transmit a credit statement to the card issuer through the card issuer's normal channels for credit statements.

(2) The card issuer shall, within 3 business days from receipt of a credit statement, credit the consumer's account with the amount of the refund.

(3) If a creditor other than a card issuer routinely gives cash refunds to consumers paying in cash, the creditor shall also give credit or cash refunds to consumers using credit cards, unless it discloses at the time the transaction is consummated that credit or

cash refunds for returns are not given. This section does not require refunds for returns nor does it prohibit refunds in kind.

(f) Discounts; tie-in arrangements. No card issuer may, by contract or otherwise:

(1) Prohibit any person who honors a credit card from offering a discount to a consumer to induce the consumer to pay by cash, check, or similar means rather than by use of a credit card or its underlying account for the purchase of property or services; or

(2) Require any person who honors the card issuer's credit card to open or maintain any account or obtain any other service not essential to the operation of the credit card plan from the card issuer or any other person, as a condition of participation in a credit card plan. If maintenance of an account for clearing purposes is determined to be essential to the operation of the credit card plan, it may be required only if no service charges or minimum balance requirements are imposed.

(g) Relation to Electronic Fund Transfer Act and Regulation E. For guidance on whether Regulation Z (12 CFR part 226) or Regulation E (12 CFR part 205) applies in instances involving both credit and electronic fund transfer aspects, refer to Regulation E, 12 CFR § 205.12(a) regarding issuance and liability for unauthorized use. On matters other than issuance and liability, this section applies to the credit aspects of combined credit/electronic fund transfer transactions, as applicable.

15. Section 226.13 is revised to read as follows:

§ 226.13 Billing error resolution.[27]

(a) Definition of billing error. For purposes of this section, the term billing error means:

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[27] [Reserved]

(1) A reflection on or with a periodic statement of an extension of credit that is not made to the consumer or to a person who has actual, implied, or apparent authority to use the consumer's credit card or open-end credit plan.

(2) A reflection on or with a periodic statement of an extension of credit that is not identified in accordance with the requirements of §§ 226.7(a)(2) or (b)(2), as applicable, and 226.8.

(3) A reflection on or with a periodic statement of an extension of credit for property or services not accepted by the consumer or the consumer's designee, or not delivered to the consumer or the consumer's designee as agreed.

(4) A reflection on a periodic statement of the creditor's failure to credit properly a payment or other credit issued to the consumer's account.

(5) A reflection on a periodic statement of a computational or similar error of an accounting nature that is made by the creditor.

(6) A reflection on a periodic statement of an extension of credit for which the consumer requests additional clarification, including documentary evidence.

(7) The creditor's failure to mail or deliver a periodic statement to the consumer's last known address if that address was received by the creditor, in writing, at least 20 days before the end of the billing cycle for which the statement was required.

(b) Billing error notice.[28] A billing error notice is a written notice[29] from a consumer that:

(1) Is received by a creditor at the address disclosed under § 226.7(a)(9) or

[28] [Reserved]

[29] [Reserved]

(b)(9), as applicable, no later than 60 days after the creditor transmitted the first periodic statement that reflects the alleged billing error;

(2) Enables the creditor to identify the consumer's name and account number; and

(3) To the extent possible, indicates the consumer's belief and the reasons for the belief that a billing error exists, and the type, date, and amount of the error.

(c) Time for resolution; general procedures.

(1) The creditor shall mail or deliver written acknowledgment to the consumer within 30 days of receiving a billing error notice, unless the creditor has complied with the appropriate resolution procedures of paragraphs (e) and (f) of this section, as applicable, within the 30-day period; and

(2) The creditor shall comply with the appropriate resolution procedures of paragraphs (e) and (f) of this section, as applicable, within 2 complete billing cycles (but in no event later than 90 days) after receiving a billing error notice.

(d) Rules pending resolution. Until a billing error is resolved under paragraph (e) or (f) of this section, the following rules apply:

(1) Consumer's right to withhold disputed amount; collection action prohibited. The consumer need not pay (and the creditor may not try to collect) any portion of any required payment that the consumer believes is related to the disputed amount (including related finance or other charges).[30] If the cardholder has enrolled in an automatic payment plan offered by the card issuer and has agreed to pay the credit card indebtedness by periodic deductions from the cardholder's deposit account, the card issuer shall not deduct any part of the disputed amount or related finance or other charges

[30] [Reserved]

if a billing error notice is received any time up to 3 business days before the scheduled payment date.

(2) Adverse credit reports prohibited. The creditor or its agent shall not (directly or indirectly) make or threaten to make an adverse report to any person about the consumer's credit standing, or report that an amount or account is delinquent, because the consumer failed to pay the disputed amount or related finance or other charges.

(3) Acceleration of debt and restriction of account prohibited. A creditor shall not accelerate any part of the consumer's indebtedness or restrict or close a consumer's account solely because the consumer has exercised in good faith rights provided by this section. A creditor may be subject to the forfeiture penalty under section 161(e) of the act for failure to comply with any of the requirements of this section.

(4) Permitted creditor actions. A creditor is not prohibited from taking action to collect any undisputed portion of the item or bill; from deducting any disputed amount and related finance or other charges from the consumer's credit limit on the account; or from reflecting a disputed amount and related finance or other charges on a periodic statement, provided that the creditor indicates on or with the periodic statement that payment of any disputed amount and related finance or other charges is not required pending the creditor's compliance with this section.

(e) Procedures if billing error occurred as asserted. If a creditor determines that a billing error occurred as asserted, it shall within the time limits in paragraph (c)(2) of this section:

(1) Correct the billing error and credit the consumer's account with any disputed amount and related finance or other charges, as applicable; and

(2) Mail or deliver a correction notice to the consumer.

(f) Procedures if different billing error or no billing error occurred. If, after conducting a reasonable investigation,[31] a creditor determines that no billing error occurred or that a different billing error occurred from that asserted, the creditor shall within the time limits in paragraph (c)(2) of this section:

(1) Mail or deliver to the consumer an explanation that sets forth the reasons for the creditor's belief that the billing error alleged by the consumer is incorrect in whole or in part;

(2) Furnish copies of documentary evidence of the consumer's indebtedness, if the consumer so requests; and

(3) If a different billing error occurred, correct the billing error and credit the consumer's account with any disputed amount and related finance or other charges, as applicable.

(g) Creditor's rights and duties after resolution. If a creditor, after complying with all of the requirements of this section, determines that a consumer owes all or part of the disputed amount and related finance or other charges, the creditor:

(1) Shall promptly notify the consumer in writing of the time when payment is due and the portion of the disputed amount and related finance or other charges that the consumer still owes;

(2) Shall allow any time period disclosed under § 226.6(a)(1) or (b)(2)(v), as applicable, and § 226.7(a)(8) or (b)(8), as applicable, during which the consumer can pay the amount due under paragraph (g)(1) of this section without incurring additional finance or other charges;

[31] [Reserved]

(3) May report an account or amount as delinquent because the amount due under paragraph (g)(1) of this section remains unpaid after the creditor has allowed any time period disclosed under § 226.6(a)(1) or (b)(2)(v), as applicable, and § 226.7(a)(8) or (b)(8), as applicable or 10 days (whichever is longer) during which the consumer can pay the amount; but

(4) May not report that an amount or account is delinquent because the amount due under paragraph (g)(1) of the section remains unpaid, if the creditor receives (within the time allowed for payment in paragraph (g)(3) of this section) further written notice from the consumer that any portion of the billing error is still in dispute, unless the creditor also:

(i) Promptly reports that the amount or account is in dispute;

(ii) Mails or delivers to the consumer (at the same time the report is made) a written notice of the name and address of each person to whom the creditor makes a report; and

(iii) Promptly reports any subsequent resolution of the reported delinquency to all persons to whom the creditor has made a report.

(h) Reassertion of billing error. A creditor that has fully complied with the requirements of this section has no further responsibilities under this section (other than as provided in paragraph (g)(4) of this section) if a consumer reasserts substantially the same billing error.

(i) Relation to Electronic Fund Transfer Act and Regulation E. If an extension of credit is incident to an electronic fund transfer, under an agreement between a consumer and a financial institution to extend credit when the consumer's account is overdrawn or to maintain a specified minimum balance in the consumer's account, the creditor shall comply with the requirements of Regulation E, 12 CFR § 205.11 governing error resolution rather than those of paragraphs (a), (b), (c), (e), (f), and (h) of this section.

16. Section 226.14 is revised to read as follows:

§ 226.14 Determination of annual percentage rate.

(a) General rule. The annual percentage rate is a measure of the cost of credit, expressed as a yearly rate. An annual percentage rate shall be considered accurate if it is not more than ⅛th of 1 percentage point above or below the annual percentage rate determined in accordance with this section.[31a] An error in disclosure of the annual percentage rate or finance charge shall not, in itself, be considered a violation of this regulation if:

(1) The error resulted from a corresponding error in a calculation tool used in good faith by the creditor; and

(2) Upon discovery of the error, the creditor promptly discontinues use of that calculation tool for disclosure purposes, and notifies the Board in writing of the error in the calculation tool.

(b) Annual percentage rate - in general. Where one or more periodic rates may be used to compute the finance charge, the annual percentage rate(s) to be disclosed for purposes of §§ 226.5a, 226.5b, 226.6, 226.7(a)(4) or (b)(4), 226.9, 226.15, 226.16 , and 226.26 shall be computed by multiplying each periodic rate by the number of periods in a year.

[31a] [Reserved]

(c) Optional effective annual percentage rate for periodic statements for creditors offering open-end plans subject to the requirements of § 226.5b. A creditor offering an open-end plan subject to the requirements of § 226.5b need not disclose an effective annual percentage rate. Such a creditor may, at its option, disclose an effective annual percentage rate(s) pursuant to § 226.7(a)(7) and compute the effective annual percentage rate as follows:

(1) Solely periodic rates imposed. If the finance charge is determined solely by applying one or more periodic rates, at the creditor's option, either:

(i) By multiplying each periodic rate by the number of periods in a year; or

(ii) By dividing the total finance charge for the billing cycle by the sum of the balances to which the periodic rates were applied and multiplying the quotient (expressed as a percentage) by the number of billing cycles in a year.

(2) Minimum or fixed charge, but not transaction charge, imposed. If the finance charge imposed during the billing cycle is or includes a minimum, fixed, or other charge not due to the application of a periodic rate, other than a charge with respect to any specific transaction during the billing cycle, by dividing the total finance charge for the billing cycle by the amount of the balance(s) to which it is applicable[32] and multiplying the quotient (expressed as a percentage) by the number of billing cycles in a year.[33] If there is no balance to which the finance charge is applicable, an annual percentage rate cannot be determined under this section. Where the finance charge imposed during the billing cycle is or includes a loan fee, points, or similar charge that relates to opening,

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[32] [Reserved]

[33] [Reserved]

renewing, or continuing an account, the amount of such charge shall not be included in the calculation of the annual percentage rate.

(3) Transaction charge imposed. If the finance charge imposed during the billing cycle is or includes a charge relating to a specific transaction during the billing cycle (even if the total finance charge also includes any other minimum, fixed, or other charge not due to the application of a periodic rate), by dividing the total finance charge imposed during the billing cycle by the total of all balances and other amounts on which a finance charge was imposed during the billing cycle without duplication, and multiplying the quotient (expressed as a percentage) by the number of billing cycles in a year,[34] except that the annual percentage rate shall not be less than the largest rate determined by multiplying each periodic rate imposed during the billing cycle by the number of periods in a year.[35] Where the finance charge imposed during the billing cycle is or includes a loan fee, points, or similar charge that relates to the opening, renewing, or continuing an account, the amount of such charge shall not be included in the calculation of the annual percentage rate. See appendix F to this part regarding determination of the denominator of the fraction under this paragraph.

(4) If the finance charge imposed during the billing cycle is or includes a minimum, fixed, or other charge not due to the application of a periodic rate and the total finance charge imposed during the billing cycle does not exceed 50 cents for a monthly or longer billing cycle, or the pro rata part of 50 cents for a billing cycle shorter than monthly, at the creditor's option, by multiplying each applicable periodic rate by the

[34] [Reserved]

[35] [Reserved]

number of periods in a year, notwithstanding the provisions of paragraphs (c)(2) and (c)(3) of this section.

(d) Calculations where daily periodic rate applied. If the provisions of paragraph (c)(1)(ii) or (c)(2) of this section apply and all or a portion of the finance charge is determined by the application of one or more daily periodic rates, the annual percentage rate may be determined either:

(1) By dividing the total finance charge by the average of the daily balances and multiplying the quotient by the number of billing cycles in a year; or

(2) By dividing the total finance charge by the sum of the daily balances and multiplying the quotient by 365.

17. Section 226.16 is revised to read as follows:

§ 226.16 Advertising.

(a) Actually available terms. If an advertisement for credit states specific credit terms, it shall state only those terms that actually are or will be arranged or offered by the creditor.

(b) Advertisement of terms that require additional disclosures. (1) Any term required to be disclosed under § 226.6(b)(3) set forth affirmatively or negatively in an advertisement for an open-end (not home-secured) credit plan triggers additional disclosures under this section. Any term required to be disclosed under § 226.6(a)(1) or (a)(2) set forth affirmatively or negatively in an advertisement for a home-equity plan subject to the requirements of § 226.5b triggers additional disclosures under this section. If any of the terms that trigger additional disclosures under this paragraph is set forth in an advertisement, the advertisement shall also clearly and conspicuously set forth the following:[36d]

(i) Any minimum, fixed, transaction, activity or similar charge that is a finance charge under § 226.4 that could be imposed.

(ii) Any periodic rate that may be applied expressed as an annual percentage rate as determined under § 226.14(b). If the plan provides for a variable periodic rate, that fact shall be disclosed.

(iii) Any membership or participation fee that could be imposed.

(2) If an advertisement for credit to finance the purchase of goods or services specified in the advertisement states a periodic payment amount, the advertisement shall also state the total of payments and the time period to repay the obligation, assuming that the consumer pays only the periodic payment amount advertised. The disclosure of the total of payments and the time period to repay the obligation must be equally prominent to the statement of the periodic payment amount.

(c) <u>Catalogs or other multiple-page advertisements; electronic advertisements</u>. (1) If a catalog or other multiple-page advertisement, or an electronic advertisement (such as an advertisement appearing on an Internet Web site), gives information in a table or schedule in sufficient detail to permit determination of the disclosures required by paragraph (b) of this section, it shall be considered a single advertisement if:

(i) The table or schedule is clearly and conspicuously set forth; and

(ii) Any statement of terms set forth in § 226.6 appearing anywhere else in the catalog or advertisement clearly refers to the page or location where the table or schedule begins.

[36d] [Reserved]

(2) A catalog or other multiple-page advertisement or an electronic advertisement (such as an advertisement appearing on an Internet Web site) complies with this paragraph if the table or schedule of terms includes all appropriate disclosures for a representative scale of amounts up to the level of the more commonly sold higher-priced property or services offered.

(d) Additional requirements for home-equity plans. (1) Advertisement of terms that require additional disclosures. If any of the terms required to be disclosed under § 226.6(a)(1) or (a)(2) or the payment terms of the plan are set forth, affirmatively or negatively, in an advertisement for a home-equity plan subject to the requirements of § 226.5b, the advertisement also shall clearly and conspicuously set forth the following:

(i) Any loan fee that is a percentage of the credit limit under the plan and an estimate of any other fees imposed for opening the plan, stated as a single dollar amount or a reasonable range.

(ii) Any periodic rate used to compute the finance charge, expressed as an annual percentage rate as determined under § 226.14(b).

(iii) The maximum annual percentage rate that may be imposed in a variable-rate plan.

(2) Discounted and premium rates. If an advertisement states an initial annual percentage rate that is not based on the index and margin used to make later rate adjustments in a variable-rate plan, the advertisement also shall state with equal prominence and in close proximity to the initial rate:

(i) The period of time such initial rate will be in effect; and

(ii) A reasonably current annual percentage rate that would have been in effect using the index and margin.

(3) Balloon payment. If an advertisement contains a statement of any minimum periodic payment and a balloon payment may result if only the minimum periodic payments are made, even if such a payment is uncertain or unlikely, the advertisement also shall state with equal prominence and in close proximity to the minimum periodic payment statement that a balloon payment may result, if applicable.[36e] A balloon payment results if paying the minimum periodic payments does not fully amortize the outstanding balance by a specified date or time, and the consumer is required to repay the entire outstanding balance at such time. If a balloon payment will occur when the consumer makes only the minimum payments required under the plan, an advertisement for such a program which contains any statement of any minimum periodic payment shall also state with equal prominence and in close proximity to the minimum periodic payment statement:

(i) That a balloon payment will result; and

(ii) The amount and timing of the balloon payment that will result if the consumer makes only the minimum payments for the maximum period of time that the consumer is permitted to make such payments.

(4) Tax implications. An advertisement that states that any interest expense incurred under the home-equity plan is or may be tax deductible may not be misleading in this regard. If an advertisement distributed in paper form or through the Internet (rather than by radio or television) is for a home-equity plan secured by the consumer's

[36e] [Reserved.]

principal dwelling, and the advertisement states that the advertised extension of credit may exceed the fair market value of the dwelling, the advertisement shall clearly and conspicuously state that:

(i) The interest on the portion of the credit extension that is greater than the fair market value of the dwelling is not tax deductible for Federal income tax purposes; and

(ii) The consumer should consult a tax adviser for further information regarding the deductibility of interest and charges.

(5) Misleading terms. An advertisement may not refer to a home-equity plan as "free money" or contain a similarly misleading term.

(6) Promotional rates and payments. (i) Definitions. The following definitions apply for purposes of paragraph (d)(6) of this section:

(A) Promotional rate. The term "promotional rate" means, in a variable-rate plan, any annual percentage rate that is not based on the index and margin that will be used to make rate adjustments under the plan, if that rate is less than a reasonably current annual percentage rate that would be in effect under the index and margin that will be used to make rate adjustments under the plan.

(B) Promotional payment. The term "promotional payment" means:

(1) For a variable-rate plan, any minimum payment applicable for a promotional period that:

(i) Is not derived by applying the index and margin to the outstanding balance when such index and margin will be used to determine other minimum payments under the plan; and

(ii) Is less than other minimum payments under the plan derived by applying a reasonably current index and margin that will be used to determine the amount of such payments, given an assumed balance.

(2) For a plan other than a variable-rate plan, any minimum payment applicable for a promotional period if that payment is less than other payments required under the plan given an assumed balance.

(C) Promotional period. A "promotional period" means a period of time, less than the full term of the loan, that the promotional rate or promotional payment may be applicable.

(ii) Stating the promotional period and post-promotional rate or payments. If any annual percentage rate that may be applied to a plan is a promotional rate, or if any payment applicable to a plan is a promotional payment, the following must be disclosed in any advertisement, other than television or radio advertisements, in a clear and conspicuous manner with equal prominence and in close proximity to each listing of the promotional rate or payment:

(A) The period of time during which the promotional rate or promotional payment will apply;

(B) In the case of a promotional rate, any annual percentage rate that will apply under the plan. If such rate is variable, the annual percentage rate must be disclosed in accordance with the accuracy standards in §§ 226.5b or 226.16(b)(1)(ii) as applicable; and

(C) In the case of a promotional payment, the amounts and time periods of any payments that will apply under the plan. In variable-rate transactions, payments that will be determined based on application of an index and margin shall be disclosed based on a reasonably current index and margin.

(iii) Envelope excluded. The requirements in paragraph (d)(6)(ii) of this section do not apply to an envelope in which an application or solicitation is mailed, or to a banner advertisement or pop-up advertisement linked to an application or solicitation provided electronically.

(e) Alternative disclosures—television or radio advertisements. An advertisement made through television or radio stating any of the terms requiring additional disclosures under paragraphs (b)(1) or (d)(1) of this section may alternatively comply with paragraphs (b)(1) or (d)(1) of this section by stating the information required by paragraphs (b)(1)(ii) or (d)(1)(ii) of this section, as applicable, and listing a toll-free telephone number, or any telephone number that allows a consumer to reverse the phone charges when calling for information, along with a reference that such number may be used by consumers to obtain the additional cost information.

(f) Misleading terms. An advertisement may not refer to an annual percentage rate as "fixed," or use a similar term, unless the advertisement also specifies a time period that the rate will be fixed and the rate will not increase during that period, or if no such time period is provided, the rate will not increase while the plan is open.

(g) Promotional Rates. (1) Scope. The requirements of this paragraph apply to any advertisement of an open-end (not home-secured) plan, including promotional materials accompanying applications or solicitations subject to § 226.5a(c) or accompanying applications or solicitations subject to § 226.5a(e).

(2) Definitions. (i) Promotional rate means any annual percentage rate applicable to one or more balances or transactions on an open-end (not home-secured) plan for a specified period of time that is lower than the annual percentage rate that will be in effect at the end of that period on such balances or transactions.

(ii) Introductory rate means a promotional rate offered in connection with the opening of an account.

(iii) Promotional period means the maximum time period for which the promotional rate may be applicable.

(3) Stating the term "introductory". If any annual percentage rate that may be applied to the account is an introductory rate, the term introductory or intro must be in immediate proximity to each listing of the introductory rate in a written or electronic advertisement.

(4) Stating the promotional period and post-promotional rate. If any annual percentage rate that may be applied to the account is a promotional rate under paragraph (g)(2)(i) of this section, the information in paragraphs (g)(4)(i) and (g)(4)(ii) of this section must be stated in a clear and conspicuous manner in the advertisement. If the rate is stated in a written or electronic advertisement, the information in paragraphs (g)(4)(i) and (g)(4)(ii) of this section must also be stated in a prominent location closely proximate to the first listing of the promotional rate.

(i) When the promotional rate will end; and

(ii) The annual percentage rate that will apply after the end of the promotional period. If such rate is variable, the annual percentage rate must comply with the accuracy standards in §§ 226.5a(c)(2), 226.5a(d)(3), 226.5a(e)(4), or 226.16(b)(1)(ii), as applicable. If such rate cannot be determined at the time disclosures are given because the rate depends at least in part on a later determination of the consumer's creditworthiness, the advertisement must disclose the specific rates or the range of rates that might apply.

(5) Envelope excluded. The requirements in paragraph (g)(4) of this section do not apply to an envelope or other enclosure in which an application or solicitation is mailed, or to a banner advertisement or pop-up advertisement, linked to an application or solicitation provided electronically.

(h) Deferred interest or similar offers. (1) Scope. The requirements of this paragraph apply to any advertisement of an open-end credit plan not subject to § 226.5b, including promotional materials accompanying applications or solicitations subject to § 226.5a(c) or accompanying applications or solicitations subject to § 226.5a(e).

(2) Definitions. "Deferred interest" means finance charges accrued on balances or transactions that a consumer is not obligated to pay or that will be waived or refunded to a consumer if those balances or transactions are paid in full by a specified date. The maximum period from the date the consumer becomes obligated for the balance or transaction until the specified date by which the consumer must pay the balance or transaction in full in order to avoid finance charges, or receive a waiver or refund of finance charges, is the "deferred interest period." "Deferred interest" does not include any finance charges the consumer avoids paying in connection with any recurring grace period.

(3) Stating the deferred interest period. If a deferred interest offer is advertised, the deferred interest period must be stated in a clear and conspicuous manner in the

advertisement. If the phrase “no interest” or similar term regarding the possible avoidance of interest obligations under the deferred interest program is stated, the term “if paid in full” must also be stated in a clear and conspicuous manner preceding the disclosure of the deferred interest period in the advertisement. If the deferred interest offer is included in a written or electronic advertisement, the deferred interest period and, if applicable, the term “if paid in full” must also be stated in immediate proximity to each statement of “no interest,” “no payments,” “deferred interest,” “same as cash,” or similar term regarding interest or payments during the deferred interest period.

(4) Stating the terms of the deferred interest or similar offer. If any deferred interest offer is advertised, the information in paragraphs (h)(4)(i) and (h)(4)(ii) of this section must be stated in the advertisement, in language similar to Sample G-24 in Appendix G to this part. If the deferred interest offer is included in a written or electronic advertisement, the information in paragraphs (h)(4)(i), and (h)(4)(ii) of this section must also be stated in a prominent location closely proximate to the first statement of “no interest,” “no payments,” “deferred interest,” “same as cash,” or similar term regarding interest or payments during the deferred interest period.

(i) A statement that interest will be charged from the date the consumer becomes obligated for the balance or transaction subject to the deferred interest offer if the balance or transaction is not paid in full within the deferred interest period; and

(ii) A statement, if applicable, that interest will be charged from the date the consumer incurs the balance or transaction subject to the deferred interest offer if the account is in default before the end of the deferred interest period.

(5) Envelope excluded. The requirements in paragraph (h)(4) of this section do not apply to an envelope or other enclosure in which an application or solicitation is mailed, or to a banner advertisement or pop-up advertisement linked to an application or solicitation provided electronically.

18. Section 226.30 is revised to read as follows:

§ 226.30 Limitation on rates.

A creditor shall include in any consumer credit contract secured by a dwelling and subject to the act and this regulation the maximum interest rate that may be imposed during the term of the obligation[50] when:

(a) In the case of closed-end credit, the annual percentage rate may increase after consummation, or

(b) In the case of open-end credit, the annual percentage rate may increase during the plan.

* * * * *

19. A new subpart G consisting of §§ 226.51, 226.52, 226.53, 226.54, 226.55, 226.56, 226.57, and 226.58 is added to read as follows:

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

§ 226.51 Ability to Pay

(a) General rule. (1) Consideration of ability to pay. A card issuer must not open a credit card account for a consumer under an open-end (not home-secured) consumer credit plan, or increase any credit limit applicable to such account, unless the card issuer considers the ability of the consumer to make the required minimum periodic

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[50] [Reserved.]

payments under the terms of the account based on the consumer's income or assets and the consumer's current obligations. Card issuers must have reasonable policies and procedures in place to consider this information.

(2) Minimum payments. (i) Reasonable method. For purposes of paragraph (a)(1) of this section, a card issuer must use a reasonable method for estimating the minimum periodic payments the consumer would be required to pay under the terms of the account.

(ii) Safe harbor. A card issuer complies with paragraph (a)(2)(i) of this section if it estimates required minimum periodic payments using the following method:

(A) The card issuer assumes utilization of the full credit line that the issuer is considering offering to the consumer from the first day of the billing cycle; and

(B) The card issuer uses a minimum payment formula employed by the issuer for the product the issuer is considering offering to the consumer or, in the case of an existing account, the minimum payment formula that currently applies to that account, provided that:

(1) If the applicable minimum payment formula includes interest charges, the card issuer estimates those charges using an interest rate that the issuer is considering offering to the consumer for purchases or, in the case of an existing account, the interest rate that currently applies to purchases; and

(2) If the applicable minimum payment formula includes fees, the card issuer may assume that no fees have been charged to the account.

(b) Rules affecting young consumers.

(1) Applications from young consumers. A card issuer may not open a credit card account under an open-end (not home-secured) consumer credit plan for a consumer less than 21 years old, unless the consumer has submitted a written application and provided:

(i)(A) a signed agreement of a cosigner, guarantor, or joint applicant who is at least 21 years old to be either secondarily liable for any debt on the account incurred by the consumer before the consumer has attained the age of 21 in the event the consumer defaults on the account or jointly liable with the consumer for any debt on the account incurred by either party, and

(B) financial information indicating such cosigner, guarantor, or joint applicant has the ability to make the minimum payments on such debts, consistent with paragraph (a) of this section; or

(ii) financial information indicating an independent ability to make the minimum payments on the proposed extension of credit in connection with the account, consistent with paragraph (a) of this section.

(2) Credit line increases for young consumers. If a credit card account has been opened pursuant to paragraph (b)(1)(i) of this section, no increase in the credit limit may be made on such account before the consumer attains the age of 21 unless the cosigner, guarantor, or joint accountholder who assumed liability at account opening agrees in writing to assume liability on the increase.

§ 226.52 Limitations on fees.

(a) Limitations during first year after account opening. (1) General rule. Except as provided in paragraph (a)(2) of this section, if a card issuer charges any fees to a credit card account under an open-end (not home-secured) consumer credit plan during the first year after the account is opened:

(i) The card issuer must not charge to the account during that period fees that in total constitute more than 25 percent of the credit limit in effect when the account is opened; and

(ii) The card issuer must not require the consumer to pay any fees in excess of the total amount permitted by paragraph (a)(1)(i) of this section with respect to the account during that period.

(2) Fees not subject to limitations. Paragraph (a) of this section does not apply to:

(i) Late payment fees, over-the-limit fees, and returned-payment fees; or

(ii) Fees that the consumer is not required to pay with respect to the account.

(3) Rule of construction. Paragraph (a) of this section does not authorize the imposition or payment of fees or charges otherwise prohibited by law.

§ 226.53 Allocation of payments.

(a) General rule. Except as provided in paragraph (b) of this section, when a consumer makes a payment in excess of the required minimum periodic payment for a credit card account under an open-end (not home-secured) consumer credit plan, the card issuer must allocate the excess amount first to the balance with the highest annual percentage rate and any remaining portion to the other balances in descending order based on the applicable annual percentage rate.

(b) Special rule for balances subject to deferred interest or similar programs. When a balance on a credit card account under an open-end (not home-secured) consumer credit plan is subject to a deferred interest or similar program that provides that a consumer will not be obligated to pay interest that accrues on the balance if the balance is paid in full prior to the expiration of a specified period of time, the card issuer must allocate any amount paid by the consumer in excess of the required minimum periodic payment first to that balance during the two billing cycles immediately preceding expiration of the specified period and any remaining portion to any other balances consistent with paragraph (a) of this section.

§ 226.54 Limitations on the imposition of finance charges.

(a) Limitations on imposing finance charges as a result of the loss of a grace period. (1) General rule. Except as provided in paragraph (b) of this section, a card issuer must not impose finance charges as a result of the loss of a grace period on a credit card account under an open-end (not home-secured) consumer credit plan if those finance charges are based on:

(i) Balances for days in billing cycles that precede the most recent billing cycle; or

(ii) Any portion of a balance subject to a grace period that was repaid prior to the expiration of the grace period.

(2) Definition of grace period. For purposes of paragraph (a)(1) of this section, "grace period" has the same meaning as in § 226.5(b)(2)(ii).

(b) Exceptions. Paragraph (a) of this section does not apply to:

(1) Adjustments to finance charges as a result of the resolution of a dispute under § 226.12 or § 226.13; or

(2) Adjustments to finance charges as a result of the return of a payment.

§ 226.55 Limitations on increasing annual percentage rates, fees, and charges.

(a) General rule. Except as provided in paragraph (b) of this section, a card issuer must not increase an annual percentage rate or a fee or charge required to be disclosed under § 226.6(b)(2)(ii), (b)(2)(iii), or (b)(2)(xii) on a credit card account under an open-end (not home-secured) consumer credit plan.

(b) Exceptions. A card issuer may increase an annual percentage rate or a fee or charge required to be disclosed under § 226.6(b)(2)(ii), (b)(2)(iii), or (b)(2)(xii) pursuant to an exception set forth in this paragraph even if that increase would not be permitted under a different exception.

(1) Temporary rate exception. A card issuer may increase an annual percentage rate upon the expiration of a specified period of six months or longer, provided that:

(i) Prior to the commencement of that period, the card issuer disclosed in writing to the consumer, in a clear and conspicuous manner, the length of the period and the annual percentage rate that would apply after expiration of the period; and

(ii) Upon expiration of the specified period:

(A) The card issuer must not apply an annual percentage rate to transactions that occurred prior to the period that exceeds the annual percentage rate that applied to those transactions prior to the period;

(B) If the disclosures required by paragraph (b)(1)(i) of this section are provided pursuant to § 226.9(c), the card issuer must not apply an annual percentage rate to transactions that occurred within 14 days after provision of the notice that exceeds the annual percentage rate that applied to that category of transactions prior to provision of the notice; and

(C) The card issuer must not apply an annual percentage rate to transactions that occurred during the period that exceeds the increased annual percentage rate disclosed pursuant to paragraph (b)(1)(i) of this section.

(2) Variable rate exception. A card issuer may increase an annual percentage rate when:

(i) The annual percentage rate varies according to an index that is not under the card issuer's control and is available to the general public; and

(ii) The increase in the annual percentage rate is due to an increase in the index.

(3) Advance notice exception. A card issuer may increase an annual percentage rate or a fee or charge required to be disclosed under § 226.6(b)(2)(ii), (b)(2)(iii), or (b)(2)(xii) after complying with the applicable notice requirements in § 226.9(b), (c), or (g), provided that:

(i) If a card issuer discloses an increased annual percentage rate, fee, or charge pursuant to § 226.9(b), the card issuer must not apply that rate, fee, or charge to transactions that occurred prior to provision of the notice;

(ii) If a card issuer discloses an increased annual percentage rate, fee, or charge pursuant to § 226.9(c) or (g), the card issuer must not apply that rate, fee, or charge to transactions that occurred prior to or within 14 days after provision of the notice; and

(iii) This exception does not permit a card issuer to increase an annual percentage rate or a fee or charge required to be disclosed under § 226.6(b)(2)(ii), (b)(2)(iii), or (b)(2)(xii) during the first year after the credit card account is opened.

(4) Delinquency exception. A card issuer may increase an annual percentage rate or a fee or charge required to be disclosed under § 226.6(b)(2)(ii), (b)(2)(iii), or (b)(2)(xii) due to the card issuer not receiving the consumer's required minimum periodic payment within 60 days after the due date for that payment, provided that:

(i) The card issuer must disclose in a clear and conspicuous manner in the notice of the increase pursuant to § 226.9(c) or (g):

(A) A statement of the reason for the increase; and

(B) That the increased annual percentage rate, fee, or charge will cease to apply if the card issuer receives six consecutive required minimum periodic payments on or before the payment due date beginning with the first payment due following the effective date of the increase; and

(ii) If the card issuer receives six consecutive required minimum periodic payments on or before the payment due date beginning with the first payment due following the effective date of the increase, the card issuer must reduce any annual percentage rate, fee, or charge increased pursuant to this exception to the annual percentage rate, fee, or charge that applied prior to the increase with respect to transactions that occurred prior to or within 14 days after provision of the § 226.9(c) or (g) notice.

(5) Workout and temporary hardship arrangement exception. A card issuer may increase an annual percentage rate or a fee or charge required to be disclosed under

§ 226.6(b)(2)(ii), (b)(2)(iii), or (b)(2)(xii) due to the consumer's completion of a workout or temporary hardship arrangement or the consumer's failure to comply with the terms of such an arrangement, provided that:

(i) Prior to commencement of the arrangement, the card issuer has provided the consumer with a clear and conspicuous written disclosure of the terms of the arrangement (including any increases due to the completion or failure of the arrangement); and

(ii) Upon the completion or failure of the arrangement, the card issuer must not apply to any transactions that occurred prior to commencement of the arrangement an annual percentage rate, fee, or charge that exceeds the annual percentage rate, fee, or charge that applied to those transactions prior to commencement of the arrangement.

(6) Servicemembers Civil Relief Act exception. If an annual percentage rate has been decreased pursuant to 50 U.S.C. app. 527, a card issuer may increase that annual percentage rate once 50 U.S.C. app. 527 no longer applies, provided that the card issuer must not apply to any transactions that occurred prior to the decrease an annual percentage rate that exceeds the annual percentage rate that applied to those transactions prior to the decrease.

(c) Treatment of protected balances. (1) Definition of protected balance. For purposes of this paragraph, "protected balance" means the amount owed for a category of transactions to which an increased annual percentage rate or an increased fee or charge required to be disclosed under § 226.6(b)(2)(ii), (b)(2)(iii), or (b)(2)(xii) cannot be applied after the annual percentage rate, fee, or charge for that category of transactions has been increased pursuant to paragraph (b)(3) of this section.

(2) Repayment of protected balance. The card issuer must not require repayment of the protected balance using a method that is less beneficial to the consumer than one of the following methods:

(i) The method of repayment for the account before the effective date of the increase;

(ii) An amortization period of not less than five years, beginning no earlier than the effective date of the increase; or

(iii) A required minimum periodic payment that includes a percentage of the balance that is equal to no more than twice the percentage required before the effective date of the increase.

(d) Continuing application. This section continues to apply to a balance on a credit card account after:

(1) The account is closed or acquired by another creditor; or

(2) The balance is transferred from a credit card account issued by a creditor to another credit account issued by the same creditor or its affiliate or subsidiary (unless the account to which the balance is transferred is subject to § 226.5b).

§ 226.56 Requirements for over-the-limit transactions

(a) Definition. For purposes of this section, the term "over-the-limit transaction" means any extension of credit by a creditor to complete a transaction that causes a consumer's credit card account balance to exceed the credit limit.

(b) Opt-in requirement. (1) General. A creditor shall not assess a fee or charge on a consumer's credit card account under an open-end (not home-secured) consumer credit plan for an over-the-limit transaction unless the creditor:

(i) Provides the consumer with an oral, written or electronic notice explaining the consumer's right to affirmatively consent, or opt in, to the creditor's payment of an over-the-limit transaction;

(ii) Provides a reasonable opportunity for the consumer to affirmatively consent, or opt in, to the creditor's payment of over-the-limit transactions;

(iii) Obtains the consumer's affirmative consent, or opt-in, to the creditor's payment of such transactions; and

(iv) If the consumer affirmatively consents, or opts in, provides the consumer notice of the right to revoke that consent following the assessment of an over-the-limit fee or charge.

(2) Completion of over-the-limit transactions without consumer consent. Notwithstanding the absence of a consumer's affirmative consent under paragraph (b)(1)(iii) of this section, a creditor may pay any over-the-limit transaction on a consumer's account provided that the creditor does not impose any fee or charge on the account for paying that over-the-limit transaction.

(c) Method of election. A creditor may permit a consumer to consent to the creditor's payment of any over-the-limit transaction in writing, orally, or electronically. The creditor must also permit the consumer to revoke his or her consent using the same methods available to the consumer for providing consent.

(d) Timing of notices. (1) Initial notice. (i) General. The notice required by paragraph (b)(1)(i) of this section shall be provided prior to the assessment of any over-the-limit fee or charge on a consumer's account;

(ii) Oral or written consent. If a consumer elects to consent to the creditor's payment of any over-the-limit transaction by oral or electronic means, the creditor must provide the notice required by paragraph (b)(1)(i) of this section immediately prior to and contemporaneously with obtaining that consent.

(2) Subsequent notice. The notice required by paragraph (b)(1)(iv) of this section shall be provided on the front of any page of each periodic statement that reflects the assessment of an over-the-limit fee or charge on a consumer's account.

(e) Content. (1) Initial notice. The notice required by paragraph (b)(1)(i) of this section shall include:

(i) Fees. The dollar amount of any fees or charges assessed by the creditor on a consumer's account for an over-the-limit transaction;

(ii) APRs. Any increased periodic rate(s) (expressed as an annual percentage rate(s)) that may be imposed on the account as a result of an over-the-limit transaction; and

(iii) Disclosure of opt-in right. An explanation of the consumer's right to affirmatively consent to the creditor's payment of over-the-limit transactions, including the method(s) by which the consumer may consent to the service.

(2) Subsequent notice. The notice required by paragraph (b)(1)(iv) of this section shall describe the consumer's right to revoke any consent provided under paragraph (b)(1)(iii) of this section, including the method(s) by which the consumer may revoke the service.

(3) Safe harbor. Use of Model Forms G-25(A) or G-25(B) of Appendix G to this part, or substantially similar notices, constitutes compliance with the notice content requirements of paragraph (e) of this section.

(f) Joint relationships. If two or more consumers are jointly liable on a credit card account under an open-end (not home-secured) consumer credit plan, the creditor shall treat the affirmative consent of any of the joint consumers as affirmative consent for that account. Similarly, the creditor shall treat a revocation of consent by any of the joint consumers as revocation of consent for that account.

(g) Continuing right to opt in or revoke opt-in. A consumer may affirmatively consent to the creditor's payment of over-the-limit transactions at any time in the manner described in the notice required by paragraph (b)(1)(i) of this section. Similarly, the consumer may revoke the consent at any time in the manner described in the notice required by paragraph (b)(1)(iv) of this section.

(h) Duration of opt-in. A consumer's affirmative consent to the creditor's payment of over-the-limit transactions is effective until revoked by the consumer, or until the creditor decides for any reason to cease paying over-the-limit transactions for the consumer.

(i) Time to comply with revocation request. A creditor must comply with a consumer's revocation request as soon as reasonably practicable after the creditor receives it.

(j) Prohibited practices. Notwithstanding a consumer's affirmative consent to a creditor's payment of over-the-limit transactions, a creditor is prohibited from engaging in the following practices:

(1) Fees or charges imposed per cycle.

(i) General rule. A creditor may not impose more than one over-the-limit fee or charge on a consumer's credit card account per billing cycle, and, except as provided in paragraph (j)(1)(ii) of this section, may not impose an over-the-limit fee or charge on the consumer's credit card account for more than three billing cycles for the same over-the-limit transaction where the consumer has not reduced the account balance below the credit limit by the payment due date for either of the last two billing cycles.

(ii) Exception. The prohibition in paragraph (j)(1)(i) of this section on imposing an over-the-limit fee or charge in more than three billing cycles for the same over-the-limit transaction(s) does not apply if an over-the-limit transaction occurs during either of the last two billing cycles.

(2) Failure to promptly replenish. A creditor may not impose an over-the-limit fee or charge solely because of creditor's failure to promptly replenish the consumer's available credit following the crediting of the consumer's payment under § 226.10.

(3) Conditioning. A creditor may not condition the amount of a consumer's credit limit on the consumer affirmatively consenting to the creditor's payment of over-the-limit transactions if the creditor assesses a fee or charge for such service.

(4) Over-the-limit fees attributed to fees or interest. A creditor may not impose an over-the-limit fee or charge if a consumer exceeds a credit limit solely because of fees or interest charged by the creditor to the consumer's account during the billing cycle. For purposes of this paragraph (j)(4), fees or interest charges that may not trigger an over-the-limit fee or charge are charges imposed as part of the plan under § 226.6(b)(3).

§ 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.

§ 226.58 Internet posting of credit card agreements.

(a) Applicability. The requirements of this section apply to any card issuer that issues credit cards under a credit card account under an open-end (not home-secured) consumer credit plan.

(b) Definitions. (1) Agreement. For purposes of this section, "agreement" or "credit card agreement" means a written document or documents evidencing the terms of the legal obligation, or the prospective legal obligation, between a card issuer and a consumer under a credit card account for an open-end (not home-secured) consumer credit plan. The "agreement" or "credit card agreement" also includes the pricing information, as defined in § 226.58(b)(4).

(2) Business day. For purposes of this section, "business day" means a day on which the creditor's offices are open to the public for carrying on substantially all of its business functions.

(3) Offers. For purposes of this section, an issuer "offers" or "offers to the public" an agreement if the issuer is soliciting or accepting applications for accounts that would be subject to that agreement.

(4) Pricing information. For purposes of this section, "pricing information" means: (i) the information under § 226.6(b)(2)(i) through (b)(2)(xii), (b)(3) and (b)(4) required to be disclosed in writing pursuant to § 226.5(a)(1)(ii); (ii) the credit limit; and (iii) the method used to calculate required minimum payments.

(c) Registration with Board. (1) Initial registration. A card issuer that offered one or more credit card agreements as of December 31, 2009, must register with the Board, in the form and manner prescribed by the Board, no later than February 1, 2010, unless the card issuer would have qualified for the de minimis exception under § 226.58(e) as of December 31, 2009.

(2) Subsequent registrations. A card issuer that that is required to make a submission to the Board under § 226.58(d) that has not previously registered with the Board must register with the Board, in the form and manner prescribed by the Board, at least 21 days before the quarterly submission deadline specified in § 226.58(d)(1) on which the card issuer's first submission to the Board is due.

(3) Updates. If information contained in a card issuer's registration under § 226.58(c)(1) or (c)(2) changes, the issuer must provide to the Board updated registration information, in the form and manner prescribed by the Board, no later than the first quarterly submission deadline specified in § 226.58(d)(1) following the change.

(d) Submission of agreements to Board. (1) Timing and content of submissions. A card issuer must make quarterly submissions to the Board, in the form and manner specified by the Board, that contain: (i) the credit card agreements, as described in Appendix N, that the card issuer offered to the public as of the last business day of the preceding calendar quarter that the card issuer has not previously submitted to the Board; (ii) any credit card agreement previously submitted to the Board that was modified or amended during the preceding calendar quarter, as described in § 226.58(d)(3); and (iii) notification regarding any credit card agreement previously submitted to the Board that the issuer is withdrawing, as described in § 226.58(d)(4) and (e). Except as provided in § 226.58(d)(2), quarterly submissions to the Board are due no later than the first business day on or after January 31, April 30, July 31, and October 31 of each year.

(2) Timing of first two submissions. The first submission following the effective date of this section must be sent to the Board no later than February 22, 2010, and must contain the credit card agreements that the card issuer offered to the public as of December 31, 2009. The next submission must be sent to the Board no later than August 2, 2010, and must contain: (i) the credit card agreements that the card issuer offered to the public as of June 30, 2010, that the card issuer has not previously submitted to the Board; (ii) any credit card agreement previously submitted to the Board that was modified or amended after December 31, 2009, and on or before June 30, 2010, as

described in § 226.58(d)(3); and (iii) notification regarding any credit card agreement previously submitted to the Board that the issuer is withdrawing as of June 30, 2010, as described in § 226.58(d)(4) and (e).

(3) Changes to agreements. If a credit card agreement has been submitted to the Board, no changes have been made to the agreement, and the card issuer continues to offer the agreement to the public, no additional submission of that agreement is required. If a change is made to a credit card agreement that previously has been submitted to the Board, including a change to any provisions of the agreement or to the pricing information, the card issuer must submit the entire revised agreement to the Board, in the form and manner specified by the Board, by the first quarterly submission deadline after the last day of the calendar quarter in which the change became effective.

(4) Withdrawal of agreements. If a card issuer no longer offers to the public a credit card agreement that previously has been submitted to the Board, the card issuer must notify the Board, in the form and manner specified by the Board, by the first quarterly submission deadline after the last day of the calendar quarter in which the issuer ceased to offer the agreement that the agreement is being withdrawn.

(e) De minimis exception. (1) A card issuer is not required to submit any credit card agreements to the Board under § 226.58(d) if the card issuer had fewer than 10,000 open credit card accounts under open-end (not home-secured) consumer credit plans as of the last business day of the calendar quarter.

(2) If an issuer that previously qualified for the de minimis exception ceases to qualify, the card issuer must begin making quarterly submissions to the Board under

§ 226.58(d) no later than the first quarterly submission deadline after the date as of which the issuer ceased to qualify.

(3) If a card issuer that did not previously qualify comes within the de minimis exception, the card issuer may notify the Board that the card issuer is withdrawing each agreement the card issuer previously submitted to the Board. Until the card issuer notifies the Board, in the form and manner specified by the Board, that each agreement the card issuer previously submitted to the Board is being withdrawn, the card issuer must continue to make quarterly submissions to the Board under § 226.58(d) and to provide updated registration information under § 226.58(c)(3).

(f) Agreements posted on card issuer's Web site. A card issuer must establish and maintain a publicly available Web site and make its credit card agreements available through the Web site, as specified in Appendix N, as follows:

(1) Agreements offered to the public. A card issuer must post and maintain on its publicly available Web site the credit card agreements that the issuer is required to submit to the Board as provided in § 226.58(d).

(2) Agreements for all open accounts. With respect to any open credit card account under an open-end (not home-secured) consumer credit plan, a card issuer must either:

(i) Post and maintain the cardholder's agreement on its Web site; or

(ii) Promptly provide a copy of the cardholder's agreement to the cardholder upon the cardholder's request. If the card issuer makes an agreement available upon request, the issuer must provide the cardholder with the ability to request a copy of the agreement both: (i) by using the issuer's Web site (such as by clicking on a clearly identified box to make the request); and (ii) by calling a toll-free telephone number that is displayed on the issuer's Web site and clearly identified as to purpose. The card issuer must send to the cardholder or otherwise make available to the cardholder a copy of the cardholder's agreement no later than 10 business days after the issuer receives the cardholder's request.

(3) E-Sign Act requirements. Card issuers may provide credit card agreements in electronic form under § 226.58(f)(1) and (f)(2) without regard to the consumer notice and consent requirements of section 101(c) of the Electronic Signatures in Global and National Commerce Act (E-Sign Act) (15 U.S.C. 7001 et seq.).

20. Appendix E to part 226 is revised to read as follows:

APPENDIX E TO PART 226—RULES FOR CARD ISSUERS THAT BILL ON A TRANSACTION-BY-TRANSACTION BASIS

The following provisions of Subpart B apply if credit cards are issued and the card issuer and the seller are the same or related persons; no finance charge is imposed; consumers are billed in full for each use of the card on a transaction-by-transaction basis, by means of an invoice or other statement reflecting each use of the card; and no cumulative account is maintained which reflects the transactions by each consumer during a period of time, such as a month. The term "related person" refers to, for example, a franchised or licensed seller of a creditor's product or service or a seller who assigns or sells sales accounts to a creditor or arranges for credit under a plan that allows the consumer to use the credit only in transactions with that seller. A seller is not related to the creditor merely because the seller and the creditor have an agreement authorizing the seller to honor the creditor's credit card.

1. <u>Section 226.6(a)(5) or § 226.6(b)(5)(iii)</u>.

2. <u>Section 226.6(a)(2) or § 226.6(b)(3)(ii)(B) , as applicable</u>. The disclosure required by § 226.6(a)(2) or § 226.6(b)(3)(ii)(B) shall be limited to those charges that are or may be imposed as a result of the deferral of payment by use of the card, such as late payment or delinquency charges. A tabular format is not required.

3. <u>Section 226.6(a)(4) or § 226.6(b)(5)(ii)</u>.

4. <u>Section 226.7(a)(2) or § 226.7(b)(2), as applicable; § 226.7(a)(9) or § 226.7(b)(9), as applicable</u>. Creditors may comply by placing the required disclosures on the invoice or statement sent to the consumer for each transaction.

5. <u>Section 226.9(a)</u>. Creditors may comply by mailing or delivering the statement required by § 226.6(a)(5) or § 226.6(b)(5)(iii) (see appendix G-3 and G-3(A) to this part) to each consumer receiving a transaction invoice during a one-month period chosen by the card issuer or by sending either the statement prescribed by § 226.6(a)(5) or § 226.6(b)(5)(iii), or an alternative billing error rights statement substantially similar to that in appendix G-4 and G-4(A) to this part, with each invoice sent to a consumer.

6. <u>Section 226.9(c)</u>. A tabular format is not required.

7. <u>Section 226.10</u>.

8. <u>Section 226.11(a)</u>. This section applies when a card issuer receives a payment or other credit that exceeds by more than $1 the amount due, as shown on the transaction invoice. The requirement to credit amounts to an account may be complied with by other reasonable means, such as by a credit memorandum. Since no periodic statement is

provided, a notice of the credit balance shall be sent to the consumer within a reasonable period of time following its occurrence unless a refund of the credit balance is mailed or delivered to the consumer within seven business days of its receipt by the card issuer.

9. Section 226.12 including § 226.12(c) and (d), as applicable. Section 226.12(e) is inapplicable.

10. Section 226.13, as applicable. All references to "periodic statement" shall be read to indicate the invoice or other statement for the relevant transaction. All actions with regard to correcting and adjusting a consumer's account may be taken by issuing a refund or a new invoice, or by other appropriate means consistent with the purposes of the section.

11. Section 226.15, as applicable.

21. Appendix F to part 226 is revised to read as follows:

APPENDIX F TO PART 226—OPTIONAL ANNUAL PERCENTAGE RATE COMPUTATIONS FOR CREDITORS OFFERING OPEN-END PLANS SUBJECT TO THE REQUIREMENTS OF § 226.5B

In determining the denominator of the fraction under § 226.14(c)(3), no amount will be used more than once when adding the sum of the balances[1] subject to periodic rates to the sum of the amounts subject to specific transaction charges. (Where a portion of the finance charge is determined by application of one or more daily periodic rates, the phrase "sum of the balances" shall also mean the "average of daily balances.") In every case, the full amount of transactions subject to specific transaction charges shall be included in the denominator. Other balances or parts of balances shall be included

[1] [Reserved]

according to the manner of determining the balance subject to a periodic rate, as illustrated in the following examples of accounts on monthly billing cycles:

1. Previous balance—none.

A specific transaction of $100 occurs on the first day of the billing cycle. The average daily balance is $100. A specific transaction charge of 3 percent is applicable to the specific transaction. The periodic rate is 1½ percent applicable to the average daily balance. The numerator is the amount of the finance charge, which is $4.50. The denominator is the amount of the transaction (which is $100), plus the amount by which the balance subject to the periodic rate exceeds the amount of the specific transactions (such excess in this case is 0), totaling $100.

The annual percentage rate is the quotient (which is 4½ percent) multiplied by 12 (the number of months in a year), i.e., 54 percent.

2. Previous balance—$100.

A specific transaction of $100 occurs at the midpoint of the billing cycle. The average daily balance is $150. A specific transaction charge of 3 percent is applicable to the specific transaction. The periodic rate is 1½ percent applicable to the average daily balance. The numerator is the amount of the finance charge which is $5.25. The denominator is the amount of the transaction (which is $100), plus the amount by which the balance subject to the periodic rate exceeds the amount of the specific transaction (such excess in this case is $50), totaling $150. As explained in example 1, the annual percentage rate is 3½ percent x 12 = 42 percent.

3. If, in example 2, the periodic rate applies only to the previous balance, the numerator is $4.50 and the denominator is $200 (the amount of the transaction, $100,

plus the balance subject only to the periodic rate, the $100 previous balance). As explained in example 1, the annual percentage rate is 2¼ percent x 12 = 27 percent.

4. If, in example 2, the periodic rate applies only to an adjusted balance (previous balance less payments and credits) and the consumer made a payment of $50 at the midpoint of the billing cycle, the numerator is $3.75 and the denominator is $150 (the amount of the transaction, $100, plus the balance subject to the periodic rate, the $50 adjusted balance). As explained in example 1, the annual percentage rate is 2½ percent x 12 = 30 percent.

5. Previous balance—$100.

A specific transaction (check) of $100 occurs at the midpoint of the billing cycle. The average daily balance is $150. The specific transaction charge is $.25 per check. The periodic rate is 1½ percent applied to the average daily balance. The numerator is the amount of the finance charge, which is $2.50 and includes the $.25 check charge and the $2.25 resulting from the application of the periodic rate. The denominator is the full amount of the specific transaction (which is $100) plus the amount by which the average daily balance exceeds the amount of the specific transaction (which in this case is $50), totaling $150. As explained in example 1, the annual percentage rate would be 1⅔ percent x 12 = 20 percent.

6. Previous balance—none.

A specific transaction of $100 occurs at the midpoint of the billing cycle. The average daily balance is $50. The specific transaction charge is 3 percent of the transaction amount or $3.00. The periodic rate is 1½ percent per month applied to the average daily balance. The numerator is the amount of the finance charge, which is

$3.75, including the $3.00 transaction charge and $.75 resulting from application of the periodic rate. The denominator is the full amount of the specific transaction ($100) plus the amount by which the balance subject to the periodic rate exceeds the amount of the transaction ($0). Where the specific transaction amount exceeds the balance subject to the periodic rate, the resulting number is considered to be zero rather than a negative number ($50 − $100= −$50). The denominator, in this case, is $100. As explained in example 1, the annual percentage rate is 3 ¾ percent x 12 = 45 percent.

22. Appendix G to part 226 is amended by:

A. Revising the table of contents at the beginning of the appendix;

B. Revising Forms G-1, G-2, G-3, G-4, G-10(A), G-10(B), G-11, and G-13(A) and (B);

C. Revising the headings of Forms G-1, G-3, G-4, and G-10(C);

D. Adding new Forms G-1(A), G-2(A), G-3(A), G-4(A), G-10(D) and (E), G-16(A) and (B), G-17(A) through (D), G-18(A) through (H), G-19, G-20, G-21, G-22, G-23, G-24, G-25(A) and (B) in numerical order; and

E. Removing and reserving Form G-12.

F. Reserving Form G-18(E).

APPENDIX G TO PART 226—OPEN-END MODEL FORMS AND CLAUSES

G-1 Balance Computation Methods Model Clauses (Home-equity Plans) (§§ 226.6 and 226.7)

G-1(A) Balance Computation Methods Model Clauses (Plans other than Home-equity Plans) (§§ 226.6 and 226.7)

G-2 Liability for Unauthorized Use Model Clause (Home-equity Plans) (§ 226.12)

G-2(A) Liability for Unauthorized Use Model Clause (Plans Other Than Home-equity Plans) (§ 226.12)

G-3 Long-Form Billing-Error Rights Model Form (Home-equity Plans) (§§ 226.6 and 226.9)

G-3(A) Long-Form Billing-Error Rights Model Form (Plans Other Than Home-equity Plans) (§§ 226.6 and 226.9)

G-4 Alternative Billing-Error Rights Model Form (Home-equity Plans) (§ 226.9)

G-4(A) Alternative Billing-Error Rights Model Form (Plans Other Than Home-equity Plans) (§ 226.9)

G-5 Rescission Model Form (When Opening an Account) (§ 226.15)

G-6 Rescission Model Form (For Each Transaction) (§ 226.15)

G-7 Rescission Model Form (When Increasing the Credit Limit) (§ 226.15)

G-8 Rescission Model Form (When Adding a Security Interest) (§ 226.15)

G-9 Rescission Model Form (When Increasing the Security) (§ 226.15)

G-10(A) Applications and Solicitations Model Form (Credit Cards) (§ 226.5a(b))

G-10(B) Applications and Solicitations Sample (Credit Cards) (§ 226.5a(b))

G-10(C) Applications and Solicitations Sample (Credit Cards) (§ 226.5a(b))

G-10(D) Applications and Solicitations Model Form (Charge Cards) (§ 226.5a(b))

G-10(E) Applications and Solicitations Sample (Charge Cards) (§ 226.5a(b))

G-11 Applications and Solicitations Made Available to General Public Model Clauses (§ 226.5a(e))

G-12 Reserved

G-13(A) Change in Insurance Provider Model Form (Combined Notice) (§ 226.9(f))

G-13(B) Change in Insurance Provider Model Form (§ 226.9(f)(2))

G-14A Home-equity Sample

G-14B Home-equity Sample

G-15 Home-equity Model Clauses

G-16(A) Debt Suspension Model Clause (§ 226.4(d)(3))

G-16(B) Debt Suspension Sample (§ 226.4(d)(3))

G-17(A) Account-opening Model Form (§ 226.6(b)(2))

G-17(B) Account-opening Sample (§ 226.6(b)(2))

G-17(C) Account-opening Sample (§ 226.6(b)(2))

G-17(D) Account-opening Sample (§ 226.6(b)(2))

G-18(A) Transactions; Interest Charges; Fees Sample (§ 226.7(b))

G-18(B) Late Payment Fee Sample (§ 226.7(b))

G-18(C)(1) Minimum Payment Warning (When Amortization Occurs and Minimum Payment Repayment Estimate is Greater than Three Years) (§ 226.7(b))

G-18(C)(2) Minimum Payment Warning (When Amortization Occurs and Minimum Payment Repayment Estimate is Equal to or Less than Three Years) (§ 226.7(b))

G-18(C)(3) Minimum Payment Warning (When Negative or No Amortization Occurs) (§ 226.7(b))

G-18(D) Periodic Statement New Balance, Due Date, Late Payment and Minimum Payment Sample (Credit cards) (§ 226.7(b))

G-18(E) [Reserved]

G-18(F) Periodic Statement Form

G-18(G) Periodic Statement Form

G-1 – Balance Computation Methods Model Clauses (Home-equity Plans)

(a) Adjusted balance method

We figure [a portion of] the finance charge on your account by applying the periodic rate to the "adjusted balance" of your account. We get the "adjusted balance" by taking the balance you owed at the end of the previous billing cycle and subtracting [any unpaid finance charges and] any payments and credits received during the present billing cycle.

(b) Previous balance method

We figure [a portion of] the finance charge on your account by applying the periodic rate to the amount you owe at the beginning of each billing cycle [minus any unpaid finance charges]. We do not subtract any payments or credits received during the billing cycle. [The amount of payments and credits to your account this billing cycle was $ ___.]

(c) Average daily balance method (excluding current transactions)

We figure [a portion of] the finance charge on your account by applying the periodic rate to the "average daily balance" of your account (excluding current transactions). To get the "average daily balance" we take the beginning balance of your account each day and subtract any payments or credits [and any unpaid finance charges]. We do not add in any new [purchases/advances/loans]. This gives us the daily balance. Then, we add all the daily balances for the billing cycle together and divide the total by the number of days in the billing cycle. This gives us the "average daily balance."

(d) Average daily balance method (including current transactions)

We figure [a portion of] the finance charge on your account by applying the periodic rate to the "average daily balance" of your account (including current transactions). To get the "average daily balance" we take the beginning balance of your account each day, add any new [purchases/advances/loans], and subtract any payments or credits, [and unpaid finance charges]. This gives us the daily balance. Then, we add up all the daily balances for the billing cycle and divide the total by the number of days in the billing cycle. This gives us the "average daily balance."

(e) Ending balance method

We figure [a portion of] the finance charge on your account by applying the periodic rate to the amount you owe at the end of each billing cycle (including new purchases and deducting payments and credits made during the billing cycle).

(f) Daily balance method (including current transactions)

We figure [a portion of] the finance charge on your account by applying the periodic rate to the "daily balance" of your account for each day in the billing cycle. To get the "daily balance" we take the beginning balance of your account each day, add any new [purchases/advances/fees], and subtract [any unpaid finance charges and] any payments or credits. This gives us the daily balance.

G-1(A) – Balance Computation Methods Model Clauses (Plans Other Than Home-equity Plans)

(a) Adjusted balance method

We figure the interest charge on your account by applying the periodic rate to the "adjusted balance" of your account. We get the "adjusted balance" by taking the balance you owed at the end of the previous billing cycle and subtracting [any unpaid interest or other finance charges and] any payments and credits received during the present billing cycle.

(b) Previous balance method

We figure the interest charge on your account by applying the periodic rate to the amount you owe at the beginning of each billing cycle. We do not subtract any payments or credits received during the billing cycle.

(c) Average daily balance method (excluding current transactions)

We figure the interest charge on your account by applying the periodic rate to the "average daily balance" of your account. To get the "average daily balance" we take the beginning balance of your account each day and subtract [any unpaid interest or other finance charges and] any payments or credits. We do not add in any new [purchases/advances/fees]. This gives us the daily balance. Then, we add all the daily balances for the billing cycle together and divide the total by the number of days in the billing cycle. This gives us the "average daily balance."

(d) Average daily balance method (including current transactions)

We figure the interest charge on your account by applying the periodic rate to the "average daily balance" of your account. To get the "average daily balance" we take the beginning balance of your account each day, add any new [purchases/advances/fees], and subtract [any unpaid interest or other finance charges and] any payments or credits. This gives us the daily balance. Then, we add up all the daily balances for the billing cycle and divide the total by the number of days in the billing cycle. This gives us the "average daily balance."

(e) Ending balance method

We figure the interest charge on your account by applying the periodic rate to the amount you owe at the end of each billing cycle (including new [purchases/advances/fees] and deducting payments and credits made during the billing cycle).

(f) Daily balance method (including current transactions)

We figure the interest charge on your account by applying the periodic rate to the "daily balance" of your account for each day in the billing cycle. To get the "daily balance" we take the beginning balance of your account each day, add any new [purchases/advances/fees], and subtract [any unpaid interest or other finance charges and] any payments or credits. This gives us the daily balance.

G-2—Liability for Unauthorized Use Model Clause (Home-equity Plans)

You may be liable for the unauthorized use of your credit card [or other term that describes the credit card]. You will not be liable for unauthorized use that occurs after you notify [name of card issuer or its designee] at [address], orally or in writing, of the loss, theft, or possible unauthorized use. [You may also contact us on the Web:

[Creditor Web or e-mail address]] In any case, your liability will not exceed [insert $50 or any lesser amount under agreement with the cardholder].

G-2(A)—Liability for Unauthorized Use Model Clause (Plans Other Than Home-equity Plans)

If you notice the loss or theft of your credit card or a possible unauthorized use of your card, you should write to us immediately at:

[address] [address listed on your bill],

or call us at [telephone number].

[You may also contact us on the Web: [Creditor Web or e-mail address]]

You will not be liable for any unauthorized use that occurs after you notify us. You may, however, be liable for unauthorized use that occurs before your notice to us. In any case, your liability will not exceed [insert $50 or any lesser amount under agreement with the cardholder].

G-3—Long-Form Billing-Error Rights Model Form (Home-equity Plans)

YOUR BILLING RIGHTS

KEEP THIS NOTICE FOR FUTURE USE

This notice contains important information about your rights and our responsibilities under the Fair Credit Billing Act.

Notify Us in Case of Errors or Questions About Your Bill

If you think your bill is wrong, or if you need more information about a transaction on your bill, write us [on a separate sheet] at [address] [the address listed on your bill]. Write to us as soon as possible. We must hear from you no later than 60 days after we sent you the first bill on which the error or problem appeared. [You may also contact us on the

Web: [Creditor Web or e-mail address]] You can telephone us, but doing so will not preserve your rights.

In your letter, give us the following information:

- Your name and account number.
- The dollar amount of the suspected error.
- Describe the error and explain, if you can, why you believe there is an error. If you need more information, describe the item you are not sure about.

If you have authorized us to pay your credit card bill automatically from your savings or checking account, you can stop the payment on any amount you think is wrong. To stop the payment your letter must reach us three business days before the automatic payment is scheduled to occur.

Your Rights and Our Responsibilities After We Receive Your Written Notice

We must acknowledge your letter within 30 days, unless we have corrected the error by then. Within 90 days, we must either correct the error or explain why we believe the bill was correct.

After we receive your letter, we cannot try to collect any amount you question, or report you as delinquent. We can continue to bill you for the amount you question, including finance charges, and we can apply any unpaid amount against your credit limit. You do not have to pay any questioned amount while we are investigating, but you are still obligated to pay the parts of your bill that are not in question.

If we find that we made a mistake on your bill, you will not have to pay any finance charges related to any questioned amount. If we didn’t make a mistake, you may have to pay finance charges, and you will have to make up any missed payments on the questioned amount. In either case, we will send you a statement of the amount you owe and the date that it is due.

If you fail to pay the amount that we think you owe, we may report you as delinquent. However, if our explanation does not satisfy you and you write to us within ten days telling us that you still refuse to pay, we must tell anyone we report you to that you have a question about your bill. And, we must tell you the name of anyone we reported you to. We must tell anyone we report you to that the matter has been settled between us when it finally is.

If we don't follow these rules, we can't collect the first $50 of the questioned amount, even if your bill was correct.

Special Rule for Credit Card Purchases

If you have a problem with the quality of property or services that you purchased with a credit card, and you have tried in good faith to correct the problem with the merchant, you may have the right not to pay the remaining amount due on the property or services. There are two limitations on this right:

(a) You must have made the purchase in your home state or, if not within your home state within 100 miles of your current mailing address; and

(b) The purchase price must have been more than $50.

These limitations do not apply if we own or operate the merchant, or if we mailed you the advertisement for the property or services.

G-3(A)—Long-Form Billing-Error Rights Model Form (Plans Other Than Home-equity Plans)

<u>Your Billing Rights: Keep this Document for Future Use</u>

This notice tells you about your rights and our responsibilities under the Fair Credit Billing Act.

<u>What To Do If You Find A Mistake On Your Statement</u>

If you think there is an error on your statement, write to us at:

[Creditor Name]

[Creditor Address]

[You may also contact us on the Web: [Creditor Web or e-mail address]]

In your letter, give us the following information:

- <u>Account information</u>: Your name and account number.
- <u>Dollar amount</u>: The dollar amount of the suspected error.
- <u>Description of problem:</u> If you think there is an error on your bill, describe what you believe is wrong and why you believe it is a mistake.

You must contact us:

- Within 60 days after the error appeared on your statement.
- At least 3 business days before an automated payment is scheduled, if you want to stop payment on the amount you think is wrong.

You must notify us of any potential errors <u>in writing</u> [or electronically]. You may call us, but if you do we are not required to investigate any potential errors and you may have to pay the amount in question.

<u>What Will Happen After We Receive Your Letter</u>

When we receive your letter, we must do two things:

1. Within 30 days of receiving your letter, we must tell you that we received your letter. We will also tell you if we have already corrected the error.

2. Within 90 days of receiving your letter, we must either correct the error or explain to you why we believe the bill is correct.

While we investigate whether or not there has been an error:

- We cannot try to collect the amount in question, or report you as delinquent on that amount.
- The charge in question may remain on your statement, and we may continue to charge you interest on that amount.
- While you do not have to pay the amount in question, you are responsible for the remainder of your balance.
- We can apply any unpaid amount against your credit limit.

After we finish our investigation, one of two things will happen:

- <u>If we made a mistake</u>: You will not have to pay the amount in question or any interest or other fees related to that amount.
- <u>If we do not believe there was a mistake</u>: You will have to pay the amount in question, along with applicable interest and fees. We will send you a statement of the amount you owe and the date payment is due. We may then report you as delinquent if you do not pay the amount we think you owe.

If you receive our explanation but still believe your bill is wrong, you must write to us within <u>10 days</u> telling us that you still refuse to pay. If you do so, we cannot report you as delinquent without also reporting that you are questioning your bill. We must tell you the name of anyone to whom we reported you as delinquent, and we must let those organizations know when the matter has been settled between us.

If we do not follow all of the rules above, you do not have to pay the first $50 of the amount you question even if your bill is correct.

<u>Your Rights If You Are Dissatisfied With Your Credit Card Purchases</u>

If you are dissatisfied with the goods or services that you have purchased with your credit card, and you have tried in good faith to correct the problem with the merchant, you may have the right not to pay the remaining amount due on the purchase.

To use this right, all of the following must be true:

1. The purchase must have been made in your home state or within 100 miles of your current mailing address, and the purchase price must have been more than $50. (Note: Neither of these are necessary if your purchase was based on an advertisement we mailed to you, or if we own the company that sold you the goods or services.)
2. You must have used your credit card for the purchase. Purchases made with cash advances from an ATM or with a check that accesses your credit card account do not qualify.
3. You must not yet have fully paid for the purchase.

If all of the criteria above are met and you are still dissatisfied with the purchase, contact us <u>in writing</u> [or electronically] at:

[Creditor Name]

[Creditor Address]

[[Creditor Web or e-mail address]]

While we investigate, the same rules apply to the disputed amount as discussed above. After we finish our investigation, we will tell you our decision. At that point, if we think you owe an amount and you do not pay, we may report you as delinquent.

G-4—Alternative Billing-Error Rights Model Form (Home-equity Plans)

BILLING RIGHTS SUMMARY

In Case of Errors or Questions About Your Bill

If you think your bill is wrong, or if you need more information about a transaction on your bill, write us [on a separate sheet] at [address] [the address shown on your bill] as soon as possible. [You may also contact us on the Web: [Creditor Web or e-mail address]] We must hear from you no later than 60 days after we sent you the first bill on which the error or problem appeared. You can telephone us, but doing so will not preserve your rights.

In your letter, give us the following information:

- Your name and account number.
- The dollar amount of the suspected error.
- Describe the error and explain, if you can, why you believe there is an error. If you need more information, describe the item you are unsure about.

You do not have to pay any amount in question while we are investigating, but you are still obligated to pay the parts of your bill that are not in question. While we investigate your question, we cannot report you as delinquent or take any action to collect the amount you question.

Special Rule for Credit Card Purchases

If you have a problem with the quality of goods or services that you purchased with a credit card, and you have tried in good faith to correct the problem with the merchant, you may not have to pay the remaining amount due on the goods or services. You have this protection only when the purchase price was more than $50 and the purchase was made in your home state or within 100 miles of your mailing address. (If we own or operate the merchant, or if we mailed you the advertisement for the property or services, all purchases are covered regardless of amount or location of purchase.)

G-4(A)—Alternative Billing-Error Rights Model Form (Plans Other Than Home-equity Plans)

What To Do If You Think You Find A Mistake On Your Statement

If you think there is an error on your statement, write to us at:

[Creditor Name]

[Creditor Address]

[You may also contact us on the Web: [Creditor Web or e-mail address]]

In your letter, give us the following information:

- Account information: Your name and account number.
- Dollar amount: The dollar amount of the suspected error.
- Description of Problem: If you think there is an error on your bill, describe what you believe is wrong and why you believe it is a mistake.

You must contact us within 60 days after the error appeared on your statement.

You must notify us of any potential errors in writing [or electronically] . You may call us, but if you do we are not required to investigate any potential errors and you may have to pay the amount in question.

While we investigate whether or not there has been an error, the following are true:

- We cannot try to collect the amount in question, or report you as delinquent on that amount.
- The charge in question may remain on your statement, and we may continue to charge you interest on that amount. But, if we determine that we made a mistake, you will not have to pay the amount in question or any interest or other fees related to that amount.
- While you do not have to pay the amount in question, you are responsible for the remainder of your balance.
- We can apply any unpaid amount against your credit limit.

Your Rights If You Are Dissatisfied With Your Credit Card Purchases

If you are dissatisfied with the goods or services that you have purchased with your credit card, and you have tried in good faith to correct the problem with the merchant, you may have the right not to pay the remaining amount due on the purchase.

To use this right, all of the following must be true:

1. The purchase must have been made in your home state or within 100 miles of your current mailing address, and the purchase price must have been more than $50. (Note: Neither of these are necessary if your purchase was based on an advertisement we mailed to you, or if we own the company that sold you the goods or services.)
2. You must have used your credit card for the purchase. Purchases made with cash advances from an ATM or with a check that accesses your credit card account do not qualify.

3. You must not yet have fully paid for the purchase.

If all of the criteria above are met and you are still dissatisfied with the purchase, contact us <u>in writing</u> [or electronically] at:

[Creditor Name]

[Creditor Address]

[[Creditor Web address]]

While we investigate, the same rules apply to the disputed amount as discussed above. After we finish our investigation, we will tell you our decision. At that point, if we think you owe an amount and you do not pay we may report you as delinquent.

* * * * *

G-10(A) Applications and Solicitations Model Form (Credit Cards)

Interest Rates and Interest Charges	
Annual Percentage Rate (APR) for Purchases	[Purchase rate] [Description that rate varies and how it is determined, if applicable]
APR for Balance Transfers	[Balance transfer rate] [Description that rate varies and how it is determined, if applicable]
APR for Cash Advances	[Cash advance rate] [Description that rate varies and how it is determined, if applicable]
Penalty APR and When it Applies	[Penalty rate] [Description of events that may result in the penalty rate] [Description of how long penalty rate may apply]
[How to Avoid Paying Interest on Purchases/ Paying Interest]	[Description of grace period for purchases or statement that no grace period applies]
[Minimum Interest Charge]/[Minimum Charge]	[Description of minimum interest charge or minimum charge]
For Credit Card Tips from the Federal Reserve Board	[Reference to Board's website]

Fees	
[Annual Fee]/[Set-up and Maintenance Fees]	[Notice of available credit, if applicable] [Description of fees for availability or issuance of credit, such as an annual fee, if applicable]
Transaction Fees	
• Balance Transfer	[Description of balance transfer fee]
• Cash Advance	[Description of cash advance fee]
• Foreign Transaction	[Description of foreign transaction fee]
Penalty Fees	
• Late Payment	[Description of late payment fee]
• Over-the-Credit Limit	[Description of over-the-credit limit fee]
• Returned Payment	[Description of returned payment fee]
Other Fees	
• Required [insert name of required insurance, or debt cancellation or suspension coverage]	[Description of cost of insurance, or debt cancellation or suspension plans] [Cross reference to additional information, if applicable]

<u>How We Will Calculate Your Balance</u>: [Description of balance computation method]

<u>Loss of Introductory APR</u>: [Circumstances in which introductory rate may be revoked and rate that applies if introductory rate is revoked, if applicable]

[Description that rate that applies after introductory rate is revoked varies and how it is determined, if applicable]

G-10(B) Applications and Solicitations Sample (Credit Cards)

Interest Rates and Interest Charges	
Annual Percentage Rate (APR) for Purchases	**8.99%** to **19.99%** when you open your account, based on your creditworthiness. After that, your APR will vary with the market based on the Prime Rate.
APR for Balance Transfers	**15.99%** This APR will vary with the market based on the Prime Rate.
APR for Cash Advances	**21.99%** This APR will vary with the market based on the Prime Rate.
Penalty APR and When it Applies	**28.99%** This APR may be applied to your account if you: 1) Make a late payment; 2) Go over your credit limit twice in a six-month period; 3) Make a payment that is returned; or 4) Do any of the above on another account that you have with us. **How Long Will the Penalty APR Apply?:** If your APRs are increased for any of these reasons, the Penalty APR will apply until you make six consecutive minimum payments when due.
How to Avoid Paying Interest on Purchases	Your due date is at least 25 days after the close of each billing cycle. We will not charge you any interest on purchases if you pay your entire balance by the due date each month.
Minimum Interest Charge	If you are charged interest, the charge will be no less than $1.50.
For Credit Card Tips from the Federal Reserve Board	To learn more about factors to consider when applying for or using a credit card, visit the website of the Federal Reserve Board at **http://www.federalreserve.gov/creditcard**.

Fees	
Annual Fee	**None**
Transaction Fees	
• Balance Transfer	Either **$5** or **3%** of the amount of each transfer, whichever is greater (maximum fee: $100).
• Cash Advance	Either **$5** or **3%** of the amount of each cash advance, whichever is greater.
• Foreign Transaction	**2%** of each transaction in U.S. dollars.
Penalty Fees	
• Late Payment	**$29** if balance is less than or equal to $1,000; **$35** if balance is more than $1,000
• Over-the-Credit Limit	**$29**
• Returned Payment	**$35**
Other Fees	
• Required Account Protector Plan	**$0.79** per $100 of balance at the end of each statement period. See back for details.

How We Will Calculate Your Balance: We use a method called "average daily balance (including new purchases)."

G-10(C) Applications and Solicitations (Credit Cards)

Interest Rates and Interest Charges	
Annual Percentage Rate (APR) for Purchases	**8.99%, 10.99%, or 12.99%** introductory APR for one year, based on your creditworthiness. After that, your APR will be **14.99%**. This APR will vary with the market based on the Prime Rate.
APR for Balance Transfers	**15.99%** This APR will vary with the market based on the Prime Rate
APR for Cash Advances	**21.99%** This APR will vary with the market based on the Prime Rate.
Penalty APR and When it Applies	**28.99%** This APR may be applied to your account if you: 1) Make a late payment; 2) Go over your credit limit; 3) Make a payment that is returned; or 4) Do any of the above on another account that you have with us. **How Long Will the Penalty APR Apply?:** If your APRs are increased for any of these reasons, the Penalty APR will apply until you make six consecutive minimum payments when due.
How to Avoid Paying Interest on Purchases	Your due date is at least 25 days after the close of each billing cycle. We will not charge you any interest on purchases if you pay your entire balance by the due date each month.
Minimum Interest Charge	If you are charged interest, the charge will be no less than $1.50.
For Credit Card Tips from the Federal Reserve Board	To learn more about factors to consider when applying for or using a credit card, visit the website of the Federal Reserve Board at **http://www.federalreserve.gov/creditcard**.

Fees	
Set-up and Maintenance Fees	NOTICE: Some of these set-up and maintenance fees will be assessed before you begin using your card and will reduce the amount of credit you initially have available. For example, if you are assigned the minimum credit limit of $250, your initial available credit will be only about $209 (or about $204 if you choose to have an additional card).
• Annual Fee	**$20**
• Account Set-up Fee	**$20** (one-time fee)
• Participation Fee	**$12** annually ($1 per month)
• Additional Card Fee	**$5** annually (if applicable)
Transaction Fees	
• Balance Transfer	Either **$5** or **3%** of the amount of each transfer, whichever is greater (maximum fee: $100).
• Cash Advance	Either **$5** or **3%** of the amount of each cash advance, whichever is greater.
• Foreign Transaction	**2%** of each transaction in U.S. dollars.
Penalty Fees	
• Late Payment	**$29** if balance is less than or equal to $1,000; **$35** if balance is more than $1,000
• Over-the-Credit Limit	**$29**
• Returned Payment	**$35**

How We Will Calculate Your Balance: We use a method called "average daily balance (including new purchases)."

Loss of Introductory APR: We may end your introductory APR and apply the Penalty APR if you make a late payment.

G-10(D) Applications and Solicitations Model Form (Charge Cards)

Payment Information
[A statement that charges incurred through use of the charge card are due when the periodic statement is received]

Fees	
[Annual Fee]/[Set-up and Maintenance Fees]	[Notice of available credit, if applicable] [Description of fees for availability or issuance of credit, such as an annual fee, if applicable]
Transaction Fees	
• Balance Transfer	[Description of balance transfer fee]
• Cash Advance	[Description of cash advance fee]
• Foreign Transaction	[Description of foreign transaction fee]
Penalty Fees	
• Late Payment	[Description of late payment fee]
• Over-the-Credit Limit	[Description of over-the-credit limit fee]
• Returned Payment	[Description of returned payment fee]

G-10(E) Applications and Solicitations Sample (Charge Cards)

Payment Information
All charges made on this charge card are due and payable when you receive your periodic statement.

Fees	
Annual Fee	**$50**
Transaction Fees	
• Balance Transfer	Either **$5** or **3%** of the amount of each transfer, whichever is greater (maximum fee: $100).
• Cash Advance	Either **$5** or **3%** of the amount of each cash advance, whichever is greater.
Penalty Fees	
• Late Payment	**$31** if balance is less than or equal to $1,000; **$35** if balance is more than $1,000
• Over-the-Credit Limit	**$30**
• Returned Payment	**$30**

G-11 – Applications and Solicitations Made Available to the General Public Model Clauses

(a) Disclosure of Required Credit Information

The information about the costs of the card described in this [application]/[solicitation] is accurate as of (month/year). This information may have changed after that date. To find out what may have changed, [call us at (telephone number)][write to us at (address)].

(b) No Disclosure of Credit Information

There are costs associated with the use of this card. To obtain information about these costs, call us at (telephone number) or write to us at (address).

G-12 [Reserved]

G-13(A)—Change in Insurance Provider Model Form (Combined Notice)

The credit card account you have with us is insured. This is to notify you that we plan to replace your current coverage with insurance coverage from a different insurer.

If we obtain insurance for your account from a different insurer, you may cancel the insurance.

[Your premium rate will increase to $ _ per _ .]

[Your coverage will be affected by the following:

[ ] The elimination of a type of coverage previously provided to you.

[(explanation)] [See _ of the attached policy for details.]

[ ] A lowering of the age at which your coverage will terminate or will become more restrictive. [(explanation)] [See _ of the attached policy or certificate for details.]

[ ] A decrease in your maximum insurable loan balance, maximum periodic benefit payment, maximum number of payments, or any other decrease in the dollar

amount of your coverage or benefits. [(explanation)] [See_of the attached policy or certificate for details.]

[ ] A restriction on the eligibility for benefits for you or others. [(explanation)] [See_ of the attached policy or certificate for details.]

[ ] A restriction in the definition of "disability" or other key term of coverage. [(explanation)] [See_of the attached policy or certificate for details.]

[ ] The addition of exclusions or limitations that are broader or other than those under the current coverage. [(explanation)] [See_ of the attached policy or certificate for details.]

[ ] An increase in the elimination (waiting) period or a change to nonretroactive coverage. [(explanation)] [See_of the attached policy or certificate for details).]

[The name and mailing address of the new insurer providing the coverage for your account is (name and address).]

G-13(B)—Change in Insurance Provider Model Form

We have changed the insurer providing the coverage for your account. The new insurer's name and address are (name and address). A copy of the new policy or certificate is attached.

You may cancel the insurance for your account.

* * * * *

G-16(A) Debt Suspension Model Clause

Please enroll me in the optional [insert name of program], and bill my account the fee of [how cost is determined]. I understand that enrollment is not required to obtain credit. I also understand that depending on the event, the protection may only temporarily suspend my duty to make minimum payments, not reduce the balance I owe. I understand that my balance will actually grow during the suspension period as interest continues to accumulate.

[To Enroll, Sign Here]/[To Enroll, Initial Here]. X ____________________

G-16(B) Debt Suspension Sample

Please enroll me in the optional [name of program], and bill my account the fee of $.83 per $100 of my month-end account balance. I understand that enrollment is not required to obtain credit. I also understand that depending on the event, the protection may only temporarily suspend my duty to make minimum payments, not reduce the balance I owe. I understand that my balance will actually grow during the suspension period as interest continues to accumulate.

To Enroll, Initial Here. X ____________________

G-17(A) Account-Opening Model Form

Interest Rates and Interest Charges	
Annual Percentage Rate (APR) for Purchases	[Purchase rate] [Description that rate varies and how it is determined, if applicable]
APR for Balance Transfers	[Balance transfer rate] [Description that rate varies and how it is determined, if applicable]
APR for Cash Advances	[Cash advance rate] [Description that rate varies and how it is determined, if applicable]
Penalty APR and When it Applies	[Penalty rate] [Description of events that may result in the penalty rate] [Description of how long penalty rate may apply]
[How to Avoid Paying Interest]/[Paying Interest]	[Description of grace period for purchases, cash advances, balance transfers, or any other credit extended or statement that no grace period applies]
[Minimum Interest Charge]/[Minimum Charge]	[Description of minimum interest charge or minimum charge, if applicable]
For Credit Card Tips from the Federal Reserve Board	[Reference to Board's website]

Fees	
[Annual Fee]/[Set-up and Maintenance Fees]	[Notice of available credit, if applicable] [Notice of right to reject plan, if applicable] [Description of fees for availability or issuance of credit, such as an annual fee, if applicable]
Transaction Fees	
• Balance Transfer	[Description of balance transfer fee]
• Cash Advance	[Description of cash advance fee]
• Foreign Transaction	[Description of foreign transaction fee]
Penalty Fees	
• Late Payment	[Description of late payment fee]
• Over-the-Credit Limit	[Description of over-the-credit limit fee]
• Returned Payment	[Description of returned payment fee]
Other Fees	
• Required [insert name of required insurance, or debt cancellation or suspension coverage]	[Description of cost of insurance, or debt cancellation or suspension plans] [Cross reference to additional information, if applicable]

<u>How We Will Calculate Your Balance</u>: [Description of balance computation method]

<u>Loss of Introductory APR</u>: [Circumstances in which introductory rate may be revoked and rate that applies if introductory rate is revoked, if applicable]

[Description that rate that applies after introductory rate is revoked varies and how it is determined, if applicable]

<u>Billing Rights</u>: [Reference to account agreement for details on billing-error rights]

G-17(B) Account-Opening Sample

Interest Rates and Interest Charges	
Annual Percentage Rate (APR) for Purchases	**8.99%** This APR will vary with the market based on the Prime Rate.
APR for Balance Transfers	**15.99%** This APR will vary with the market based on the Prime Rate.
APR for Cash Advances	**21.99%** This APR will vary with the market based on the Prime Rate.
Penalty APR and When it Applies	**28.99%** This APR may be applied to your account if you: 1) Make a late payment; 2) Go over your credit limit twice in a six-month period; 3) Make a payment that is returned; or 4) Do any of the above on another account that you have with us. **How Long Will the Penalty APR Apply?:** If your APRs are increased for any of these reasons, the Penalty APR will apply until you make six consecutive minimum payments when due.
Paying Interest	Your due date is at least 25 days after the close of each billing cycle. We will not charge you any interest on purchases if you pay your entire balance by the due date each month. We will begin charging interest on cash advances and balance transfers on the transaction date.
Minimum Interest Charge	If you are charged interest, the charge will be no less than $1.50.
For Credit Card Tips from the Federal Reserve Board	To learn more about factors to consider when applying for or using a credit card, visit the website of the Federal Reserve Board at **http://www.federalreserve.gov/creditcard**.

Fees	
Annual Fee	**None**
Transaction Fees	
• Balance Transfer	Either **$5** or **3%** of the amount of each transfer, whichever is greater (maximum fee: $100).
• Cash Advance	Either **$5** or **3%** of the amount of each cash advance, whichever is greater.
• Foreign Transaction	**2%** of each transaction in U.S. dollars.
Penalty Fees	
• Late Payment	**$29** if balance is less than or equal to $1,000; **$35** if balance is more than $1,000
• Over-the-Credit Limit	**$29**
• Returned Payment	**$35**
Other Fees	
• Required Account Protector Plan	**$0.79** per $100 of balance at the end of each statement period. See back for details.

How We Will Calculate Your Balance: We use a method called "average daily balance (including new purchases)." See your account agreement for more details.

Billing Rights: Information on your rights to dispute transactions and how to exercise those rights is provided in your account agreement.

G-17(C) Account-Opening Sample

Interest Rates and Interest Charges	
Annual Percentage Rate (APR) for Purchases	**8.99%** introductory APR for one year. After that, your APR will be **14.99%**. This APR will vary with the market based on the Prime Rate.
APR for Balance Transfers	**15.99%** This APR will vary with the market based on the Prime Rate.
APR for Cash Advances	**21.99%** This APR will vary with the market based on the Prime Rate.
Penalty APR and When it Applies	**28.99%** This APR may be applied to your account if you: 1) Make a late payment; 2) Go over your credit limit; 3) Make a payment that is returned; or 4) Do any of the above on another account that you have with us. **How Long Will the Penalty APR Apply?:** If your APRs are increased for any of these reasons, the Penalty APR will apply until you make six consecutive minimum payments when due.
Paying Interest	Your due date is at least 25 days after the close of each billing cycle. We will not charge you any interest on purchases if you pay your entire balance by the due date each month. We will begin charging interest on cash advances and balance transfers on the transaction date.
Minimum Interest Charge	If you are charged interest, the charge will be no less than $1.50.
For Credit Card Tips from the Federal Reserve Board	To learn more about factors to consider when applying for or using a credit card, visit the website of the Federal Reserve Board at **http://www.federalreserve.gov/creditcard**.

Fees	
Set-up and Maintenance Fees	NOTICE: Some of these set-up and maintenance fees will be assessed before you begin using your card and will reduce the amount of credit you initially have available. Based on your initial credit limit of $250, your initial available credit will be only about $209 (or about $204 if you choose to have an additional card). You may still reject this plan, provided that you have not yet used the account or paid a fee after receiving a billing statement. If you do reject the plan, you are not responsible for any fees or charges.
• Annual Fee	**$20**
• Account Set-up Fee	**$20** (one-time fee)
• Participation Fee	**$12** annually ($1 per month)
• Additional Card Fee	**$5** annually (if applicable)
Transaction Fees	
• Balance Transfer	Either **$5** or **3%** of the amount of each transfer, whichever is greater (maximum fee: $100).
• Cash Advance	Either **$5** or **3%** of the amount of each cash advance, whichever is greater.
• Foreign Transaction	**2%** of each transaction in U.S. dollars.
Penalty Fees	
• Late Payment	**$29** if balance is less than or equal to $1,000; **$35** if balance is more than $1,000
• Over-the-Credit Limit	**$29**
• Returned Payment	**$35**

How We Will Calculate Your Balance: We use a method called "average daily balance (including new purchases)." See your account agreement for more details.

Loss of Introductory APR: We may end your introductory APR and apply the Penalty APR if you make a late payment.

Billing Rights: Information on your rights to dispute transactions and how to exercise those rights is provided in your account agreement.

G-17(D) Account-Opening Sample (Line of Credit)

Interest Rate and Interest Charges	
APR for Cash Advances	**18.00%.**
Minimum Interest Charge	If you are charged interest, the charge will be no less than $1.50.
Paying Interest	You will be charged interest from the transaction date.

Fees	
Annual Fee	**$20**
Penalty Fees	
• Late Payment	**$10**
• Over-the-Credit Limit	**$29**

How We Will Calculate Your Balance: We use a method called "average daily balance (including new purchases)." See your account agreement for more details.

Billing Rights: Information on your rights to dispute transactions and how to exercise those rights is provided in your account agreement.

G-18(A) Periodic Statement Transactions; Interest Charges; Fees Sample

Transactions				
Reference Number	**Trans Date**	**Post Date**	**Description of Transaction or Credit**	**Amount**
5884186PS0388W6YM	2/22	2/23	Store #1	$2.05
0544400060ZLV72VL	2/24	2/25	Store #2	$12.11
854338203FS8OO0Z5	2/25	2/25	Pymt Thank You	$450.00–
55541860705RDYD0X	2/25	2/26	Store #3	$4.63
554328608008W90M0	2/25	2/26	Store #4	$114.95
054830709LYMRPT4L	2/25	2/26	Store #5	$7.35
564891561545KOSHD	2/25	2/26	Store #6	$14.35
841517877845AKOJIO	2/25	2/26	Store #7	$40.35
895848561561894KOH	2/26	2/27	Store #8	$27.68
1871556189456SAMKL	2/26	2/27	Store #9	$124.76
1542202074TWWZV48	2/26	2/26	Cash Advance	$121.50
2564894185189LKDFID	2/27	2/28	Store #10	$32.87
4545754784KOHUIOS	2/27	3/1	Balance Transfer	$785.00
2564561023184102315	2/28	3/1	Store #11	$14.76
14547847586KDDL564	2/28	2/28	Cash Advance	$196.50
55542818705RASD0X	3/1	3/2	Store #12	$3.76
289189194ASDS8744	3/1	3/3	Store #13	$13.45
178105417841045784	3/2	3/4	Store #14	$2.35
045148714518979874	3/4	3/5	Store #13	$13.45–
8456152156181SDSA	3/5	3/6	Store #15	$25.00
31289105205648AWD	3/11	3/12	Store #16	$7.34
04518478415615ASD	3/11	3/16	Store #17	$10.56
0547810544898718AF	3/15	3/17	Store #18	$24.50
056489413216848OP	3/16	3/17	Store #19	$8.76
054894561564ASDW	3/17	3/18	Store #20	$14.23
5648974891AD98156	3/19	3/20	Store #21	$23.76
Fees				
9525156489SFD4545Q	2/23	2/23	Late Fee	$35.00
564156156470JSNDS	2/26	2/26	Cash Advance Fee	$5.00
84151564SADS8745H	2/27	2/27	Balance Transfer Fee	$23.55
256489156189451516L	2/28	2/28	Cash Advance Fee	$5.90
			TOTAL FEES FOR THIS PERIOD	**$69.45**
Interest Charged				
			Interest Charge on Purchases	$6.31
			Interest Charge on Cash Advances	$4.58
			TOTAL INTEREST FOR THIS PERIOD	**$10.89**

2012 Totals Year-to-Date	
Total fees charged in 2012	$90.14
Total interest charged in 2012	$18.27

G-18(B)—Late Payment Fee Sample

Late Payment Warning: If we do not receive your minimum payment by the date listed above, you may have to pay a $35 late fee and your APRs may be increased up to the Penalty APR of 28.99%.

G-18(C)(1) Minimum Payment Warning (When Amortization Occurs and Minimum Payment Repayment Estimate is Greater than Three Years)

Minimum Payment Warning: If you make only the minimum payment each period, you will pay more in interest and it will take you longer to pay off your balance. For example:

If you make no additional charges using this card and each month you pay…	You will pay off the balance shown on this statement in about…	And you will end up paying an estimated total of…
Only the minimum payment	10 years	$3,284
$62	3 years	$2,232 (*Savings=$1,052*)

If you would like information about credit counseling services, call 1-800-xxx-xxxx.

G-18(C)(2) Minimum Payment Warning (When Amortization Occurs and Minimum Payment Repayment Estimate is Equal to or Less than Three Years)

Minimum Payment Warning: If you make only the minimum payment each period, you will pay more in interest and it will take you longer to pay off your balance. For example:

If you make no additional charges using this card and each month you pay…	You will pay off the balance shown on this statement in about…	And you will end up paying an estimated total of…
Only the minimum payment	14 months	$130

If you would like information about credit counseling services, call 1-800-xxx-xxxx.

G-18(C)(3) Minimum Payment Warning (When Negative or No Amortization Occurs)

Minimum Payment Warning: Even if you make no more charges using this card, if you make only the minimum payment each month we estimate **you will never pay off the balance shown on this statement** because your payment will be less than the interest charged each month.

If you make more than the minimum payment each period, you will pay less in interest and pay off your balance sooner. For example, if you instead paid **$74** per month, you would pay off the balance shown on this statement in around **3 years.**

If you would like information about credit counseling services, call 1-800-xxx-xxxx.

G-18(D) Periodic Statement New Balance, Due Date, Late Payment and Minimum Payment Sample (Credit Cards)

Payment Information

New Balance	$1,784.53
Minimum Payment Due	$53.00
Payment Due Date	4/20/12

Late Payment Warning: If we do not receive your minimum payment by the date listed above, you may have to pay a $35 late fee and your APRs may be increased up to the Penalty APR of 28.99%.

Minimum Payment Warning: If you make only the minimum payment each period, you will pay more in interest and it will take you longer to pay off your balance. For example:

If you make no additional charges using this card and each month you pay…	You will pay off the balance shown on this statement in about…	And you will end up paying an estimated total of…
Only the minimum payment	10 years	$3,284
$62	3 years	$2,232 *(Savings=$1,052)*

If you would like information about credit counseling services, call 1-800-xxx-xxxx.

G-18(E)

[Reserved.]

G-18(F) Periodic Statement Form

XXX Bank Credit Card Account Statement
Account Number XXXX XXXX XXXX XXXX
February 21, 2012 to March 22, 2012

Summary of Account Activity

Previous Balance	$535.07
Payments	-$450.00
Other Credits	-$13.45
Purchases	+$529.57
Balance Transfers	+$785.00
Cash Advances	+$318.00
Past Due Amount	+$0.00
Fees Charged	**+$69.45**
Interest Charged	**+$10.89**
New Balance	$1,784.53
Credit limit	$2,000.00
Available credit	$215.47
Statement closing date	3/22/2012
Days in billing cycle	30

QUESTIONS?
Call Customer Service 1-XXX-XXX-XXXX
Lost or Stolen Credit Card 1-XXX-XXX-XXXX

Payment Information

New Balance	$1,784.53
Minimum Payment Due	$53.00
Payment Due Date	4/20/12

Late Payment Warning: If we do not receive your minimum payment by the date listed above, you may have to pay a $35 late fee and your APRs may be increased up to the Penalty APR of 28.99%.

Minimum Payment Warning: If you make only the minimum payment each period, you will pay more in interest and it will take you longer to pay off your balance. For example:

If you make no additional charges using this card and each month you pay...	You will pay off the balance shown on this statement in about...	And you will end up paying an estimated total of...
Only the minimum payment	10 years	$3,284
$62	3 years	$2,232 *(Savings=$1,052)*

If you would like information about credit counseling services, call 1-800-XXX-XXXX.

Please send billing inquiries and correspondence to:
PO Box XXXX, Anytown, Anystate XXXXX

Important Changes to Your Account Terms

The following is a summary of changes that are being made to your account terms. You have the right to opt out of these changes. For more detailed information, please refer to the booklet enclosed with this statement.

These changes will impact your account as follows:

Transactions made on or after 4/9/12: As of 5/10/12, any changes to APRs described below will apply to these transactions.

Transactions made before 4/9/12: Current APRs will continue to apply to these transactions.

If you are already being charged a higher Penalty APR for purchases: In this case, any changes to APRs described below will not go into effect at this time. These changes will go into effect when the Penalty APR no longer applies to your account.

	Revised Terms, as of 5/10/12
APR for Purchases	16.99%

Transactions

Reference Number	Trans Date	Post Date	Description of Transaction or Credit	Amount
5884186PS0388W6YM	2/22	2/23	Store #1	$2.05
0544400060ZLV72VL	2/24	2/25	Store #2	$12.11
55541860705RDYD0X	2/24	2/25	Store #3	$4.63
554328608008W90M0	2/24	2/25	Store #4	$114.95
054830709LYMRPT4L	2/24	2/25	Store #5	$7.35
854338203FS8OO0Z5	2/25	2/25	Pymt Thank You	$450.00–

(transactions continued on next page)

NOTICE: SEE REVERSE SIDE FOR IMPORTANT INFORMATION

Please detach this portion and return with your payment to insure proper credit. Retain upper portion for your records.

Account Number:	**XXXX XXXX XXXX XXXX**
New Balance	**$1,784.53**
Minimum Payment Due	**$53.00**
Payment Due Date	**4/20/12**

AMOUNT ENCLOSED: $

Please indicate address change and additional cardholder requests on the reverse side.

XXX Bank
P.O. Box XXXX
Anytown, Anystate XXXXX

XXX Bank Credit Card Account Statement
Account Number XXXX XXXX XXXX XXXX
February 21, 2012 to March 22, 2012

Transactions (cont.)

Reference Number	Trans Date	Post Date	Description of Transaction or Credit	Amount
564891561545KOSHD	2/25	2/26	Store #6	$14.35
841517877845AKOJIO	2/25	2/26	Store #7	$40.35
895848561561894KOH	2/26	2/27	Store #8	$27.68
1871556189456SAMKL	2/26	2/27	Store #9	$124.76
1542202074TWWZV48	2/26	2/26	Cash Advance	$121.50
2564894185189LKDFID	2/27	2/28	Store #10	$32.87
4545754784KOHUIOS	2/27	3/1	Balance Transfer	$785.00
14547847586KDDL564	2/28	2/28	Cash Advance	$196.50
2564561023184102315	2/28	3/1	Store #11	$14.76
55542818705RASD0X	3/1	3/2	Store #12	$3.76
289189194ASDS8744	3/1	3/3	Store #13	$13.45
178105417841045784	3/2	3/6	Store #14	$2.35
045148714518979874	3/4	3/5	Store #13	$13.45–
8456152156181SDSA	3/5	3/12	Store #15	$25.00
31289105205648AWD	3/11	3/12	Store #16	$7.34
04518478415615ASD	3/11	3/16	Store #17	$10.56
0547810544898718AF	3/15	3/17	Store #18	$24.50
056489413216848OP	3/16	3/17	Store #19	$8.76
054894561564ASDW	3/17	3/18	Store #20	$14.23
5648974891AD98156	3/19	3/20	Store #21	$23.76
		Fees		
9525156489SFD4545Q	2/23	2/23	Late Fee	$35.00
56415615647OJSNDS	2/26	2/26	Cash Advance Fee	$5.00
84151564SADS8745H	2/27	2/27	Balance Transfer Fee	$23.55
256489156189451516L	2/28	2/28	Cash Advance Fee	$5.90
			TOTAL FEES FOR THIS PERIOD	**$69.45**
		Interest Charged		
			Interest Charge on Purchases	$6.31
			Interest Charge on Cash Advances	$4.58
			TOTAL INTEREST FOR THIS PERIOD	**$10.89**

2012 Totals Year-to-Date	
Total fees charged in 2012	$90.14
Total interest charged in 2012	$18.27

Interest Charge Calculation

Your **Annual Percentage Rate (APR)** is the annual interest rate on your account.

Type of Balance	Annual Percentage Rate (APR)	Balance Subject to Interest Rate	Interest Charge
Purchases	14.99% (v)	$512.14	$6.31
Cash Advances	21.99% (v)	$253.50	$4.58
Balance Transfers	0.00%	$637.50	$0.00

(v) = Variable Rate

G-18(G) Periodic Statement Form

XXX Bank Credit Card Account Statement
Account Number XXXX XXXX XXXX XXXX
February 21, 2012 to March 22, 2012

Summary of Account Activity

Previous Balance	$80.52
Payments	-$50.00
Other Credits	+$0.00
Purchases	+$52.13
Balance Transfers	+$0.00
Cash Advances	+$0.00
Past Due Amount	+$0.00
Fees Charged	**+$37.00**
Interest Charged	**+$0.00**
New Balance	$119.65
Credit limit	$2,000.00
Available credit	$1,880.35
Statement closing date	3/22/2012
Days in billing cycle	30

QUESTIONS?
Call Customer Service 1-XXX-XXX-XXXX
Lost or Stolen Credit Card 1-XXX-XXX-XXXX

Payment Information

New Balance	$119.65
Minimum Payment Due	$10.00
Payment Due Date	4/20/12

Late Payment Warning: If we do not receive your minimum payment by the date listed above, you may have to pay a $35 late fee and your APRs may be increased up to the Penalty APR of 28.99%.

Minimum Payment Warning: If you make only the minimum payment each period, you will pay more in interest and it will take you longer to pay off your balance. For example:

If you make no additional charges using this card and each month you pay…	You will pay off the balance shown on this statement in about…	And you will end up paying an estimated total of…
Only the minimum payment	14 months	$130

If you would like information about credit counseling services, call 1-800-XXX-XXXX.

Please send billing inquiries and correspondence to:
PO Box XXXX, Anytown, Anystate XXXXX

Notice of Changes to Your Interest Rates

You have triggered the Penalty APR of 28.99%. This change will impact your account as follows:

Transactions made on or after 4/9/12: As of 5/10/12, the Penalty APR will apply to these transactions. We may keep the APR at this level indefinitely.

Transactions made before 4/9/12: Current rates will continue to apply to these transactions. However, if you become more than 60 days late on your account, the Penalty APR will apply to those transactions as well.

Transactions

Reference Number	Trans Date	Post Date	Description of Transaction or Credit	Amount
		Payments and Other Credits		
854338203FS8OO0Z5	2/25	2/25	Pymt Thank You	$50.00–
		Purchases		
5884186PS0388W6YM	2/22	2/23	Store #1	$2.05
0544400060ZLV72VL	2/24	2/25	Store #2	$2.11
55541860705RDYD0X	2/24	2/25	Store #3	$4.63
554328608008W90M0	2/24	2/25	Store #4	$4.95
054830709LYMRPT4L	2/24	2/25	Store #5	$7.35
564891561545KOSHD	2/25	2/26	Store #6	$4.35
841517877845AKOJIO	2/25	2/26	Store #7	$2.35
895848561561894KOH	2/26	2/27	Store #8	$7.68
1871556189456SAMKL	2/26	2/27	Store #9	$4.76
2564894185189LKDFID	2/27	2/28	Store #10	$2.87
55542818705RASD0X	3/1	3/2	Store #11	$3.76
178105417841045784	3/2	3/6	Store #12	$2.35
8456152156181SDSA	3/5	3/12	Store #13	$2.92

(transactions continued on next page)

NOTICE: SEE REVERSE SIDE FOR IMPORTANT INFORMATION

Please detach this portion and return with your payment to insure proper credit. Retain upper portion for your records.

Account Number:	**XXXX XXXX XXXX XXXX**
New Balance	**$119.65**
Minimum Payment Due	**$10.00**
Payment Due Date	**4/20/12**

AMOUNT ENCLOSED: $

Please indicate address change and additional cardholder requests on the reverse side.

XXX Bank
P.O. Box XXXX
Anytown, Anystate XXXXX

XXX Bank Credit Card Account Statement
Account Number XXXX XXXX XXXX XXXX
February 21, 2012 to March 22, 2012

Transactions (cont.)

Reference Number	Trans Date	Post Date	Description of Transaction or Credit	Amount
			Fees	
9525156489SFD4545Q	2/23	2/23	Late Fee	$35.00
56415615647OJSNDS	3/22	3/22	Minimum Charge	$2.00
			TOTAL FEES FOR THIS PERIOD	**$37.00**
			Interest Charged	
			Interest Charge on Purchases	$0.00
			Interest Charge on Cash Advances	$0.00
			TOTAL INTEREST FOR THIS PERIOD	**$0.00**

2012 Totals Year-to-Date	
Total fees charged in 2012	$90.14
Total interest charged in 2012	$18.27

Interest Charge Calculation

Your **Annual Percentage Rate (APR)** is the annual interest rate on your account.

Type of Balance	Annual Percentage Rate (APR)	Balance Subject to Interest Rate	Interest Charge
Purchases	14.99% (v)	$113.80	$0.00
Cash Advances	21.99% (v)	$0.00	$0.00
Balance Transfers	0.00%	$0.00	$0.00

(v) = Variable Rate

G-18(H)—Deferred Interest Periodic Statement Clause

[You must pay your promotional balance in full by [date] to avoid paying accrued interest charges.]

G-19 Checks Accessing a Credit Card Sample

Interest and Fee Information	
APR for Check Transactions	1.7% (Promotional APR through your November 2012 billing cycle) After November 2012, you will be charged the APR for Cash Advances, currently 21.99%.
Use by Date	You must use the check by 4/1/12 for the promotional APR to apply. If you use the check after that date, we may still honor the check but you will not receive the promotional APR. Instead, the standard APR for Cash Advances will apply.
Fee	Either $5 or 3% of the amount of each transaction, whichever is greater.
Paying Interest	We will begin charging interest on these checks on the transaction date.

G-20 Change-in-Terms Sample (Increase in Annual Percentage Rate)

Important Changes to Your Account Terms

The following is a summary of changes that are being made to your account terms. You have the right to opt out of these changes. For more detailed information, please refer to the booklet enclosed with this statement.

These changes will impact your account as follows:

Transactions made on or after 4/9/12: As of 5/10/12, any changes to APRs described below will apply to these transactions.

Transactions made before 4/9/12: Current APRs will continue to apply to these transactions.

If you are already being charged a higher Penalty APR for purchases: In this case, any changes to APRs described below will not go into effect at this time. These changes will go into effect when the Penalty APR no longer applies to your account.

Revised Terms, as of 5/10/12	
APR for Purchases	16.99%

G-21 Change-in-Terms Sample (Increase in Fees)

Important Changes to Your Account Terms

The following is a summary of changes that are being made to your account terms. These changes will take effect on 5/10/12. For more detailed information, please refer to the booklet enclosed with this statement.

You have the right to reject these changes, unless you become more than 60 days late on your account. However, if you do reject these changes you will not be able to use your account for new transactions. You can reject the changes by calling us at 1-800-xxx-xxxx.

Revised Terms, as of 5/10/12	
Late Payment Fee	$32 if your balance is less than or equal to $1,000; $39 if your balance is more than $1,000
Returned Payment Fee	$39

G-22 Penalty Rate Increase Sample (Payment 60 or Fewer Days Late)

Notice of Changes to Your Interest Rates
You have triggered the Penalty APR of 28.99%. This change will impact your account as follows:
Transactions made on or after 4/9/12: As of 5/10/12, the Penalty APR will apply to these transactions. We may keep the APR at this level indefinitely.
Transactions made before 4/9/12: Current rates will continue to apply to these transactions. However, if you become more than 60 days late on your account, the Penalty APR will apply to those transactions as well.

G-23 Penalty Rate Increase Sample (Payment More Than 60 Days Late)

Notice of Changes to Your Interest Rates
You have triggered the Penalty APR of 28.99% because we did not receive your minimum payment within 60 days of the due date. As of 5/10/12, the Penalty APR will apply to all existing balances and new transactions on your account. If you make six consecutive minimum payments starting with your first payment due after 5/10/12, your rate will return to the Standard APR. If you do not make these six consecutive minimum payments, we may keep the Penalty APR on your account indefinitely.

G-24—Deferred Interest Offer Clauses

(a) For Credit Card Accounts Under an Open-End (Not Home-Secured) Consumer Credit Plan

[Interest will be charged to your account from the purchase date if the purchase balance is not paid in full within the/by [deferred interest period/date] or if you make a late payment.]

(b) For Other Open-End Plans

[Interest will be charged to your account from the purchase date if the purchase balance is not paid in full within the/by [deferred interest period/date] or if your account is otherwise in default.]

G-25(A)—Consent Form for Over-the-Credit Limit Transactions

<u>Your right to request over-the-credit limit coverage</u>

Unless you tell us otherwise, we will decline any transaction that causes you to go over your credit limit. If you want us to authorize these transactions, you can request over-the-credit limit coverage.

If you have over-the-credit limit coverage and you go over your credit limit, we will charge you a fee of $XX and may increase your APRs to the Penalty APR of XX.XX%. You will only pay one fee per billing cycle, even if you go over your limit multiple times in the same cycle.

Even if you request over-the-credit limit coverage, in some cases we may still decline a transaction that would cause you to go over your limit, such as if you are past due or significantly over your credit limit.

If you want us to authorize transactions that go over your credit limit, please:

- Call us at [telephone number];
- Visit [Web site]; or
- Check the box below, and return the form to us at [address].

__ I want you to authorize transactions that exceed my credit limit. I understand that if I go over my credit limit, I will be charged a fee of $__ and my APRs may be increased.

G-25(B) – Revocation Notice for Periodic Statement Regarding Over-the-Credit Limit Transactions

You currently have over-the-credit limit coverage on your account, which means that we will pay transactions that cause you go to over your credit limit. If you do go over your credit limit, we will charge you a fee of $XX and your APRs may be increased. To remove over-the-credit-limit coverage from your account, call us at 1-800-xxxxxxx or visit www.xxxxxxx.com. You may also write us at: [insert address].

23. Appendix H to part 226 is amended by revising the table of contents, and adding new forms H-17(A) and H-17(B) to read as follows:

APPENDIX H TO PART 226—CLOSED-END MODEL FORMS AND CLAUSES

H-17(B) Debt Suspension Sample

* * * * *

H-17(A) Debt Suspension Model Clause

Please enroll me in the optional [insert name of program], and bill my account the fee of [insert charge for the initial term of coverage]. I understand that enrollment is not required to obtain credit. I also understand that depending on the event, the protection may only temporarily suspend my duty to make minimum payments, not reduce the balance I owe. I understand that my balance will actually grow during the suspension period as interest continues to accumulate.

[To Enroll, Sign Here]/[To Enroll, Initial Here]. X ____________________

H-17(B) Debt Suspension Sample

Please enroll me in the optional [name of program], and bill my account the fee of $200.00. I understand that enrollment is not required to obtain credit. I also understand that depending on the event, the protection may only temporarily suspend my duty to make minimum payments, not reduce the balance I owe. I understand that my balance will actually grow during the suspension period as interest continues to accumulate.

To Enroll, Initial Here. X ____________________

24. Appendix M1 and Appendix M2 to part 226 are added to read as follows:

APPENDIX M1 TO PART 226—REPAYMENT DISCLOSURES

(a) Definitions. (1) "Promotional terms" means terms of a cardholder's account that will expire in a fixed period of time, as set forth by the card issuer.

(2) "Deferred interest or similar plan" means a plan where a consumer will not be obligated to pay interest that accrues on balances or transactions if those balances or transactions are paid in full prior to the expiration of a specified period of time.

(b) Calculating minimum payment repayment estimates.

(1) Minimum payment formulas. When calculating the minimum payment repayment estimate, credit card issuers must use the minimum payment formula(s) that apply to a cardholder's account. If more than one minimum payment formula applies to an account, the issuer must apply each minimum payment formula to the portion of the balance to which the formula applies. In this case, the issuer must disclose the longest repayment period calculated. For example, assume that an issuer uses one minimum payment formula to calculate the minimum payment amount for a general revolving feature, and another minimum payment formula to calculate the minimum payment amount for special purchases, such as a "club plan purchase." Also, assume that based on a consumer's balances in these features and the annual percentage rates that apply to such features, the repayment period calculated pursuant to this Appendix for the general revolving feature is 5 years, while the repayment period calculated for the special purchase feature is 3 years. This issuer must disclose 5 years as the repayment period for the entire balance to the consumer. If any promotional terms related to payments apply to a cardholder's account, such as a deferred billing plan where minimum payments are

not required for 12 months, credit card issuers may assume no promotional terms apply to the account.

(2) Annual percentage rate. When calculating the minimum payment repayment estimate, a credit card issuer must use the annual percentage rates that apply to a cardholder's account, based on the portion of the balance to which the rate applies. If any promotional terms related to annual percentage rates apply to a cardholder's account, other than deferred interest or similar plans, a credit card issuer in calculating the minimum payment repayment estimate must apply the promotional annual percentage rate(s) until it expires and then must apply the rate that applies after the promotional rate(s) expires. If the rate that applies after the promotional rate(s) expires is a variable rate, a card issuer must calculate that rate based on the applicable index or formula. This variable rate is accurate if it was in effect within the last 30 days before the minimum payment repayment estimate is provided. For deferred interest plans or similar plans, if minimum payments under the deferred interest or similar plan will repay the balances or transactions in full prior to the expiration of the specified period of time, a card issuer must assume that the consumer will not be obligated to pay the accrued interest. This means, in calculating the minimum payment repayment estimate, the card issuer must apply a zero percent annual percentage rate to the balance subject to the deferred interest or similar plan. If, however, minimum payments under the deferred interest plan or similar plan may not repay the balances or transactions in full prior to the expiration of the specified period of time, a credit card issuer must assume that a consumer will not repay the balances or transactions in full prior to the expiration of the specified period of time and thus the consumer will be obligated to pay the accrued interest. This means, in

calculating the minimum payment repayment estimate, the card issuer must apply the annual percentage rate at which interest is accruing to the balance subject to the deferred interest or similar plan.

(3) Beginning balance. When calculating the minimum payment repayment estimate , a credit card issuer must use as the beginning balance the outstanding balance on a consumer's account as of the closing date of the last billing cycle. When calculating the minimum payment repayment estimate, a credit card issuer may round the beginning balance as described above to the nearest whole dollar.

(4) Assumptions. When calculating the minimum payment repayment estimate, a credit card issuer for each of the terms below, may either make the following assumption about that term, or use the account term that applies to a consumer's account.

(i) Only minimum monthly payments are made each month. In addition, minimum monthly payments are made each month – for example, a debt cancellation or suspension agreement, or skip payment feature does not apply to the account.

(ii) No additional extensions of credit are obtained, such as new purchases, transactions, fees, charges or other activity. No refunds or rebates are given.

(iii) The annual percentage rate or rates that apply to a cardholder's account will not change, through either the operation of a variable rate or the change to a rate, except as provided in paragraph (b)(2) of this Appendix. For example, if a penalty annual percentage rate currently applies to a consumer's account, an issuer may assume that the penalty annual percentage rate will apply to the consumer's account indefinitely, even if the consumer may potentially return to a non-penalty annual percentage rate in the future under the account agreement.

(iv) There is no grace period.

(v) The final payment pays the account in full (i.e., there is no residual finance charge after the final month in a series of payments).

(vi) The average daily balance method is used to calculate the balance.

(vii) All months are the same length and leap year is ignored. A monthly or daily periodic rate may be assumed. If a daily periodic rate is assumed, the issuer may either assume (1) a year is 365 days long, and all months are 30.41667 days long, or (2) a year is 360 days long, and all months are 30 days long.

(viii) Payments are credited on the last day of the month.

(ix) Payments are allocated to lower annual percentage rate balances before higher annual percentage rate balances.

(x) The account is not past due and the account balance does not exceed the credit limit.

(xi) When calculating the minimum payment repayment estimate, the assumed payments, current balance and interest charges for each month may be rounded to the nearest cent, as shown in Appendix M2 to this part.

(5) Tolerance. A minimum payment repayment estimate shall be considered accurate if it is not more than 2 months above or below the minimum payment repayment estimate determined in accordance with the guidance in this Appendix (prior to rounding described in § 226.7(b)(12)(i)(B)). For example, assume the minimum payment repayment estimate calculated using the guidance in this Appendix is 28 months (2 years, 4 months), and the minimum payment repayment estimate calculated by the issuer is 30 months (2 years, 6 months). The minimum payment repayment estimate should be

disclosed as 2 years, due to the rounding rule set forth in § 226.7(b)(12)(i)(B). Nonetheless, based on the 30 month estimate, the issuer disclosed 3 years, based on that rounding rule. The issuer would be in compliance with this guidance by disclosing 3 years, instead of 2 years, because the issuer's estimate is within the 2 months' tolerance, prior to rounding. In addition, even if an issuer's estimate is more than 2 months above or below the minimum payment repayment estimate calculated using the guidance in this Appendix, so long as the issuer discloses the correct number of years to the consumer based on the rounding rule set forth in § 226.7(b)(12)(i)(B), the issuer would be in compliance with this guidance. For example, assume the minimum payment repayment estimate calculated using the guidance in this Appendix is 32 months (2 years, 8 months), and the minimum payment repayment estimate calculated by the issuer is 38 months (3 years, 2 months). Under the rounding rule set forth in § 226.7(b)(12)(i)(B), both of these estimates would be rounded and disclosed to the consumer as 3 years. Thus, if the issuer disclosed 3 years to the consumer, the issuer would be in compliance with this guidance even though the minimum payment repayment estimate calculated by the issuer is outside the 2 months' tolerance amount.

(c) Calculating the minimum payment total cost estimate. When calculating the minimum payment total cost estimate, a credit card issuer must total the dollar amount of the interest and principal that the consumer would pay if he or she made minimum payments for the length of time calculated as the minimum payment repayment estimate under paragraph (b) of this Appendix. The minimum payment total cost estimate is deemed to be accurate if it is based on a minimum payment repayment estimate that is within the tolerance guidance set forth in paragraph (b)(5) of this Appendix. For example, assume the minimum payment repayment estimate calculated using the guidance in this Appendix is 28 months (2 years, 4 months), and the minimum payment repayment estimate calculated by the issuer is 30 months (2 years, 6 months). The minimum payment total cost estimate will be deemed accurate even if it is based on the 30 month estimate for length of repayment, because the issuer's minimum payment repayment estimate is within the 2 months' tolerance, prior to rounding. In addition, assume the minimum payment repayment estimate calculated under this Appendix is 32 months (2 years, 8 months), and the minimum payment repayment estimate calculated by the issuer is 38 months (3 years, 2 months). Under the rounding rule set forth in § 226.7(b)(12)(i)(B), both of these estimates would be rounded and disclosed to the consumer as 3 years. If the issuer based the minimum payment total cost estimate on 38 months (or any other minimum payment repayment estimate that would be rounded to 3 years), the minimum payment total cost estimate would be deemed to be accurate.

(d) Calculating the estimated monthly payment for repayment in 36 months. (1) In general. When calculating the estimated monthly payment for repayment in 36 months, a credit card issuer must calculate the estimated monthly payment amount that would be required to pay off the outstanding balance shown on the statement within 36 months, assuming the consumer paid the same amount each month for 36 months.

(2) Weighted annual percentage rate. In calculating the estimated monthly payment for repayment in 36 months, an issuer must use a weighted annual percentage rate that is based on the annual percentage rates that apply to a cardholder's account and the portion of the balance to which the rate applies, as shown in Appendix M2 to this part. If any promotional terms related to annual percentage rates apply to a cardholder's

account, other than deferred interest plans or similar plans, in calculating the weighted annual percentage rate, the issuer must calculate a weighted average of the promotional rate and the rate that will apply after the promotional rate expires based on the percentage of 36 months each rate will apply, as shown in Appendix M2 to this part. For deferred interest plans or similar plans, if minimum payments under the deferred interest or similar plan will repay the balances or transactions in full prior to the expiration of the specified period of time, a card issuer must assume that the consumer will not be obligated to pay the accrued interest. This means, in calculating the weighted annual percentage rate, the card issuer must apply a zero percent annual percentage rate to the balance subject to the deferred interest or similar plan. If, however, minimum payments under the deferred interest plan or similar plan may not repay the balances or transactions in full prior to the expiration of the specified period of time, a credit card issuer in calculating the weighted annual percentage rate must assume that a consumer will not repay the balances or transactions in full prior to the expiration of the specified period of time and thus the consumer will be obligated to pay the accrued interest. This means, in calculating the weighted annual percentage rate, the card issuer must apply the annual percentage rate at which interest is accruing to the balance subject to the deferred interest or similar plan.

(2) Assumptions. In calculating the estimated monthly payment for repayment in 36 months, a card issuer must use the same terms described in paragraph (b) of this Appendix, as appropriate.

(e) Calculating the total cost estimate for repayment in 36 months. When calculating the total cost estimate for repayment in 36 months, a credit card issuer must total the dollar amount of the interest and principal that the consumer would pay if he or she made the estimated monthly payment calculated under paragraph (d) of this Appendix each month for 36 months.

(f) Calculating the savings estimate for repayment in 36 months. When calculating the saving estimate for repayment in 36 months, a credit card issuer must subtract the total cost estimate for repayment in 36 months calculated under paragraph (e) of this Appendix (rounded to the nearest whole dollar as set forth in § 226.7(b)(12)(i)(F)(3)) from the minimum payment total cost estimate calculated under paragraph (c) of this Appendix (rounded to the nearest whole dollar as set forth in § 226.7(b)(12)(i)(C)).

APPENDIX M2 TO PART 226—SAMPLE CALCULATIONS OF REPAYMENT DISCLOSURES

The following is an example of how to calculate the minimum payment repayment estimate, the minimum payment total cost estimate, the estimated monthly payment for repayment in 36 months, the total cost estimate for repayment in 36 months, and the savings estimate for repayment in 36 month using the guidance in Appendix M1 to this part where three annual percentage rates apply (where one of the rates is a promotional APR), the total outstanding balance is $1000, and the minimum payment formula is 2 percent of the outstanding balance or $20, whichever is greater. The following calculation is written in SAS code.

```
data one;
/*

Note:  pmt01 = estimated monthly payment to repay balance in 36 months
       sumpmts36 = sum of payments for repayment in 36 months

       month = number of months to repay total balance if making only minimum
       payments
       pmt = minimum monthly payment
       fc = monthly finance charge
```

```
            sumpmts = sum of payments for minimum payments


*/
* inputs;

* annual percentage rates;  apr1= 0.0; apr2=0.17; apr3=0.21; * insert in ascending order;
* outstanding balances;     cbal1=500; cbal2=250; cbal3=250;
* dollar minimum payment;   dmin=20;
* percent minimum payment;  pmin=0.02; * (0.02+perrate);

* promotional rate information;
* last month for promotional rate;   expm=6;     * = 0 if no promotional rate;
* regular rate;                      rrate=.17; * = 0 if no promotional rate;

array apr(3); array perrate(3);

days=365/12;           * calculate days in month;

* calculate estimated monthly payment to pay off balances in 36 months, and total cost of
repaying balance in 36 months;

array xperrate(3);
do I=1 to 3;
xperrate(I)=(apr(I)/365)*days;  * calculate periodic rate;
end;
if expm gt 0 then xperrate1a=(expm/36)*xperrate1+(1-(expm /36))*(rrate/365)*days;
   else xperrate1a=xperrate1;

tbal=cbal1+cbal2+cbal3;
perrate36=(cbal1*xperrate1a+cbal2*xperrate2+cbal3*xperrate3)/(cbal1+cbal2+cbal3);

* months to repay; dmonths=36;


* initialize counters for sum of payments for repayment in 36 months;
Sumpmts36=0;

pvaf=(1-(1+perrate36)**-dmonths)/perrate36;   * calculate present value of annuity
factor;
pmt01=round(tbal/pvaf,0.01);           * calculate monthly payment for designated
number of months;
sumpmts36 = pmt01 * 36;


* calculate time to repay and total cost of making minimum payments each month;
```

```
* initialize counter for months, and sum of payments;
month=0;
sumpmts=0;

do I=1 to 3;
perrate(I)=(apr(I)/365)*days;  * calculate periodic rate;
end;
put perrate1= perrate2= perrate3=;

eins:
month=month+1;            * increment month counter;
pmt=round(pmin*tbal,0.01); * calculate payment as percentage of balance;
if month ge expm and expm ne 0 then perrate1=(rrate/365)*days;

if pmt lt dmin then pmt=dmin; * set dollar minimum payment;

array xxxbal(3); array cbal(3);
do I=1 to 3;
xxxbal(I)=round(cbal(I)*(1+perrate(I)),0.01);
end;

fc=xxxbal1+xxxbal2+xxxbal3-tbal;

if pmt gt (tbal+fc) then do;
do I=1 to 3;
if cbal(I) gt 0 then pmt=round(cbal(I)*(1+perrate(I)),0.01); * set final payment amount;
end;
end;


if pmt le xxxbal1 then do;
cbal1=xxxbal1-pmt;
cbal2=xxxbal2;
cbal3=xxxbal3;
end;

if pmt gt xxxbal1 and xxxbal2 gt 0  and pmt le (xxxbal1+xxxbal2) then do;
  cbal2=xxxbal2-(pmt-xxxbal1);
  cbal1=0;
  cbal3=xxxbal3;
  end;

if pmt gt xxxbal2 and xxxbal3 gt 0 then do;
  cbal3=xxxbal3-(pmt-xxxbal1-xxxbal2);
  cbal2=0;
  end;
```

```
sumpmts=sumpmts+pmt;     * increment sum of payments;
tbal=cbal1+cbal2+cbal3;  * calculate new total balance;

* print month, balance, payment amount, and finance charge;
put month= tbal= cbal1= cbal2= cbal3= pmt= fc=  ;

if tbal gt 0 then go to eins; * go to next month if balance is greater than zero;

* initialize total cost savings;
savtot=0;
savtot= round(sumpmts,1) – round (sumpmts36,1);

* print number of months to repay debt if minimum payments made, final balance (zero),
total cost if minimum payments made, estimated monthly payment for repayment in 36
months, total cost for repayment in 36 months, and total savings if repaid in 36 months;

put title='   ';
put title='number of months to repay debt if minimum payment made, final balance, total
cost if minimum payments made, estimated monthly payment for repayment in 36
months, total cost for repayment in 36 months, and total savings if repaid in 36 months';
put month= tbal= sumpmts= pmt01= sumpmts36= savtot=;
put title='   ';
run;
```

* * * * *

25. Appendix N to part 226 is added to read as follows:

APPENDIX N –INTERNET POSTING OF CREDIT CARD AGREEMENTS

1. Credit Card Agreements Submitted to the Board Under § 226.58(d)

(a) Each agreement submitted to the Board must contain the provisions of the agreement and the pricing information in effect as of the last business day of the preceding calendar quarter.

(b) Information that is not uniform for all cardholders under an agreement, but that instead may vary from one cardholder to another depending upon a cardholder's creditworthiness, state of residence, or other factors, such as the pricing information, must be set forth in an addendum to the agreement. The addendum must provide the information either by setting forth all the possible variations (such as purchase APRs of 6.9 percent, 8.9 percent, 10.9 percent, or 12.9 percent), or by providing a range (such as purchase APR ranging from 6.9 percent to 12.9 percent).

(c) Card issuers are not required to submit any disclosures required by state or federal law, such as affiliate marketing notices, privacy policies, or disclosures under the E-Sign Act, except to the extent that those disclosures are included in the provisions of the agreement or the pricing information. Similarly, card issuers are not required to submit solicitation materials or periodic statements.

(d) Agreements must not include any personally identifiable information relating to any cardholder, such as name, address, telephone number, or account number.

(e) Issuers may not provide provisions of the agreement or pricing information in the form of change-in-terms notices or riders (other than the single addendum described above, if applicable). Changes in provisions or pricing information must be integrated into the body of the agreement (or into the single addendum described above, if applicable).

2. Posting of Agreements Offered to the Public on Card Issuer's Web Site Under Proposed § 226.58(f)(1)

(a) Agreements may be posted in any electronic format that is readily usable by the general public.

(b) The content of the agreements posted on the issuer's Web site must the same as those submitted to the Board, as specified in paragraph 1. above.

(c) The card issuer must update the agreements posted on its Web site at least as frequently as the quarterly schedule required for submission of agreements to the Board under § 226.58(d). If the issuer chooses to update the agreements on its Web site more frequently, the agreements posted on the issuer's Web site may contain the provisions of the agreement and the pricing information in effect as of a date other than the last business day of the preceding calendar quarter.

(d) The agreements posted on the issuer's Web site must be placed in a location that is prominent and easily accessible by the public and must be presented in a clear and legible typeface.

3. Availability of Agreements for All Open Accounts Under § 226.58(f)(2)

(a) If the card issuer posts an agreement on its Web site under § 226.58(f)(2)(i), the agreement may be posted in any electronic format this is readily usable by the general public and must be placed in a location that is prominent and easily accessible to the cardholder.

(b) The content of such agreements (whether posted on the card issuer's Web site under § 226.58(f)(2)(i) or made available upon the cardholder's request under § 226.58(f)(2)(ii)) must conform to the content requirements for agreements submitted to the Board, as specified in paragraph 1. above, except that each agreement: (1) must set forth the specific provisions and pricing information applicable to the particular cardholder; and (2) may contain personally identifiable information relating to the cardholder, such as name, address, telephone number, or account number, provided that the issuer takes appropriate measures to make the agreement accessible only to the cardholder or other authorized persons. Pricing information may be integrated into the text of the agreement or provided in a single attached addendum. All agreements must be presented in a clear and legible typeface.

(c) Agreements must contain provisions and pricing information that is complete and accurate as of a date no more than 60 days prior to: (1) the date on which the agreement is posted on the card issuer's Web site under § 226.58(f)(2)(i); or (2) the date the cardholder's request is received under § 226.58(f)(2)(ii).

(d) Issuers may not provide provisions of the agreement or pricing information in the form of change-in-terms notices or riders (other than the single addendum described above, if applicable). Changes in provisions or pricing information must be integrated into the body of the agreement (or into the single addendum described above, if applicable).

26. In Supplement I to Part 226:

A. Revise the Introduction.

B. Revise Subpart A.

C. In Subpart B, revise sections 226.5 and 226.5a and sections 226.6 through 226.14 and section 226.16.

D. Under Section 226.5b—Requirements for Home-equity Plans, under 5b(a) Form of Disclosures, under 5b(a)(1) General, paragraph 1. is revised.

E. Under Section 226.5b—Requirements for Home-equity Plans, under 5b(f) Limitations on Home-equity Plans, under 5b(f)(3)(vi), paragraph 4. is revised.

F. Under Section 226.26—Use of Annual Percentage Rate in Oral Disclosures, under 26(a) Open-end credit., paragraph 1. is revised.

G. Under Section 226.27—Language of Disclosures, paragraph 1. is revised.

H. Under Section 226.28—Effect on State Laws, under 28(a) Inconsistent disclosure requirements., paragraph 6. is revised.

I. Under Section 226.30—Limitation on Rates, paragraph 8. is revised and paragraph 13. is deleted.

J. In new Subpart G, add sections 226.51 through 226.58.

K. Revise Appendix F, Appendix G, and Appendix H.

L. Amend Appendix G by revising paragraphs 1. through 3. and 5. through 6., republishing paragraph 7., and adding paragraphs 8. through 12.

M. Remove the References paragraph at the end of sections 226.1, 226.2, 226.3, 226.4, 226.5, 226.6, 226.7, 226.8, 226.9, 226.10, 226.11, 226.12, 226.13, 226.14, 226.16, and Appendix F.

SUPPLEMENT I TO PART 226—OFFICIAL STAFF INTERPRETATIONS

INTRODUCTION

1. Official status. This commentary is the vehicle by which the staff of the Division of Consumer and Community Affairs of the Federal Reserve Board issues official staff interpretations of Regulation Z. Good faith compliance with this commentary affords protection from liability under 130(f) of the Truth in Lending Act. Section 130(f) (15 U.S.C. 1640) protects creditors from civil liability for any act done or omitted in good faith in conformity with any interpretation issued by a duly authorized official or employee of the Federal Reserve System.

2. Procedure for requesting interpretations. Under appendix C of the regulation, anyone may request an official staff interpretation. Interpretations that are adopted will be incorporated in this commentary following publication in the Federal Register. No official staff interpretations are expected to be issued other than by means of this commentary.

3. Rules of construction. (a) Lists that appear in the commentary may be exhaustive or illustrative; the appropriate construction should be clear from the context. In most cases, illustrative lists are introduced by phrases such as "including, but not limited to," "among other things," "for example," or "such as."

(b) Throughout the commentary, reference to "this section" or "this paragraph" means the section or paragraph in the regulation that is the subject of the comment.

4. Comment designations. Each comment in the commentary is identified by a number and the regulatory section or paragraph which it interprets. The comments are designated with as much specificity as possible according to the particular regulatory

provision addressed. For example, some of the comments to § 226.18(b) are further divided by subparagraph, such as comment 18(b)(1)-1 and comment 18(b)(2)-1. In other cases, comments have more general application and are designated, for example, as comment 18-1 or comment 18(b)-1. This introduction may be cited as comments I-1 through I-4. Comments to the appendices may be cited, for example, as comment app. A-1.

SUBPART A—GENERAL

Section 226.1—Authority, Purpose, Coverage, Organization, Enforcement and Liability

1(c) Coverage.

1. Foreign applicability. Regulation Z applies to all persons (including branches of foreign banks and sellers located in the United States) that extend consumer credit to residents (including resident aliens) of any state as defined in § 226.2. If an account is located in the United States and credit is extended to a U.S. resident, the transaction is subject to the regulation. This will be the case whether or not a particular advance or purchase on the account takes place in the United States and whether or not the extender of credit is chartered or based in the United States or a foreign country. For example, if a U.S. resident has a credit card account located in the consumer's state issued by a bank (whether U.S. or foreign-based), the account is covered by the regulation, including extensions of credit under the account that occur outside the United States. In contrast, if a U.S. resident residing or visiting abroad, or a foreign national abroad, opens a credit card account issued by a foreign branch of a U.S. bank, the account is not covered by the regulation.

1(d) Organization.

Paragraph (1)(d)(5).

1. Effective dates. The Board's revisions to Regulation Z published on July 30, 2008 (the "final rules"), apply to covered loans (including refinance loans and assumptions considered new transactions under § 226.20), for which the creditor receives an application on or after October 1, 2009, except for the final rules on advertising, escrows, and loan servicing. The final rules on escrows in § 226.35(b)(3) are effective for covered loans, (including refinancings and assumptions in § 226.20) for which the creditor receives an application on or after April 1, 2010; but for such loans secured by manufactured housing on or after October 1, 2010. The final rules applicable to servicers in § 226.36(c) apply to all covered loans serviced on or after October 1, 2009. The final rules on advertising apply to advertisements occurring on or after October 1, 2009. For example, a radio ad occurs on the date it is first broadcast; a solicitation occurs on the date it is mailed to the consumer. The following examples illustrate the application of the effective dates for the final rules.

i. General. A refinancing or assumption as defined in § 226.20(a) or (b) is a new transaction and is covered by a provision of the final rules if the creditor receives an application for the transaction on or after that provision's effective date. For example, if a creditor receives an application for a refinance loan covered by § 226.35(a) on or after October 1, 2009, and the refinance loan is consummated on October 15, 2009, the provision restricting prepayment penalties in § 226.35(b)(2) applies. However, if the transaction were a modification of an existing obligation's terms that does not constitute a refinance loan under § 226.20(a), the final rules, including for example the restriction on prepayment penalties would not apply.

ii. Escrows. Assume a consumer applies for a refinance loan to be secured by a dwelling (that is not a manufactured home) on March 15, 2010, and the loan is consummated on April 2, 2010, the escrow rule in § 226.35(b)(3) does not apply.

iii. Servicing. Assume that a consumer applies for a new loan on August 1, 2009. The loan is consummated on September 1, 2009. The servicing rules in § 226.36(c) apply to the servicing of that loan as of October 1, 2009.

Paragraph 1(d)(6).

1. Mandatory compliance dates. Compliance with the Board's revisions to Regulation Z published on August 14, 2009 is mandatory for private education loans for which the creditor receives an application on or after February 14, 2010. Compliance with the final rules on co-branding in Sec. Sec. 226.48(a) and (b) is mandatory for marketing occurring on or after February 14, 2010. Compliance with the final rules is optional for private education loan transactions for which an application was received prior to February 14, 2010, even if consummated after the mandatory compliance date.

2. Optional compliance. A creditor may, at its option, provide the approval and final disclosures required under §§ 226.47(b) or (c) for private education loans where an application was received prior to the mandatory compliance date. If the creditor opts to provide the disclosures, the creditor must also comply with the applicable timing and other rules in §§ 226.46 and 226.48 (including providing the consumer with the 30-day acceptance period under § 226.48(c), and the right to cancel under § 226.48(d)). For example if the creditor receives an application on January 25, 2010 and approves the

consumer's application on or after February 14, 2010, the creditor may, at its option, provide the approval disclosures under § 226.47(b), the final disclosures under § 226.47(c) and comply with the applicable requirements §§ 226.46 and 226.48. The creditor must also obtain the self-certification form as required in § 226.48(e), if applicable. Or, for example, if the creditor receives an application on January 25, 2010 and approves the consumer's application before February 14, 2010, the creditor may, at its option, provide the final disclosure under § 226.47(c) and comply with the applicable timing and other requirements of §§ 226.46 and 226.48, including providing the consumer with the right to cancel under § 226.48(d). The creditor must also obtain the self-certification form as required in § 226.48(e), if applicable.

Paragraph 1(d)(7).

1. [Reserved.]

Section 226.2—Definitions and Rules of Construction

2(a)(2) Advertisement.

1. Coverage. Only commercial messages that promote consumer credit transactions requiring disclosures are advertisements. Messages inviting, offering, or otherwise announcing generally to prospective customers the availability of credit transactions, whether in visual, oral, or print media, are covered by Regulation Z (12 CFR part 226).

i. Examples include:

A. Messages in a newspaper, magazine, leaflet, promotional flyer, or catalog.

B. Announcements on radio, television, or public address system.

C. Electronic advertisements, such as on the Internet.

D. Direct mail literature or other printed material on any exterior or interior sign.

E. Point of sale displays.

F. Telephone solicitations.

G. Price tags that contain credit information.

H. Letters sent to customers or potential customers as part of an organized solicitation of business.

I. Messages on checking account statements offering auto loans at a stated annual percentage rate.

J. Communications promoting a new open-end plan or closed-end transaction.

ii. The term does not include:

A. Direct personal contacts, such as follow-up letters, cost estimates for individual consumers, or oral or written communication relating to the negotiation of a specific transaction.

B. Informational material, for example, interest-rate and loan-term memos, distributed only to business entities.

C. Notices required by federal or state law, if the law mandates that specific information be displayed and only the information so mandated is included in the notice.

D. News articles the use of which is controlled by the news medium.

E. Market-research or educational materials that do not solicit business.

F. Communications about an existing credit account (for example, a promotion encouraging additional or different uses of an existing credit card account.)

2. Persons covered. All persons must comply with the advertising provisions in §§ 226.16 and 226.24, not just those that meet the definition of creditor in § 226.2(a)(17).

Thus, home builders, merchants, and others who are not themselves creditors must comply with the advertising provisions of the regulation if they advertise consumer credit transactions. However, under section 145 of the act, the owner and the personnel of the medium in which an advertisement appears, or through which it is disseminated, are not subject to civil liability for violations.

2(a)(3) Reserved.

2(a)(4) Billing cycle or cycle.

1. Intervals. In open-end credit plans, the billing cycle determines the intervals for which periodic disclosure statements are required; these intervals are also used as measuring points for other duties of the creditor. Typically, billing cycles are monthly, but they may be more frequent or less frequent (but not less frequent than quarterly).

2. Creditors that do not bill. The term cycle is interchangeable with billing cycle for definitional purposes, since some creditors' cycles do not involve the sending of bills in the traditional sense but only statements of account activity. This is commonly the case with financial institutions when periodic payments are made through payroll deduction or through automatic debit of the consumer's asset account.

3. Equal cycles. Although cycles must be equal, there is a permissible variance to account for weekends, holidays, and differences in the number of days in months. If the actual date of each statement does not vary by more than four days from a fixed "day" (for example, the third Thursday of each month) or "date" (for example, the 15th of each month) that the creditor regularly uses, the intervals between statements are considered equal. The requirement that cycles be equal applies even if the creditor applies a daily periodic rate to determine the finance charge. The requirement that intervals be equal

does not apply to the first billing cycle on an open-end account (i.e., the time period between account opening and the generation of the first periodic statement) or to a transitional billing cycle that can occur if the creditor occasionally changes its billing cycles so as to establish a new statement day or date. (See comments 9(c)(1)-3 and 9(c)(2)-3.)

4. Payment reminder. The sending of a regular payment reminder (rather than a late payment notice) establishes a cycle for which the creditor must send periodic statements.

2(a)(6) Business day.

1. Business function test. Activities that indicate that the creditor is open for substantially all of its business functions include the availability of personnel to make loan disbursements, to open new accounts, and to handle credit transaction inquiries. Activities that indicate that the creditor is not open for substantially all of its business functions include a retailer’s merely accepting credit cards for purchases or a bank’s having its customer-service windows open only for limited purposes such as deposits and withdrawals, bill paying, and related services.

2. Rule for rescission, disclosures for certain mortgage transactions, and private education loans. A more precise rule for what is a business day (all calendar days except Sundays and the Federal legal holidays specified in 5 U.S.C. 6103(a)) applies when the right of rescission, the receipt of disclosures for certain dwelling-secured mortgage transactions under §§ 226.19(a)(1)(ii), 226.19(a)(2), 226.31(c), or the receipt of disclosures for private education loans under § 226.46(d)(4) is involved. Four Federal legal holidays are identified in 5 U.S.C. 6103(a) by a specific date: New Year's Day,

January 1; Independence Day, July 4; Veterans Day, November 11; and Christmas Day, December 25. When one of these holidays (July 4, for example) falls on a Saturday, Federal offices and other entities might observe the holiday on the preceding Friday (July 3). In cases where the more precise rule applies, the observed holiday (in the example, July 3) is a business day.

2(a)(7) Card issuer.

1. Agent. An agent of a card issuer is considered a card issuer. Because agency relationships are traditionally defined by contract and by state or other applicable law, the regulation does not define agent. Merely providing services relating to the production of credit cards or data processing for others, however, does not make one the agent of the card issuer. In contrast, a financial institution may become the agent of the card issuer if an agreement between the institution and the card issuer provides that the cardholder may use a line of credit with the financial institution to pay obligations incurred by use of the credit card.

2(a)(8) Cardholder.

1. General rule. A cardholder is a natural person at whose request a card is issued for consumer credit purposes or who is a co-obligor or guarantor for such a card issued to another. The second category does not include an employee who is a co-obligor or guarantor on a card issued to the employer for business purposes, nor does it include a person who is merely the authorized user of a card issued to another.

2. Limited application of regulation. For the limited purposes of the rules on issuance of credit cards and liability for unauthorized use, a cardholder includes any

person, including an organization, to whom a card is issued for <u>any</u> purpose—including a business, agricultural, or commercial purpose.

3. <u>Issuance</u>. See the commentary to § 226.12(a).

4. <u>Dual-purpose cards and dual-card systems</u>. Some card issuers offer dual-purpose cards that are for business as well as consumer purposes. If a card is issued to an individual for consumer purposes, the fact that an organization has guaranteed to pay the debt does not make it business credit. On the other hand, if a card is issued for business purposes, the fact that an individual sometimes uses it for consumer purchases does not subject the card issuer to the provisions on periodic statements, billing-error resolution, and other protections afforded to consumer credit. Some card issuers offer dual-card systems—that is, they issue two cards to the same individual, one intended for business use, the other for consumer or personal use. With such a system, the same person may be a cardholder for general purposes when using the card issued for consumer use, and a cardholder only for the limited purposes of the restrictions on issuance and liability when using the card issued for business purposes.

<u>2(a)(9) Cash price</u>.

1. <u>Components</u>. This amount is a starting point in computing the amount financed and the total sale price under § 226.18 for credit sales. Any charges imposed equally in cash and credit transactions may be included in the cash price, or they may be treated as other amounts financed under § 226.18(b)(2).

2. <u>Service contracts</u>. Service contracts include contracts for the repair or the servicing of goods, such as mechanical breakdown coverage, even if such a contract is characterized as insurance under state law.

3. Rebates. The creditor has complete flexibility in the way it treats rebates for purposes of disclosure and calculation. (See the commentary to § 226.18(b).)

2(a)(10) Closed-end credit.

1. General. The coverage of this term is defined by exclusion. That is, it includes any credit arrangement that does not fall within the definition of open-end credit. Subpart C contains the disclosure rules for closed-end credit when the obligation is subject to a finance charge or is payable by written agreement in more than four installments.

2(a)(11) Consumer.

1. Scope. Guarantors, endorsers, and sureties are not generally consumers for purposes of the regulation, but they may be entitled to rescind under certain circumstances and they may have certain rights if they are obligated on credit card plans.

2. Rescission rules. For purposes of rescission under §§ 226.15 and 226.23, a consumer includes any natural person whose ownership interest in his or her principal dwelling is subject to the risk of loss. Thus, if a security interest is taken in A's ownership interest in a house and that house is A's principal dwelling, A is a consumer for purposes of rescission, even if A is not liable, either primarily or secondarily, on the underlying consumer credit transaction. An ownership interest does not include, for example, leaseholds or inchoate rights, such as dower.

3. Land trusts. Credit extended to land trusts, as described in the commentary to § 226.3(a), is considered to be extended to a natural person for purposes of the definition of consumer.

2(a)(12) Consumer credit.

1. Primary purpose. There is no precise test for what constitutes credit offered or extended for personal, family, or household purposes, nor for what constitutes the primary purpose. (See, however, the discussion of business purposes in the commentary to § 226.3(a).)

2(a)(13) Consummation.

1. State law governs. When a contractual obligation on the consumer's part is created is a matter to be determined under applicable law; Regulation Z does not make this determination. A contractual commitment agreement, for example, that under applicable law binds the consumer to the credit terms would be consummation. Consummation, however, does not occur merely because the consumer has made some financial investment in the transaction (for example, by paying a nonrefundable fee) unless, of course, applicable law holds otherwise.

2. Credit v. sale. Consummation does not occur when the consumer becomes contractually committed to a sale transaction, unless the consumer also becomes legally obligated to accept a particular credit arrangement. For example, when a consumer pays a nonrefundable deposit to purchase an automobile, a purchase contract may be created, but consummation for purposes of the regulation does not occur unless the consumer also contracts for financing at that time.

2(a)(14) Credit.

1. Exclusions. The following situations are not considered credit for purposes of the regulation:

i. Layaway plans, unless the consumer is contractually obligated to continue making payments. Whether the consumer is so obligated is a matter to be determined under applicable law. The fact that the consumer is not entitled to a refund of any amounts paid towards the cash price of the merchandise does not bring layaways within the definition of credit.

ii. Tax liens, tax assessments, court judgments, and court approvals of reaffirmation of debts in bankruptcy. However, third-party financing of such obligations (for example, a bank loan obtained to pay off a tax lien) is credit for purposes of the regulation.

iii. Insurance premium plans that involve payment in installments with each installment representing the payment for insurance coverage for a certain future period of time, unless the consumer is contractually obligated to continue making payments.

iv. Home improvement transactions that involve progress payments, if the consumer pays, as the work progresses, only for work completed and has no contractual obligation to continue making payments.

v. Borrowing against the accrued cash value of an insurance policy or a pension account, if there is no independent obligation to repay.

vi. Letters of credit.

vii. The execution of option contracts. However, there may be an extension of credit when the option is exercised, if there is an agreement at that time to defer payment of a debt.

viii. Investment plans in which the party extending capital to the consumer risks the loss of the capital advanced. This includes, for example, an arrangement with a home purchaser in which the investor pays a portion of the downpayment and of the periodic mortgage payments in return for an ownership interest in the property, and shares in any gain or loss of property value.

ix. Mortgage assistance plans administered by a government agency in which a portion of the consumer's monthly payment amount is paid by the agency. No finance charge is imposed on the subsidy amount, and that amount is due in a lump-sum payment on a set date or upon the occurrence of certain events. (If payment is not made when due, a new note imposing a finance charge may be written, which may then be subject to the regulation.)

2. Payday loans; deferred presentment. Credit includes a transaction in which a cash advance is made to a consumer in exchange for the consumer's personal check, or in exchange for the consumer's authorization to debit the consumer's deposit account, and where the parties agree either that the check will not be cashed or deposited, or that the consumer's deposit account will not be debited, until a designated future date. This type of transaction is often referred to as a "payday loan" or "payday advance" or "deferred-presentment loan." A fee charged in connection with such a transaction may be a finance charge for purposes of § 226.4, regardless of how the fee is characterized under state law. Where the fee charged constitutes a finance charge under § 226.4 and the person advancing funds regularly extends consumer credit, that person is a creditor and is required to provide disclosures consistent with the requirements of Regulation Z. (See § 226.2(a)(17).)

2(a)(15) Credit card.

1. Usable from time to time. A credit card must be usable from time to time. Since this involves the possibility of repeated use of a single device, checks and similar instruments that can be used only once to obtain a single credit extension are not credit cards.

2. Examples. i. Examples of credit cards include:

A. A card that guarantees checks or similar instruments, if the asset account is also tied to an overdraft line or if the instrument directly accesses a line of credit.

B. A card that accesses both a credit and an asset account (that is, a debit-credit card).

C. An identification card that permits the consumer to defer payment on a purchase.

D. An identification card indicating loan approval that is presented to a merchant or to a lender, whether or not the consumer signs a separate promissory note for each credit extension.

E. A card or device that can be activated upon receipt to access credit, even if the card has a substantive use other than credit, such as a purchase-price discount card. Such a card or device is a credit card notwithstanding the fact that the recipient must first contact the card issuer to access or activate the credit feature.

ii. In contrast, credit card does not include, for example:

A. A check-guarantee or debit card with no credit feature or agreement, even if the creditor occasionally honors an inadvertent overdraft.

B. Any card, key, plate, or other device that is used in order to obtain petroleum products for business purposes from a wholesale distribution facility or to gain access to that facility, and that is required to be used without regard to payment terms.

3. Charge card. Generally, charge cards are cards used in connection with an account on which outstanding balances cannot be carried from one billing cycle to another and are payable when a periodic statement is received. Under the regulation, a reference to credit cards generally includes charge cards. The term charge card is, however, distinguished from credit card in §§ 226.5a, 226.7(b)(11), 226.7(b)(12), 226.9(e), 226.9(f) and 226.28(d), and appendices G-10 through G-13. When the term credit card is used in those provisions, it refers to credit cards other than charge cards.

2(a)(16) Credit sale.

1. Special disclosure. If the seller is a creditor in the transaction, the transaction is a credit sale and the special credit sale disclosures (that is, the disclosures under § 226.18(j)) must be given. This applies even if there is more than one creditor in the transaction and the creditor making the disclosures is not the seller. (See the commentary to § 226.17(d).)

2. Sellers who arrange credit. If the seller of the property or services involved arranged for financing but is not a creditor as to that sale, the transaction is not a credit sale. Thus, if a seller assists the consumer in obtaining a direct loan from a financial institution and the consumer's note is payable to the financial institution, the transaction is a loan and only the financial institution is a creditor.

3. Refinancings. Generally, when a credit sale is refinanced within the meaning of § 226.20(a), loan disclosures should be made. However, if a new sale of goods or services is also involved, the transaction is a credit sale.

4. Incidental sales. Some lenders sell a product or service—such as credit, property, or health insurance—as part of a loan transaction. Section 226.4 contains the rules on whether the cost of credit life, disability or property insurance is part of the finance charge. If the insurance is financed, it may be disclosed as a separate credit-sale transaction or disclosed as part of the primary transaction; if the latter approach is taken, either loan or credit-sale disclosures may be made. (See the commentary to § 226.17(c)(1) for further discussion of this point.)

5. Credit extensions for educational purposes. A credit extension for educational purposes in which an educational institution is the creditor may be treated as either a credit sale or a loan, regardless of whether the funds are given directly to the student, credited to the student's account, or disbursed to other persons on the student's behalf. The disclosure of the total sale price need not be given if the transaction is treated as a loan.

2(a)(17) Creditor.

1. General. The definition contains four independent tests. If any one of the tests is met, the person is a creditor for purposes of that particular test.

Paragraph 2(a)(17)(i).

1. Prerequisites. This test is composed of two requirements, both of which must be met in order for a particular credit extension to be subject to the regulation and for the

credit extension to count towards satisfaction of the numerical tests mentioned in § 226.2(a)(17)(v).

i. First, there must be either or both of the following:

A. A written (rather than oral) agreement to pay in more than four installments. A letter that merely confirms an oral agreement does not constitute a written agreement for purposes of the definition.

B. A finance charge imposed for the credit. The obligation to pay the finance charge need not be in writing.

ii. Second, the obligation must be payable to the person in order for that person to be considered a creditor. If an obligation is made payable to bearer, the creditor is the one who initially accepts the obligation.

2. Assignees. If an obligation is initially payable to one person, that person is the creditor even if the obligation by its terms is simultaneously assigned to another person. For example:

i. An auto dealer and a bank have a business relationship in which the bank supplies the dealer with credit sale contracts that are initially made payable to the dealer and provide for the immediate assignment of the obligation to the bank. The dealer and purchaser execute the contract only after the bank approves the creditworthiness of the purchaser. Because the obligation is initially payable on its face to the dealer, the dealer is the only creditor in the transaction.

3. Numerical tests. The examples below illustrate how the numerical tests of § 226.2(a)(17)(v) are applied. The examples assume that consumer credit with a finance

charge or written agreement for more than 4 installments was extended in the years in question and that the person did not extend such credit in 2006.

4. Counting transactions. For purposes of closed-end credit, the creditor counts each credit transaction. For open-end credit, transactions means accounts, so that outstanding accounts are counted instead of individual credit extensions. Normally the number of transactions is measured by the preceding calendar year; if the requisite number is met, then the person is a creditor for all transactions in the current year. However, if the person did not meet the test in the preceding year, the number of transactions is measured by the current calendar year. For example, if the person extends consumer credit 26 times in 2007, it is a creditor for purposes of the regulation for the last extension of credit in 2007 and for all extensions of consumer credit in 2008. On the other hand, if a business begins in 2007 and extends consumer credit 20 times, it is not a creditor for purposes of the regulation in 2007. If it extends consumer credit 75 times in 2008, however, it becomes a creditor for purposes of the regulation (and must begin making disclosures) after the 25th extension of credit in that year and is a creditor for all extensions of consumer credit in 2009.

5. Relationship between consumer credit in general and credit secured by a dwelling. Extensions of credit secured by a dwelling are counted towards the 25-extensions test. For example, if in 2007 a person extends unsecured consumer credit 23 times and consumer credit secured by a dwelling twice, it becomes a creditor for the succeeding extensions of credit, whether or not they are secured by a dwelling. On the other hand, extensions of consumer credit not secured by a dwelling are not counted towards the number of credit extensions secured by a dwelling. For example, if in 2007 a

person extends credit not secured by a dwelling 8 times and credit secured by a dwelling 3 times, it is not a creditor.

6. Effect of satisfying one test. Once one of the numerical tests is satisfied, the person is also a creditor for the other type of credit. For example, in 2007 a person extends consumer credit secured by a dwelling 5 times. That person is a creditor for all succeeding credit extensions, whether they involve credit secured by a dwelling or not.

7. Trusts. In the case of credit extended by trusts, each individual trust is considered a separate entity for purposes of applying the criteria. For example:

i. A bank is the trustee for three trusts. Trust A makes 15 extensions of consumer credit annually; Trust B makes 10 extensions of consumer credit annually; and Trust C makes 30 extensions of consumer credit annually. Only Trust C is a creditor for purposes of the regulation.

Paragraph 2(a)(17)(ii). [Reserved]

Paragraph 2(a)(17)(iii).

1. Card issuers subject to Subpart B. Section 226.2(a)(17)(iii) makes certain card issuers creditors for purposes of the open-end credit provisions of the regulation. This includes, for example, the issuers of so-called travel and entertainment cards that expect repayment at the first billing and do not impose a finance charge. Since all disclosures are to be made only as applicable, such card issuers would omit finance charge disclosures. Other provisions of the regulation regarding such areas as scope, definitions, determination of which charges are finance charges, Spanish language disclosures, record retention, and use of model forms, also apply to such card issuers.

Paragraph 2(a)(17)(iv).

1. Card issuers subject to Subparts B and C. Section 226.2(a)(17)(iv) includes as creditors card issuers extending closed-end credit in which there is a finance charge or an agreement to pay in more than four installments. These card issuers are subject to the appropriate provisions of Subparts B and C, as well as to the general provisions.

2(a)(18) Downpayment.

1. Allocation. If a consumer makes a lump-sum payment, partially to reduce the cash price and partially to pay prepaid finance charges, only the portion attributable to reducing the cash price is part of the downpayment. (See the commentary to § 226.2(a)(23).)

2. Pick-up payments. i. Creditors may treat the deferred portion of the downpayment, often referred to as pick-up payments, in a number of ways. If the pick-up payment is treated as part of the downpayment:

A. It is subtracted in arriving at the amount financed under § 226.18(b).

B. It may, but need not, be reflected in the payment schedule under § 226.18(g).

ii. If the pick-up payment does not meet the definition (for example, if it is payable after the second regularly scheduled payment) or if the creditor chooses not to treat it as part of the downpayment:

A. It must be included in the amount financed.

B. It must be shown in the payment schedule.

iii. Whichever way the pick-up payment is treated, the total of payments under § 226.18(h) must equal the sum of the payments disclosed under § 226.18(g).

3. Effect of existing liens.

i. No cash payment. In a credit sale, the "downpayment" may only be used to reduce the cash price. For example, when a trade-in is used as the downpayment and the existing lien on an automobile to be traded in exceeds the value of the automobile, creditors must disclose a zero on the downpayment line rather than a negative number. To illustrate, assume a consumer owes $10,000 on an existing automobile loan and that the trade-in value of the automobile is only $8,000, leaving a $2,000 deficit. The creditor should disclose a downpayment of $0, not -$2,000.

ii. Cash payment. If the consumer makes a cash payment, creditors may, at their option, disclose the entire cash payment as the downpayment, or apply the cash payment first to any excess lien amount and disclose any remaining cash as the downpayment. In the above example:

A. If the downpayment disclosed is equal to the cash payment, the $2,000 deficit must be reflected as an additional amount financed under § 226.18(b)(2).

B. If the consumer provides $1,500 in cash (which does not extinguish the $2,000 deficit), the creditor may disclose a downpayment of $1,500 or of $0.

C. If the consumer provides $3,000 in cash, the creditor may disclose a downpayment of $3,000 or of $1,000.

2(a)(19) Dwelling.

1. Scope. A dwelling need not be the consumer's principal residence to fit the definition, and thus a vacation or second home could be a dwelling. However, for purposes of the definition of residential mortgage transaction and the right to rescind, a

dwelling must be the principal residence of the consumer. (See the commentary to §§ 226.2(a)(24), 226.15, and 226.23.)

2. Use as a residence. Mobile homes, boats, and trailers are dwellings if they are in fact used as residences, just as are condominium and cooperative units. Recreational vehicles, campers, and the like not used as residences are not dwellings.

3. Relation to exemptions. Any transaction involving a security interest in a consumer's principal dwelling (as well as in any real property) remains subject to the regulation despite the general exemption in § 226.3(b) for credit extensions over $25,000.

2(a)(20) Open-end credit.

1. General. This definition describes the characteristics of open-end credit (for which the applicable disclosure and other rules are contained in Subpart B), as distinct from closed-end credit. Open-end credit is consumer credit that is extended under a plan and meets all 3 criteria set forth in the definition.

2. Existence of a plan. The definition requires that there be a plan, which connotes a contractual arrangement between the creditor and the consumer. Some creditors offer programs containing a number of different credit features. The consumer has a single account with the institution that can be accessed repeatedly via a number of sub-accounts established for the different program features and rate structures. Some features of the program might be used repeatedly (for example, an overdraft line) while others might be used infrequently (such as the part of the credit line available for secured credit). If the program as a whole is subject to prescribed terms and otherwise meets the definition of open-end credit, such a program would be considered a single, multifeatured plan.

3. Repeated transactions. Under this criterion, the creditor must reasonably contemplate repeated transactions. This means that the credit plan must be usable from time to time and the creditor must legitimately expect that there will be repeat business rather than a one-time credit extension. The creditor must expect repeated dealings with consumers under the credit plan as a whole and need not believe a consumer will reuse a particular feature of the plan. The determination of whether a creditor can reasonably contemplate repeated transactions requires an objective analysis. Information that much of the creditor's customer base with accounts under the plan make repeated transactions over some period of time is relevant to the determination, particularly when the plan is opened primarily for the financing of infrequently purchased products or services. A standard based on reasonable belief by a creditor necessarily includes some margin for judgmental error. The fact that particular consumers do not return for further credit extensions does not prevent a plan from having been properly characterized as open-end. For example, if much of the customer base of a clothing store makes repeat purchases, the fact that some consumers use the plan only once would not affect the characterization of the store's plan as open-end credit. The criterion regarding repeated transactions is a question of fact to be decided in the context of the creditor's type of business and the creditor's relationship with its customers. For example, it would be more reasonable for a bank or depository institution to contemplate repeated transactions with a customer than for a seller of aluminum siding to make the same assumption about its customers.

4. Finance charge on an outstanding balance. The requirement that a finance charge may be computed and imposed from time to time on the outstanding balance means that there is no specific amount financed for the plan for which the finance charge,

total of payments, and payment schedule can be calculated. A plan may meet the definition of open-end credit even though a finance charge is not normally imposed, provided the creditor has the right, under the plan, to impose a finance charge from time to time on the outstanding balance. For example, in some plans, a finance charge is not imposed if the consumer pays all or a specified portion of the outstanding balance within a given time period. Such a plan could meet the finance charge criterion, if the creditor has the right to impose a finance charge, even though the consumer actually pays no finance charges during the existence of the plan because the consumer takes advantage of the option to pay the balance (either in full or in installments) within the time necessary to avoid finance charges.

5. Reusable line. The total amount of credit that may be extended during the existence of an open-end plan is unlimited because available credit is generally replenished as earlier advances are repaid. A line of credit is self-replenishing even though the plan itself has a fixed expiration date, as long as during the plan's existence the consumer may use the line, repay, and reuse the credit. The creditor may occasionally or routinely verify credit information such as the consumer's continued income and employment status or information for security purposes but, to meet the definition of open-end credit, such verification of credit information may not be done as a condition of granting a consumer's request for a particular advance under the plan. In general, a credit line is self-replenishing if the consumer can take further advances as outstanding balances are repaid without being required to separately apply for those additional advances. A credit card account where the plan as a whole replenishes meets the self-replenishing criterion, notwithstanding the fact that a credit card issuer may

verify credit information from time to time in connection with specific transactions. This criterion of unlimited credit distinguishes open-end credit from a series of advances made pursuant to a closed-end credit loan commitment. For example:

i. Under a closed-end commitment, the creditor might agree to lend a total of $10,000 in a series of advances as needed by the consumer. When a consumer has borrowed the full $10,000, no more is advanced under that particular agreement, even if there has been repayment of a portion of the debt. (See § 226.2(a)(17)(iv) for disclosure requirements when a credit card is used to obtain the advances.)

ii. This criterion does not mean that the creditor must establish a specific credit limit for the line of credit or that the line of credit must always be replenished to its original amount. The creditor may reduce a credit limit or refuse to extend new credit in a particular case due to changes in the creditor's financial condition or the consumer's creditworthiness. (The rules in § 226.5b(f), however, limit the ability of a creditor to suspend credit advances for home equity plans.) While consumers should have a reasonable expectation of obtaining credit as long as they remain current and within any preset credit limits, further extensions of credit need not be an absolute right in order for the plan to meet the self-replenishing criterion.

6. Verifications of collateral value. Creditors that otherwise meet the requirements of § 226.2(a)(20) extend open-end credit notwithstanding the fact that the creditor must verify collateral values to comply with federal, state, or other applicable law or verifies the value of collateral in connection with a particular advance under the plan.

7. Open-end real estate mortgages. Some credit plans call for negotiated advances under so-called open-end real estate mortgages. Each such plan must be independently measured against the definition of open-end credit, regardless of the terminology used in the industry to describe the plan. The fact that a particular plan is called an open-end real estate mortgage, for example, does not, by itself, mean that it is open-end credit under the regulation.

2(a)(21) Periodic rate.

1. Basis. The periodic rate may be stated as a percentage (for example, 1½% per month) or as a decimal equivalent (for example, .015 monthly). It may be based on any portion of a year the creditor chooses. Some creditors use 1/360 of an annual rate as their periodic rate. These creditors:

i. May disclose a 1/360 rate as a daily periodic rate, without further explanation, if it is in fact only applied 360 days per year. But if the creditor applies that rate for 365 days, the creditor must note that fact and, of course, disclose the true annual percentage rate.

ii. Would have to apply the rate to the balance to disclose the annual percentage rate with the degree of accuracy required in the regulation (that is, within ⅛th of 1 percentage point of the rate based on the actual 365 days in the year).

2. Transaction charges. Periodic rate does not include initial one-time transaction charges, even if the charge is computed as a percentage of the transaction amount.

2(a)(22) Person.

1. Joint ventures. A joint venture is an organization and is therefore a person.

2. Attorneys. An attorney and his or her client are considered to be the same person for purposes of this regulation when the attorney is acting within the scope of the attorney-client relationship with regard to a particular transaction.

3. Trusts. A trust and its trustee are considered to be the same person for purposes of this regulation.

2(a)(23) Prepaid finance charge.

1. General. Prepaid finance charges must be taken into account under § 226.18(b) in computing the disclosed amount financed, and must be disclosed if the creditor provides an itemization of the amount financed under § 226.18(c).

2. Examples. i. Common examples of prepaid finance charges include:

A. Buyer's points.

B. Service fees.

C. Loan fees.

D. Finder's fees.

E. Loan-guarantee insurance.

F. Credit-investigation fees.

ii. However, in order for these or any other finance charges to be considered prepaid, they must be either paid separately in cash or check or withheld from the proceeds. Prepaid finance charges include any portion of the finance charge paid prior to or at closing or settlement.

3. Exclusions. Add-on and discount finance charges are not prepaid finance charges for purposes of this regulation. Finance charges are not prepaid merely because

they are precomputed, whether or not a portion of the charge will be rebated to the consumer upon prepayment. (See the commentary to § 226.18(b).)

4. Allocation of lump-sum payments. In a credit sale transaction involving a lump-sum payment by the consumer and a discount or other item that is a finance charge under § 226.4, the discount or other item is a prepaid finance charge to the extent the lump-sum payment is not applied to the cash price. For example, a seller sells property to a consumer for $10,000, requires the consumer to pay $3,000 at the time of the purchase, and finances the remainder as a closed-end credit transaction. The cash price of the property is $9,000. The seller is the creditor in the transaction and therefore the $1,000 difference between the credit and cash prices (the discount) is a finance charge. (See the commentary to § 226.4(b)(9) and (c)(5).) If the creditor applies the entire $3,000 to the cash price and adds the $1,000 finance charge to the interest on the $6,000 to arrive at the total finance charge, all of the $3,000 lump-sum payment is a downpayment and the discount is not a prepaid finance charge. However, if the creditor only applies $2,000 of the lump-sum payment to the cash price, then $2,000 of the $3,000 is a downpayment and the $1,000 discount is a prepaid finance charge.

2(a)(24) Residential mortgage transaction.

1. Relation to other sections. This term is important in five provisions in the regulation:

i. Section 226.4(c)(7)—exclusions from the finance charge.

ii. Section 226.15(f)—exemption from the right of rescission.

iii. Section 226.18(q)—whether or not the obligation is assumable.

iv. Section 226.20(b)—disclosure requirements for assumptions.

v. Section 226.23(f)—exemption from the right of rescission.

2. Lien status. The definition is not limited to first lien transactions. For example, a consumer might assume a paid-down first mortgage (or borrow part of the purchase price) and borrow the balance of the purchase price from a creditor who takes a second mortgage. The second mortgage transaction is a residential mortgage transaction if the dwelling purchased is the consumer's principal residence.

3. Principal dwelling. A consumer can have only one principal dwelling at a time. Thus, a vacation or other second home would not be a principal dwelling. However, if a consumer buys or builds a new dwelling that will become the consumer's principal dwelling within a year or upon the completion of construction, the new dwelling is considered the principal dwelling for purposes of applying this definition to a particular transaction. (See the commentary to §§ 226.15(a) and 226.23(a).)

4. Construction financing. If a transaction meets the definition of a residential mortgage transaction and the creditor chooses to disclose it as several transactions under § 226.17(c)(6), each one is considered to be a residential mortgage transaction, even if different creditors are involved. For example:

i. The creditor makes a construction loan to finance the initial construction of the consumer's principal dwelling, and the loan will be disbursed in five advances. The creditor gives six sets of disclosures (five for the construction phase and one for the permanent phase). Each one is a residential mortgage transaction.

ii. One creditor finances the initial construction of the consumer's principal dwelling and another creditor makes a loan to satisfy the construction loan and provide permanent financing. Both transactions are residential mortgage transactions.

5. Acquisition. i. A residential mortgage transaction finances the acquisition of a consumer's principal dwelling. The term does not include a transaction involving a consumer's principal dwelling if the consumer had previously purchased and acquired some interest to the dwelling, even though the consumer had not acquired full legal title.

ii. Examples of new transactions involving a previously acquired dwelling include the financing of a balloon payment due under a land sale contract and an extension of credit made to a joint owner of property to buy out the other joint owner's interest. In these instances, disclosures are not required under § 226.18(q) (assumability policies). However, the rescission rules of §§ 226.15 and 226.23 do apply to these new transactions.

iii. In other cases, the disclosure and rescission rules do not apply. For example, where a buyer enters into a written agreement with the creditor holding the seller's mortgage, allowing the buyer to assume the mortgage, if the buyer had previously purchased the property and agreed with the seller to make the mortgage payments, § 226.20(b) does not apply (assumptions involving residential mortgages).

6. Multiple purpose transactions. A transaction meets the definition of this section if any part of the loan proceeds will be used to finance the acquisition or initial construction of the consumer's principal dwelling. For example, a transaction to finance the initial construction of the consumer's principal dwelling is a residential mortgage transaction even if a portion of the funds will be disbursed directly to the consumer or used to satisfy a loan for the purchase of the land on which the dwelling will be built.

7. Construction on previously acquired vacant land. A residential mortgage transaction includes a loan to finance the construction of a consumer's principal dwelling on a vacant lot previously acquired by the consumer.

2(a)(25) Security interest.

1. Threshold test. The threshold test is whether a particular interest in property is recognized as a security interest under applicable law. The regulation does not determine whether a particular interest is a security interest under applicable law. If the creditor is unsure whether a particular interest is a security interest under applicable law (for example, if statutes and case law are either silent or inconclusive on the issue), the creditor may at its option consider such interests as security interests for Truth in Lending purposes. However, the regulation and the commentary do exclude specific interests, such as after-acquired property and accessories, from the scope of the definition regardless of their categorization under applicable law, and these named exclusions may not be disclosed as security interests under the regulation. (But see the discussion of exclusions elsewhere in the commentary to § 226.2(a)(25).)

2. Exclusions. The general definition of security interest excludes three groups of interests: incidental interests, interests in after-acquired property, and interests that arise solely by operation of law. These interests may not be disclosed with the disclosures required under § 226.18, but the creditor is not precluded from preserving these rights elsewhere in the contract documents, or invoking and enforcing such rights, if it is otherwise lawful to do so. If the creditor is unsure whether a particular interest is one of the excluded interests, the creditor may, at its option, consider such interests as security interests for Truth in Lending purposes.

3. Incidental interests. i. Incidental interests in property that are not security interests include, among other things:

A. Assignment of rents.

B. Right to condemnation proceeds.

C. Interests in accessories and replacements.

D. Interests in escrow accounts, such as for taxes and insurance.

E. Waiver of homestead or personal property rights.

ii. The notion of an incidental interest does not encompass an explicit security interest in an insurance policy if that policy is the primary collateral for the transaction—for example, in an insurance premium financing transaction.

4. Operation of law. Interests that arise solely by operation of law are excluded from the general definition. Also excluded are interests arising by operation of law that are merely repeated or referred to in the contract. However, if the creditor has an interest that arises by operation of law, such as a vendor's lien, and takes an independent security interest in the same property, such as a UCC security interest, the latter interest is a disclosable security interest unless otherwise provided.

5. Rescission rules. Security interests that arise solely by operation of law are security interests for purposes of rescission. Examples of such interests are mechanics' and materialmen's liens.

6. Specificity of disclosure. A creditor need not separately disclose multiple security interests that it may hold in the same collateral. The creditor need only disclose that the transaction is secured by the collateral, even when security interests from prior transactions remain of record and a new security interest is taken in connection with the

transaction. In disclosing the fact that the transaction is secured by the collateral, the creditor also need not disclose how the security interest arose. For example, in a closed-end credit transaction, a rescission notice need not specifically state that a new security interest is "acquired" or an existing security interest is "retained" in the transaction. The acquisition or retention of a security interest in the consumer's principal dwelling instead may be disclosed in a rescission notice with a general statement such as the following: "Your home is the security for the new transaction."

2(b) Rules of construction.

1. Footnotes. Footnotes are used extensively in the regulation to provide special exceptions and more detailed explanations and examples. Material that appears in a footnote has the same legal weight as material in the body of the regulation.

2. Amount. The numerical amount must be a dollar amount unless otherwise indicated. For example, in a closed-end transaction (Subpart C), the amount financed and the amount of any payment must be expressed as a dollar amount. In some cases, an amount should be expressed as a percentage. For example, in disclosures provided before the first transaction under an open-end plan (Subpart B), creditors are permitted to explain how the amount of any finance charge will be determined; where a cash-advance fee (which is a finance charge) is a percentage of each cash advance, the amount of the finance charge for that fee is expressed as a percentage.

Section 226.3—Exempt Transactions

1. Relationship to § 226.12. The provisions in § 226.12(a) and (b) governing the issuance of credit cards and the limitations on liability for their unauthorized use apply to

all credit cards, even if the credit cards are issued for use in connection with extensions of credit that otherwise are exempt under this section.

3(a) Business, commercial, agricultural, or organizational credit.

1. Primary purposes. A creditor must determine in each case if the transaction is primarily for an exempt purpose. If some question exists as to the primary purpose for a credit extension, the creditor is, of course, free to make the disclosures, and the fact that disclosures are made under such circumstances is not controlling on the question of whether the transaction was exempt. (See comment 3(a)-2, however, with respect to credit cards.)

2. Business purpose purchases.

i. Business-purpose credit cards – extensions of credit for consumer purposes. If a business-purpose credit card is issued to a person, the provisions of the regulation do not apply, other than as provided in §§ 226.12(a) and 226.12(b), even if extensions of credit for consumer purposes are occasionally made using that business-purpose credit card. For example, the billing error provisions set forth in § 226.13 do not apply to consumer-purpose extensions of credit using a business-purpose credit card.

ii. Consumer-purpose credit cards – extensions of credit for business purposes. If a consumer-purpose credit card is issued to a person, the provisions of the regulation apply, even to occasional extensions of credit for business purposes made using that consumer-purpose credit card. For example, a consumer may assert a billing error with respect to any extension of credit using a consumer-purpose credit card, even if the specific extension of credit on such credit card or open-end credit plan that is the subject of the dispute was made for business purposes.

3. Factors. In determining whether credit to finance an acquisition—such as securities, antiques, or art—is primarily for business or commercial purposes (as opposed to a consumer purpose), the following factors should be considered:

i. General.

A. The relationship of the borrower's primary occupation to the acquisition. The more closely related, the more likely it is to be business purpose.

B. The degree to which the borrower will personally manage the acquisition. The more personal involvement there is, the more likely it is to be business purpose.

C. The ratio of income from the acquisition to the total income of the borrower. The higher the ratio, the more likely it is to be business purpose.

D. The size of the transaction. The larger the transaction, the more likely it is to be business purpose.

E. The borrower's statement of purpose for the loan.

ii. Business-purpose examples. Examples of business-purpose credit include:

A. A loan to expand a business, even if it is secured by the borrower's residence or personal property.

B. A loan to improve a principal residence by putting in a business office.

C. A business account used occasionally for consumer purposes.

iii. Consumer-purpose examples. Examples of consumer-purpose credit include:

A. Credit extensions by a company to its employees or agents if the loans are used for personal purposes.

B. A loan secured by a mechanic's tools to pay a child's tuition.

C. A personal account used occasionally for business purposes.

4. Non-owner-occupied rental property. Credit extended to acquire, improve, or maintain rental property (regardless of the number of housing units) that is not owner-occupied is deemed to be for business purposes. This includes, for example, the acquisition of a warehouse that will be leased or a single-family house that will be rented to another person to live in. If the owner expects to occupy the property for more than 14 days during the coming year, the property cannot be considered non-owner-occupied and this special rule will not apply. For example, a beach house that the owner will occupy for a month in the coming summer and rent out the rest of the year is owner occupied and is not governed by this special rule. (See comment 3(a)–5, however, for rules relating to owner-occupied rental property.)

5. Owner-occupied rental property. If credit is extended to acquire, improve, or maintain rental property that is or will be owner-occupied within the coming year, different rules apply:

i. Credit extended to acquire the rental property is deemed to be for business purposes if it contains more than 2 housing units.

ii. Credit extended to improve or maintain the rental property is deemed to be for business purposes if it contains more than 4 housing units. Since the amended statute defines dwelling to include 1 to 4 housing units, this rule preserves the right of rescission for credit extended for purposes other than acquisition. Neither of these rules means that an extension of credit for property containing fewer than the requisite number of units is necessarily consumer credit. In such cases, the determination of whether it is business or consumer credit should be made by considering the factors listed in comment 3(a)–3.

6. Business credit later refinanced. Business-purpose credit that is exempt from the regulation may later be rewritten for consumer purposes. Such a transaction is consumer credit requiring disclosures only if the existing obligation is satisfied and replaced by a new obligation made for consumer purposes undertaken by the same obligor.

7. Credit card renewal. A consumer-purpose credit card that is subject to the regulation may be converted into a business-purpose credit card at the time of its renewal, and the resulting business-purpose credit card would be exempt from the regulation. Conversely, a business-purpose credit card that is exempt from the regulation may be converted into a consumer-purpose credit card at the time of its renewal, and the resulting consumer-purpose credit card would be subject to the regulation.

8. Agricultural purpose. An agricultural purpose includes the planting, propagating, nurturing, harvesting, catching, storing, exhibiting, marketing, transporting, processing, or manufacturing of food, beverages (including alcoholic beverages), flowers, trees, livestock, poultry, bees, wildlife, fish, or shellfish by a natural person engaged in farming, fishing, or growing crops, flowers, trees, livestock, poultry, bees, or wildlife. The exemption also applies to a transaction involving real property that includes a dwelling (for example, the purchase of a farm with a homestead) if the transaction is primarily for agricultural purposes.

9. Organizational credit. The exemption for transactions in which the borrower is not a natural person applies, for example, to loans to corporations, partnerships, associations, churches, unions, and fraternal organizations. The exemption applies

regardless of the purpose of the credit extension and regardless of the fact that a natural person may guarantee or provide security for the credit.

10. Land trusts. Credit extended for consumer purposes to a land trust is considered to be credit extended to a natural person rather than credit extended to an organization. In some jurisdictions, a financial institution financing a residential real estate transaction for an individual uses a land trust mechanism. Title to the property is conveyed to the land trust for which the financial institution itself is trustee. The underlying installment note is executed by the financial institution in its capacity as trustee and payment is secured by a trust deed, reflecting title in the financial institution as trustee. In some instances, the consumer executes a personal guaranty of the indebtedness. The note provides that it is payable only out of the property specifically described in the trust deed and that the trustee has no personal liability on the note. Assuming the transactions are for personal, family, or household purposes, these transactions are subject to the regulation since in substance (if not form) consumer credit is being extended.

3(b) Credit over $25,000 not secured by real property or a dwelling.

1. Coverage. Since a mobile home can be a dwelling under § 226.2(a)(19), this exemption does not apply to a credit extension secured by a mobile home used or expected to be used as the principal dwelling of the consumer, even if the credit exceeds $25,000. A loan commitment for closed-end credit in excess of $25,000 is exempt even though the amounts actually drawn never actually reach $25,000.

2. Open-end credit. i. An open-end credit plan is exempt under § 226.3(b) (unless secured by real property or personal property used or expected to be used as the consumer's principal dwelling) if either of the following conditions is met:

A. The creditor makes a firm commitment to lend over $25,000 with no requirement of additional credit information for any advances (except as permitted from time to time pursuant to § 226.2(a)(20)).

B. The initial extension of credit on the line exceeds $25,000.

ii. If a security interest is taken at a later time in any real property, or in personal property used or expected to be used as the consumer's principal dwelling, the plan would no longer be exempt. The creditor must comply with all of the requirements of the regulation including, for example, providing the consumer with an initial disclosure statement. If the security interest being added is in the consumer's principal dwelling, the creditor must also give the consumer the right to rescind the security interest. (See the commentary to § 226.15 concerning the right of rescission.)

3. Closed-end credit—subsequent changes. A closed-end loan for over $25,000 may later be rewritten for $25,000 or less, or a security interest in real property or in personal property used or expected to be used as the consumer's principal dwelling may be added to an extension of credit for over $25,000. Such a transaction is consumer credit requiring disclosures only if the existing obligation is satisfied and replaced by a new obligation made for consumer purposes undertaken by the same obligor. (See the commentary to § 226.23(a)(1) regarding the right of rescission when a security interest in a consumer's principal dwelling is added to a previously exempt transaction.)

3(c) Public utility credit.

1. Examples. Examples of public utility services include:

i. General.

A. Gas, water, or electrical services.

B. Cable television services.

C. Installation of new sewer lines, water lines, conduits, telephone poles, or metering equipment in an area not already serviced by the utility.

ii. Extensions of credit not covered. The exemption does not apply to extensions of credit, for example:

A. To purchase appliances such as gas or electric ranges, grills, or telephones.

B. To finance home improvements such as new heating or air conditioning systems.

3(d) Securities or commodities accounts.

1. Coverage. This exemption does not apply to a transaction with a broker registered solely with the state, or to a separate credit extension in which the proceeds are used to purchase securities.

3(e) Home fuel budget plans.

1. Definition. Under a typical home fuel budget plan, the fuel dealer estimates the total cost of fuel for the season, bills the customer for an average monthly payment, and makes an adjustment in the final payment for any difference between the estimated and the actual cost of the fuel. Fuel is delivered as needed, no finance charge is assessed, and the customer may withdraw from the plan at any time. Under these circumstances,

the arrangement is exempt from the regulation, even if a charge to cover the billing costs is imposed.

3(f) Student loan programs.

1. Coverage. This exemption applies to loans made, insured, or guaranteed under title IV of the Higher Education Act of 1965 (20 U.S.C. 1070 et seq.). This exemption does not apply to private education loans as defined by § 226.46(b)(5).

Section 226.4—Finance Charge

4(a) Definition.

1. Charges in comparable cash transactions. Charges imposed uniformly in cash and credit transactions are not finance charges. In determining whether an item is a finance charge, the creditor should compare the credit transaction in question with a similar cash transaction. A creditor financing the sale of property or services may compare charges with those payable in a similar cash transaction by the seller of the property or service.

i. For example, the following items are not finance charges:

A. Taxes, license fees, or registration fees paid by both cash and credit customers.

B. Discounts that are available to cash and credit customers, such as quantity discounts.

C. Discounts available to a particular group of consumers because they meet certain criteria, such as being members of an organization or having accounts at a particular financial institution. This is the case even if an individual must pay cash to obtain the discount, provided that credit customers who are members of the group and do not qualify for the discount pay no more than the nonmember cash customers.

D. Charges for a service policy, auto club membership, or policy of insurance against latent defects offered to or required of both cash and credit customers for the same price.

ii. In contrast, the following items are finance charges:

A. Inspection and handling fees for the staged disbursement of construction-loan proceeds.

B. Fees for preparing a Truth in Lending disclosure statement, if permitted by law (for example, the Real Estate Settlement Procedures Act prohibits such charges in certain transactions secured by real property).

C. Charges for a required maintenance or service contract imposed only in a credit transaction.

iii. If the charge in a credit transaction exceeds the charge imposed in a comparable cash transaction, only the difference is a finance charge. For example:

A. If an escrow agent is used in both cash and credit sales of real estate and the agent's charge is $100 in a cash transaction and $150 in a credit transaction, only $50 is a finance charge.

2. <u>Costs of doing business</u>. Charges absorbed by the creditor as a cost of doing business are not finance charges, even though the creditor may take such costs into consideration in determining the interest rate to be charged or the cash price of the property or service sold. However, if the creditor separately imposes a charge on the

consumer to cover certain costs, the charge is a finance charge if it otherwise meets the definition. For example:

i. A discount imposed on a credit obligation when it is assigned by a seller-creditor to another party is not a finance charge as long as the discount is not separately imposed on the consumer. (See § 226.4(b)(6).)

ii. A tax imposed by a state or other governmental body on a creditor is not a finance charge if the creditor absorbs the tax as a cost of doing business and does not separately impose the tax on the consumer. (For additional discussion of the treatment of taxes, see other commentary to § 226.4(a).)

3. Forfeitures of interest. If the creditor reduces the interest rate it pays or stops paying interest on the consumer's deposit account or any portion of it for the term of a credit transaction (including, for example, an overdraft on a checking account or a loan secured by a certificate of deposit), the interest lost is a finance charge. (See the commentary to § 226.4(c)(6).) For example:

A. A consumer borrows $5,000 for 90 days and secures it with a $10,000 certificate of deposit paying 15% interest. The creditor charges the consumer an interest rate of 6% on the loan and stops paying interest on $5,000 of the $10,000 certificate for the term of the loan. The interest lost is a finance charge and must be reflected in the annual percentage rate on the loan.

B. However, the consumer must be entitled to the interest that is not paid in order for the lost interest to be a finance charge. For example:

iii. A consumer wishes to buy from a financial institution a $10,000 certificate of deposit paying 15% interest but has only $4,000. The financial institution offers to lend the consumer $6,000 at an interest rate of 6% but will pay the 15% interest only on the amount of the consumer's deposit, $4,000. The creditor's failure to pay interest on the $6,000 does not result in an additional finance charge on the extension of credit, provided the consumer is entitled by the deposit agreement with the financial institution to interest only on the amount of the consumer's deposit.

iv. A consumer enters into a combined time deposit/credit agreement with a financial institution that establishes a time deposit account and an open-end line of credit. The line of credit may be used to borrow against the funds in the time deposit. The agreement provides for an interest rate on any credit extension of, for example, 1%. In addition, the agreement states that the creditor will pay 0% interest on the amount of the time deposit that corresponds to the amount of the credit extension(s). The interest that is not paid on the time deposit by the financial institution is not a finance charge (and therefore does not affect the annual percentage rate computation).

4. Treatment of transaction fees on credit card plans. Any transaction charge imposed on a cardholder by a card issuer is a finance charge, regardless of whether the issuer imposes the same, greater, or lesser charge on withdrawals of funds from an asset account such as a checking or savings account. For example:

i. Any charge imposed on a credit cardholder by a card issuer for the use of an automated teller machine (ATM) to obtain a cash advance (whether in a proprietary, shared, interchange, or other system) is a finance charge regardless of whether the card issuer imposes a charge on its debit cardholders for using the ATM to withdraw cash from a consumer asset account, such as a checking or savings account.

ii. Any charge imposed on a credit cardholder for making a purchase or obtaining a cash advance outside the United States, with a foreign merchant, or in a foreign currency is a finance charge, regardless of whether a charge is imposed on debit cardholders for such transactions. The following principles apply in determining what is a foreign transaction fee and the amount of the fee:

A. Included are (1) fees imposed when transactions are made in a foreign currency and converted to U.S. dollars; (2) fees imposed when transactions are made in U.S. dollars outside the U.S.; and (3) fees imposed when transactions are made (whether in a foreign currency or in U.S. dollars) with a foreign merchant, such as via a merchant's Web site. For example, a consumer may use a credit card to make a purchase in Bermuda, in U.S. dollars, and the card issuer may impose a fee because the transaction took place outside the United States.

B. Included are fees imposed by the card issuer and fees imposed by a third party that performs the conversion, such as a credit card network or the card issuer's corporate parent. (For example, in a transaction processed through a credit card network, the network may impose a 1 percent charge and the card-issuing bank may impose an additional 2 percent charge, for a total of a 3 percentage point foreign transaction fee being imposed on the consumer.)

C. Fees imposed by a third party are included only if they are directly passed on to the consumer. For example, if a credit card network imposes a 1 percent fee on the card issuer, but the card issuer absorbs the fee as a cost of doing business (and only passes it on to consumers in the general sense that the interest and fees are imposed on all its customers to recover its costs), then the fee is not a foreign transaction fee and need not be disclosed. In another example, if the credit card network imposes a 1 percent fee for a foreign transaction on the card issuer, and the card issuer imposes this same fee on the consumer who engaged in the foreign transaction, then the fee is a foreign transaction fee and a finance charge.

D. A card issuer is not required to disclose a fee imposed by a merchant. For example, if the merchant itself performs the currency conversion and adds a fee, this fee need not be disclosed by the card issuer. Under § 226.9(d), a card issuer is not obligated to disclose finance charges imposed by a party honoring a credit card, such as a merchant, although the merchant is required to disclose such a finance charge if the merchant is subject to the Truth in Lending Act and Regulation Z.

E. The foreign transaction fee is determined by first calculating the dollar amount of the transaction by using a currency conversion rate outside the card issuer's and third party's control. Any amount in excess of that dollar amount is a foreign transaction fee. Conversion rates outside the card issuer's and third party's control include, for example, a rate selected from the range of rates available in the wholesale currency exchange markets, an average of the highest and lowest rates available in such markets, or a government-mandated or government-managed exchange rate (or a rate selected from a range of such rates).

F. The rate used for a particular transaction need not be the same rate that the card issuer (or third party) itself obtains in its currency conversion operations. In addition, the rate used for a particular transaction need not be the rate in effect on the date of the transaction (purchase or cash advance).

5. Taxes.

i. Generally, a tax imposed by a state or other governmental body solely on a creditor is a finance charge if the creditor separately imposes the charge on the consumer.

ii. In contrast, a tax is not a finance charge (even if it is collected by the creditor) if applicable law imposes the tax:

A. Solely on the consumer;

B. On the creditor and the consumer jointly;

C. On the credit transaction, without indicating which party is liable for the tax; or

D. On the creditor, if applicable law directs or authorizes the creditor to pass the tax on to the consumer. (For purposes of this section, if applicable law is silent as to passing on the tax, the law is deemed not to authorize passing it on.)

iii. For example, a stamp tax, property tax, intangible tax, or any other state or local tax imposed on the consumer, or on the credit transaction, is not a finance charge even if the tax is collected by the creditor.

iv. In addition, a tax is not a finance charge if it is excluded from the finance charge by another provision of the regulation or commentary (for example, if the tax is imposed uniformly in cash and credit transactions).

4(a)(1) Charges by third parties.

1. Choosing the provider of a required service. An example of a third-party charge included in the finance charge is the cost of required mortgage insurance, even if the consumer is allowed to choose the insurer.

2. Annuities associated with reverse mortgages. Some creditors offer annuities in connection with a reverse-mortgage transaction. The amount of the premium is a finance charge if the creditor requires the purchase of the annuity incident to the credit. Examples include the following:

i. The credit documents reflect the purchase of an annuity from a specific provider or providers.

ii. The creditor assesses an additional charge on consumers who do not purchase an annuity from a specific provider.

iii. The annuity is intended to replace in whole or in part the creditor's payments to the consumer either immediately or at some future date.

4(a)(2) Special rule; closing agent charges.

1. General. This rule applies to charges by a third party serving as the closing agent for the particular loan. An example of a closing agent charge included in the finance charge is a courier fee where the creditor requires the use of a courier.

2. Required closing agent. If the creditor requires the use of a closing agent, fees charged by the closing agent are included in the finance charge only if the creditor requires the particular service, requires the imposition of the charge, or retains a portion of the charge. Fees charged by a third-party closing agent may be otherwise excluded from the finance charge under § 226.4. For example, a fee that would be paid in a comparable cash transaction may be excluded under § 226.4(a). A charge for conducting or attending a closing is a finance charge and may be excluded only if the charge is included in and is incidental to a lump-sum fee excluded under § 226.4(c)(7).

4(a)(3) Special rule; mortgage broker fees.

1. General. A fee charged by a mortgage broker is excluded from the finance charge if it is the type of fee that is also excluded when charged by the creditor. For example, to exclude an application fee from the finance charge under § 226.4(c)(1), a mortgage broker must charge the fee to all applicants for credit, whether or not credit is extended.

2. Coverage. This rule applies to charges paid by consumers to a mortgage broker in connection with a consumer credit transaction secured by real property or a dwelling.

3. Compensation by lender. The rule requires all mortgage broker fees to be included in the finance charge. Creditors sometimes compensate mortgage brokers under a separate arrangement with those parties. Creditors may draw on amounts paid by the consumer, such as points or closing costs, to fund their payment to the broker. Compensation paid by a creditor to a mortgage broker under an agreement is not included as a separate component of a consumer's total finance charge (although this compensation may be reflected in the finance charge if it comes from amounts paid by the consumer to the creditor that are finance charges, such as points and interest).

4(b) Examples of finance charges.

1. Relationship to other provisions. Charges or fees shown as examples of finance charges in § 226.4(b) may be excludable under § 226.4(c), (d), or (e). For example:

i. Premiums for credit life insurance, shown as an example of a finance charge under § 226.4(b)(7), may be excluded if the requirements of § 226.4(d)(1) are met.

ii Appraisal fees mentioned in § 226.4(b)(4) are excluded for real property or residential mortgage transactions under § 226.4(c)(7).

Paragraph 4(b)(2).

1. Checking account charges. A checking or transaction account charge imposed in connection with a credit feature is a finance charge under § 226.4(b)(2) to the extent the charge exceeds the charge for a similar account without a credit feature. If a charge for an account with a credit feature does not exceed the charge for an account without a credit feature, the charge is not a finance charge under § 226.4(b)(2). To illustrate:

i. A $5 service charge is imposed on an account with an overdraft line of credit (where the institution has agreed in writing to pay an overdraft), while a $3 service charge is imposed on an account without a credit feature; the $2 difference is a finance charge. (If the difference is not related to account activity, however, it may be excludable as a participation fee. See the commentary to § 226.4(c)(4).)

ii. A $5 service charge is imposed for each item that results in an overdraft on an account with an overdraft line of credit, while a $25 service charge is imposed for paying or returning each item on a similar account without a credit feature; the $5 charge is not a finance charge.

Paragraph 4(b)(3).

1. Assumption fees. The assumption fees mentioned in § 226.4(b)(3) are finance charges only when the assumption occurs and the fee is imposed on the new buyer. The assumption fee is a finance charge in the new buyer's transaction.

Paragraph 4(b)(5).

1. Credit loss insurance. Common examples of the insurance against credit loss mentioned in § 226.4(b)(5) are mortgage guaranty insurance, holder in due course insurance, and repossession insurance. Such premiums must be included in the finance charge only for the period that the creditor requires the insurance to be maintained.

2. Residual value insurance. Where a creditor requires a consumer to maintain residual value insurance or where the creditor is a beneficiary of a residual value insurance policy written in connection with an extension of credit (as is the case in some forms of automobile balloon-payment financing, for example), the premiums for the insurance must be included in the finance charge for the period that the insurance is to be maintained. If a creditor pays for residual-value insurance and absorbs the payment as a cost of doing business, such costs are not considered finance charges. (See comment 4(a)-2.)

Paragraphs 4(b)(7) and (b)(8).

1. Pre-existing insurance policy. The insurance discussed in § 226.4(b)(7) and (b)(8) does not include an insurance policy (such as a life or an automobile collision insurance policy) that is already owned by the consumer, even if the policy is assigned to or otherwise made payable to the creditor to satisfy an insurance requirement. Such a policy is not "written in connection with" the transaction, as long as the insurance was not purchased for use in that credit extension, since it was previously owned by the consumer.

2. Insurance written in connection with a transaction. Credit insurance sold before or after an open-end (not home-secured) plan is opened is considered "written in

connection with a credit transaction." Insurance sold after consummation in closed-end credit transactions or after the opening of a home-equity plan subject to the requirements of § 226.5b is not considered "written in connection with" the credit transaction if the insurance is written because of the consumer's default (for example, by failing to obtain or maintain required property insurance) or because the consumer requests insurance after consummation or the opening of a home-equity plan subject to the requirements of § 226.5b (although credit-sale disclosures may be required for the insurance sold after consummation if it is financed).

3. Substitution of life insurance. The premium for a life insurance policy purchased and assigned to satisfy a credit life insurance requirement must be included in the finance charge, but only to the extent of the cost of the credit life insurance if purchased from the creditor or the actual cost of the policy (if that is less than the cost of the insurance available from the creditor). If the creditor does not offer the required insurance, the premium to be included in the finance charge is the cost of a policy of insurance of the type, amount, and term required by the creditor.

4. Other insurance. Fees for required insurance not of the types described in § 226.4(b)(7) and (b)(8) are finance charges and are not excludable. For example:

i. The premium for a hospitalization insurance policy, if it is required to be purchased only in a credit transaction, is a finance charge.

Paragraph 4(b)(9).

1. Discounts for payment by other than credit. The discounts to induce payment by other than credit mentioned in § 226.4(b)(9) include, for example, the following situation:

i. The seller of land offers individual tracts for $10,000 each. If the purchaser pays cash, the price is $9,000, but if the purchaser finances the tract with the seller the price is $10,000. The $1,000 difference is a finance charge for those who buy the tracts on credit.

2. Exception for cash discounts.

i. Creditors may exclude from the finance charge discounts offered to consumers for using cash or another means of payment instead of using a credit card or an open-end plan. The discount may be in whatever amount the seller desires, either as a percentage of the regular price (as defined in section 103(z) of the act, as amended) or a dollar amount. Pursuant to section 167(b) of the act, this provision applies only to transactions involving an open-end credit plan or a credit card (whether open-end or closed-end credit is extended on the card). The merchant must offer the discount to prospective buyers whether or not they are cardholders or members of the open-end credit plan. The merchant may, however, make other distinctions. For example:

A. The merchant may limit the discount to payment by cash and not offer it for payment by check or by use of a debit card.

B. The merchant may establish a discount plan that allows a 15% discount for payment by cash, a 10% discount for payment by check, and a 5% discount for payment by a particular credit card. None of these discounts is a finance charge.

ii. Pursuant to section 171(c) of the act, discounts excluded from the finance charge under this paragraph are also excluded from treatment as a finance charge or other charge for credit under any state usury or disclosure laws.

3. Determination of the regular price.

i. The regular price is critical in determining whether the difference between the price charged to cash customers and credit customers is a discount or a surcharge, as these terms are defined in amended section 103 of the act. The regular price is defined in section 103 of the act as—

. . .the tag or posted price charged for the property or service if a single price is tagged or posted, or the price charged for the property or service when payment is made by use of an open-end credit account or a credit card if either (1) no price is tagged or posted, or (2) two prices are tagged or posted. . . .

ii. For example, in the sale of motor vehicle fuel, the tagged or posted price is the price displayed at the pump. As a result, the higher price (the open-end credit or credit card price) must be displayed at the pump, either alone or along with the cash price. Service station operators may designate separate pumps or separate islands as being for either cash or credit purchases and display only the appropriate prices at the various pumps. If a pump is capable of displaying on its meter either a cash or a credit price depending upon the consumer's means of payment, both the cash price and the credit price must be displayed at the pump. A service station operator may display the cash price of fuel by itself on a curb sign, as long as the sign clearly indicates that the price is limited to cash purchases.

4(b)(10) Debt cancellation and debt suspension fees.

1. Definition. Debt cancellation coverage provides for payment or satisfaction of all or part of a debt when a specified event occurs. The term "debt cancellation coverage" includes guaranteed automobile protection, or "GAP," agreements, which pay

or satisfy the remaining debt after property insurance benefits are exhausted. Debt suspension coverage provides for suspension of the obligation to make one or more payments on the date(s) otherwise required by the credit agreement, when a specified event occurs. The term "debt suspension" does not include loan payment deferral arrangements in which the triggering event is the bank's unilateral decision to allow a deferral of payment and the borrower's unilateral election to do so, such as by skipping or reducing one or more payments ("skip payments").

2. Coverage written in connection with a transaction. Coverage sold after consummation in closed-end credit transactions or after the opening of a home-equity plan subject to the requirements of § 226.5b is not "written in connection with" the credit transaction if the coverage is written because the consumer requests coverage after consummation or the opening of a home-equity plan subject to the requirements of § 226.5b (although credit-sale disclosures may be required for the coverage sold after consummation if it is financed). Coverage sold before or after an open-end (not home-secured) plan is opened is considered "written in connection with a credit transaction."

4(c) Charges excluded from the finance charge.

Paragraph 4(c)(1).

1. Application fees. An application fee that is excluded from the finance charge is a charge to recover the costs associated with processing applications for credit. The fee may cover the costs of services such as credit reports, credit investigations, and appraisals. The creditor is free to impose the fee in only certain of its loan programs, such as mortgage loans. However, if the fee is to be excluded from the finance charge

under § 226.4(c)(1), it must be charged to all applicants, not just to applicants who are approved or who actually receive credit.

Paragraph 4(c)(2).

1. Late payment charges.

i. Late payment charges can be excluded from the finance charge under § 226.4(c)(2) whether or not the person imposing the charge continues to extend credit on the account or continues to provide property or services to the consumer. In determining whether a charge is for actual unanticipated late payment on a 30-day account, for example, factors to be considered include:

A. The terms of the account. For example, is the consumer required by the account terms to pay the account balance in full each month? If not, the charge may be a finance charge.

B. The practices of the creditor in handling the accounts. For example, regardless of the terms of the account, does the creditor allow consumers to pay the accounts over a period of time without demanding payment in full or taking other action to collect? If no effort is made to collect the full amount due, the charge may be a finance charge.

ii. Section 226.4(c)(2) applies to late payment charges imposed for failure to make payments as agreed, as well as failure to pay an account in full when due.

2. Other excluded charges. Charges for "delinquency, default, or a similar occurrence" include, for example, charges for reinstatement of credit privileges or for submitting as payment a check that is later returned unpaid.

Paragraph 4(c)(3).

1. Assessing interest on an overdraft balance. A charge on an overdraft balance computed by applying a rate of interest to the amount of the overdraft is not a finance charge, even though the consumer agrees to the charge in the account agreement, unless the financial institution agrees in writing that it will pay such items.

Paragraph 4(c)(4).

1. Participation fees—periodic basis. The participation fees described in § 226.4(c)(4) do not necessarily have to be formal membership fees, nor are they limited to credit card plans. The provision applies to any credit plan in which payment of a fee is a condition of access to the plan itself, but it does not apply to fees imposed separately on individual closed-end transactions. The fee may be charged on a monthly, annual, or other periodic basis; a one-time, non-recurring fee imposed at the time an account is opened is not a fee that is charged on a periodic basis, and may not be treated as a participation fee.

2. Participation fees—exclusions. Minimum monthly charges, charges for non-use of a credit card, and other charges based on either account activity or the amount of credit available under the plan are not excluded from the finance charge by § 226.4(c)(4). Thus, for example, a fee that is charged and then refunded to the consumer based on the extent to which the consumer uses the credit available would be a finance charge. (See the commentary to § 226.4(b)(2). Also, see comment 14(c)-2 for treatment of certain types of fees excluded in determining the annual percentage rate for the periodic statement.)

Paragraph 4(c)(5).

1. Seller's points. The seller's points mentioned in § 226.4(c)(5) include any charges imposed by the creditor upon the noncreditor seller of property for providing credit to the buyer or for providing credit on certain terms. These charges are excluded from the finance charge even if they are passed on to the buyer, for example, in the form of a higher sales price. Seller's points are frequently involved in real estate transactions guaranteed or insured by governmental agencies. A commitment fee paid by a noncreditor seller (such as a real estate developer) to the creditor should be treated as seller's points. Buyer's points (that is, points charged to the buyer by the creditor), however, are finance charges.

2. Other seller-paid amounts. Mortgage insurance premiums and other finance charges are sometimes paid at or before consummation or settlement on the borrower's behalf by a noncreditor seller. The creditor should treat the payment made by the seller as seller's points and exclude it from the finance charge if, based on the seller's payment, the consumer is not legally bound to the creditor for the charge. A creditor who gives disclosures before the payment has been made should base them on the best information reasonably available.

Paragraph 4(c)(6).

1. Lost interest. Certain federal and state laws mandate a percentage differential between the interest rate paid on a deposit and the rate charged on a loan secured by that deposit. In some situations, because of usury limits the creditor must reduce the interest rate paid on the deposit and, as a result, the consumer loses some of the interest that would otherwise have been earned. Under § 226.4(c)(6), such "lost interest" need not be

included in the finance charge. This rule applies only to an interest reduction imposed because a rate differential is required by law and a usury limit precludes compliance by any other means. If the creditor imposes a differential that exceeds that required, only the lost interest attributable to the excess amount is a finance charge. (See the commentary to § 226.4(a).)

Paragraph 4(c)(7).

1. Real estate or residential mortgage transaction charges. The list of charges in § 226.4(c)(7) applies both to residential mortgage transactions (which may include, for example, the purchase of a mobile home) and to other transactions secured by real estate. The fees are excluded from the finance charge even if the services for which the fees are imposed are performed by the creditor's employees rather than by a third party. In addition, the cost of verifying or confirming information connected to the item is also excluded. For example, credit-report fees cover not only the cost of the report but also the cost of verifying information in the report. In all cases, charges excluded under § 226.4(c)(7) must be bona fide and reasonable.

2. Lump-sum charges. If a lump sum charged for several services includes a charge that is not excludable, a portion of the total should be allocated to that service and included in the finance charge. However, a lump sum charged for conducting or attending a closing (for example, by a lawyer or a title company) is excluded from the finance charge if the charge is primarily for services related to items listed in § 226.4(c)(7) (for example, reviewing or completing documents), even if other incidental services such as explaining various documents or disbursing funds for the parties are

performed. The entire charge is excluded even if a fee for the incidental services would be a finance charge if it were imposed separately.

3. Charges assessed during the loan term. Real estate or residential mortgage transaction charges excluded under § 226.4(c)(7) are those charges imposed solely in connection with the initial decision to grant credit. This would include, for example, a fee to search for tax liens on the property or to determine if flood insurance is required. The exclusion does not apply to fees for services to be performed periodically during the loan term, regardless of when the fee is collected. For example, a fee for one or more determinations during the loan term of the current tax-lien status or flood-insurance requirements is a finance charge, regardless of whether the fee is imposed at closing, or when the service is performed. If a creditor is uncertain about what portion of a fee to be paid at consummation or loan closing is related to the initial decision to grant credit, the entire fee may be treated as a finance charge.

4(d) Insurance and debt cancellation and debt suspension coverage.

1. General. Section 226.4(d) permits insurance premiums and charges and debt cancellation and debt suspension charges to be excluded from the finance charge. The required disclosures must be made in writing, except as provided in § 226.4(d)(4). The rules on location of insurance and debt cancellation and debt suspension disclosures for closed-end transactions are in § 226.17(a). For purposes of § 226.4(d), all references to insurance also include debt cancellation and debt suspension coverage unless the context indicates otherwise.

2. Timing of disclosures. If disclosures are given early, for example under § 226.17(f) or § 226.19(a), the creditor need not redisclose if the actual premium is

different at the time of consummation. If insurance disclosures are not given at the time of early disclosure and insurance is in fact written in connection with the transaction, the disclosures under § 226.4(d) must be made in order to exclude the premiums from the finance charge.

3. Premium rate increases. The creditor should disclose the premium amount based on the rates currently in effect and need not designate it as an estimate even if the premium rates may increase. An increase in insurance rates after consummation of a closed-end credit transaction or during the life of an open-end credit plan does not require redisclosure in order to exclude the additional premium from treatment as a finance charge.

4. Unit-cost disclosures.

i. Open-end credit. The premium or fee for insurance or debt cancellation or debt suspension for the initial term of coverage may be disclosed on a unit-cost basis in open-end credit transactions. The cost per unit should be based on the initial term of coverage, unless one of the options under comment 4(d)-12 is available.

ii. Closed-end credit. One of the transactions for which unit-cost disclosures (such as 50 cents per year for each $100 of the amount financed) may be used in place of the total insurance premium involves a particular kind of insurance plan. For example, a consumer with a current indebtedness of $8,000 is covered by a plan of credit life insurance coverage with a maximum of $10,000. The consumer requests an additional $4,000 loan to be covered by the same insurance plan. Since the $4,000 loan exceeds, in part, the maximum amount of indebtedness that can be covered by the plan, the creditor may properly give the insurance-cost disclosures on the $4,000 loan on a unit-cost basis.

5. Required credit life insurance; debt cancellation or suspension coverage. Credit life, accident, health, or loss-of-income insurance, and debt cancellation and suspension coverage described in § 226.4(b)(10), must be voluntary in order for the premium or charges to be excluded from the finance charge. Whether the insurance or coverage is in fact required or optional is a factual question. If the insurance or coverage is required, the premiums must be included in the finance charge, whether the insurance or coverage is purchased from the creditor or from a third party. If the consumer is required to elect one of several options—such as to purchase credit life insurance, or to assign an existing life insurance policy, or to pledge security such as a certificate of deposit—and the consumer purchases the credit life insurance policy, the premium must be included in the finance charge. (If the consumer assigns a preexisting policy or pledges security instead, no premium is included in the finance charge. The security interest would be disclosed under § 226.6(a)(4), § 226.6(b)(5)(ii), or § 226.18(m). See the commentary to § 226.4(b)(7) and (b)(8).)

6. Other types of voluntary insurance. Insurance is not credit life, accident, health, or loss-of-income insurance if the creditor or the credit account of the consumer is not the beneficiary of the insurance coverage. If the premium for such insurance is not imposed by the creditor as an incident to or a condition of credit, it is not covered by § 226.4.

7. Signatures. If the creditor offers a number of insurance options under § 226.4(d), the creditor may provide a means for the consumer to sign or initial for each option, or it may provide for a single authorizing signature or initial with the options selected designated by some other means, such as a check mark. The insurance

authorization may be signed or initialed by any consumer, as defined in § 226.2(a)(11), or by an authorized user on a credit card account.

8. Property insurance. To exclude property insurance premiums or charges from the finance charge, the creditor must allow the consumer to choose the insurer and disclose that fact. This disclosure must be made whether or not the property insurance is available from or through the creditor. The requirement that an option be given does not require that the insurance be readily available from other sources. The premium or charge must be disclosed only if the consumer elects to purchase the insurance from the creditor; in such a case, the creditor must also disclose the term of the property insurance coverage if it is less than the term of the obligation.

9. Single-interest insurance. Blanket and specific single-interest coverage are treated the same for purposes of the regulation. A charge for either type of single-interest insurance may be excluded from the finance charge if:

i. The insurer waives any right of subrogation.

ii. The other requirements of § 226.4(d)(2) are met. This includes, of course, giving the consumer the option of obtaining the insurance from a person of the consumer's choice. The creditor need not ascertain whether the consumer is able to purchase the insurance from someone else.

10. Single-interest insurance defined. The term single-interest insurance as used in the regulation refers only to the types of coverage traditionally included in the term vendor's single-interest insurance (or VSI), that is, protection of tangible property against normal property damage, concealment, confiscation, conversion, embezzlement, and skip. Some comprehensive insurance policies may include a variety of additional

coverages, such as repossession insurance and holder-in-due-course insurance. These types of coverage do not constitute single-interest insurance for purposes of the regulation, and premiums for them do not qualify for exclusion from the finance charge under § 226.4(d). If a policy that is primarily VSI also provides coverages that are not VSI or other property insurance, a portion of the premiums must be allocated to the nonexcludable coverages and included in the finance charge. However, such allocation is not required if the total premium in fact attributable to all of the non-VSI coverages included in the policy is $1.00 or less (or $5.00 or less in the case of a multiyear policy).

11. Initial term.

i. The initial term of insurance or debt cancellation or debt suspension coverage determines the period for which a premium amount must be disclosed, unless one of the options discussed under comment 4(d)-12 is available. For purposes of § 226.4(d), the initial term is the period for which the insurer or creditor is obligated to provide coverage, even though the consumer may be allowed to cancel the coverage or coverage may end due to nonpayment before that term expires.

ii. For example:

A. The initial term of a property insurance policy on an automobile that is written for one year is one year even though premiums are paid monthly and the term of the credit transaction is four years.

B. The initial term of an insurance policy is the full term of the credit transaction if the consumer pays or finances a single premium in advance.

12. Initial term; alternative.

i. General. A creditor has the option of providing cost disclosures on the basis of one year of insurance or debt cancellation or debt suspension coverage instead of a longer initial term (provided the premium or fee is clearly labeled as being for one year) if:

A. The initial term is indefinite or not clear, or

B. The consumer has agreed to pay a premium or fee that is assessed periodically but the consumer is under no obligation to continue the coverage, whether or not the consumer has made an initial payment.

ii. Open-end plans. For open-end plans, a creditor also has the option of providing unit-cost disclosure on the basis of a period that is less than one year if the consumer has agreed to pay a premium or fee that is assessed periodically, for example monthly, but the consumer is under no obligation to continue the coverage.

iii. Examples. To illustrate:

A. A credit life insurance policy providing coverage for a 30-year mortgage loan has an initial term of 30 years, even though premiums are paid monthly and the consumer is not required to continue the coverage. Disclosures may be based on the initial term, but the creditor also has the option of making disclosures on the basis of coverage for an assumed initial term of one year.

13. Loss-of-income insurance. The loss-of-income insurance mentioned in § 226.4(d) includes involuntary unemployment insurance, which provides that some or all of the consumer’s payments will be made if the consumer becomes unemployed involuntarily.

4(d)(3) Voluntary debt cancellation or debt suspension fees.

1. General. Fees charged for the specialized form of debt cancellation agreement known as guaranteed automobile protection ("GAP") agreements must be disclosed according to § 226.4(d)(3) rather than according to § 226.4(d)(2) for property insurance.

2. Disclosures. Creditors can comply with § 226.4(d)(3) by providing a disclosure that refers to debt cancellation or debt suspension coverage whether or not the coverage is considered insurance. Creditors may use the model credit insurance disclosures only if the debt cancellation or debt suspension coverage constitutes insurance under state law. (See Model Clauses and Samples at G-16 and H-17 in appendix G and appendix H to part 226 for guidance on how to provide the disclosure required by § 226.4(d)(3)(iii) for debt suspension products.)

3. Multiple events. If debt cancellation or debt suspension coverage for two or more events is provided at a single charge, the entire charge may be excluded from the finance charge if at least one of the events is accident or loss of life, health, or income and the conditions specified in § 226.4(d)(3) or, as applicable, § 226.4(d)(4), are satisfied.

4. Disclosures in programs combining debt cancellation and debt suspension features. If the consumer's debt can be cancelled under certain circumstances, the disclosure may be modified to reflect that fact. The disclosure could, for example, state (in addition to the language required by § 226.4(d)(3)(iii)) that "In some circumstances, my debt may be cancelled." However, the disclosure would not be permitted to list the specific events that would result in debt cancellation.

4(d)(4) Telephone purchases.

1. Affirmative request. A creditor would not satisfy the requirement to obtain a consumer's affirmative request if the "request" was a response to a script that uses leading questions or negative consent. A question asking whether the consumer wishes to enroll in the credit insurance or debt cancellation or suspension plan and seeking a yes-or-no response (such as "Do you want to enroll in this optional debt cancellation plan?") would not be considered leading.

4(e) Certain security interest charges.

1. Examples.

i. Excludable charges. Sums must be actually paid to public officials to be excluded from the finance charge under § 226.4(e)(1) and (e)(3). Examples are charges or other fees required for filing or recording security agreements, mortgages, continuation statements, termination statements, and similar documents, as well as intangible property or other taxes even when the charges or fees are imposed by the state solely on the creditor and charged to the consumer (if the tax must be paid to record a security agreement). (See comment 4(a)-5 regarding the treatment of taxes, generally.)

ii. Charges not excludable. If the obligation is between the creditor and a third party (an assignee, for example), charges or other fees for filing or recording security agreements, mortgages, continuation statements, termination statements, and similar documents relating to that obligation are not excludable from the finance charge under this section.

2. Itemization. The various charges described in § 226.4(e)(1) and (e)(3) may be totaled and disclosed as an aggregate sum, or they may be itemized by the specific fees

and taxes imposed. If an aggregate sum is disclosed, a general term such as security interest fees or filing fees may be used.

3. Notary fees. In order for a notary fee to be excluded under § 226.4(e)(1), all of the following conditions must be met:

i. The document to be notarized is one used to perfect, release, or continue a security interest.

ii. The document is required by law to be notarized.

iii. A notary is considered a public official under applicable law.

iv. The amount of the fee is set or authorized by law.

4. Nonfiling insurance. The exclusion in § 226.4(e)(2) is available only if nonfiling insurance is purchased. If the creditor collects and simply retains a fee as a sort of "self-insurance" against nonfiling, it may not be excluded from the finance charge. If the nonfiling insurance premium exceeds the amount of the fees excludable from the finance charge under § 226.4(e)(1), only the excess is a finance charge. For example:

i. The fee for perfecting a security interest is $5.00 and the fee for releasing the security interest is $3.00. The creditor charges $10.00 for nonfiling insurance. Only $8.00 of the $10.00 is excludable from the finance charge.

4(f) Prohibited offsets.

1. Earnings on deposits or investments. The rule that the creditor shall not deduct any earnings by the consumer on deposits or investments applies whether or not the creditor has a security interest in the property.

SUBPART B – OPEN-END CREDIT

Section 226.5—General Disclosure Requirements

5(a) Form of disclosures.

5(a)(1) General.

1. Clear and conspicuous standard. The "clear and conspicuous" standard generally requires that disclosures be in a reasonably understandable form. Disclosures for credit card applications and solicitations under § 226.5a, highlighted account-opening disclosures under § 226.6(b)(1), highlighted disclosure on checks that access a credit card under § 226.9(b)(3), highlighted change-in-terms disclosures under § 226.9(c)(2)(iv)(C), and highlighted disclosures when a rate is increased due to delinquency, default or for a penalty under § 226.9(g)(3)(ii) must also be readily noticeable to the consumer.

2. Clear and conspicuous—reasonably understandable form. Except where otherwise provided, the reasonably understandable form standard does not require that disclosures be segregated from other material or located in any particular place on the disclosure statement, or that numerical amounts or percentages be in any particular type size. For disclosures that are given orally, the standard requires that they be given at a speed and volume sufficient for a consumer to hear and comprehend them. (See comment 5(b)(1)(ii)-1.) Except where otherwise provided, the standard does not prohibit:

i. Pluralizing required terminology ("finance charge" and "annual percentage rate").

ii. Adding to the required disclosures such items as contractual provisions, explanations of contract terms, state disclosures, and translations.

iii. Sending promotional material with the required disclosures.

iv. Using commonly accepted or readily understandable abbreviations (such as "mo." for "month" or "Tx." for "Texas") in making any required disclosures.

v. Using codes or symbols such as "APR" (for annual percentage rate), "FC" (for finance charge), or "Cr" (for credit balance), so long as a legend or description of the code or symbol is provided on the disclosure statement.

3. Clear and conspicuous—readily noticeable standard. To meet the readily noticeable standard, disclosures for credit card applications and solicitations under § 226.5a, highlighted account-opening disclosures under § 226.6(b)(1), highlighted disclosures on checks that access a credit card account under § 226.9(b)(3), highlighted change-in-terms disclosures under § 226.9(c)(2)(iv)(C), and highlighted disclosures when a rate is increased due to delinquency, default or penalty pricing under § 226.9(g)(3)(ii) must be given in a minimum of 10-point font. (See special rule for font size requirements for the annual percentage rate for purchases under §§ 226.5a(b)(1) and 226.6(b)(2)(i).)

4. Integrated document. The creditor may make both the account-opening disclosures (§ 226.6) and the periodic-statement disclosures (§ 226.7) on more than one page, and use both the front and the reverse sides, except where otherwise indicated, so long as the pages constitute an integrated document. An integrated document would not include disclosure pages provided to the consumer at different times or disclosures interspersed on the same page with promotional material. An integrated document would include, for example:

i. Multiple pages provided in the same envelope that cover related material and are folded together, numbered consecutively, or clearly labeled to show that they relate to one another; or

ii. A brochure that contains disclosures and explanatory material about a range of services the creditor offers, such as credit, checking account, and electronic fund transfer features

5. Disclosures covered. Disclosures that must meet the "clear and conspicuous" standard include all required communications under this subpart. Therefore, disclosures made by a person other than the card issuer, such as disclosures of finance charges imposed at the time of honoring a consumer's credit card under § 226.9(d), and notices, such as the correction notice required to be sent to the consumer under § 226.13(e), must also be clear and conspicuous.

Paragraph 5(a)(1)(ii)(A).

1. Electronic disclosures. Disclosures that need not be provided in writing under § 226.5(a)(1)(ii)(A) may be provided in writing, orally, or in electronic form. If the consumer requests the service in electronic form, such as on the creditor's Web site, the specified disclosures may be provided in electronic form without regard to the consumer consent or other provisions of the Electronic Signatures in Global and National Commerce Act (E-Sign Act) (15 U.S.C. 7001 et seq.).

Paragraph 5(a)(1)(iii).

1. Disclosures not subject to E-Sign Act. See the commentary to § 226.5(a)(1)(ii)(A) regarding disclosures (in addition to those specified under

§ 226.5(a)(1)(iii)) that may be provided in electronic form without regard to the consumer consent or other provisions of the E-Sign Act.

5(a)(2) Terminology.

1. When disclosures must be more conspicuous. For home-equity plans subject to § 226.5b, the terms finance charge and annual percentage rate, when required to be used with a number, must be disclosed more conspicuously than other required disclosures, except in the cases provided in § 226.5(a)(2)(ii). At the creditor's option, finance charge and annual percentage rate may also be disclosed more conspicuously than the other required disclosures even when the regulation does not so require. The following examples illustrate these rules:

i. In disclosing the annual percentage rate as required by § 226.6(a)(1)(ii), the term annual percentage rate is subject to the more conspicuous rule.

ii. In disclosing the amount of the finance charge, required by § 226.7(a)(6)(i), the term finance charge is subject to the more conspicuous rule.

iii. Although neither finance charge nor annual percentage rate need be emphasized when used as part of general informational material or in textual descriptions of other terms, emphasis is permissible in such cases. For example, when the terms appear as part of the explanations required under § 226.6(a)(1)(iii) and (a)(1)(iv), they may be equally conspicuous as the disclosures required under §§ 226.6(a)(1)(ii) and 226.7(a)(7).

2. Making disclosures more conspicuous. In disclosing the terms finance charge and annual percentage rate more conspicuously for home-equity plans subject to § 226.5b, only the words finance charge and annual percentage rate should be

accentuated. For example, if the term total finance charge is used, only finance charge should be emphasized. The disclosures may be made more conspicuous by, for example:

i. Capitalizing the words when other disclosures are printed in lower case.

ii. Putting them in bold print or a contrasting color.

iii. Underlining them.

iv. Setting them off with asterisks.

v. Printing them in larger type.

3. Disclosure of figures—exception to more conspicuous rule. For home-equity plans subject to § 226.5b, the terms annual percentage rate and finance charge need not be more conspicuous than figures (including, for example, numbers, percentages, and dollar signs).

4. Consistent terminology. Language used in disclosures required in this subpart must be close enough in meaning to enable the consumer to relate the different disclosures; however, the language need not be identical.

5(b) Time of disclosures.

5(b)(1) Account-opening disclosures.

5(b)(1)(i) General rule.

1. Disclosure before the first transaction. When disclosures must be furnished "before the first transaction," account-opening disclosures must be delivered before the consumer becomes obligated on the plan. Examples include:

i. Purchases. The consumer makes the first purchase, such as when a consumer opens a credit plan and makes purchases contemporaneously at a retail store, except when the consumer places a telephone call to make the purchase and opens the plan contemporaneously (see commentary to § 226.5(b)(1)(iii) below).

ii. Advances. The consumer receives the first advance. If the consumer receives a cash advance check at the same time the account-opening disclosures are provided, disclosures are still timely if the consumer can, after receiving the disclosures, return the cash advance check to the creditor without obligation (for example, without paying finance charges).

2. Reactivation of suspended account. If an account is temporarily suspended (for example, because the consumer has exceeded a credit limit, or because a credit card is reported lost or stolen) and then is reactivated, no new account-opening disclosures are required.

3. Reopening closed account. If an account has been closed (for example, due to inactivity, cancellation, or expiration) and then is reopened, new account-opening disclosures are required. No new account-opening disclosures are required, however, when the account is closed merely to assign it a new number (for example, when a credit card is reported lost or stolen) and the "new" account then continues on the same terms.

4. Converting closed-end to open-end credit. If a closed-end credit transaction is converted to an open-end credit account under a written agreement with the consumer, account-opening disclosures under § 226.6 must be given before the consumer becomes obligated on the open-end credit plan. (See the commentary to § 226.17 on converting open-end credit to closed-end credit.)

5. Balance transfers. A creditor that solicits the transfer by a consumer of outstanding balances from an existing account to a new open-end plan must furnish the

disclosures required by § 226.6 so that the consumer has an opportunity, after receiving the disclosures, to contact the creditor before the balance is transferred and decline the transfer. For example, assume a consumer responds to a card issuer's solicitation for a credit card account subject to § 226.5a that offers a range of balance transfer annual percentage rates, based on the consumer's creditworthiness. If the creditor opens an account for the consumer, the creditor would comply with the timing rules of this section by providing the consumer with the annual percentage rate (along with the fees and other required disclosures) that would apply to the balance transfer in time for the consumer to contact the creditor and withdraw the request. A creditor that permits consumers to withdraw the request by telephone has met this timing standard if the creditor does not effect the balance transfer until 10 days after the creditor has sent account-opening disclosures to the consumer, assuming the consumer has not contacted the creditor to withdraw the request. Card issuers that are subject to the requirements of § 226.5a may establish procedures that comply with both §§ 226.5a and 226.6 in a single disclosure statement.

6. Substitution or replacement of credit card accounts.

i. Generally. When a card issuer substitutes or replaces an existing credit card account with another credit card account, the card issuer must either provide notice of the terms of the new account consistent with § 226.6(b) or provide notice of the changes in the terms of the existing account consistent with § 226.9(c)(2). Whether a substitution or replacement 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 §§ 226.6(b) and 226.9(c)(2) is determined in light of all the relevant facts and circumstances. For additional requirements and limitations related to the substitution or replacement of credit card accounts, see §§ 226.12(a) and 226.55(d) and comments 12(a)(1)-1 through -8, 12(a)(2)-1 through -9, 55(b)(3)-3, and 55(d)-1 through -3.

ii. Relevant facts and circumstances. Listed below are facts and circumstances that are relevant to whether a substitution or replacement 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 §§ 226.6(b) and 226.9(c)(2). When most of the facts and circumstances listed below are present, the substitution or replacement likely constitutes the opening of a new account for which § 226.6(b) disclosures are appropriate. When few of the facts and circumstances listed below are present, the substitution or replacement likely constitutes a change in the terms of an existing account for which § 226.9(c)(2) disclosures are appropriate.

A. Whether the card issuer provides the consumer with a new credit card;

B. Whether the card issuer provides the consumer with a new account number;

C. Whether the account provides new features or benefits after the substitution or replacement (such as rewards on purchases);

D. Whether the account can be used to conduct transactions at a greater or lesser number of merchants after the substitution or replacement;

E. Whether the card issuer implemented the substitution or replacement on an individualized basis; and

F. Whether the account becomes a different type of open-end plan after the substitution or replacement (such as when a charge card is replaced by a credit card).

5(b)(1)(ii) Charges imposed as part of an open-end (not home-secured) plan.

1. Disclosing charges before the fee is imposed. Creditors may disclose charges imposed as part of an open-end (not home-secured) plan orally or in writing at any time before a consumer agrees to pay the fee or becomes obligated for the charge, unless the charge is specified under § 226.6(b)(2). (Charges imposed as part of an open-end (not home-secured plan) that are not specified under § 226.6(b)(2) may alternatively be disclosed in electronic form; see the commentary to § 226.5(a)(1)(ii)(A).) Creditors must provide such disclosures at a time and in a manner that a consumer would be likely to notice them. For example, if a consumer telephones a card issuer to discuss a particular service, a creditor would meet the standard if the creditor clearly and conspicuously discloses the fee associated with the service that is the topic of the telephone call orally to the consumer. Similarly, a creditor providing marketing materials in writing to a consumer about a particular service would meet the standard if the creditor provided a clear and conspicuous written disclosure of the fee for that service in those same materials. A creditor that provides written materials to a consumer about a particular service but provides a fee disclosure for another service not promoted in such materials would not meet the standard. For example, if a creditor provided marketing materials promoting payment by Internet, but included the fee for a replacement card on such materials with no explanation, the creditor would not be disclosing the fee at a time and in a manner that the consumer would be likely to notice the fee.

5(b)(1)(iii) Telephone purchases.

1. Return policies. In order for creditors to provide disclosures in accordance with the timing requirements of this paragraph, consumers must be permitted to return

merchandise purchased at the time the plan was established without paying mailing or return-shipment costs. Creditors may impose costs to return subsequent purchases of merchandise under the plan, or to return merchandise purchased by other means such as a credit card issued by another creditor. A reasonable return policy would be of sufficient duration that the consumer is likely to have received the disclosures and had sufficient time to make a decision about the financing plan before his or her right to return the goods expires. Return policies need not provide a right to return goods if the consumer consumes or damages the goods, or for installed appliances or fixtures, provided there is a reasonable repair or replacement policy to cover defective goods or installations. If the consumer chooses to reject the financing plan, creditors comply with the requirements of this paragraph by permitting the consumer to pay for the goods with another reasonable form of payment acceptable to the merchant and keep the goods although the creditor cannot require the consumer to do so.

5(b)(1)(iv) Membership fees.

1. Membership fees. See § 226.5a(b)(2) and related commentary for guidance on fees for issuance or availability of a credit or charge card.

2. Rejecting the plan. If a consumer has paid or promised to pay a membership fee including an application fee excludable from the finance charge under § 226.4(c)(1) before receiving account-opening disclosures, the consumer may, after receiving the disclosures, reject the plan and not be obligated for the membership fee, application fee, or any other fee or charge. A consumer who has received the disclosures and uses the account, or makes a payment on the account after receiving a billing statement, is deemed not to have rejected the plan.

3. Using the account. A consumer uses an account by obtaining an extension of credit after receiving the account-opening disclosures, such as by making a purchase or obtaining an advance. A consumer does not "use" the account by activating the account. A consumer also does not "use" the account when the creditor assesses fees on the account (such as start-up fees or fees associated with credit insurance or debt cancellation or suspension programs agreed to as a part of the application and before the consumer receives account-opening disclosures). For example, the consumer does not "use" the account when a creditor sends a billing statement with start-up fees, there is no other activity on the account, the consumer does not pay the fees, and the creditor subsequently assesses a late fee or interest on the unpaid fee balances. A consumer also does not "use" the account by paying an application fee excludable from the finance charge under § 226.4(c)(1) prior to receiving the account-opening disclosures.

4. Home-equity plans. Creditors offering home-equity plans subject to the requirements of § 226.5b are subject to the requirements of § 226.5b(h) regarding the collection of fees.

5(b)(2) Periodic statements.

Paragraph 5(b)(2)(i).

1. Periodic statements not required. Periodic statements need not be sent in the following cases:

i. If the creditor adjusts an account balance so that at the end of the cycle the balance is less than $1—so long as no finance charge has been imposed on the account for that cycle.

ii. If a statement was returned as undeliverable. If a new address is provided, however, within a reasonable time before the creditor must send a statement, the creditor must resume sending statements. Receiving the address at least 20 days before the end of a cycle would be a reasonable amount of time to prepare the statement for that cycle. For example, if an address is received 22 days before the end of the June cycle, the creditor must send the periodic statement for the June cycle. (See § 226.13(a)(7).)

2. Termination of draw privileges. When a consumer's ability to draw on an open-end account is terminated without being converted to closed-end credit under a written agreement, the creditor must continue to provide periodic statements to those consumers entitled to receive them under § 226.5(b)(2)(i), for example, when the draw period of an open-end credit plan ends and consumers are paying off outstanding balances according to the account agreement or under the terms of a workout agreement that is not converted to a closed-end transaction. In addition, creditors must continue to follow all of the other open-end credit requirements and procedures in subpart B.

3. Uncollectible accounts. An account is deemed uncollectible for purposes of § 226.5(b)(2)(i) when a creditor has ceased collection efforts, either directly or through a third party.

4. Instituting collection proceedings. Creditors institute a delinquency collection proceeding by filing a court action or initiating an adjudicatory process with a third party. Assigning a debt to a debt collector or other third party would not constitute instituting a collection proceeding.

Paragraph 5(b)(2)(ii).

1. Reasonable procedures. A creditor is not required to determine the specific date on which periodic statements are mailed or delivered to each individual consumer. A creditor complies with § 226.5(b)(2)(ii) if it has adopted reasonable procedures designed to ensure that periodic statements are mailed or delivered to consumers no later than a certain number of days after the closing date of the billing cycle and adds that number of days to the 21-day period required by § 226.5(b)(2)(ii) when determining the payment due date and the date on which any grace period expires. For example, if a creditor has adopted reasonable procedures designed to ensure that periodic statements are mailed or delivered to consumers no later than three days after the closing date of the billing cycle, the payment due date and the date on which any grace period expires must be no less than 24 days after the closing date of the billing cycle.

2. Treating a payment as late for any purpose and collecting any finance or other charges. Treating a payment as late for any purpose includes increasing the annual percentage rate as a penalty, reporting the consumer as delinquent to a credit reporting agency, or assessing a late fee or any other fee based on the consumer's failure to make a payment within a specified amount of time or by a specified date. The prohibition in § 226.5(b)(2)(ii) on treating a payment as late for any purpose or collecting finance or other charges applies only during the 21-day period following mailing or delivery of the periodic statement. When an account is not eligible for a grace period, imposing a finance charge due to a periodic interest rate does not constitute treating a payment as late or collecting finance or other charges as a result of a failure to comply with § 226.5(b)(2)(ii).

3. Payment due date. For purposes of § 226.5(b)(2)(ii), "payment due date" means the date by which the creditor requires the consumer to make the required minimum periodic payment in order to avoid being treated as late for any purpose, except as set forth in paragraphs i. and ii. below.

i. Courtesy period following payment due date. Although the terms of the account agreement may require that payment be made by a certain date, some creditors provide an additional period of time after that date during which a late payment fee will not be assessed. In some cases, this period is set forth in the account agreement while in others it is provided as an informal policy or practice. Regardless, for purposes of § 226.5(b)(2)(ii), the payment due date is the due date according to the legal obligation between the parties, not the end of the additional period of time. For example, if an account agreement for a home equity plan subject to the requirements of § 226.5b provides that payment is due on the first day of the month but a late payment fee will not be assessed if the payment is received by the fifteenth day of the month, the payment due date for purposes of § 226.5(b)(2)(ii) is the first day of the month. Similarly, if a cardholder agreement provides that payment is due on the fifteenth day of the month but, under the creditor's informal "courtesy" period, a late payment fee will not be assessed if the payment is received by the eighteenth day of the month, the payment due date for purposes of § 226.5(b)(2)(ii) is the fifteenth day of the month.

ii. Laws affecting assessment of late payment and other fees. Some state or other laws require that a certain number of days must elapse following a due date before a late payment or other fee may be imposed. For example, assume that the account agreement provides that payment is due on the fifteenth day of the month but, under state law, the creditor is prohibited from assessing a late payment fee until the twenty-sixth day of the month. For purposes of § 226.5(b)(2)(ii), the payment due date is the due date according to the legal obligation between the parties (the fifteenth day of the month), not the date before which state law prohibits the imposition of a late payment fee (the twenty-sixth day of the month).

4. Definition of grace period. For purposes of § 226.5(b)(2)(ii), "grace period" means a period within which any credit extended may be repaid without incurring a finance charge due to a periodic interest rate. A deferred interest or similar promotional program under which the consumer is not obligated to pay interest that accrues on a balance if that balance is paid in full prior to the expiration of a specified period of time is not a grace period for purposes of § 226.5(b)(2)(ii). Similarly, a courtesy period following the payment due date is not a grace period for purposes of § 226.5(b)(2)(ii). See comment 5(b)(2)(ii)-3.i.

5. Consumer request to pick up periodic statements. When a consumer initiates a request, the creditor may permit, but may not require, the consumer to pick up periodic statements. If the consumer wishes to pick up a statement, the statement must be made available in accordance with § 226.5(b)(2)(ii).

6. Deferred interest and similar promotional programs. See comment 7(b)-1.iv.

Paragraph 5(b)(2)(iii).

1. Computer malfunction. The exceptions identified in § 226.5(b)(2)(iii) of this section do not extend to the failure to provide a periodic statement because of computer malfunction.

2. Calling for periodic statements. When the consumer initiates a request, the creditor may permit, but may not require, consumers to pick up their periodic statements. If the consumer wishes to pick up the statement and the plan has a grace period, the statement must be made available in accordance with the 14-day rule.

5(c) Basis of disclosures and use of estimates.

1. Legal obligation. The disclosures should reflect the credit terms to which the parties are legally bound at the time of giving the disclosures.

i. The legal obligation is determined by applicable state or other law.

ii. The fact that a term or contract may later be deemed unenforceable by a court on the basis of equity or other grounds does not, by itself, mean that disclosures based on that term or contract did not reflect the legal obligation.

iii. The legal obligation normally is presumed to be contained in the contract that evidences the agreement. But this may be rebutted if another agreement between the parties legally modifies that contract.

2. Estimates—obtaining information. Disclosures may be estimated when the exact information is unknown at the time disclosures are made. Information is unknown if it is not reasonably available to the creditor at the time disclosures are made. The reasonably available standard requires that the creditor, acting in good faith, exercise due diligence in obtaining information. In using estimates, the creditor is not required to disclose the basis for the estimated figures, but may include such explanations as additional information. The creditor normally may rely on the representations of other parties in obtaining information. For example, the creditor might look to insurance companies for the cost of insurance.

3. Estimates—redisclosure. If the creditor makes estimated disclosures, redisclosure is not required for that consumer, even though more accurate information becomes available before the first transaction. For example, in an open-end plan to be secured by real estate, the creditor may estimate the appraisal fees to be charged; such an estimate might reasonably be based on the prevailing market rates for similar appraisals. If the exact appraisal fee is determinable after the estimate is furnished but before the consumer receives the first advance under the plan, no new disclosure is necessary.

5(d) Multiple creditors; multiple consumers.

1. Multiple creditors. Under § 226.5(d):

i. Creditors must choose which of them will make the disclosures.

ii. A single, complete set of disclosures must be provided, rather than partial disclosures from several creditors.

iii. All disclosures for the open-end credit plan must be given, even if the disclosing creditor would not otherwise have been obligated to make a particular disclosure.

2. Multiple consumers. Disclosures may be made to either obligor on a joint account. Disclosure responsibilities are not satisfied by giving disclosures to only a surety or guarantor for a principal obligor or to an authorized user. In rescindable transactions, however, separate disclosures must be given to each consumer who has the right to rescind under § 226.15.

3. Card issuer and person extending credit not the same person. Section 127(c)(4)(D) of the Truth in Lending Act (15 U.S.C. 1637(c)(4)(D)) contains rules pertaining to charge card issuers with plans that allow access to an open-end credit plan

that is maintained by a person other than the charge card issuer. These rules are not implemented in Regulation Z (although they were formerly implemented in § 226.5a(f)). However, the statutory provisions remain in effect and may be used by charge card issuers with plans meeting the specified criteria.

5(e) Effect of subsequent events.

1. Events causing inaccuracies. Inaccuracies in disclosures are not violations if attributable to events occurring after disclosures are made. For example, when the consumer fails to fulfill a prior commitment to keep the collateral insured and the creditor then provides the coverage and charges the consumer for it, such a change does not make the original disclosures inaccurate. The creditor may, however, be required to provide a new disclosure(s) under § 226.9(c).

2. Use of inserts. When changes in a creditor's plan affect required disclosures, the creditor may use inserts with outdated disclosure forms. Any insert:

i. Should clearly refer to the disclosure provision it replaces.

ii. Need not be physically attached or affixed to the basic disclosure statement.

iii. May be used only until the supply of outdated forms is exhausted.

Section 226.5a—Credit and Charge Card Applications and Solicitations

1. General. Section 226.5a generally requires that credit disclosures be contained in application forms and solicitations initiated by a card issuer to open a credit or charge card account. (See § 226.5a(a)(5) and (e)(2) for exceptions; see § 226.5a(a)(1) and accompanying commentary for the definition of solicitation; see also § 226.2(a)(15) and accompanying commentary for the definition of charge card.)

2. Substitution of account-opening summary table for the disclosures required by § 226.5a. In complying with § 226.5a(c), (e)(1) or (f), a card issuer may provide the account-opening summary table described in § 226.6(b)(1) in lieu of the disclosures required by § 226.5a, if the issuer provides the disclosures required by § 226.6 on or with the application or solicitation.

3. Clear and conspicuous standard. See comment 5(a)(1)-1 for the clear and conspicuous standard applicable to § 226.5a disclosures.

5a(a) General rules.

5a(a)(1) Definition of solicitation.

1. Invitations to apply. A card issuer may contact a consumer who has not been preapproved for a card account about opening an account (whether by direct mail, telephone, or other means) and invite the consumer to complete an application. Such a contact does not meet the definition of solicitation, nor is it covered by this section, unless the contact itself includes an application form in a direct mailing, electronic communication or "take-one"; an oral application in a telephone contact initiated by the card issuer; or an application in an in-person contact initiated by the card issuer.

5a(a)(2) Form of disclosures; tabular format.

1. Location of table. i. General. Except for disclosures given electronically, disclosures in § 226.5a(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:

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.

Whatever method is used, a card issuer need not confirm that the consumer has read the disclosures.

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 § 226.5a(b), (d)(2)(ii) 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 § 226.5a(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 § 226.5a(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 226.5a(a)(2)(iv) provides that any maximum limits on fee amounts unrelated to fees that vary by state may not be disclosed in bold text. For example, 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 not be highlighted in bold. Nonetheless, assume that the amount of the late fee varies by state, and the range of amount of late fees disclosed is $15 - $25. In this case, the maximum limit of $25 on the late fee amounts must be highlighted in bold. In both cases, the minimum fee amount (e.g. $5 or $15) must be disclosed in bold text.

iii. Periodic fees. Section 226.5a(a)(2)(iv) provides that any periodic fee disclosed pursuant to § 226.5a(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 on-line 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 226.5a(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 226; but see § 226.5(a)(2) for terminology requirements applicable to § 226.5a disclosures.

5a(a)(4) Fees that vary by state.

1. Manner of disclosing range. If the card issuer discloses a range of fees instead of disclosing the amount of the specific fee applicable to the consumer's account, the range may be stated as the lowest authorized fee (zero, if there are one or more states where no fee applies) to the highest authorized fee.

5a(a)(5) Exceptions.

1. Noncoverage of consumer-initiated requests. Applications provided to a consumer upon request are not covered by § 226.5a, even if the request is made in response to the card issuer's invitation to apply for a card account. To illustrate, if a card issuer invites consumers to call a toll-free number or to return a response card to obtain an application, the application sent in response to the consumer's request need not contain the disclosures required under § 226.5a. Similarly, if the card issuer invites

consumers to call and make an oral application on the telephone, § 226.5a does not apply to the application made by the consumer. If, however, the card issuer calls a consumer or initiates a telephone discussion with a consumer about opening a card account and contemporaneously takes an oral application, such applications are subject to § 226.5a, specifically § 226.5a(d). Likewise, if the card issuer initiates an in-person discussion with a consumer about opening a card account and contemporaneously takes an application, such applications are subject to § 226.5a, specifically § 226.5a(f).

5a(b) Required disclosures.

1. Tabular format. Provisions in § 226.5a(b) and its commentary provide that certain information must appear or is permitted to appear in a table. The tabular format is required for § 226.5a(b) disclosures given pursuant to § 226.5a(c), (d)(2), (e)(1) and (f). The tabular format does not apply to oral disclosures given pursuant to § 226.5a(d)(1). (See § 226.5a(a)(2).)

2. Accuracy. Rules concerning accuracy of the disclosures required by § 226.5a(b), including variable rate disclosures, are stated in § 226.5a(c), (d), and (e), as applicable.

5a(b)(1) Annual percentage rate.

1. Variable-rate accounts—definition. For purposes of § 226.5a(b)(1), a variable-rate account exists when rate changes are part of the plan and are tied to an index or formula. (See the commentary to § 226.6(b)(4)(ii) for examples of variable-rate plans.)

2. Variable-rate accounts—fact that rate varies and how the rate will be determined. In describing how the applicable rate will be determined, the card issuer must identify in the table the type of index or formula used, such as the prime rate. In

describing the index, the issuer may not include in the table details about the index. For example, if the issuer uses a prime rate, the issuer must disclose the rate as a "prime rate" and may not disclose in the table other details about the prime rate, such as the fact that it is the highest prime rate published in the Wall Street Journal two business days before the closing date of the statement for each billing period. The issuer may not disclose in the table the current value of the index (such as that the prime rate is currently 7.5 percent) or the amount of the margin or spread added to the index or formula in setting the applicable rate. A card issuer may not disclose any applicable limitations on rate increases or decreases in the table, such as describing that the rate will not go below a certain rate or higher than a certain rate. (See Samples G-10(B) and G-10(C) for guidance on how to disclose the fact that the applicable rate varies and how it is determined.)

3. Discounted initial rates. i. Immediate proximity. If the term "introductory" is in the same phrase as the introductory rate, as that term is defined in § 226.16(g)(2)(ii), it will be deemed to be in immediate proximity of the listing. For example, an issuer that uses the phrase "introductory balance transfer APR X percent" has used the word "introductory" within the same phrase as the rate. (See Sample G-10(C) for guidance on how to disclose clearly and conspicuously the expiration date of the introductory rate and the rate that will apply after the introductory rate expires, if an introductory rate is disclosed in the table.)

ii. Subsequent changes in terms. The fact that an issuer may reserve the right to change a rate subsequent to account opening, pursuant to the notice requirements of § 226.9(c) and the limitations in § 226.55, does not, by itself, make that rate an introductory rate. For example, assume an issuer discloses an annual percentage rate for purchases of 12.99% but does not specify a time period during which that rate will be in effect. Even if that issuer subsequently increases the annual percentage rate for purchases to 15.99%, pursuant to a change-in-terms notice provided under § 226.9(c), the 12.99% is not an introductory rate.

iii. More than one introductory rate. If more than one introductory rate may apply to a particular balance in succeeding periods, the term "introductory" need only be used to describe the first introductory rate. For example, if an issuer offers a rate of 8.99% on purchases for six months, 10.99% on purchases for the following six months, and 14.99% on purchases after the first year, the term "introductory" need only be used to describe the 8.99% rate.

4. Premium initial rates – subsequent changes in terms. The fact that an issuer may reserve the right to change a rate subsequent to account opening, pursuant to the notice requirements of § 226.9(c) and the limitations in § 226.55 (as applicable), does not, by itself, make that rate a premium initial rate. For example, assume an issuer discloses an annual percentage rate for purchases of 18.99% but does not specify a time period during which that rate will be in effect. Even if that issuer subsequently reduces the annual percentage rate for purchases to 15.99%, the 18.99% is not a premium initial rate. If the rate decrease is the result of a change from a non-variable rate to a variable rate or from a variable rate to a non-variable rate, see comments 9(c)(2)(v)-3 and 9(c)(2)(v)-4 for guidance on the notice requirements under § 226.9(c).

5. Increased penalty rates. i. In general. For rates that are not introductory rates, if a rate may increase as a penalty for one or more events specified in the account agreement, such as a late payment or an extension of credit that exceeds the credit limit,

the card issuer must disclose the increased rate that would apply, a brief description of the event or events that may result in the increased rate, and a brief description of how long the increased rate will remain in effect. The description of the specific event or events that may result in an increased rate should be brief. For example, if an issuer may increase a rate to the penalty rate because the consumer does not make the minimum payment by 5 p.m., Eastern Time, on its payment due date, the issuer should describe this circumstance in the table as "make a late payment." Similarly, if an issuer may increase a rate that applies to a particular balance because the account is more than 30 days late, the issuer should describe this circumstance in the table as "make a late payment." An issuer may not distinguish between the events that may result in an increased rate for existing balances and the events that may result in an increased rate for new transactions. (See Samples G-10(B) and G-10(C) (in the row labeled "Penalty APR and When it Applies") for additional guidance on the level of detail in which the specific event or events should be described.) The description of how long the increased rate will remain in effect also should be brief. If a card issuer reserves the right to apply the increased rate indefinitely, that fact should be stated. (See Samples G-10(B) and G-10(C) (in the row labeled "Penalty APR and When it Applies") for additional guidance on the level of detail which the issuer should use to describe how long the increased rate will remain in effect.) A card issuer will be deemed to meet the standard to clearly and conspicuously disclose the information required by § 226.5a(b)(1)(iv)(A) if the issuer uses the format shown in Samples G-10(B) and G-10(C) (in the row labeled "Penalty APR and When it Applies") to disclose this information.

ii. Introductory rates – general. An issuer is required to disclose directly beneath the table the circumstances under which an introductory rate, as that term is defined in § 226.16(g)(2)(ii), may be revoked, and the rate that will apply after the revocation. This information about revocation of an introductory rate and the rate that will apply after revocation must be provided even if the rate that will apply after the introductory rate is revoked is the rate that would have applied at the end of the promotional period. In a variable-rate account, the rate that would have applied at the end of the promotional period is a rate based on the applicable index or formula in accordance with the accuracy requirements set forth in § 226.5a(c) or (e). In describing the rate that will apply after revocation of the introductory rate, if the rate that will apply after revocation of the introductory rate is already disclosed in the table, the issuer is not required to repeat the rate, but may refer to that rate in a clear and conspicuous manner. For example, if the rate that will apply after revocation of an introductory rate is the standard rate that applies to that type of transaction (such as a purchase or balance transfer transaction), and the standard rates are labeled in the table as "standard APRs," the issuer may refer to the "standard APR" when describing the rate that will apply after revocation of an introductory rate. (See Sample G-10(C) in the disclosure labeled "Loss of Introductory APR" directly beneath the table.) The description of the circumstances in which an introductory rate could be revoked should be brief. For example, if an issuer may increase an introductory rate because the account is more than 60 days late, the issuer should describe this circumstance in the table as "make a late payment." In addition, if the circumstances in which an introductory rate could be revoked are already listed elsewhere in the table, the issuer is not required to repeat the circumstances again, but may refer to those circumstances in a clear and conspicuous manner. For example, if the circumstances in which an introductory rate could be revoked are the same as the event or events that may trigger a "penalty rate" as described in § 226.5a(b)(1)(iv)(A), the issuer may refer to the actions listed in the Penalty APR row, in describing the circumstances in which the introductory rate could be revoked. (See Sample G-10(C) in the disclosure labeled "Loss of Introductory APR" directly beneath the table for additional guidance on the level of detail in which to describe the circumstances in which an introductory rate could be revoked.) A card issuer will be deemed to meet the standard to clearly and conspicuously disclose the information required by § 226.5a(b)(1)(iv)(B) if the issuer uses the format shown in Sample G-10(C) to disclose this information.

iii. Introductory rates – limitations on revocation. Issuers that are disclosing an introductory rate are prohibited by § 226.55 from increasing or revoking the introductory rate before it expires unless the consumer fails to make a required minimum periodic payment within 60 days after the due date for the payment. In making the required disclosure pursuant to § 226.5a(b)(1)(iv)(B), issuers should describe this circumstance directly beneath the table as "make a late payment."

6. Rates that depend on consumer's creditworthiness. i. In general. The card issuer, at its option, may disclose the possible rates that may apply as either specific rates, or a range of rates. For example, if there are three possible rates that may apply (9.99, 12.99 or 17.99 percent), an issuer may disclose specific rates (9.99, 12.99 or 17.99 percent) or a range of rates (9.99 to 17.99 percent). The card issuer may not disclose only the lowest, highest or median rate that could apply. (See Samples G-10(B) and G-10(C) for guidance on how to disclose a range of rates.)

ii. Penalty rates. If the rate is a penalty rate, as described in § 226.5a(b)(1)(iv), the card issuer at its option may disclose the highest rate that could apply, instead of disclosing the specific rates or the range of rates that could apply. For example, if the penalty rate could be up to 28.99 percent, but the issuer may impose a penalty rate that is less than that rate depending on factors at the time the penalty rate is imposed, the issuer may disclose the penalty rate as “up to” 28.99 percent. The issuer also must include a statement that the penalty rate for which the consumer may qualify will depend on the consumer’s creditworthiness, and other factors if applicable.

iii. Other factors. Section 226.5a(b)(1)(v) applies even if other factors are used in combination with a consumer’s creditworthiness to determine the rate for which a consumer may qualify at account opening. For example, § 226.5a(b)(1)(v) would apply if the issuer considers the type of purchase the consumer is making at the time the consumer opens the account, in combination with the consumer’s creditworthiness, to determine the rate for which the consumer may qualify at account opening. If other factors are considered, the issuer should amend the statement about creditworthiness, to indicate that the rate for which the consumer may qualify at account opening will depend on the consumer’s creditworthiness and other factors. Nonetheless, § 226.5a(b)(1)(v) does not apply if a consumer’s creditworthiness is not one of the factors that will determine the rate for which the consumer may qualify at account opening (for example, if the rate is based solely on the type of purchase that the consumer is making at the time the consumer opens the account, or is based solely on whether the consumer has other banking relationships with the card issuer).

7. Rate based on another rate on the account. In some cases, one rate may be based on another rate on the account. For example, assume that a penalty rate as described in § 226.5a(b)(1)(iv)(A) is determined by adding 5 percentage points to the current purchase rate, which is 10 percent. In this example, the card issuer in disclosing the penalty rate must disclose 15 percent as the current penalty rate. If the purchase rate is a variable rate, then the penalty rate also is a variable rate. In that case, the card issuer also must disclose the fact that the penalty rate may vary and how the rate is determined, such as "This APR may vary with the market based on the Prime Rate." In describing the penalty rate, the issuer shall not disclose in the table the amount of the margin or spread added to the current purchase rate to determine the penalty rate, such as describing that the penalty rate is determined by adding 5 percentage points to the purchase rate. (See § 226.5a(b)(1)(i) and comment 5a(b)(1)-2 for further guidance on describing a variable rate.)

8. Rates. The only rates that shall be disclosed in the table are annual percentage rates determined under § 226.14(b). Periodic rates shall not be disclosed in the table.

9. Deferred interest or similar transactions. An issuer offering a deferred interest or similar plan, such as a promotional program that provides that a consumer will not be obligated to pay interest that accrues on a balance if that balance is paid in full prior to the expiration of a specified period of time, may not disclose a 0% rate as the rate applicable to deferred interest or similar transactions if there are any circumstances under which the consumer will be obligated for interest on such transactions for the deferred interest or similar period.

5a(b)(2) Fees for issuance or availability.

1. Membership fees. Membership fees for opening an account must be disclosed under this paragraph. A membership fee to join an organization that provides a credit or charge card as a privilege of membership must be disclosed only if the card is issued automatically upon membership. Such a fee shall not be disclosed in the table if membership results merely in eligibility to apply for an account.

2. Enhancements. Fees for optional services in addition to basic membership privileges in a credit or charge card account (for example, travel insurance or card-registration services) shall not be disclosed in the table if the basic account may be opened without paying such fees. Issuing a card to each primary cardholder (not authorized users) is considered a basic membership privilege and fees for additional cards, beyond the first card on the account, must be disclosed as a fee for issuance or availability. Thus, a fee to obtain an additional card on the account beyond the first card (so that each cardholder would have his or her own card) must be disclosed in the table as a fee for issuance or availability under § 226.5a(b)(2). This fee must be disclosed even if the fee is optional; that is, if the fee is charged only if the cardholder requests one or more additional cards. (See the available credit disclosure in § 226.5a(b)(14).)

3. One-time fees. Disclosure of non-periodic fees is limited to fees related to opening the account, such as one-time membership or participation fees, or an application fee that is excludable from the finance charge under § 226.4(c)(1). The following are examples of fees that shall not be disclosed in the table:

i. Fees for reissuing a lost or stolen card.

ii. Statement reproduction fees.

4. Waived or reduced fees. If fees required to be disclosed are waived or reduced for a limited time, the introductory fees or the fact of fee waivers may be provided in the table in addition to the required fees if the card issuer also discloses how long the reduced fees or waivers will remain in effect.

5. Periodic fees and one-time fees. A card issuer disclosing a periodic fee must disclose the amount of the fee, how frequently it will be imposed, and the annualized amount of the fee. A card issuer disclosing a non-periodic fee must disclose that the fee is a one-time fee. (See Sample G-10(C) for guidance on how to meet these requirements.)

5a(b)(3) Fixed finance charge; minimum interest charge.

1. Example of brief statement. See Samples G-10(B) and G-10(C) for guidance on how to provide a brief description of a minimum interest charge.

2. Adjustment of $1.00 threshold amount. Consistent with § 226.5a(b)(3), the Board will publish adjustments to the $1.00 threshold amount, as appropriate.

5a(b)(4) Transaction charges.

1. Charges imposed by person other than card issuer. Charges imposed by a third party, such as a seller of goods, shall not be disclosed in the table under this section; the third party would be responsible for disclosing the charge under § 226.9(d)(1).

2. Foreign transaction fees. A transaction charge imposed by the card issuer for the use of the card for purchases includes any fee imposed by the issuer for purchases in a foreign currency or that take place outside the United States or with a foreign merchant. (See comment 4(a)-4 for guidance on when a foreign transaction fee is considered charged by the card issuer.) If an issuer charges the same foreign transaction fee for

purchases and cash advances in a foreign currency, or that take place outside the United States or with a foreign merchant, the issuer may disclose this foreign transaction fee as shown in Samples G-10(B) and G-10(C). Otherwise, the issuer must revise the foreign transaction fee language shown in Samples G-10(B) and G-10(C) to disclose clearly and conspicuously the amount of the foreign transaction fee that applies to purchases and the amount of the foreign transaction fee that applies to cash advances.

5a(b)(5) Grace period.

1. How grace period disclosure is made. The card issuer must state any conditions on the applicability of the grace period. An issuer that offers a grace period on all purchases and conditions the grace period on the consumer paying his or her outstanding balance in full by the due date each billing cycle, or on the consumer paying the outstanding balance in full by the due date in the previous and/or the current billing cycle(s) will be deemed to meet these requirements by providing the following disclosure, as applicable: "Your due date is [at least] ___ days after the close of each billing cycle. We will not charge you any interest on purchases if you pay your entire balance by the due date each month."

2. No grace period. The issuer may use the following language to describe that no grace period on any purchases is offered, as applicable: "We will begin charging interest on purchases on the transaction date."

3. Grace period on some purchases. If the issuer provides a grace period on some types of purchases but no grace period on others, the issuer may combine and revise the language in comments 5a(b)(5)-1 and -2 as appropriate to describe to which types of

purchases a grace period applies and to which types of purchases no grace period is offered.

5a(b)(6) Balance computation method.

1. Form of disclosure. In cases where the card issuer uses a balance computation method that is identified by name in the regulation, the card issuer must disclose below the table only the name of the method. In cases where the card issuer uses a balance computation method that is not identified by name in the regulation, the disclosure below the table must clearly explain the method in as much detail as set forth in the descriptions of balance methods in § 226.5a(g). The explanation need not be as detailed as that required for the disclosures under § 226.6(b)(4)(i)(D). (See the commentary to § 226.5a(g) for guidance on particular methods.)

2. Determining the method. In determining which balance computation method to disclose for purchases, the card issuer must assume that a purchase balance will exist at the end of any grace period. Thus, for example, if the average daily balance method will include new purchases only if purchase balances are not paid within the grace period, the card issuer would disclose the name of the average daily balance method that includes new purchases. The card issuer must not assume the existence of a purchase balance, however, in making other disclosures under § 226.5a(b).

5a(b)(7) Statement on charge card payments.

1. Applicability and content. The disclosure that charges are payable upon receipt of the periodic statement is applicable only to charge card accounts. In making this disclosure, the card issuer may make such modifications as are necessary to more accurately reflect the circumstances of repayment under the account. For example, the

disclosure might read, "Charges are due and payable upon receipt of the periodic statement and must be paid no later than 15 days after receipt of such statement."

5a(b)(8) Cash advance fee.

1. Content. See Samples G-10(B) and G-10(C) for guidance on how to disclose clearly and conspicuously the cash advance fee.

2. Foreign cash advances. Cash advance fees required to be disclosed under § 226.5a(b)(8) include any charge imposed by the card issuer for cash advances in a foreign currency or that take place outside the United States or with a foreign merchant. (See comment 4(a)-4 for guidance on when a foreign transaction fee is considered charged by the card issuer.) If an issuer charges the same foreign transaction fee for purchases and cash advances in a foreign currency or that take place outside the United States or with a foreign merchant, the issuer may disclose this foreign transaction fee as shown in Samples G-10(B) and (C). Otherwise, the issuer must revise the foreign transaction fee language shown in Samples G-10(B) and (C) to disclose clearly and conspicuously the amount of the foreign transaction fee that applies to purchases and the amount of the foreign transaction fee that applies to cash advances.

3. ATM fees. An issuer is not required to disclose pursuant to § 226.5a(b)(8) any charges imposed on a cardholder by an institution other than the card issuer for the use of the other institution's ATM in a shared or interchange system.

5a(b)(9) Late payment fee.

1. Applicability. The disclosure of the fee for a late payment includes only those fees that will be imposed for actual, unanticipated late payments. (See the commentary to

§ 226.4(c)(2) for additional guidance on late payment fees. See Samples G-10(B) and G-10(C) for guidance on how to disclose clearly and conspicuously the late payment fee.)

5a(b)(10) Over-the-limit fee.

1. Applicability. The disclosure of fees for exceeding a credit limit does not include fees for other types of default or for services related to exceeding the limit. For example, no disclosure is required of fees for reinstating credit privileges or fees for the dishonor of checks on an account that, if paid, would cause the credit limit to be exceeded. (See Samples G-10(B) and G-10(C) for guidance on how to disclose clearly and conspicuously the over-the-limit fee.)

5a(b)(13) Required insurance, debt cancellation, or debt suspension coverage.

1. Content. See Sample G-10(B) for guidance on how to comply with the requirements in § 226.5a(b)(13).

5a(b)(14) Available credit.

1. Calculating available credit. If the 15 percent threshold test is met, the issuer must disclose the available credit excluding optional fees, and the available credit including optional fees. In calculating the available credit to disclose in the table, the issuer must consider all fees for the issuance or availability of credit described in § 226.5a(b)(2), and any security deposit, that will be imposed and charged to the account when the account is opened, such as one-time issuance and set-up fees. For example, in calculating the available credit, issuers must consider the first year's annual fee and the first month's maintenance fee (as applicable) if they are charged to the account on the first billing statement. In calculating the amount of the available credit including optional fees, if optional fees could be charged multiple times, the issuer shall assume that the

optional fee is only imposed once. For example, if an issuer charges a fee for each additional card issued on the account, the issuer in calculating the amount of the available credit including optional fees may assume that the cardholder requests only one additional card. In disclosing the available credit, the issuer shall round down the available credit amount to the nearest whole dollar.

2. Content. See Sample G-10(C) for guidance on how to provide the disclosure required by § 226.5a(b)(14) clearly and conspicuously.

5a(b)(15) Web site reference.

1. Content. See Samples G-10(B) and G-10(C) for guidance on disclosing a reference to the Web site established by the Board and a statement that consumers may obtain on the Web site information about shopping for and using credit card accounts.

5a(c) Direct mail and electronic applications and solicitations.

1. Mailed publications. Applications or solicitations contained in generally available publications mailed to consumers (such as subscription magazines) are subject to the requirements applicable to take-ones in § 226.5a(e), rather than the direct mail requirements of § 226.5a(c). However, if a primary purpose of a card issuer's mailing is to offer credit or charge card accounts—for example, where a card issuer "prescreens" a list of potential cardholders using credit criteria, and then mails to the targeted group its catalog containing an application or a solicitation for a card account—the direct mail rules apply. In addition, a card issuer may use a single application form as a take-one (in racks in public locations, for example) and for direct mailings, if the card issuer complies with the requirements of § 226.5a(c) even when the form is used as a take-one—that is, by presenting the required § 226.5a disclosures in a tabular format. When used in a direct

mailing, the credit term disclosures must be accurate as of the mailing date whether or not the § 226.5a(e)(1)(ii) and (e)(1)(iii) disclosures are included; when used in a take-one, the disclosures must be accurate for as long as the take-one forms remain available to the public if the § 226.5a(e)(1)(ii) and (e)(1)(iii) disclosures are omitted. (If those disclosures are included in the take-one, the credit term disclosures need only be accurate as of the printing date.)

5a(d) Telephone applications and solicitations.

1. Coverage. i. This paragraph applies if:

A. A telephone conversation between a card issuer and consumer may result in the issuance of a card as a consequence of an issuer-initiated offer to open an account for which the issuer does not require any application (that is, a prescreened telephone solicitation).

B. The card issuer initiates the contact and at the same time takes application information over the telephone.

ii. This paragraph does not apply to:

A. Telephone applications initiated by the consumer.

B. Situations where no card will be issued—because, for example, the consumer indicates that he or she does not want the card, or the card issuer decides either during the telephone conversation or later not to issue the card.

2. Right to reject the plan. The right to reject the plan referenced in this paragraph is the same as the right to reject the plan described in § 226.5(b)(1)(iv). If an issuer substitutes the account-opening summary table described in § 226.6(b)(1) in lieu of the disclosures specified in § 226.5a(d)(2)(ii), the disclosure specified in

§ 226.5a(d)(2)(ii)(B) must appear in the table, if the issuer is required to do so pursuant to § 226.6(b)(2)(xiii). Otherwise, the disclosure specified in § 226.5a(d)(2)(ii)(B) may appear either in or outside the table containing the required credit disclosures.

3. Substituting account-opening table for alternative written disclosures. An issuer may substitute the account-opening summary table described in § 226.6(b)(1) in lieu of the disclosures specified in § 226.5a(d)(2)(ii).

5a(e) Applications and solicitations made available to general public.

1. Coverage. Applications and solicitations made available to the general public include what are commonly referred to as take-one applications typically found at counters in banks and retail establishments, as well as applications contained in catalogs, magazines and other generally available publications. In the case of credit unions, this paragraph applies to applications and solicitations to open card accounts made available to those in the general field of membership.

2. In-person applications and solicitations. In-person applications and solicitations initiated by a card issuer are subject to § 226.5a(f), not § 226.5a(e). (See § 226.5a(f) and accompanying commentary for rules relating to in-person applications and solicitations.)

3. Toll-free telephone number. If a card issuer, in complying with any of the disclosure options of § 226.5a(e), provides a telephone number for consumers to call to obtain credit information, the number must be toll-free for nonlocal calls made from an area code other than the one used in the card issuer's dialing area. Alternatively, a card issuer may provide any telephone number that allows a consumer to call for information and reverse the telephone charges.

5a(e)(1) Disclosure of required credit information.

1. Date of printing. Disclosure of the month and year fulfills the requirement to disclose the date an application was printed.

2. Form of disclosures. The disclosures specified in §226.5a(e)(1)(ii) and (e)(1)(iii) may appear either in or outside the table containing the required credit disclosures.

5a(e)(2) No disclosure of credit information.

1. When disclosure option available. A card issuer may use this option only if the issuer does not include on or with the application or solicitation any statement that refers to the credit disclosures required by § 226.5a(b). Statements such as no annual fee, low interest rate, favorable rates, and low costs are deemed to refer to the required credit disclosures and, therefore, may not be included on or with the solicitation or application, if the card issuer chooses to use this option.

5a(e)(3) Prompt response to requests for information.

1. Prompt disclosure. Information is promptly disclosed if it is given within 30 days of a consumer's request for information but in no event later than delivery of the credit or charge card.

2. Information disclosed. When a consumer requests credit information, card issuers need not provide all the required credit disclosures in all instances. For example, if disclosures have been provided in accordance with § 226.5a(e)(1) and a consumer calls or writes a card issuer to obtain information about changes in the disclosures, the issuer need only provide the items of information that have changed from those previously disclosed on or with the application or solicitation. If a consumer requests information

about particular items, the card issuer need only provide the requested information. If, however, the card issuer has made disclosures in accordance with the option in § 226.5a(e)(2) and a consumer calls or writes the card issuer requesting information about costs, all the required disclosure information must be given.

3. Manner of response. A card issuer's response to a consumer's request for credit information may be provided orally or in writing, regardless of the manner in which the consumer's request is received by the issuer. Furthermore, the card issuer must provide the information listed in § 226.5a(e)(1). Information provided in writing need not be in a tabular format.

5a(f) In-person applications and solicitations.

1. Coverage. i. This paragraph applies if:

A. An in-person conversation between a card issuer and a consumer may result in the issuance of a card as a consequence of an issuer-initiated offer to open an account for which the issuer does not require any application (that is, a preapproved in-person solicitation).

B. The card issuer initiates the contact and at the same time takes application information in person. For example, the following are covered:

1. A consumer applies in person for a car loan at a financial institution and the loan officer invites the consumer to apply for a credit or charge card account; the consumer accepts the invitation and submits an application.

2. An employee of a retail establishment, in the course of processing a sales transaction using a bank credit card, asks a customer if he or she would like to apply for

the retailer's credit or charge card; the customer responds affirmatively and submits an application.

ii. This paragraph does not apply to:

A. In-person applications initiated by the consumer.

B. Situations where no card will be issued—because, for example, the consumer indicates that he or she does not want the card, or the card issuer decides during the in-person conversation not to issue the card.

Section 226.5b—Requirements for Home-equity Plans

* * * * *

5b(a) Form of Disclosure

5b(a)(1) General

1. Written disclosures. The disclosures required under this section must be clear and conspicuous and in writing, but need not be in a form the consumer can keep. (See the commentary to § 226.6(a)(3) for special rules when disclosures required under § 226.5b(d) are given in a retainable form.)

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5b(f) Limitations on Home-equity Plans

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Paragraph 5b(f)(3)(vi).

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4. Reinstatement of credit privileges. Creditors are responsible for ensuring that credit privileges are restored as soon as reasonably possible after the condition that permitted the creditor's action ceases to exist. One way a creditor can meet this

responsibility is to monitor the line on an ongoing basis to determine when the condition ceases to exist. The creditor must investigate the condition frequently enough to assure itself that the condition permitting the freeze continues to exist. The frequency with which the creditor must investigate to determine whether a condition continues to exist depends upon the specific condition permitting the freeze. As an alternative to such monitoring, the creditor may shift the duty to the consumer to request reinstatement of credit privileges by providing a notice in accordance with § 226.9(c)(1)(iii). A creditor may require a reinstatement request to be in writing if it notifies the consumer of this requirement on the notice provided under § 226.9(c)(1)(iii). Once the consumer requests reinstatement, the creditor must promptly investigate to determine whether the condition allowing the freeze continues to exist. Under this alternative, the creditor has a duty to investigate only upon the consumer's request.

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Section 226.6—Account-opening Disclosures

6(a) Rules affecting home-equity plans.

* * * * *

6(b) Rules affecting open-end (not home-secured) plans.

6(b)(1) Form of disclosures; tabular format for open-end (not home-secured) plans.

1. Relation to tabular summary for applications and solicitations. See commentary to § 226.5a(a), (b), and (c) regarding format and content requirements, except for the following:

i. Creditors must use the accuracy standard for annual percentage rates in § 226.6(b)(4)(ii)(G).

ii. Generally, creditors must disclose the specific rate for each feature that applies to the account. If the rates on an open-end (not home-secured) plan vary by state and the creditor is providing the account-opening table in person at the time the plan is established in connection with financing the purchase of goods or services the creditor may, at its option, disclose in the account-opening table (A) the rate applicable to the consumer's account, or (B) the range of rates, if the disclosure includes a statement that the rate varies by state and refers the consumer to the account agreement or other disclosure provided with the account-opening table where the rate applicable to the consumer's account is disclosed.

iii. Creditors must explain whether or not a grace period exists for all features on the account. The row heading "Paying Interest" must be used if any one feature on the account does not have a grace period.

iv. Creditors must name the balance computation method used for each feature of the account and state that an explanation of the balance computation method(s) is provided in the account-opening disclosures.

v. Creditors must state that consumers' billing rights are provided in the account-opening disclosures.

vi. If fees on an open-end (not home-secured) plan vary by state and the creditor is providing the account-opening table in person at the time the plan is established in connection with financing the purchase of goods or services the creditor may, at its option, disclose in the account-opening table (A) the specific fee applicable to the consumer's account, or (B) the range of fees, if the disclosure includes a statement that the amount of the fee varies by state and refers the consumer to the account agreement or other disclosure provided with the account-opening table where the fee applicable to the consumer's account is disclosed.

vii. Creditors that must disclose the amount of available credit must state the initial credit limit provided on the account.

viii. Creditors must disclose directly beneath the table the circumstances under which an introductory rate may be revoked and the rate that will apply after the introductory rate is revoked. Issuers of credit card accounts under an open-end (not home-secured) consumer credit plan are subject to limitations on the circumstances under which an introductory rate may be revoked. (See comment 5a(b)(1)-4 for guidance on how a card issuer may disclose the circumstances under which an introductory rate may be revoked.)

ix. The applicable forms providing safe harbors for account-opening tables are under appendix G-17 to part 226.

2. <u>Clear and conspicuous standard</u>. See comment 5(a)(1)-1 for the clear and conspicuous standard applicable to § 226.6 disclosures.

3. <u>Terminology</u>. Section 226.6(b)(1) generally requires that the headings, content, and format of the tabular disclosures be substantially similar, but need not be identical, to the tables in appendix G to part 226; but see § 226.5(a)(2) for terminology requirements applicable to § 226.6(b).

6(b)(2) Required disclosures for account-opening table for open-end (not home-secured) plans.

6(b)(2)(iii) Fixed finance charge; minimum interest charge.

1. Example of brief statement. See Samples G-17(B), G-17(C), and G-17(D) for guidance on how to provide a brief description of a minimum interest charge.

6(b)(2)(v) Grace period.

1. Grace period. Creditors must state any conditions on the applicability of the grace period. A creditor that offers a grace period on all types of transactions for the account and conditions the grace period on the consumer paying his or her outstanding balance in full by the due date each billing cycle, or on the consumer paying the outstanding balance in full by the due date in the previous and/or the current billing cycle(s) will be deemed to meet these requirements by providing the following disclosure, as applicable: "Your due date is [at least] ___ days after the close of each billing cycle. We will not charge you any interest on your account if you pay your entire balance by the due date each month."

2. No grace period. Creditors may use the following language to describe that no grace period is offered, as applicable: "We will begin charging interest on [applicable transactions] on the transaction date."

3. Grace period on some features. See Samples G-17(B) and G-17(C) for guidance on complying with § 226.6(b)(2)(v) when a creditor offers a grace period for purchases but no grace period on balance transfers and cash advances.

6(b)(2)(vi) Balance computation method.

1. Content. See Samples G-17(B) and G-17(C) for guidance on how to disclose the balance computation method where the same method is used for all features on the account.

6(b)(2)(xiii) Available credit.

1. Right to reject the plan. Creditors may use the following language to describe consumers' right to reject a plan after receiving account-opening disclosures: "You may still reject this plan, provided that you have not yet used the account or paid a fee after receiving a billing statement. If you do reject the plan, you are not responsible for any fees or charges."

6(b)(3) Disclosure of charges imposed as part of open-end (not home-secured) plans.

1. When finance charges accrue. Creditors are not required to disclose a specific date when a cost that is a finance charge under § 226.4 will begin to accrue.

2. Grace periods. In disclosing in the account agreement or disclosure statement whether or not a grace period exists, the creditor need not use any particular descriptive phrase or term. However, the descriptive phrase or term must be sufficiently similar to the disclosures provided pursuant to §§ 226.5a(b)(5) and 226.6(b)(2)(v) to satisfy a creditor's duty to provide consistent terminology under § 226.5(a)(2).

3. No finance charge imposed below certain balance. Creditors are not required to disclose the fact that no finance charge is imposed when the outstanding balance is less than a certain amount or the balance below which no finance charge will be imposed.

Paragraph 6(b)(3)(ii).

1. Failure to use the plan as agreed. Late payment fees, over-the-limit fees, and fees for payments returned unpaid are examples of charges resulting from consumers' failure to use the plan as agreed.

2. Examples of fees that affect the plan. Examples of charges the payment, or nonpayment, of which affects the consumer's account are:

i. Access to the plan. Fees for using the card at the creditor's ATM to obtain a cash advance, fees to obtain additional cards including replacements for lost or stolen cards, fees to expedite delivery of cards or other credit devices, application and membership fees, and annual or other participation fees identified in § 226.4(c)(4).

ii. Amount of credit extended. Fees for increasing the credit limit on the account, whether at the consumer's request or unilaterally by the creditor.

iii. Timing or method of billing or payment. Fees to pay by telephone or via the Internet.

3. Threshold test. If the creditor is unsure whether a particular charge is a cost imposed as part of the plan, the creditor may at its option consider such charges as a cost imposed as part of the plan for purposes of the Truth in Lending Act.

Paragraph 6(b)(3)(iii)(B).

1. Fees for package of services. A fee to join a credit union is an example of a fee for a package of services that is not imposed as part of the plan, even if the consumer must join the credit union to apply for credit. In contrast, a membership fee is an example of a fee for a package of services that is considered to be imposed as part of a plan where the primary benefit of membership in the organization is the opportunity to

apply for a credit card, and the other benefits offered (such as a newsletter or a member information hotline) are merely incidental to the credit feature.

6(b)(4) Disclosure of rates for open-end (not home-secured) plans.

Paragraph 6(b)(4)(i)(B).

1. Range of balances. Creditors are not required to disclose the range of balances:

i. If only one periodic interest rate may be applied to the entire account balance.

ii. If only one periodic interest rate may be applied to the entire balance for a feature (for example, cash advances), even though the balance for another feature (purchases) may be subject to two rates (a 1.5% monthly periodic interest rate on purchase balances of $0 - $500, and a 1% periodic interest rate for balances above $500). In this example, the creditor must give a range of balances disclosure for the purchase feature.

Paragraph 6(b)(4)(i)(D).

1. Explanation of balance computation method. Creditors do not provide a sufficient explanation of a balance computation method by using a shorthand phrase such as "previous balance method" or the name of a balance computation method listed in § 226.5a(g). (See Model Clauses G-1(A) in appendix G to part 226. See § 226.6(b)(2)(vi) regarding balance computation descriptions in the account-opening summary.)

2. Allocation of payments. Creditors may, but need not, explain how payments and other credits are allocated to outstanding balances.

6(b)(4)(ii) Variable-rate accounts.

1. Variable-rate disclosures—coverage.

i. Examples. Examples of open-end plans that permit the rate to change and are considered variable-rate plans include:

A. Rate changes that are tied to the rate the creditor pays on its six-month certificates of deposit.

B. Rate changes that are tied to Treasury bill rates.

C. Rate changes that are tied to changes in the creditor's commercial lending rate.

ii. Examples of open-end plans that permit the rate to change and are not considered variable-rate include:

A. Rate changes that are invoked under a creditor's contract reservation to increase the rate without reference to such an index or formula (for example, a plan that simply provides that the creditor reserves the right to raise its rates).

B. Rate changes that are triggered by a specific event such as an open-end credit plan in which the employee receives a lower rate contingent upon employment, and the rate increases upon termination of employment.

2. Variable-rate plan—circumstances for increase.

i. The following are examples that comply with the requirement to disclose circumstances under which the rate(s) may increase:

A. "The Treasury bill rate increases."

B. "The Federal Reserve discount rate increases."

ii. Disclosing the frequency with which the rate may increase includes disclosing when the increase will take effect; for example:

A. “An increase will take effect on the day that the Treasury bill rate increases.”

B. “An increase in the Federal Reserve discount rate will take effect on the first day of the creditor’s billing cycle.”

3. Variable-rate plan—limitations on increase. In disclosing any limitations on rate increases, limitations such as the maximum increase per year or the maximum increase over the duration of the plan must be disclosed. When there are no limitations, the creditor may, but need not, disclose that fact. Legal limits such as usury or rate ceilings under state or federal statutes or regulations need not be disclosed. Examples of limitations that must be disclosed include:

i. “The rate on the plan will not exceed 25% annual percentage rate.”

ii. “Not more than ½ of 1% increase in the annual percentage rate per year will occur.”

4. Variable-rate plan—effects of increase. Examples of effects of rate increases that must be disclosed include:

i. Any requirement for additional collateral if the annual percentage rate increases beyond a specified rate.

ii. Any increase in the scheduled minimum periodic payment amount.

5. Discounted variable-rate plans. In some variable-rate plans, creditors may set an initial interest rate that is not determined by the index or formula used to make later interest rate adjustments. Typically, this initial rate is lower than the rate would be if it were calculated using the index or formula.

i. For example, a creditor may calculate interest rates according to a formula using the six-month Treasury bill rate plus a 2 percent margin. If the current Treasury bill rate is 10 percent, the creditor may forgo the 2 percent spread and charge only 10 percent for a limited time, instead of setting an initial rate of 12 percent, or the creditor may disregard the index or formula and set the initial rate at 9 percent.

ii. When creditors disclose in the account-opening disclosures an initial rate that is not calculated using the index or formula for later rate adjustments, the disclosure should reflect:

A. The initial rate (expressed as a periodic rate and a corresponding annual percentage rate), together with a statement of how long the initial rate will remain in effect;

B. The current rate that would have been applied using the index or formula (also expressed as a periodic rate and a corresponding annual percentage rate); and

C. The other variable-rate information required by § 226.6(b)(4)(ii).

6(b)(4)(iii) Rate changes not due to index or formula.

1. Events that cause the initial rate to change.

i. Changes based on expiration of time period. If the initial rate will change at the expiration of a time period, creditors that disclose the initial rate in the account-opening disclosure must identify the expiration date and the fact that the initial rate will end at that time.

ii. Changes based on specified contract terms. If the account agreement provides that the creditor may change the initial rate upon the occurrence of specified event or events, the creditor must identify the events or events. Examples include the consumer not making the required minimum payment when due, or the termination of an employee preferred rate when the employment relationship is terminated.

2. Rate that will apply after initial rate changes.

i. Increased margins. If the initial rate is based on an index and the rate may increase due to a change in the margin applied to the index, the creditor must disclose the increased margin. If more than one margin could apply, the creditor may disclose the highest margin.

ii. Risk-based pricing. In some plans, the amount of the rate change depends on how the creditor weighs the occurrence of events specified in the account agreement that authorize the creditor to change rates, as well as other factors. Creditors must state the increased rate that may apply. At the creditor's option, the creditor may state the possible rates as a range, or by stating only the highest rate that could be assessed. The creditor must disclose the period for which the increased rate will remain in effect, such as "until you make three timely payments," or if there is no limitation, the fact that the increased rate may remain indefinitely.

3. Effect of rate change on balances. Creditors must disclose information to consumers about the balance to which the new rate will apply and the balance to which the current rate at the time of the change will apply. Card issuers subject to § 226.55 may be subject to certain restrictions on the application of increased rates to certain balances.

6(b)(5) Additional disclosures for open-end (not home-secured) plans.

6(b)(5)(i) Voluntary credit insurance, debt cancellation or debt suspension.

1. Timing. Under § 226.4(d), disclosures required to exclude the cost of voluntary credit insurance or debt cancellation or debt suspension coverage from the finance charge must be provided before the consumer agrees to the purchase of the insurance or coverage. Creditors comply with § 226.6(b)(5)(i) if they provide those

disclosures in accordance with § 226.4(d). For example, if the disclosures required by § 226.4(d) are provided at application, creditors need not repeat those disclosures at account opening.

6(b)(5)(ii) Security interests.

1. General. Creditors are not required to use specific terms to describe a security interest, or to explain the type of security or the creditor's rights with respect to the collateral.

2. Identification of property. Creditors sufficiently identify collateral by type by stating, for example, motor vehicle or household appliances. (Creditors should be aware, however, that the federal credit practices rules, as well as some state laws, prohibit certain security interests in household goods.) The creditor may, at its option, provide a more specific identification (for example, a model and serial number.)

3. Spreader clause. If collateral for preexisting credit with the creditor will secure the plan being opened, the creditor must disclose that fact. (Such security interests may be known as "spreader" or "dragnet" clauses, or as "cross-collateralization" clauses.) The creditor need not specifically identify the collateral; a reminder such as "collateral securing other loans with us may also secure this loan" is sufficient. At the creditor's option, a more specific description of the property involved may be given.

4. Additional collateral. If collateral is required when advances reach a certain amount, the creditor should disclose the information available at the time of the account-opening disclosures. For example, if the creditor knows that a security interest will be taken in household goods if the consumer's balance exceeds $1,000, the creditor should disclose accordingly. If the creditor knows that security will be required if the

consumer's balance exceeds $1,000, but the creditor does not know what security will be required, the creditor must disclose on the initial disclosure statement that security will be required if the balance exceeds $1,000, and the creditor must provide a change-in-terms notice under § 226.9(c) at the time the security is taken. (See comment 6(b)(5)(ii)-2.)

5. Collateral from third party. Security interests taken in connection with the plan must be disclosed, whether the collateral is owned by the consumer or a third party.

6(b)(5)(iii) Statement of billing rights.

1. See the commentary to Model Forms G-3(A) and G-4(A).

Section 226.7—Periodic Statement

1. Multifeatured plans. Some plans involve a number of different features, such as purchases, cash advances, or overdraft checking. Groups of transactions subject to different finance charge terms because of the dates on which the transactions took place are treated like different features for purposes of disclosures on the periodic statements. The commentary includes additional guidance for multifeatured plans.

7(a) Rules affecting home-equity plans.

* * * * *

7(b) Rules affecting open-end (not home-secured) plans.

1. Deferred interest or similar transactions. Creditors offer a variety of payment plans for purchases that permit consumers to avoid interest charges if the purchase balance is paid in full by a certain date. The following provides guidance for a deferred interest or similar plan where, for example, no interest charge is imposed on a $500 purchase made in January if the $500 balance is paid by March 31.

i. Annual percentage rates. Under § 226.7(b)(4), creditors must disclose each annual percentage rate that may be used to compute the interest charge. Under some plans with a deferred interest or similar feature, if the deferred interest balance is not paid by a certain date, March 31 in this example, interest charges applicable to the billing cycles between the date of purchase in January and March 31 may be imposed. Annual percentage rates that may apply to the deferred interest balance ($500 in this example) if the balance is not paid in full by March 31 must appear on periodic statements for the billing cycles between the date of purchase and March 31. However, if the consumer does not pay the deferred interest balance by March 31, the creditor is not required to identify, on the periodic statement disclosing the interest charge for the deferred interest balance, annual percentage rates that have been disclosed in previous billing cycles between the date of purchase and March 31.

ii. Balances subject to periodic rates. Under § 226.7(b)(5), creditors must disclose the balances subject to interest during a billing cycle. The deferred interest balance ($500 in this example) is not subject to interest for billing cycles between the date of purchase and March 31 in this example. Periodic statements sent for those billing cycles should not include the deferred interest balance in the balance disclosed under § 226.7(b)(5). This amount must be separately disclosed on periodic statements and identified by a term other than the term used to identify the balance disclosed under § 226.7(b)(5) (such as "deferred interest balance"). During any billing cycle in which an interest charge on the deferred interest balance is debited to the account, the balance disclosed under § 226.7(b)(5) should include the deferred interest balance for that billing cycle.

iii. Amount of interest charge. Under § 226.7(b)(6)(ii), creditors must disclose interest charges imposed during a billing cycle. For some deferred interest purchases, the creditor may impose interest from the date of purchase if the deferred interest balance ($500 in this example) is not paid in full by March 31 in this example, but otherwise will not impose interest for billing cycles between the date of purchase and March 31. Periodic statements for billing cycles preceding March 31 in this example should not include in the interest charge disclosed under § 226.7(b)(6)(ii) the amounts a consumer may owe if the deferred interest balance is not paid in full by March 31. In this example, the February periodic statement should not identify as interest charges interest attributable to the $500 January purchase. This amount must be separately disclosed on periodic statements and identified by a term other than "interest charge" (such as "contingent interest charge" or "deferred interest charge"). The interest charge on a deferred interest balance should be reflected on the periodic statement under § 226.7(b)(6)(ii) for the billing cycle in which the interest charge is debited to the account.

iv. Due date to avoid obligation for finance charges under a deferred interest or similar program. Section 226.7(b)(14) requires disclosure on periodic statements of the date by which any outstanding balance subject to a deferred interest or similar program must be paid in full in order to avoid the obligation for finance charges on such balance. This disclosure must appear on the front of the periodic statement for two billing cycles immediately preceding the billing cycle in which the disclosed date occurs. However, if the duration of the deferred interest period is such that the reminder cannot be given for the last two billing cycles immediately preceding the disclosed date, the disclosure must be included on all periodic statements during the deferred interest period. Assuming monthly billing cycles ending at month-end and a payment due date of the 25th of the following month for balances not subject to the deferred interest program, the following examples illustrate how a creditor may comply with the requirement in § 226.7(b)(14) to disclose the date by which payment in full of balances subject to the deferred interest program must occur in order to avoid the obligation to pay finance charges applicable to a deferred interest balance ($500 in this example):

A. If the creditor identifies March 31 as the payment-due date for the $500 purchase, the creditor must include the $500 purchase and its due date on the periodic statement reflecting activity for January sent on February 1, and the periodic statement reflecting activity for February sent on March 1. (For the periodic statement reflecting account activity for February sent on March 1, the creditor could also identify March 31 as the payment-due date for any other amounts that would normally be due on March 25.)

B. If the creditor opts to delay the end of the deferred interest period to coincide with the end of the grace period for balances not subject to the deferred interest program by permitting the consumer to avoid finance charges if the $500 is paid in full by April 25, the creditor must include the $500 purchase and its due date on the periodic statement reflecting activity for February sent on March 1, and the periodic statement reflecting activity for March sent on April 1. The creditor could also include the $500 purchase and its due date on the periodic statement reflecting activity for January sent on February 1.

C. If the purchase was made in December (instead of January), the creditor must include the $500 purchase and its due date on the periodic statement reflecting activity for January sent on February 1 and the periodic statement reflecting activity for February sent on March 1. The creditor also could include the $500 purchase and its due date on the periodic statement reflecting activity for December sent on January 1.

D. If the due date for the deferred interest balance is February 20 (instead of March 31), the creditor must include the $500 purchase and its due date on the periodic statement reflecting activity for January and sent on February 1.

<u>7(b)(1) Previous balance</u>.

1. <u>Credit balances</u>. If the previous balance is a credit balance, it must be disclosed in such a way so as to inform the consumer that it is a credit balance, rather than a debit balance.

2. <u>Multifeatured plans</u>. In a multifeatured plan, the previous balance may be disclosed either as an aggregate balance for the account or as separate balances for each feature (for example, a previous balance for purchases and a previous balance for cash advances). If separate balances are disclosed, a total previous balance is optional.

3. <u>Accrued finance charges allocated from payments</u>. Some open-end credit plans provide that the amount of the finance charge that has accrued since the consumer's last payment is directly deducted from each new payment, rather than being separately added to each statement and reflected as an increase in the obligation. In such a plan, the previous balance need not reflect finance charges accrued since the last payment.

<u>7(b)(2) Identification of transactions</u>.

1. <u>Multifeatured plans</u>. Creditors may, but are not required to, arrange transactions by feature (such as disclosing purchase transactions separately from cash advance transactions). Pursuant to § 226.7(b)(6), however, creditors must group all fees

and all interest separately from transactions and may not disclose any fees or interest charges with transactions.

2. Automated teller machine (ATM) charges imposed by other institutions in shared or interchange systems. A charge imposed on the cardholder by an institution other than the card issuer for the use of the other institution's ATM in a shared or interchange system and included by the terminal-operating institution in the amount of the transaction need not be separately disclosed on the periodic statement.

7(b)(3) Credits.

1. Identification—sufficiency. The creditor need not describe each credit by type (returned merchandise, rebate of finance charge, etc.)—"credit" would suffice—except if the creditor is using the periodic statement to satisfy the billing-error correction notice requirement. (See the commentary to § 226.13(e) and (f).) Credits may be distinguished from transactions in any way that is clear and conspicuous, for example, by use of debit and credit columns or by use of plus signs and/or minus signs.

2. Date. If only one date is disclosed (that is, the crediting date as required by the regulation), no further identification of that date is necessary. More than one date may be disclosed for a single entry, as long as it is clear which date represents the date on which credit was given.

3. Totals. A total of amounts credited during the billing cycle is not required.

7(b)(4) Periodic rates.

1. Disclosure of periodic interest rates—whether or not actually applied. Except as provided in § 226.7(b)(4)(ii), any periodic interest rate that may be used to compute

finance charges, expressed as and labeled "Annual Percentage Rate," must be disclosed whether or not it is applied during the billing cycle. For example:

i. If the consumer's account has both a purchase feature and a cash advance feature, the creditor must disclose the annual percentage rate for each, even if the consumer only makes purchases on the account during the billing cycle.

ii. If the annual percentage rate varies (such as when it is tied to a particular index), the creditor must disclose each annual percentage rate in effect during the cycle for which the statement was issued.

2. Disclosure of periodic interest rates required only if imposition possible. With regard to the periodic interest rate disclosure (and its corresponding annual percentage rate), only rates that could have been imposed during the billing cycle reflected on the periodic statement need to be disclosed. For example:

i. If the creditor is changing annual percentage rates effective during the next billing cycle (either because it is changing terms or because of a variable-rate plan), the annual percentage rates required to be disclosed under § 226.7(b)(4) are only those in effect during the billing cycle reflected on the periodic statement. For example, if the annual percentage rate applied during May was 18%, but the creditor will increase the rate to 21% effective June 1, 18% is the only required disclosure under § 226.7(b)(4) for the periodic statement reflecting the May account activity.

ii. If the consumer has an overdraft line that might later be expanded upon the consumer's request to include secured advances, the rates for the secured advance feature need not be given until such time as the consumer has requested and received access to the additional feature.

iii. If annual percentage rates applicable to a particular type of transaction changed after a certain date and the old rate is only being applied to transactions that took place prior to that date, the creditor need not continue to disclose the old rate for those consumers that have no outstanding balances to which that rate could be applied.

3. Multiple rates—same transaction. If two or more periodic rates are applied to the same balance for the same type of transaction (for example, if the interest charge consists of a monthly periodic interest rate of 1.5% applied to the outstanding balance and a required credit life insurance component calculated at 0.1% per month on the same outstanding balance), creditors must disclose the interest periodic rate, expressed as an 18% annual percentage rate and the range of balances to which it is applicable. Costs attributable to the credit life insurance component must be disclosed as a fee under § 226.7(b)(6)(iii).

4. Fees. Creditors that identify fees in accordance with § 226.7(b)(6)(iii) need not identify the periodic rate at which a fee would accrue if the fee remains unpaid. For example, assume a fee is imposed for a late payment in the previous cycle and that the fee, unpaid, would be included in the purchases balance and accrue interest at the rate for purchases. The creditor need not separately disclose that the purchase rate applies to the portion of the purchases balance attributable to the unpaid fee.

5. Ranges of balances. See comment 6(b)(4)(i)(B)-1. A creditor is not required to adjust the range of balances disclosure to reflect the balance below which only a minimum charge applies.

6. Deferred interest transactions. See comment 7(b)-1.iv.

<u>7(b)(5) Balance on which finance charge computed</u>.

1. <u>Split rates applied to balance ranges</u>. If split rates were applied to a balance because different portions of the balance fall within two or more balance ranges, the creditor need not separately disclose the portions of the balance subject to such different rates since the range of balances to which the rates apply has been separately disclosed. For example, a creditor could disclose a balance of $700 for purchases even though a monthly periodic rate of 1.5% applied to the first $500, and a monthly periodic rate of 1% to the remainder. This option to disclose a combined balance does not apply when the interest charge is computed by applying the split rates to each day's balance (in contrast, for example, to applying the rates to the average daily balance). In that case, the balances must be disclosed using any of the options that are available if two or more daily rates are imposed. (See comment 7(b)(5)-4.)

2. <u>Monthly rate on average daily balance</u>. Creditors may apply a monthly periodic rate to an average daily balance.

3. <u>Multifeatured plans</u>. In a multifeatured plan, the creditor must disclose a separate balance (or balances, as applicable) to which a periodic rate was applied for each feature. Separate balances are not required, however, merely because a grace period is available for some features but not others. A total balance for the entire plan is optional. This does not affect how many balances the creditor must disclose—or may disclose—within each feature. (See, for example, comments 7(b)(5)-4 and 7(b)(4)-5.)

4. <u>Daily rate on daily balance</u>. i. If a finance charge is computed on the balance each day by application of one or more daily periodic interest rates, the balance on which

the interest charge was computed may be disclosed in any of the following ways for each feature:

ii. If a single daily periodic interest rate is imposed, the balance to which it is applicable may be stated as:

A. A balance for each day in the billing cycle.

B. A balance for each day in the billing cycle on which the balance in the account changes.

C. The sum of the daily balances during the billing cycle.

D. The average daily balance during the billing cycle, in which case the creditor may, at its option, explain that the average daily balance is or can be multiplied by the number of days in the billing cycle and the periodic rate applied to the product to determine the amount of interest.

iii. If two or more daily periodic interest rates may be imposed, the balances to which the rates are applicable may be stated as:

A. A balance for each day in the billing cycle.

B. A balance for each day in the billing cycle on which the balance in the account changes.

C. Two or more average daily balances, each applicable to the daily periodic interest rates imposed for the time that those rates were in effect. The creditor may, at its option, explain that interest is or may be determined by (1) multiplying each of the average balances by the number of days in the billing cycle (or if the daily rate varied during the cycle, by multiplying by the number of days the applicable rate was in effect),

(2) multiplying each of the results by the applicable daily periodic rate, and (3) adding these products together.

5. Information to compute balance. In connection with disclosing the interest charge balance, the creditor need not give the consumer all of the information necessary to compute the balance if that information is not otherwise required to be disclosed. For example, if current purchases are included from the date they are posted to the account, the posting date need not be disclosed.

6. Non-deduction of credits. The creditor need not specifically identify the total dollar amount of credits not deducted in computing the finance charge balance. Disclosure of the amount of credits not deducted is accomplished by listing the credits (§ 226.7(b)(3)) and indicating which credits will not be deducted in determining the balance (for example, "credits after the 15th of the month are not deducted in computing the interest charge.").

7. Use of one balance computation method explanation when multiple balances disclosed. Sometimes the creditor will disclose more than one balance to which a periodic rate was applied, even though each balance was computed using the same balance computation method. For example, if a plan involves purchases and cash advances that are subject to different rates, more than one balance must be disclosed, even though the same computation method is used for determining the balance for each feature. In these cases, one explanation or a single identification of the name of the balance computation method is sufficient. Sometimes the creditor separately discloses the portions of the balance that are subject to different rates because different portions of the balance fall within two or more balance ranges, even when a combined balance

disclosure would be permitted under comment 7(b)(5)-1. In these cases, one explanation or a single identification of the name of the balance computation method is also sufficient (assuming, of course, that all portions of the balance were computed using the same method).

8. Deferred interest transactions. See comment 7(b)-1.iv.

7(b)(6) Charges imposed.

1. Examples of charges. See commentary to § 226.6(b)(3).

2. Fees. Costs attributable to periodic rates other than interest charges shall be disclosed as a fee. For example, if a consumer obtains credit life insurance that is calculated at 0.1% per month on an outstanding balance and a monthly interest rate of 1.5% applies to the same balance, the creditor must disclose the dollar cost attributable to interest as an “interest charge” and the credit insurance cost as a “fee.”

3. Total fees for calendar year to date.

i. Monthly statements. Some creditors send monthly statements but the statement periods do not coincide with the calendar month. For creditors sending monthly statements, the following comply with the requirement to provide calendar year-to-date totals.

A. A creditor may disclose a calendar-year-to-date total at the end of the calendar year by aggregating fees for 12 monthly cycles, starting with the period that begins during January and finishing with the period that begins during December. For example, if statement periods begin on the 10th day of each month, the statement covering December 10, 2011 through January 9, 2012, may disclose the year-to-date total for fees imposed from January 10, 2011, through January 9, 2012. Alternatively, the creditor could provide a statement for the cycle ending January 9, 2012, showing the year-to-date total for fees imposed January 1, 2011, through December 31, 2011.

B. A creditor may disclose a calendar-year-to-date total at the end of the calendar year by aggregating fees for 12 monthly cycles, starting with the period that begins during December and finishing with the period that begins during November. For example, if statement periods begin on the 10th day of each month, the statement covering November 10, 2011 through December 9, 2011, may disclose the year-to-date total for fees imposed from December 10, 2010, through December 9, 2011.

ii. Quarterly statements. Creditors issuing quarterly statements may apply the guidance set forth for monthly statements to comply with the requirement to provide calendar year-to-date totals on quarterly statements.

4. Minimum charge in lieu of interest. A minimum charge imposed if a charge would otherwise have been determined by applying a periodic rate to a balance except for the fact that such charge is smaller than the minimum must be disclosed as a fee. For example, assume a creditor imposes a minimum charge of $1.50 in lieu of interest if the calculated interest for a billing period is less than that minimum charge. If the interest calculated on a consumer's account for a particular billing period is 50 cents, the minimum charge of $1.50 would apply. In this case, the entire $1.50 would be disclosed as a fee; the periodic statement would reflect the $1.50 as a fee, and $0 in interest.

5. Adjustments to year-to-date totals. In some cases, a creditor may provide a statement for the current period reflecting that fees or interest charges imposed during a previous period were waived or reversed and credited to the account. Creditors may, but are not required to, reflect the adjustment in the year-to-date totals, nor, if an adjustment

is made, to provide an explanation about the reason for the adjustment. Such adjustments should not affect the total fees or interest charges imposed for the current statement period.

6. Acquired accounts. An institution that acquires an account or plan must include, as applicable, fees and charges imposed on the account or plan prior to the acquisition in the aggregate disclosures provided under § 226.7(b)(6) for the acquired account or plan. Alternatively, the institution may provide separate totals reflecting activity prior and subsequent to the account or plan acquisition. For example, a creditor that acquires an account or plan on August 12 of a given calendar year may provide one total for the period from January 1 to August 11 and a separate total for the period beginning on August 12 .

7. Account upgrades. A creditor that upgrades, or otherwise changes, a consumer's plan to a different open-end credit plan must include, as applicable, fees and charges imposed for that portion of the calendar year prior to the upgrade or change in the consumer's plan in the aggregate disclosures provided pursuant to § 226.7(b)(6) for the new plan. For example, assume a consumer has incurred $125 in fees for the calendar year to date for a retail credit card account, which is then replaced by a cobranded credit card account also issued by the creditor. In this case, the creditor must reflect the $125 in fees incurred prior to the replacement of the retail credit card account in the calendar year-to-date totals provided for the cobranded credit card account. Alternatively, the institution may provide two separate totals reflecting activity prior and subsequent to the plan upgrade or change.

7(b)(7) Change-in-terms and increased penalty rate summary for open-end (not home-secured) plans.

1. Location of summary tables. If a change-in-terms notice required by § 226.9(c)(2) is provided on or with a periodic statement, a tabular summary of key changes must appear on the front of the statement. Similarly, if a notice of a rate increase due to delinquency or default or as a penalty required by § 226.9(g)(1) is provided on or with a periodic statement, information required to be provided about the increase, presented in a table, must appear on the front of the statement.

7(b)(8) Grace period.

1. Terminology. In describing the grace period, the language used must be consistent with that used on the account-opening disclosure statement. (See § 226.5(a)(2)(i).)

2. Deferred interest transactions. See comment 7(b)-1.iv.

7(b)(9) Address for notice of billing errors.

1. Terminology. The periodic statement should indicate the general purpose for the address for billing-error inquiries, although a detailed explanation or particular wording is not required.

2. Telephone number. A telephone number, e-mail address, or Web site location may be included, but the mailing address for billing-error inquiries, which is the required disclosure, must be clear and conspicuous. The address is deemed to be clear and conspicuous if a precautionary instruction is included that telephoning or notifying the creditor by e-mail or Web site will not preserve the consumer's billing rights, unless the

creditor has agreed to treat billing error notices provided by electronic means as written notices, in which case the precautionary instruction is required only for telephoning.

7(b)(10) Closing date of billing cycle; new balance.

1. Credit balances. See comment 7(b)(1)-1.

2. Multifeatured plans. In a multifeatured plan, the new balance may be disclosed for each feature or for the plan as a whole. If separate new balances are disclosed, a total new balance is optional.

3. Accrued finance charges allocated from payments. Some plans provide that the amount of the finance charge that has accrued since the consumer's last payment is directly deducted from each new payment, rather than being separately added to each statement and therefore reflected as an increase in the obligation. In such a plan, the new balance need not reflect finance charges accrued since the last payment.

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 § 226.7(b)(11).

2. Assessment of late payment fees. Some state 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 state 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 state 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 state 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 § 226.7(b)(11), but could not, under state 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 $29" 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 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, would not comply with this requirement.

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 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 § 226.10(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 § 226.10(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.

7(b)(12) Repayment disclosures.

7(b)(12)(iv) Provision of information about credit counseling services.

1. Approved credit counseling agencies. Section 226.7(b)(12)(iv)(A) requires card issuers to provide information regarding at least three organizations that have been approved by the United States Trustee or a bankruptcy administrator pursuant to 11 U.S.C. 111(a)(1) to provide credit counseling services in the state in which the billing address for the account is located or the state specified by the consumer. The card issuer may use the billing address for the account or, at its option, allow the consumer to specify the state. A card issuer does not satisfy the requirements in § 226.7(b)(12)(iv)(A) by

providing information regarding providers that have been approved pursuant to 11 U.S.C. 111(a)(2) to offer personal financial management courses.

2. Information provided by United States Trustee or a bankruptcy administrator. A card issuer complies with the requirements of § 226.7(b)(12)(iv) if it provides the consumer with information obtained from the United States Trustee or a bankruptcy administrator, including information obtained from the Web site operated by the United States Trustee. If, for example, the Web site address for an organization approved by the United States Trustee is not available from the Web site operated by the United States Trustee, a card issuer is not required to provide a Web site address for that organization. However, at least annually, the card issuer must verify and update the information it provides for consistency with the information provided by the United States Trustee or a bankruptcy administrator.

3. Automated response systems or devices. At their option, card issuers may use toll-free telephone numbers that connect consumers to automated systems, such as an interactive voice response system, through which consumers may obtain the information required by § 226.7(b)(12)(iv) by inputting information using a touch-tone telephone or similar device.

4. Toll-free telephone number. A card issuer may provide a toll-free telephone number that is designed to handle customer service calls generally, so long as the option to receive the information required by § 226.7(b)(12)(iv) is prominently disclosed to the consumer. For automated systems, the option to receive the information required by § 226.7(b)(12)(iv) is prominently disclosed to the consumer if it is listed as one of the options in the first menu of options given to the consumer, such as ''Press or say '3' if

you would like information about credit counseling services.'' If the automated system permits callers to select the language in which the call is conducted and in which information is provided, the menu to select the language may precede the menu with the option to receive information about accessing credit counseling services.

5. Third parties. At their option, card issuers may use a third party to establish and maintain a toll-free telephone number for use by the issuer to provide the information required by § 226.7(b)(12)(iv).

6. Web site address. When making the repayment disclosures on the periodic statement pursuant to § 226.7(b)(12), a card issuer at its option may also include a reference to a Web site address (in addition to the toll-free telephone number) where its customers may obtain the information required by § 226.7(b)(12)(iv), so long as the information provided on the Web site complies with § 226.7(b)(12)(iv). The Web site address disclosed must take consumers directly to the Web page where information about accessing credit counseling may be obtained. In the alternative, the card issuer may disclose the Web site address for the Web page operated by the United States Trustee where consumers may obtain information about approved credit counseling organizations.

7. Advertising or marketing information. If a consumer requests information about credit counseling services, the card issuer may not provide advertisements or marketing materials to the consumer (except for providing the name of the issuer) prior to providing the information required by § 226.7(b)(12)(iv). Educational materials that do not solicit business are not considered advertisements or marketing materials for this purpose. Examples:

i. Toll-free telephone number. As described in comment 7(b)(12)(iv)–4, an issuer may provide a toll-free telephone number that is designed to handle customer service calls generally, so long as the option to receive the information required by § 226.7(b)(12)(iv) through that toll-free telephone number is prominently disclosed to the consumer. Once the consumer selects the option to receive the information required by § 226.7(b)(12)(iv), the issuer may not provide advertisements or marketing materials to the consumer (except for providing the name of the issuer) prior to providing the required information.

ii. Web page. If the issuer discloses a link to a Web site address as part of the repayment disclosures pursuant to comment 7(b)(12)(iv)–6, the issuer may not provide advertisements or marketing materials (except for providing the name of the issuer) on the Web page accessed by the address prior to providing the information required by § 226.7(b)(12)(iv).

7(b)(13) Format requirements.

1. Combined deposit account and credit account statements. Some financial institutions provide information about deposit account and open-end credit account activity on one periodic statement. For purposes of providing disclosures on the front of the first page of the periodic statement pursuant to § 226.7(b)(13), the first page of such a combined statement shall be the page on which credit transactions first appear.

Section 226.8—Identifying Transactions on Periodic Statements

8(a) Sale credit.

1. Sale credit. The term "sale credit" refers to a purchase in which the consumer uses a credit card or otherwise directly accesses an open-end line of credit (see comment

8(b)-1 if access is by means of a check) to obtain goods or services from a merchant, whether or not the merchant is the card issuer or creditor. "Sale credit" includes:

i. The purchase of funds-transfer services (such as a wire transfer) from an intermediary.

ii. The purchase of services from the card issuer or creditor. For the purchase of services that are costs imposed as part of the plan under § 226.6(b)(3), card issuers and creditors comply with the requirements for identifying transactions under this section by disclosing the fees in accordance with the requirements of § 226.7(b)(6). For the purchases of services that are not costs imposed as part of the plan, card issuers and creditors may, at their option, identify transactions under this section or in accordance with the requirements of § 226.7(b)(6).

2. Amount—transactions not billed in full. If sale transactions are not billed in full on any single statement, but are billed periodically in precomputed installments, the first periodic statement reflecting the transaction must show either the full amount of the transaction together with the date the transaction actually took place; or the amount of the first installment that was debited to the account together with the date of the transaction or the date on which the first installment was debited to the account. In any event, subsequent periodic statements should reflect each installment due, together with either any other identifying information required by § 226.8(a) (such as the seller's name and address in a three-party situation) or other appropriate identifying information relating the transaction to the first billing. The debiting date for the particular installment, or the date the transaction took place, may be used as the date of the transaction on these subsequent statements.

3. <u>Date—when a transaction takes place</u>.

i. If the consumer conducts the transaction in person, the date of the transaction is the calendar date on which the consumer made the purchase or order, or secured the advance.

ii. For transactions billed to the account on an ongoing basis (other than installments to pay a precomputed amount), the date of the transaction is the date on which the amount is debited to the account. This might include, for example, monthly insurance premiums.

iii. For mail, Internet, or telephone orders, a creditor may disclose as the transaction date either the invoice date, the debiting date, or the date the order was placed by telephone or via the Internet.

iv. In a foreign transaction, the debiting date may be considered the transaction date.

4. <u>Date—sufficiency of description</u>.

i. If the creditor discloses only the date of the transaction, the creditor need not identify it as the "transaction date." If the creditor discloses more than one date (for example, the transaction date and the posting date), the creditor must identify each.

ii. The month and day sufficiently identify the transaction date, unless the posting of the transaction is delayed so long that the year is needed for a clear disclosure to the consumer.

5. <u>Same or related persons</u>. i. For purposes of identifying transactions, the term <u>same or related persons</u> refers to, for example:

A. Franchised or licensed sellers of a creditor's product or service.

B. Sellers who assign or sell open-end sales accounts to a creditor or arrange for such credit under a plan that allows the consumer to use the credit only in transactions with that seller.

ii. A seller is not related to the creditor merely because the seller and the creditor have an agreement authorizing the seller to honor the creditor's credit card.

6. Brief identification—sufficiency of description. The "brief identification" provision in § 226.8(a)(1)(i) requires a designation that will enable the consumer to reconcile the periodic statement with the consumer's own records. In determining the sufficiency of the description, the following rules apply:

i. While item-by-item descriptions are not necessary, reasonable precision is required. For example, "merchandise," "miscellaneous," "second-hand goods," or "promotional items" would not suffice.

ii. A reference to a department in a sales establishment that accurately conveys the identification of the types of property or services available in the department is sufficient—for example, "jewelry," or "sporting goods."

iii. A number or symbol that is related to an identification list printed elsewhere on the statement that reasonably identifies the transaction with the creditor is sufficient.

7. Seller's name—sufficiency of description. The requirement contemplates that the seller's name will appear on the periodic statement in essentially the same form as it appears on transaction documents provided to the consumer at the time of the sale. The seller's name may also be disclosed as, for example:

i. A more complete spelling of the name that was alphabetically abbreviated on the receipt or other credit document.

ii. An alphabetical abbreviation of the name on the periodic statement even if the name appears in a more complete spelling on the receipt or other credit document. Terms that merely indicate the form of a business entity, such as “Inc.,” “Co.,” or “Ltd.,” may always be omitted.

8. Location of transaction.

i. If the seller has multiple stores or branches within a city, the creditor need not identify the specific branch at which the sale occurred.

ii. When no meaningful address is available because the consumer did not make the purchase at any fixed location of the seller, the creditor may omit the address, or may provide some other identifying designation, such as “aboard plane,” “ABC Airways Flight,” “customer’s home,” “telephone order,” “Internet order” or “mail order.”

8(b) Nonsale credit.

1. Nonsale credit. The term “nonsale credit” refers to any form of loan credit including, for example:

i. A cash advance.

ii. An advance on a credit plan that is accessed by overdrafts on a checking account.

iii. The use of a “supplemental credit device” in the form of a check or draft or the use of the overdraft credit plan accessed by a debit card, even if such use is in connection with a purchase of goods or services.

iv. Miscellaneous debits to remedy mispostings, returned checks, and similar entries.

2. Amount—overdraft credit plans. If credit is extended under an overdraft credit plan tied to a checking account or by means of a debit card tied to an overdraft credit plan:

i. The amount to be disclosed is that of the credit extension, not the face amount of the check or the total amount of the debit/credit transaction.

ii. The creditor may disclose the amount of the credit extensions on a cumulative daily basis, rather than the amount attributable to each check or each use of the debit card that accesses the credit plan.

3. Date of transaction. See comment 8(a)-4.

4. Nonsale transaction—sufficiency of identification. The creditor sufficiently identifies a nonsale transaction by describing the type of advance it represents, such as cash advance, loan, overdraft loan, or any readily understandable trade name for the credit program.

Section 226.9–Subsequent Disclosure Requirements

9(a) Furnishing statement of billing rights.

9(a)(1) Annual statement.

1. General. The creditor may provide the annual billing rights statement:

i. By sending it in one billing period per year to each consumer that gets a periodic statement for that period; or

ii. By sending a copy to all of its accountholders sometime during the calendar year but not necessarily all in one billing period (for example, sending the annual notice in connection with renewal cards or when imposing annual membership fees).

2. Substantially similar. See the commentary to Model Forms G-3 and G-3(A) in appendix G to part 226.

9(a)(2) Alternative summary statement.

1. Changing from long-form to short form statement and vice versa. If the creditor has been sending the long-form annual statement, and subsequently decides to use the alternative summary statement, the first summary statement must be sent no later than 12 months after the last long-form statement was sent. Conversely, if the creditor wants to switch to the long-form, the first long-form statement must be sent no later than 12 months after the last summary statement.

2. Substantially similar. See the commentary to Model Forms G-4 and G-4(A) in appendix G to part 226.

9(b) Disclosures for supplemental credit access devices and additional features.

1. Credit access device—examples. Credit access device includes, for example, a blank check, payee-designated check, blank draft or order, or authorization form for issuance of a check; it does not include a check issued payable to a consumer representing loan proceeds or the disbursement of a cash advance.

2. Credit account feature—examples. A new credit account feature would include, for example:

i. The addition of overdraft checking to an existing account (although the regular checks that could trigger the overdraft feature are not themselves "devices").

ii. The option to use an existing credit card to secure cash advances, when previously the card could only be used for purchases.

Paragraph 9(b)(2).

1. Different finance charge terms. Except as provided in § 226.9(b)(3) for checks that access a credit card account, if the finance charge terms are different from those previously disclosed, the creditor may satisfy the requirement to give the finance charge terms either by giving a complete set of new account-opening disclosures reflecting the terms of the added device or feature or by giving only the finance charge disclosures for the added device or feature.

9(b)(3) Checks that access a credit card account.

9(b)(3)(i) Disclosures.

1. Front of the page containing the checks. The following would comply with the requirement that the tabular disclosures provided pursuant to § 226.9(b)(3) appear on the front of the page containing the checks:

i. Providing the tabular disclosure on the front of the first page on which checks appear, for an offer where checks are provided on multiple pages;

ii. Providing the tabular disclosure on the front of a mini-book or accordion booklet containing the checks; or

iii. Providing the tabular disclosure on the front of the solicitation letter, when the checks are printed on the front of the same page as the solicitation letter even if the checks can be separated by the consumer from the solicitation letter using perforations.

Paragraph 9(b)(3)(i)(D).

1. Grace period. Creditors may use the following language to describe a grace period on check transactions: "Your due date is [at least] ____ days after the close of each billing cycle. We will not charge you interest on check transactions if you pay your

entire balance by the due date each month." Creditors may use the following language to describe that no grace period on check transactions is offered, as applicable: "We will begin charging interest on these checks on the transaction date."

9(c) Change in terms.

9(c)(1) Rules affecting home-equity plans.

* * * * *

9(c)(2) Rules affecting open-end (not home-secured) plans.

1. Changes initially disclosed. Except as provided in § 226.9(g)(1), no notice of a change in terms need be given if the specific change is set forth initially, such as rate increases under a properly disclosed variable-rate plan in accordance with § 226.9(c)(2)(v)(C). In contrast, notice must be given if the contract allows the creditor to increase the rate at its discretion.

2. State law issues. Some issues are not addressed by § 226.9(c)(2) because they are controlled by state or other applicable laws. These issues include the types of changes a creditor may make, to the extent otherwise permitted by this regulation.

3. Change in billing cycle. Whenever the creditor changes the consumer's billing cycle, it must give a change-in-terms notice if the change affects any of the terms described in § 226.9(c)(2)(i), unless an exception under § 226.9(c)(2)(v) applies; for example, the creditor must give advance notice if the creditor initially disclosed a 28-day grace period on purchases and the consumer will have fewer days during the billing cycle change. But see § 226.7(b)(11)(i)(A) regarding the general requirement that the payment due date for a credit card account under an open-end (not home-secured) consumer credit plan must be the same day each month.

4. Relationship to § 226.9(b). If a creditor adds a feature to the account on the type of terms otherwise required to be disclosed under § 226.6, the creditor must satisfy: the requirement to provide the finance charge disclosures for the added feature under § 226.9(b); and any applicable requirement to provide a change-in-terms notice under § 226.9(c), including any advance notice that must be provided. For example, if a creditor adds a balance transfer feature to an account more than 30 days after account-opening disclosures are provided, it must give the finance charge disclosures for the balance transfer feature under § 226.9(b) as well as comply with the change-in-terms notice requirements under § 226.9(c), including providing notice of the change at least 45 days prior to the effective date of the change. Similarly, if a creditor makes a balance transfer offer on finance charge terms that are higher than those previously disclosed for balance transfers, it would also generally be required to provide a change-in-terms notice at least 45 days in advance of the effective date of the change. A creditor may provide a single notice under § 226.9(c) to satisfy the notice requirements of both paragraphs (b) and (c) of § 226.9. For checks that access a credit card account subject to the disclosure requirements in § 226.9(b)(3), a creditor is not subject to the notice requirements under § 226.9(c) even if the applicable rate or fee is higher than those previously disclosed for such checks. Thus, for example, the creditor need not wait 45 days before applying the new rate or fee for transactions made using such checks, but the creditor must make the required disclosures on or with the checks in accordance with § 226.9(b)(3).

9(c)(2)(i) Changes where written advance notice is required.

1. Affected consumers. Change-in-terms notices need only go to those consumers who may be affected by the change. For example, a change in the periodic

rate for check overdraft credit need not be disclosed to consumers who do not have that feature on their accounts. If a single credit account involves multiple consumers that may be affected by the change, the creditor should refer to § 226.5(d) to determine the number of notices that must be given.

2. Timing—effective date of change. The rule that the notice of the change in terms be provided at least 45 days before the change takes effect permits mid-cycle changes when there is clearly no retroactive effect, such as the imposition of a transaction fee. Any change in the balance computation method, in contrast, would need to be disclosed at least 45 days prior to the billing cycle in which the change is to be implemented.

3. Timing—advance notice not required. Advance notice of 45 days is not necessary—that is, a notice of change in terms is required, but it may be mailed or delivered as late as the effective date of the change if the consumer agrees to the particular change. This provision is solely intended for use in the unusual instance when a consumer substitutes collateral or when the creditor can advance additional credit only if a change relatively unique to that consumer is made, such as the consumer's providing additional security or paying an increased minimum payment amount. Therefore, the following are not "agreements" between the consumer and the creditor for purposes of § 226.9(c)(2)(i): The consumer's general acceptance of the creditor's contract reservation of the right to change terms; the consumer's use of the account (which might imply acceptance of its terms under state law); the consumer's acceptance of a unilateral term change that is not particular to that consumer, but rather is of general applicability to consumers with that type of account; and the consumer's request to reopen a closed

account or to upgrade an existing account to another account offered by the creditor with different credit or other features. See also comment 5(b)(1)(i)-6.

4. Form of change-in-terms notice. Except if § 226.9(c)(2)(iv) applies, a complete new set of the initial disclosures containing the changed term complies with § 226.9(c)(2)(i) if the change is highlighted on the disclosure statement, or if the disclosure statement is accompanied by a letter or some other insert that indicates or draws attention to the term being changed.

5. Security interest change—form of notice. A copy of the security agreement that describes the collateral securing the consumer's account may be used as the notice, when the term change is the addition of a security interest or the addition or substitution of collateral.

6. Examples. See comment 55(a)-1 and 55(b)-3 for examples of how a card issuer that is subject to § 226.55 may comply with the timing requirements for notices required by § 226.9(c)(2)(i).

9(c)(2)(iii) Charges not covered by § 226.6(b)(1) and (b)(2).

1. Applicability. Generally, if a creditor increases any component of a charge, or introduces a new charge, that is imposed as part of the plan under § 226.6(b)(3) but is not required to be disclosed as part of the account-opening summary table under § 226.6(b)(1) and (b)(2), the creditor may either, at its option (i) provide at least 45 days' written advance notice before the change becomes effective to comply with the requirements of § 226.9(c)(2)(i), or (ii) provide notice orally or in writing, or electronically if the consumer requests the service electronically, of the amount of the charge to an affected consumer before the consumer agrees to or becomes obligated to

pay the charge, at a time and in a manner that a consumer would be likely to notice the disclosure. (See the commentary under § 226.5(a)(1)(iii) regarding disclosure of such changes in electronic form.) For example, a fee for expedited delivery of a credit card is a charge imposed as part of the plan under § 226.6(b)(3) but is not required to be disclosed in the account-opening summary table under § 226.6(b)(1) and (b)(2). If a creditor changes the amount of that expedited delivery fee, the creditor may provide written advance notice of the change to affected consumers at least 45 days before the change becomes effective. Alternatively, the creditor may provide oral or written notice, or electronic notice if the consumer requests the service electronically, of the amount of the charge to an affected consumer before the consumer agrees to or becomes obligated to pay the charge, at a time and in a manner that the consumer would be likely to notice the disclosure. (See comment 5(b)(1)(ii)-1 for examples of disclosures given at a time and in a manner that the consumer would be likely to notice them.)

9(c)(2)(iv) Disclosure requirements.

9(c)(2)(iv) Significant changes to account terms.

1. Changing margin for calculating a variable rate. If a creditor is changing a margin used to calculate a variable rate, the creditor must disclose the amount of the new rate (as calculated using the new margin) in the table described in § 226.9(c)(2)(iv), and include a reminder that the rate is a variable rate. For example, if a creditor is changing the margin for a variable rate that uses the prime rate as an index, the creditor must disclose in the table the new rate (as calculated using the new margin) and indicate that the rate varies with the market based on the prime rate.

2. Changing index for calculating a variable rate. If a creditor is changing the index used to calculate a variable rate, the creditor must disclose the amount of the new rate (as calculated using the new index) and indicate that the rate varies and the how the rate is determined, as explained in § 226.6(b)(2)(i)(A). For example, if a creditor is changing from using a prime rate to using the LIBOR in calculating a variable rate, the creditor would disclose in the table the new rate (using the new index) and indicate that the rate varies with the market based on the LIBOR.

3. Changing from a variable rate to a non-variable rate. If a creditor is changing from a variable rate to a non-variable rate, the creditor must disclose the amount of the new rate (that is, the non-variable rate) in the table.

4. Changing from a non-variable rate to a variable rate. If a creditor is changing from a non-variable rate to a variable rate, the creditor must disclose the amount of the new rate (the variable rate using the index and margin), and indicate that the rate varies with the market based on the index used, such as the prime rate or the LIBOR.

5. Changes in the penalty rate, the triggers for the penalty rate, or how long the penalty rate applies. If a creditor is changing the amount of the penalty rate, the creditor must also redisclose the triggers for the penalty rate and the information about how long the penalty rate applies even if those terms are not changing. Likewise, if a creditor is changing the triggers for the penalty rate, the creditor must redisclose the amount of the penalty rate and information about how long the penalty rate applies. If a creditor is changing how long the penalty rate applies, the creditor must redisclose the amount of the penalty rate and the triggers for the penalty rate, even if they are not changing.

6. Changes in fees. If a creditor is changing part of how a fee that is disclosed in a tabular format under § 226.6(b)(1) and (b)(2) is determined, the creditor must redisclose all relevant information related to that fee regardless of whether this other information is changing. For example, if a creditor currently charges a cash advance fee of "Either $5 or 3% of the transaction amount, whichever is greater. (Max: $100)," and the creditor is only changing the minimum dollar amount from $5 to $10, the issuer must redisclose the other information related to how the fee is determined. For example, the creditor in this example would disclose the following: "Either $10 or 3% of the transaction amount, whichever is greater. (Max: $100)."

7. Combining a notice described in § 226.9(c)(2)(iv) with a notice described in § 226.9(g)(3). If a creditor is required to provide a notice described in § 226.9(c)(2)(iv) and a notice described in § 226.9(g)(3) to a consumer, the creditor may combine the two notices. This would occur if penalty pricing has been triggered, and other terms are changing on the consumer's account at the same time.

8. Content. Sample G-20 contains an example of how to comply with the requirements in § 226.9(c)(2)(iv) when a variable rate is being changed to a non-variable rate on a credit card account.. The sample explains when the new rate will apply to new transactions and to which balances the current rate will continue to apply. Sample G-21 contains an example of how to comply with the requirements in § 226.9(c)(2)(iv) when (i) the late payment fee on a credit card account is being increased in accordance with a formula that depends on the outstanding balance on the account, and (ii) the returned payment fee is also being increased. The sample discloses the consumer's right to reject the changes in accordance with § 226.9(h).

9. Clear and conspicuous standard. See comment 5(a)(1)-1 for the clear and conspicuous standard applicable to disclosures required under § 226.9(c)(2)(iv)(A)(1).

10. Terminology. See § 226.5(a)(2) for terminology requirements applicable to disclosures required under § 226.9(c)(2)(iv)(A)(1).

9(c)(2)(v) Notice not required.

1. Changes not requiring notice. The following are examples of changes that do not require a change-in-terms notice:

i. A change in the consumer's credit limit except as otherwise required by § 226.9(c)(2)(vi).

ii. A change in the name of the credit card or credit card plan.

iii. The substitution of one insurer for another.

iv. A termination or suspension of credit privileges.

v. Changes arising merely by operation of law; for example, if the creditor's security interest in a consumer's car automatically extends to the proceeds when the consumer sells the car.

2. Skip features. i. General. If a credit program allows consumers to skip or reduce one or more payments during the year, or involves temporary reductions in finance charges other than reductions in an interest rate (except if § 226.9(c)(2)(v)(B) or (c)(2)(v)(D) applies), no notice of the change in terms is required either prior to the reduction or upon resumption of the higher finance charges or payments if these features are explained on the account-opening disclosure statement (including an explanation of the terms upon resumption). For example, a merchant may allow consumers to skip the December payment to encourage holiday shopping, or a teacher's credit union may not

require payments during summer vacation. Otherwise, the creditor must give notice prior to resuming the original schedule or finance charge, even though no notice is required prior to the reduction. The change-in-terms notice may be combined with the notice offering the reduction. For example, the periodic statement reflecting the reduction or skip feature may also be used to notify the consumer of the resumption of the original schedule or finance charge, either by stating explicitly when the higher payment or charges resume or by indicating the duration of the skip option. Language such as "You may skip your October payment" may serve as the change-in-terms notice.

ii. Temporary reductions in interest rates. If a credit program involves temporary reductions in an interest rate, no notice of the change in terms is required either prior to the reduction or upon resumption of the original rate if these features are disclosed in advance in accordance with the requirements of § 226.9(c)(2)(v)(B). Otherwise, the creditor must give notice prior to resuming the original rate, even though no notice is required prior to the reduction. The notice provided prior to resuming the original rate must comply with the timing requirements of § 226.9(c)(2)(i) and the content and format requirements of § 226.9(c)(2)(iv)(A), (B) (if applicable), and (C). See comment 55(b)-3 for guidance regarding the application of § 226.55 in these circumstances.

3. Changing from a variable rate to a non-variable rate. If a creditor is changing a rate applicable to a consumer's account from a variable rate to a non-variable rate, the creditor must provide a notice as otherwise required under § 226.9(c) even if the variable rate at the time of the change is higher than the non-variable rate. (See comment 9(c)(2)(iv)(A)-3.)

4. Changing from a non-variable rate to a variable rate. If a creditor is changing a rate applicable to a consumer's account from a non-variable rate to a variable rate, the creditor must provide a notice as otherwise required under § 226.9(c) even if the non-variable rate is higher than the variable rate at the time of the change. (See comment 9(c)(2)(iv)(A)-4.)

5. Telephone purchases. The timing requirements of § 226.9(c)(2)(v)(B) are deemed to have been met, and written disclosures required by § 226.9(c)(2)(v)(B) may be provided as soon as reasonably practicable after the first transaction subject to a rate that will be in effect for a specified period of time (a temporary rate) if:

i. The first transaction subject to the temporary rate occurs when a consumer contacts a merchant by telephone to purchase goods and at the same time the consumer accepts an offer to finance the purchase at the temporary rate;

ii. The merchant or third-party creditor permits consumers to return any goods financed subject to the temporary rate and return the goods free of cost after the merchant or third-party creditor has provided the written disclosures required by § 226.9(c)(2)(v)(B); and

iii. The disclosures required by § 226.9(c)(2)(v)(B) and the consumer's right to reject the temporary rate offer and return the goods are disclosed to the consumer as part of the offer to finance the purchase.

6. Disclosure of annual percentage rates. If a rate disclosed pursuant to § 226.9(c)(2)(v)(B) or (c)(2)(v)(D) is a variable rate, the creditor must disclose the fact that the rate may vary and how the rate is determined. For example, a creditor could state "After October 1, 2009, your APR will be 14.99%. This APR will vary with the market

based on the Prime Rate."

7. Deferred interest or similar programs. If the applicable conditions are met, the exception in § 226.9(c)(2)(v)(B) applies to deferred interest or similar promotional programs under which the consumer is not obligated to pay interest that accrues on a balance if that balance is paid in full prior to the expiration of a specified period of time. For such programs, a creditor must disclose pursuant to § 226.9(c)(2)(v)(B)(1) the length of the deferred interest period and the rate that will apply to the balance subject to the deferred interest program if that balance is not paid in full prior to expiration of the deferred interest period. Examples of language that a creditor may use to make the required disclosures under § 226.9(c)(2)(v)(B)(1) include:

i. "No interest if paid in full in 6 months. If the balance is not paid in full in 6 months, interest will be imposed from the date of purchase at a rate of 15.99%."

ii. "No interest if paid in full by December 31, 2010. If the balance is not paid in full by that date, interest will be imposed from the transaction date at a rate of 15%."

8. Disclosure of the terms of a workout or temporary hardship arrangement. In order for the exception in § 226.9(c)(2)(v)(D) to apply, the disclosure provided to the consumer pursuant to § 226.9(c)(2)(v)(D)(2) must set forth:

i. The annual percentage rate that will apply to balances subject to the workout or temporary hardship arrangement;

ii. The annual percentage rate that will apply to such balances if the consumer completes or fails to comply with the terms of, the workout or temporary hardship arrangement;

iii. Any reduced fee or charge of a type required to be disclosed under

§ 226.6(b)(2)(ii), (b)(2)(iii), or (b)(2)(xii) that will apply to balances subject to the workout or temporary hardship arrangement, as well as the fee or charge that will apply if the consumer completes or fails to comply with the terms of the workout or temporary hardship arrangement; and

iv. If applicable, that the consumer must make timely minimum payments in order to remain eligible for the workout or temporary hardship arrangement.

9(d) Finance charge imposed at time of transaction.

1. Disclosure prior to imposition. A person imposing a finance charge at the time of honoring a consumer's credit card must disclose the amount of the charge, or an explanation of how the charge will be determined, prior to its imposition. This must be disclosed before the consumer becomes obligated for property or services that may be paid for by use of a credit card. For example, disclosure must be given before the consumer has dinner at a restaurant, stays overnight at a hotel, or makes a deposit guaranteeing the purchase of property or services.

9(e) Disclosures upon renewal of credit or charge card.

1. Coverage. This paragraph applies to credit and charge card accounts of the type subject to § 226.5a. (See § 226.5a(a)(5) and the accompanying commentary for discussion of the types of accounts subject to § 226.5a.) The disclosure requirements are triggered when a card issuer imposes any annual or other periodic fee on such an account or if the card issuer has changed or amended any term of a cardholder's account required to be disclosed under § 226.6(b)(1) and (b)(2) that has not previously been disclosed to the consumer, whether or not the card issuer originally was required to provide the application and solicitation disclosures described in § 226.5a.

2. Form. The disclosures under this paragraph must be clear and conspicuous, but need not appear in a tabular format or in a prominent location. The disclosures need not be in a form the cardholder can retain.

3. Terms at renewal. Renewal notices must reflect the terms actually in effect at the time of renewal. For example, a card issuer that offers a preferential annual percentage rate to employees during their employment must send a renewal notice to employees disclosing the lower rate actually charged to employees (although the card issuer also may show the rate charged to the general public).

4. Variable rate. If the card issuer cannot determine the rate that will be in effect if the cardholder chooses to renew a variable-rate account, the card issuer may disclose the rate in effect at the time of mailing or delivery of the renewal notice. Alternatively, the card issuer may use the rate as of a specified date within the last 30 days before the disclosure is provided.

5. Renewals more frequent than annual. If a renewal fee is billed more often than annually, the renewal notice should be provided each time the fee is billed. In this instance, the fee need not be disclosed as an annualized amount. Alternatively, the card issuer may provide the notice no less than once every 12 months if the notice explains the amount and frequency of the fee that will be billed during the time period covered by the disclosure, and also discloses the fee as an annualized amount. The notice under this alternative also must state the consequences of a cardholder's decision to terminate the account after the renewal-notice period has expired. For example, if a $2 fee is billed monthly but the notice is given annually, the notice must inform the cardholder that the monthly charge is $2, the annualized fee is $24, and $2 will be billed to the account each

month for the coming year unless the cardholder notifies the card issuer. If the cardholder is obligated to pay an amount equal to the remaining unpaid monthly charges if the cardholder terminates the account during the coming year but after the first month, the notice must disclose the fact.

6. Terminating credit availability. Card issuers have some flexibility in determining the procedures for how and when an account may be terminated. However, the card issuer must clearly disclose the time by which the cardholder must act to terminate the account to avoid paying a renewal fee, if applicable. State and other applicable law govern whether the card issuer may impose requirements such as specifying that the cardholder's response be in writing or that the outstanding balance be repaid in full upon termination.

7. Timing of termination by cardholder. When a card issuer provides notice under § 226.9(e)(1), a cardholder must be given at least 30 days or one billing cycle, whichever is less, from the date the notice is mailed or delivered to make a decision whether to terminate an account.

8. Timing of notices. A renewal notice is deemed to be provided when mailed or delivered. Similarly, notice of termination is deemed to be given when mailed or delivered.

9. Prompt reversal of renewal fee upon termination. In a situation where a cardholder has provided timely notice of termination and a renewal fee has been billed to a cardholder's account, the card issuer must reverse or otherwise withdraw the fee promptly. Once a cardholder has terminated an account, no additional action by the cardholder may be required.

9(e)(2) Notification on periodic statements.

1. Combined disclosures. If a single disclosure is used to comply with both §§ 226.9(e) and 226.7, the periodic statement must comply with the rules in §§ 226.5a and 226.7. For example, a description substantially similar to the heading describing the grace period required by § 226.5a(b)(5) must be used and the name of the balance-calculation method must be identified (if listed in § 226.5a(g)) to comply with the requirements of § 226.5a. A card issuer may include some of the renewal disclosures on a periodic statement and others on a separate document so long as there is some reference indicating that the disclosures relate to one another. All renewal disclosures must be provided to a cardholder at the same time.

2. Preprinted notices on periodic statements. A card issuer may preprint the required information on its periodic statements. A card issuer that does so, however, must make clear on the periodic statement when the preprinted renewal disclosures are applicable. For example, the card issuer could include a special notice (not preprinted) at the appropriate time that the renewal fee will be billed in the following billing cycle, or could show the renewal date as a regular (preprinted) entry on all periodic statements.

9(f) Change in credit card account insurance provider.

1. Coverage. This paragraph applies to credit card accounts of the type subject to § 226.5a if credit insurance (typically life, disability, and unemployment insurance) is offered on the outstanding balance of such an account. (Credit card accounts subject to § 226.9(f) are the same as those subject to § 226.9(e); see comment 9(e)–1.) Charge card accounts are not covered by this paragraph. In addition, the disclosure requirements of this paragraph apply only where the card issuer initiates the change in insurance provider.

For example, if the card issuer's current insurance provider is merged into or acquired by another company, these disclosures would not be required. Disclosures also need not be given in cases where card issuers pay for credit insurance themselves and do not separately charge the cardholder.

2. No increase in rate or decrease in coverage. The requirement to provide the disclosure arises when the card issuer changes the provider of insurance, even if there will be no increase in the premium rate charged to the consumer and no decrease in coverage under the insurance policy.

3. Form of notice. If a substantial decrease in coverage will result from the change in provider, the card issuer either must explain the decrease or refer to an accompanying copy of the policy or group certificate for details of the new terms of coverage. (See the commentary to appendix G–13 to part 226.)

4. Discontinuation of insurance. In addition to stating that the cardholder may cancel the insurance, the card issuer may explain the effect the cancellation would have on the consumer's credit card plan.

5. Mailing by third party. Although the card issuer is responsible for the disclosures, the insurance provider or another third party may furnish the disclosures on the card issuer's behalf.

9(f)(3) Substantial decrease in coverage.

1. Determination. Whether a substantial decrease in coverage will result from the change in provider is determined by the two-part test in § 226.9(f)(3): first, whether the decrease is in a significant term of coverage; and second, whether the decrease might

reasonably be expected to affect a cardholder's decision to continue the insurance. If both conditions are met, the decrease must be disclosed in the notice.

9(g) Increase in rates due to delinquency or default or as a penalty.

1. Relationship between § 226.9(c) and (g) and § 226.55– examples. Card issuers subject to § 226.55 are prohibited from increasing the annual percentage rate for a category of transactions on any consumer credit card account unless specifically permitted by one of the exceptions in § 226.55(b). See comments 55(a)-1 and 55(b)-3 and the commentary to § 226.55(b)(4) for examples that illustrate the relationship between the notice requirements of § 226.9(c) and (g) and § 226.55.

2. Affected consumers. If a single credit account involves multiple consumers that may be affected by the change, the creditor should refer to § 226.5(d) to determine the number of notices that must be given.

3. Combining a notice described in § 226.9(g)(3) with a notice described in § 226.9(c)(2)(iv). If a creditor is required to provide notices pursuant to both § 226.9(c)(2)(iv) and (g)(3) to a consumer, the creditor may combine the two notices. This would occur when penalty pricing has been triggered, and other terms are changing on the consumer's account at the same time.

4. Content. Sample G-22 contains an example of how to comply with the requirements in § 226.9(g)(3)(i) when the rate on a consumer's credit card account is being increased to a penalty rate as described in § 226.9(g)(1)(ii), based on a late payment that is not more than 60 days late Sample G-23 contains an example of how to comply with the requirements in § 226.9(g)(3)(i) when the rate increase is triggered by a delinquency of more than 60 days.

5. Clear and conspicuous standard. See comment 5(a)(1)-1 for the clear and conspicuous standard applicable to disclosures required under § 226.9(g).

6. Terminology. See § 226.5(a)(2) for terminology requirements applicable to disclosures required under § 226.9(g).

9(g)(4) Exception for decrease in credit limit.

1. The following illustrates the requirements of § 226.9(g)(4). Assume that a creditor decreased the credit limit applicable to a consumer's account and sent a notice pursuant to § 226.9(g)(4) on January 1, stating among other things that the penalty rate would apply if the consumer's balance exceeded the new credit limit as of February 16. If the consumer's balance exceeded the credit limit on February 16, the creditor could impose the penalty rate on that date. However, a creditor could not apply the penalty rate if the consumer's balance did not exceed the new credit limit on February 16, even if the consumer's balance had exceeded the new credit limit on several dates between January 1 and February 15. If the consumer's balance did not exceed the new credit limit on February 16 but the consumer conducted a transaction on February 17 that caused the balance to exceed the new credit limit, the general rule in § 226.9(g)(1)(ii) would apply and the creditor would be required to give an additional 45 days' notice prior to imposition of the penalty rate (but under these circumstances the consumer would have no ability to cure the over-the-limit balance in order to avoid penalty pricing).

9(h) Consumer rejection of certain significant changes in terms.

1. Circumstances in which § 226.9(h) does not apply. Section 226.9(h) applies when § 226.9(c)(2)(iv)(B) requires disclosure of the consumer's right to reject a significant change to an account term. Thus, for example, § 226.9(h) does not apply to

changes to the terms of home equity plans subject to the requirements of § 226.5b that are accessible by a credit or charge card because § 226.9(c)(2) does not apply to such plans. Similarly, § 226.9(h) does not apply in the following circumstances because § 226.9(c)(2)(iv)(B) does not require disclosure of the right to reject in those circumstances: (i) an increase in the required minimum periodic payment; (ii) an increase in an annual percentage rate applicable to a consumer's account; (iii) a change in the balance computation method necessary to comply with § 226.54; and (iv) when the change results from the creditor not receiving the consumer's required minimum periodic payment within 60 days after the due date for that payment.

9(h)(1) Right to reject.

1. Reasonable requirements for submission of rejections. A creditor may establish reasonable requirements for the submission of rejections pursuant to § 226.9(h)(1). For example:

i. It would be reasonable for a creditor to require that rejections be made by the primary account holder and that the consumer identify the account number.

ii. It would be reasonable for a creditor to require that rejections be made only using the toll-free telephone number disclosed pursuant to § 226.9(c). It would also be reasonable for a creditor to designate additional channels for the submission of rejections (such as an address for rejections submitted by mail) so long as the creditor does not require that rejections be submitted through such additional channels.

iii. It would be reasonable for a creditor to require that rejections be received before the effective date disclosed pursuant to § 226.9(c) and to treat the account as not subject to § 226.9(h) if a rejection is received on or after that date. It would not, however, be reasonable to require that rejections be submitted earlier than the day before the effective date. If a creditor is unable to process all rejections received before the effective date, the creditor may delay implementation of the change in terms until all rejections have been processed. In the alternative, the creditor could implement the change on the effective date and then, on any account for which a timely rejection was received, reverse the change and remove or credit any interest charges or fees imposed as a result of the change. For example, if the effective date for a change in terms is June 15 and the creditor cannot process all rejections received by telephone on June 14 until June 16, the creditor may delay imposition of the change until June 17. Alternatively, the creditor could implement the change for all affected accounts on June 15 and then, once all rejections have been processed, return any account for which a timely rejection was received to the prior terms and ensure that the account is not assessed any additional interest or fees as a result of the change or that the account is credited for such interest or fees.

2. Use of account following provision of notice. A consumer does not waive or forfeit the right to reject a significant change in terms by using the account for transactions prior to the effective date of the change. Similarly, a consumer does not revoke a rejection by using the account for transactions after the rejection is received.

9(h)(2)(ii) Prohibition on penalties.

1. Termination or suspension of credit availability. Section 226.9(h)(2)(ii) does not prohibit a creditor from terminating or suspending credit availability as a result of the consumer's rejection of a significant change in terms.

2. Solely as a result of rejection. A creditor is prohibited from imposing a fee or

charge or treating an account as in default solely as a result of the consumer's rejection of a significant change in terms. For example, if credit availability is terminated or suspended as a result of the consumer's rejection of a significant change in terms, a creditor is prohibited from imposing a periodic fee that was not charged before the consumer rejected the change (such as a closed account fee). However, regardless of whether credit availability is terminated or suspended as a result of the consumer's rejection, a creditor is not prohibited from continuing to charge a periodic fee that was charged before the rejection. Similarly, a creditor that charged a fee for late payment before a change was rejected is not prohibited from charging that fee after rejection of the change.

9(h)(2)(iii) Repayment of outstanding balance.

1. Relevant date for repayment methods. Once a consumer has rejected a significant change in terms, § 226.9(h)(2)(iii) prohibits the creditor from requiring repayment of the balance on the account using a method that is less beneficial to the consumer than one of the methods listed in § 226.55(c)(2). When applying the methods listed in § 226.55(c)(2) pursuant to § 226.9(h)(2)(iii), a creditor may utilize the date on which the creditor was notified of the rejection or a later date (such as the date on which the change would have gone into effect but for the rejection). For example, assume that on April 16 a creditor provides a notice pursuant to § 226.9(c) informing the consumer that the monthly maintenance fee for the account will increase effective June 1. The notice also states that the consumer may reject the increase by calling a specified toll-free telephone number before June 1 but that, if the consumer does so, credit availability for the account will be terminated. On May 5, the consumer calls the toll-free number and

exercises the right to reject. If the creditor chooses to establish a five-year amortization period for the balance on the account consistent with § 226.55(c)(2)(ii), that period may begin no earlier than the date on which the creditor was notified of the rejection (May 5). However, the creditor may also begin the amortization period on the date on which the change would have gone into effect but for the rejection (June 1).

2. Balance on the account.

i. In general. When applying the methods listed in § 226.55(c)(2) pursuant to § 226.9(h)(2)(iii), the provisions in § 226.55(c)(2) and the guidance in the commentary to § 226.55(c)(2) regarding protected balances also apply to a balance on the account subject to § 226.9(h)(2)(iii). If a creditor terminates or suspends credit availability based on a consumer's rejection of a significant change in terms, the balance on the account that is subject to § 226.9(h)(2)(iii) is the balance at the end of the day on which credit availability is terminated or suspended. However, if a creditor does not terminate or suspend credit availability based on the consumer's rejection, the balance on the account subject to § 226.9(h)(2)(iii) is the balance at the end of the day on which the creditor was notified of the rejection or, at the creditor's option, a later date.

ii. Example. Assume that on June 16 a creditor provides a notice pursuant to § 226.9(c) informing the consumer that the annual fee for the account will increase effective August 1. The notice also states that the consumer may reject the increase by calling a specified toll-free telephone number before August 1 but that, if the consumer does so, credit availability for the account will be terminated. On July 20, the account has a purchase balance of $1,000 and the consumer calls the toll-free number and exercises the right to reject. On July 22, a $200 purchase is charged to the account. If the creditor terminates credit availability on July 25 as a result of the rejection, the balance subject to the repayment limitations in § 226.9(h)(2)(iii) is the $1,200 purchase balance at the end of the day on July 25. However, if the creditor does not terminate credit availability as a result of the rejection, the balance subject to the repayment limitations in § 226.9(h)(2)(iii) is the $1,000 purchase balance at the end of the day on the date the creditor was notified of the rejection (July 20), although the creditor may, at its option, treat the $200 purchase as part of the balance subject to § 226.9(h)(2)(iii).

9(h)(3) Exception.

1. Examples. Section 226.9(h)(3) provides that § 226.9(h) does not apply when the creditor has not received the consumer's required minimum periodic payment within 60 days after the due date for that payment. The following examples illustrate the application of this exception:

i. Account becomes more than 60 days delinquent before notice provided. Assume that a credit card account is opened on January 1 of year one and that the payment due date for the account is the fifteenth day of the month. On June 20 of year two, the creditor has not received the required minimum periodic payments due on April 15, May 15, and June 15. On June 20, the creditor provides a notice pursuant to § 226.9(c) informing the consumer that a monthly maintenance fee of $10 will be charged beginning on August 4. However, § 226.9(c)(2)(iv)(B) does not require the creditor to notify the consumer of the right to reject because the creditor has not received the April 15 minimum payment within 60 days after the due date. Furthermore, the exception in § 226.9(h)(3) applies and the consumer may not reject the fee.

ii. Account becomes more than 60 days delinquent after rejection. Assume that a credit card account is opened on January 1 of year one and that the payment due date for the account is the fifteenth day of the month. On April 20 of year two, the creditor has not received the required minimum periodic payment due on April 15. On April 20, the creditor provides a notice pursuant to § 226.9(c) informing the consumer that an annual fee of $100 will be charged beginning on June 4. The notice further states that the consumer may reject the fee by calling a specified toll-free telephone number before June 4 but that, if the consumer does so, credit availability for the account will be terminated. On May 5, the consumer calls the toll-free telephone number and rejects the fee. Section 226.9(h)(2)(i) prohibits the creditor from charging the $100 fee to the account. If, however, the creditor does not receive the minimum payments due on April 15 and May 15 by June 15, § 226.9(h)(3) permits the creditor to charge the $100 fee. The creditor must provide a second notice of the fee pursuant to § 226.9(c), but § 226.9(c)(2)(iv)(B) does not require the creditor to disclose the right to reject and § 226.9(h)(3) does not allow the consumer to reject the fee. Similarly, the restrictions in § 226.9(h)(2)(ii) and (iii) no longer apply.

Section 226.10—Payments

10(a) General rule.

1. Crediting date. Section 226.10(a) does not require the creditor to post the payment to the consumer's account on a particular date; the creditor is only required to credit the payment as of the date of receipt.

2. Date of receipt. The "date of receipt" is the date that the payment instrument or other means of completing the payment reaches the creditor. For example:

i. Payment by check is received when the creditor gets it, not when the funds are collected.

ii. In a payroll deduction plan in which funds are deposited to an asset account held by the creditor, and from which payments are made periodically to an open-end credit account, payment is received on the date when it is debited to the asset account (rather than on the date of the deposit), provided the payroll deduction method is voluntary and the consumer retains use of the funds until the contractual payment date.

iii. If the consumer elects to have payment made by a third party payor such as a financial institution, through a preauthorized payment or telephone bill-payment arrangement, payment is received when the creditor gets the third party payor's check or other transfer medium, such as an electronic fund transfer, as long as the payment meets the creditor's requirements as specified under § 226.10(b).

iv. Payment made via the creditor's Web site is received on the date on which the consumer authorizes the creditor to effect the payment, even if the consumer gives the instruction authorizing that payment in advance of the date on which the creditor is authorized to effect the payment. If the consumer authorizes the creditor to effect the payment immediately, but the consumer's instruction is received after 5 p.m. or any later cut-off time specified by the creditor, the date on which the consumer authorizes the creditor to effect the payment is deemed to be the next business day.

<u>10(b) Specific requirements for payments</u>.

1. <u>Payment by electronic fund transfer</u>. A creditor may be prohibited from specifying payment by preauthorized electronic fund transfer. (See section 913 of the Electronic Fund Transfer Act.)

2. Payment via creditor's Web site. If a creditor promotes electronic payment via its Web site (such as by disclosing on the Web site itself that payments may be made via the Web site), any payments made via the creditor's Web site would generally be conforming payments for purposes of § 226.10(b).

3. Acceptance of nonconforming payments. If the creditor accepts a nonconforming payment (for example, payment mailed to a branch office, when the creditor had specified that payment be sent to a different location), finance charges may accrue for the period between receipt and crediting of payments.

4. Implied guidelines for payments. In the absence of specified requirements for making payments (See § 226.10(b)):

i. Payments may be made at any location where the creditor conducts business.

ii. Payments may be made any time during the creditor's normal business hours.

iii. Payment may be by cash, money order, draft, or other similar instrument in properly negotiable form, or by electronic fund transfer if the creditor and consumer have so agreed.

5. Payments made at point of sale. If a creditor that is a financial institution issues a credit card that can be used only for transactions with a particular merchant or merchants, and a consumer is able to make a payment on that credit card account at a retail location maintained by such a merchant, that retail location is not considered to be a branch or office of the creditor for purposes of § 226.10(b)(3).

6. In-person payments on credit card accounts. For purposes of § 226.10(b)(3), payments made in person at a branch or office of a financial institution include payments made with the direct assistance of, or to, a branch or office employee, for example a teller

at a bank branch. A payment made at the bank branch without the direct assistance of a branch or office employee, for example a payment placed in a branch or office mail slot, is not a payment made in person for purposes of § 226.10(b)(3).

10(d) Crediting of payments when creditor does not receive or accept payments on due date.

1. Example. A day on which the creditor does not receive or accept payments by mail may occur, for example, if the U.S. Postal Service does not deliver mail on that date.

10(e) Limitations on fees related to method of payment.

1. Separate fee to allow consumers to make a payment. For the purposes of § 226.10(e), "separate fee" means a fee imposed on a consumer for making a single payment to the consumer's account. A fees or other charge imposed if payment is made after the due date, such as a late fee or finance charge, is not a separate fee to allow consumers to make a payment for purposes of § 226.10(e).

2. Expedited. For purposes of § 226.10(e), the term "expedited" means crediting a payment the same day or, if the payment is received after any cut-off time established by the creditor, the next business day.

3. Service by a customer service representative. Service by a customer service representative of a creditor means any payment made to the consumer's account with the assistance of a live representative or agent of the creditor, including those made in person, on the telephone, or by electronic means. A customer service representative does not include automated, means of making payment that do not involve a live representative or agent of the creditor, such as a voice response unit or interactive voice response system.

10(f) Changes by card issuer.

1. Address for receiving payment. For purposes of § 226.10(f), "address for receiving payment" means a mailing address for receiving payment, such as a post office box, or the address of a branch or office at which payments on credit card accounts are accepted.

2. Materiality. For purposes of § 226.10(f), a "material change" means any change in the address for receiving payment or procedures for handling cardholder payments which causes a material delay in the crediting of a payment. "Material delay" means any delay in crediting payment to a consumer's account which would result in a late payment and the imposition of a late fee or finance charge. A delay in crediting a payment which does not result in a late fee or finance charge would be immaterial.

3. Safe harbor. A card issuer may elect not to impose a late fee or finance charge on a consumer's account for the 60-day period following a change in address for receiving payment or procedures for handling cardholder payments which could reasonably be expected to cause a material delay in crediting of a payment to the consumer's account.

4. Examples.

i. A card issuer changes the mailing address for receiving payments by mail from a five-digit postal zip code to a nine-digit postal zip code. A consumer mails a payment using the five-digit postal zip code. The change in mailing address is immaterial and it does not cause a delay. Therefore, a card issuer may impose a late fee or finance charge for a late payment on the account.

ii. A card issuer changes the mailing address for receiving payments by mail from one post office box number to another post office box number. For a 60-day period following the change, the card issuer continues to use both post office box numbers for the collection of payments received by mail. The change in mailing address would not cause a material delay in crediting a payment because payments would be received and credited at both addresses. Therefore, a card issuer may impose a late fee or finance charge for a late payment on the account during the 60-day period following the date on which the change took effect.

iii. Same facts as paragraph ii. above, except the prior post office box number is no longer valid and mail sent to that address during the 60-day period following the change would be returned to sender. The change in mailing address is material and the change could cause a material delay in the crediting of a payment because a payment sent to the old address could be delayed past the due date. If, as a result, a consumer makes a late payment on the account during the 60-day period following the date on which the change took effect, a card issuer may not impose any late fee or finance charge for the late payment.

iv. A consumer regularly makes payments in person at a local branch of a card issuer which maintains offices at which payments are accepted on credit card accounts. The card issuer permanently closes that local branch office. The permanent closing of the local branch office is a material change in address for receiving payment. If, as a result, a consumer makes a late payment on the account during the 60-day period following the date on which the change took effect, the card issuer may not impose any late fee or finance charge for the late payment.

v. A consumer has elected to make payments automatically to a credit card account, such as through a payroll deduction plan or a third party payor's preauthorized payment arrangement. A card issuer changes the procedures for handling such payments and as a result, a payment is delayed and not credited to the consumer's account before the due date. In these circumstances, a card issuer may not impose any late fee or finance charge during the 60-day period following the date on which the change took effect for a late payment on the account.

5. Finance charge due to periodic interest rate. When an account is not eligible for a grace period, imposing a finance charge due to a periodic interest rate does not constitute imposition of a finance charge for a late payment for the purposes of § 226.10(f).

Section 226.11—Treatment of Credit Balances; Account Termination

11(a) Credit balances.

1. Timing of refund. The creditor may also fulfill its obligations under § 226.11 by:

i. Refunding any credit balance to the consumer immediately.

ii. Refunding any credit balance prior to receiving a written request (under § 226.11(a)(2)) from the consumer.

iii. Refunding any credit balance upon the consumer's oral or electronic request.

iv. Making a good faith effort to refund any credit balance before 6 months have passed. If that attempt is unsuccessful, the creditor need not try again to refund the credit balance at the end of the 6-month period.

2. Amount of refund. The phrases any part of the remaining credit balance in § 226.11(a)(2) and any part of the credit balance remaining in the account in § 226.11(a)(3) mean the amount of the credit balance at the time the creditor is required to make the refund. The creditor may take into consideration intervening purchases or other debits to the consumer's account (including those that have not yet been reflected on a periodic statement) that decrease or eliminate the credit balance.

Paragraph 11(a)(2).

1. Written requests—standing orders. The creditor is not required to honor standing orders requesting refunds of any credit balance that may be created on the consumer's account.

Paragraph 11(a)(3).

1. Good faith effort to refund. The creditor must take positive steps to return any credit balance that has remained in the account for over 6 months. This includes, if necessary, attempts to trace the consumer through the consumer's last known address or telephone number, or both.

2. Good faith effort unsuccessful. Section 226.11 imposes no further duties on the creditor if a good faith effort to return the balance is unsuccessful. The ultimate disposition of the credit balance (or any credit balance of $1 or less) is to be determined under other applicable law.

11(b) Account termination.

Paragraph 11(b)(1).

1. Expiration date. The credit agreement determines whether or not an open-end plan has a stated expiration (maturity) date. Creditors that offer accounts with no stated

expiration date are prohibited from terminating those accounts solely because a consumer does not incur a finance charge, even if credit cards or other access devices associated with the account expire after a stated period. Creditors may still terminate such accounts for inactivity consistent with § 226.11(b)(2).

11(c) Timely settlement of estate debts

1. Examples. The following are examples of reasonable procedures that may satisfy this rule:

i. A creditor may decline future transactions and terminate the account upon receiving reasonable notice of the consumer's death.

ii. A creditor may credit the account for fees and charges imposed after the date of receiving reasonable notice of the consumer's death.

iii. A creditor may waive the estate's liability for all charges made to the account after receiving reasonable notice of the consumer's death.

iv. A creditor may authorize an agent to handle matters in accordance with the requirements of this rule.

2. Fees and charges. Section 226.11(c)(2) does not prohibit a creditor from imposing finance charges based on balances for days that precede the date on which the creditor receives a request pursuant to § 226.11(c)(3). For example, if the last day of the billing cycle is June 30 and the creditor receives a request pursuant to § 226.11(c)(3) on June 25, the creditor may charge interest that accrued prior to June 25.

3. Application to joint accounts. A creditor may impose fees and charges on an account of a deceased consumer if a joint accountholder remains on the account. If only

an authorized user remains on the account of a deceased consumer, however, then a creditor may not impose fees and charges.

4. Request by an administrator or executor of an estate. A creditor may receive a request for the amount of the balance on a deceased consumer's account in writing or by telephone call from the administrator or executor of an estate. If a request is made in writing, such as by mail, the request is received on the date the creditor receives the correspondence.

5. Timely statement of balance. A creditor must disclose the balance on a deceased consumer's account, upon request by the administrator or executor of the decedent's estate. A creditor may provide the amount, if any, by a written statement or by telephone. This does not preclude a creditor from providing the balance amount to appropriate persons, other than the administrator or executor, such as the spouse or a relative of the decedent, who indicate that they may pay any balance. This provision does not relieve creditors of the requirements to provide a periodic statement, under § 226.5(b)(2). A periodic statement, under § 226.5(b)(2), may satisfy the requirements of § 226.11(c)(3), if provided within 30 days of the notice of the consumer's death.

Section 226.12—Special Credit Card Provisions

1. Scope. Sections 226.12(a) and (b) deal with the issuance and liability rules for credit cards, whether the card is intended for consumer, business, or any other purposes. Sections 226.12(a) and (b) are exceptions to the general rule that the regulation applies only to consumer credit. (See §§ 226.1 and 226.3.)

2. Definition of "accepted credit card". For purposes of this section, "accepted credit card" means any credit card that a cardholder has requested or applied for and

received, or has signed, used, or authorized another person to use to obtain credit. Any credit card issued as a renewal or substitute in accordance with § 226.12(a) becomes an accepted credit card when received by the cardholder.

12(a) Issuance of credit cards.

Paragraph 12(a)(1).

1. Explicit request. A request or application for a card must be explicit. For example, a request for an overdraft plan tied to a checking account does not constitute an application for a credit card with overdraft checking features.

2. Addition of credit features. If the consumer has a non-credit card, the addition of credit features to the card (for example, the granting of overdraft privileges on a checking account when the consumer already has a check guarantee card) constitutes issuance of a credit card.

3. Variance of card from request. The request or application need not correspond exactly to the card that is issued. For example:

i. The name of the card requested may be different when issued.

ii. The card may have features in addition to those reflected in the request or application.

4. Permissible form of request. The request or application may be oral (in response to a telephone solicitation by a card issuer, for example) or written.

5. Time of issuance. A credit card may be issued in response to a request made before any cards are ready for issuance (for example, if a new program is established), even if there is some delay in issuance.

6. Persons to whom cards may be issued. A card issuer may issue a credit card to the person who requests it, and to anyone else for whom that person requests a card and who will be an authorized user on the requester's account. In other words, cards may be sent to consumer A on A's request, and also (on A's request) to consumers B and C, who will be authorized users on A's account. In these circumstances, the following rules apply:

i. The additional cards may be imprinted in either A's name or in the names of B and C.

ii. No liability for unauthorized use (by persons other than B and C), not even the $50, may be imposed on B or C since they are merely users and not cardholders as that term is defined in § 226.2 and used in § 226.12(b); of course, liability of up to $50 for unauthorized use of B's and C's cards may be imposed on A.

iii. Whether B and C may be held liable for their own use, or on the account generally, is a matter of state or other applicable law.

7. Issuance of non-credit cards.

i. General. Under § 226.12(a)(1), a credit card cannot be issued except in response to a request or an application. (See comment 2(a)(15)–2 for examples of cards or devices that are and are not credit cards.) A non-credit card may be sent on an unsolicited basis by an issuer that does not propose to connect the card to any credit plan; a credit feature may be added to a previously issued non-credit card only upon the consumer's specific request.

ii. Examples. A purchase-price discount card may be sent on an unsolicited basis by an issuer that does not propose to connect the card to any credit plan. An issuer demonstrates that it proposes to connect the card to a credit plan by, for example, including promotional materials about credit features or account agreements and disclosures required by § 226.6. The issuer will violate the rule against unsolicited issuance if, for example, at the time the card is sent a credit plan can be accessed by the card or the recipient of the unsolicited card has been preapproved for credit that the recipient can access by contacting the issuer and activating the card.

8. Unsolicited issuance of PINs. A card issuer may issue personal identification numbers (PINs) to existing credit cardholders without a specific request from the cardholders, provided the PINs cannot be used alone to obtain credit. For example, the PINs may be necessary if consumers wish to use their existing credit cards at automated teller machines or at merchant locations with point of sale terminals that require PINs.

Paragraph 12(a)(2).

1. Renewal. Renewal generally contemplates the regular replacement of existing cards because of, for example, security reasons or new technology or systems. It also includes the re-issuance of cards that have been suspended temporarily, but does not include the opening of a new account after a previous account was closed.

2. Substitution—examples. Substitution encompasses the replacement of one card with another because the underlying account relationship has changed in some way—such as when the card issuer has:

i. Changed its name.

ii. Changed the name of the card.

iii. Changed the credit or other features available on the account. For example, the original card could be used to make purchases and obtain cash advances at teller windows. The substitute card might be usable, in addition, for obtaining cash advances through automated teller machines. (If the substitute card constitutes an access device, as defined in Regulation E, then the Regulation E issuance rules would have to be followed.) The substitution of one card with another on an unsolicited basis is not permissible, however, where in conjunction with the substitution an additional credit card account is opened and the consumer is able to make new purchases or advances under both the original and the new account with the new card. For example, if a retail card issuer replaces its credit card with a combined retailer/bank card, each of the creditors maintains a separate account, and both accounts can be accessed for new transactions by use of the new credit card, the card cannot be provided to a consumer without solicitation.

iv. Substituted a card user's name on the substitute card for the cardholder's name appearing on the original card.

v. Changed the merchant base, provided that the new card is honored by at least one of the persons that honored the original card. However, unless the change in the merchant base is the addition of an affiliate of the existing merchant base, the substitution of a new card for another on an unsolicited basis is not permissible where the account is inactive. A credit card cannot be issued in these circumstances without a request or application. For purposes of § 226.12(a), an account is inactive if no credit has been extended and if the account has no outstanding balance for the prior 24 months. (See § 226.11(b)(2).)

3. Substitution—successor card issuer. Substitution also occurs when a successor card issuer replaces the original card issuer (for example, when a new card issuer

purchases the accounts of the original issuer and issues its own card to replace the original one). A permissible substitution exists even if the original issuer retains the existing receivables and the new card issuer acquires the right only to future receivables, provided use of the original card is cut off when use of the new card becomes possible.

4. Substitution—non-credit-card plan. A credit card that replaces a retailer's open-end credit plan not involving a credit card is not considered a substitute for the retailer's plan—even if the consumer used the retailer's plan. A credit card cannot be issued in these circumstances without a request or application.

5. One-for-one rule. An accepted card may be replaced by no more than one renewal or substitute card. For example, the card issuer may not replace a credit card permitting purchases and cash advances with two cards, one for the purchases and another for the cash advances.

6. One-for-one rule—exceptions. The regulation does not prohibit the card issuer from:

i. Replacing a debit/credit card with a credit card and another card with only debit functions (or debit functions plus an associated overdraft capability), since the latter card could be issued on an unsolicited basis under Regulation E.

ii. Replacing an accepted card with more than one renewal or substitute card, provided that:

A. No replacement card accesses any account not accessed by the accepted card;

B. For terms and conditions required to be disclosed under § 226.6, all replacement cards are issued subject to the same terms and conditions, except that a creditor may vary terms for which no change in terms notice is required under § 226.9(c); and

C. Under the account's terms the consumer's total liability for unauthorized use with respect to the account does not increase.

7. Methods of terminating replaced card. The card issuer need not physically retrieve the original card, provided the old card is voided in some way, for example:

i. The issuer includes with the new card a notification that the existing card is no longer valid and should be destroyed immediately.

ii. The original card contained an expiration date.

iii. The card issuer, in order to preclude use of the card, reprograms computers or issues instructions to authorization centers.

8. Incomplete replacement. If a consumer has duplicate credit cards on the same account (Card A—one type of bank credit card, for example), the card issuer may not replace the duplicate cards with one Card A and one Card B (Card B—another type of bank credit card) unless the consumer requests Card B.

9. Multiple entities. Where multiple entities share responsibilities with respect to a credit card issued by one of them, the entity that issued the card may replace it on an unsolicited basis, if that entity terminates the original card by voiding it in some way, as described in comment 12(a)(2)–7. The other entity or entities may not issue a card on an unsolicited basis in these circumstances.

12(b) Liability of cardholder for unauthorized use.

1. Meaning of cardholder. For purposes of this provision, cardholder includes any person (including organizations) to whom a credit card is issued for any purpose, including business. When a corporation is the cardholder, required disclosures should be provided to the corporation (as opposed to an employee user).

2. Imposing liability. A card issuer is not required to impose liability on a cardholder for the unauthorized use of a credit card; if the card issuer does not seek to impose liability, the issuer need not conduct any investigation of the cardholder's claim.

3. Reasonable investigation. If a card issuer seeks to impose liability when a claim of unauthorized use is made by a cardholder, the card issuer must conduct a reasonable investigation of the claim. In conducting its investigation, the card issuer may reasonably request the cardholder's cooperation. The card issuer may not automatically deny a claim based solely on the cardholder's failure or refusal to comply with a particular request, including providing an affidavit or filing a police report; however, if the card issuer otherwise has no knowledge of facts confirming the unauthorized use, the lack of information resulting from the cardholder's failure or refusal to comply with a particular request may lead the card issuer reasonably to terminate the investigation. The procedures involved in investigating claims may differ, but actions such as the following represent steps that a card issuer may take, as appropriate, in conducting a reasonable investigation:

i. Reviewing the types or amounts of purchases made in relation to the cardholder's previous purchasing pattern.

ii. Reviewing where the purchases were delivered in relation to the cardholder's residence or place of business.

iii. Reviewing where the purchases were made in relation to where the cardholder resides or has normally shopped.

iv. Comparing any signature on credit slips for the purchases to the signature of the cardholder or an authorized user in the card issuer's records, including other credit slips.

v. Requesting documentation to assist in the verification of the claim.

vi. Requiring a written, signed statement from the cardholder or authorized user. For example, the creditor may include a signature line on a billing rights form that the cardholder may send in to provide notice of the claim. However, a creditor may not require the cardholder to provide an affidavit or signed statement under penalty of perjury as part of a reasonable investigation.

vii. Requesting a copy of a police report, if one was filed.

viii. Requesting information regarding the cardholder's knowledge of the person who allegedly used the card or of that person's authority to do so.

4. Checks that access a credit card account. The liability provisions for unauthorized use under § 226.12(b)(1) only apply to transactions involving the use of a credit card, and not if an unauthorized transaction is made using a check accessing the credit card account. However, the billing error provisions in § 226.13 apply to both of these types of transactions.

12(b)(1)(ii) Limitation on amount.

1. Meaning of authority. Section 226.12(b)(1)(i) defines unauthorized use in terms of whether the user has actual, implied, or apparent authority. Whether such authority exists must be determined under state or other applicable law.

2. Liability limits—dollar amounts. As a general rule, the cardholder's liability for a series of unauthorized uses cannot exceed either $50 or the value obtained through the unauthorized use before the card issuer is notified, whichever is less.

3. Implied or apparent authority. If a cardholder furnishes a credit card and grants authority to make credit transactions to a person (such as a family member or coworker) who exceeds the authority given, the cardholder is liable for the transaction(s) unless the cardholder has notified the creditor that use of the credit card by that person is no longer authorized.

4. Credit card obtained through robbery or fraud. An unauthorized use includes, but is not limited to, a transaction initiated by a person who has obtained the credit card from the consumer, or otherwise initiated the transaction, through fraud or robbery.

12(b)(2) Conditions of liability.

1. Issuer's option not to comply. A card issuer that chooses not to impose any liability on cardholders for unauthorized use need not comply with the disclosure and identification requirements discussed in § 226.12(b)(2).

Paragraph 12(b)(2)(ii).

1. Disclosure of liability and means of notifying issuer. The disclosures referred to in § 226.12(b)(2)(ii) may be given, for example, with the initial disclosures under

§ 226.6, on the credit card itself, or on periodic statements. They may be given at any time preceding the unauthorized use of the card.

2. Meaning of "adequate notice." For purposes of this provision, "adequate notice" means a printed notice to a cardholder that sets forth clearly the pertinent facts so that the cardholder may reasonably be expected to have noticed it and understood its meaning. The notice may be given by any means reasonably assuring receipt by the cardholder.

Paragraph 12(b)(2)(iii).

1. Means of identifying cardholder or user. To fulfill the condition set forth in § 226.12(b)(2)(iii), the issuer must provide some method whereby the cardholder or the authorized user can be identified. This could include, for example, a signature, photograph, or fingerprint on the card or other biometric means, or electronic or mechanical confirmation.

2. Identification by magnetic strip. Unless a magnetic strip (or similar device not readable without physical aids) must be used in conjunction with a secret code or the like, it would not constitute sufficient means of identification. Sufficient identification also does not exist if a "pool" or group card, issued to a corporation and signed by a corporate agent who will not be a user of the card, is intended to be used by another employee for whom no means of identification is provided.

3. Transactions not involving card. The cardholder may not be held liable under § 226.12(b) when the card itself (or some other sufficient means of identification of the cardholder) is not presented. Since the issuer has not provided a means to identify the user under these circumstances, the issuer has not fulfilled one of the conditions for

imposing liability. For example, when merchandise is ordered by telephone or the Internet by a person without authority to do so, using a credit card account number by itself or with other information that appears on the card (for example, the card expiration date and a 3- or 4-digit cardholder identification number), no liability may be imposed on the cardholder.

12(b)(3) Notification to card issuer.

1. How notice must be provided. Notice given in a normal business manner—for example, by mail, telephone, or personal visit—is effective even though it is not given to, or does not reach, some particular person within the issuer's organization. Notice also may be effective even though it is not given at the address or phone number disclosed by the card issuer under § 226.12(b)(2)(ii).

2. Who must provide notice. Notice of loss, theft, or possible unauthorized use need not be initiated by the cardholder. Notice is sufficient so long as it gives the "pertinent information" which would include the name or card number of the cardholder and an indication that unauthorized use has or may have occurred.

3. Relationship to § 226.13. The liability protections afforded to cardholders in § 226.12 do not depend upon the cardholder's following the error resolution procedures in § 226.13. For example, the written notification and time limit requirements of § 226.13 do not affect the § 226.12 protections. (See also comment 12(b)-4.)

12(b)(5) Business use of credit cards.

1. Agreement for higher liability for business use cards. The card issuer may not rely on § 226.12(b)(5) if the business is clearly not in a position to provide 10 or more cards to employees (for example, if the business has only 3 employees). On the other

hand, the issuer need not monitor the personnel practices of the business to make sure that it has at least 10 employees at all times.

2. Unauthorized use by employee. The protection afforded to an employee against liability for unauthorized use in excess of the limits set in § 226.12(b) applies only to unauthorized use by someone other than the employee. If the employee uses the card in an unauthorized manner, the regulation sets no restriction on the employee's potential liability for such use.

12(c) Right of cardholder to assert claims or defenses against card issuer.

1. Relationship to § 226.13. The § 226.12(c) credit card "holder in due course" provision deals with the consumer's right to assert against the card issuer a claim or defense concerning property or services purchased with a credit card, if the merchant has been unwilling to resolve the dispute. Even though certain merchandise disputes, such as non-delivery of goods, may also constitute "billing errors" under § 226.13, that section operates independently of § 226.12(c). The cardholder whose asserted billing error involves undelivered goods may institute the error resolution procedures of § 226.13; but whether or not the cardholder has done so, the cardholder may assert claims or defenses under § 226.12(c). Conversely, the consumer may pay a disputed balance and thus have no further right to assert claims and defenses, but still may assert a billing error if notice of that billing error is given in the proper time and manner. An assertion that a particular transaction resulted from unauthorized use of the card could also be both a "defense" and a billing error.

2. Claims and defenses assertible. Section 226.12(c) merely preserves the consumer's right to assert against the card issuer any claims or defenses that can be

asserted against the merchant. It does not determine what claims or defenses are valid as to the merchant; this determination must be made under state or other applicable law.

3. Transactions excluded. Section 226.12(c) does not apply to the use of a check guarantee card or a debit card in connection with an overdraft credit plan, or to a check guarantee card used in connection with cash-advance checks.

4. Method of calculating the amount of credit outstanding. The amount of the claim or defense that the cardholder may assert shall not exceed the amount of credit outstanding for the disputed transaction at the time the cardholder first notifies the card issuer or the person honoring the credit card of the existence of the claim or defense. To determine the amount of credit outstanding for purposes of this section, payments and other credits shall be applied to: (i) Late charges in the order of entry to the account; then to (ii) finance charges in the order of entry to the account; and then to (iii) any other debits in the order of entry to the account. If more than one item is included in a single extension of credit, credits are to be distributed pro rata according to prices and applicable taxes.

12(c)(1) General rule.

1. Situations excluded and included. The consumer may assert claims or defenses only when the goods or services are "purchased with the credit card." This could include mail, the Internet or telephone orders, if the purchase is charged to the credit card account. But it would exclude:

i. Use of a credit card to obtain a cash advance, even if the consumer then uses the money to purchase goods or services. Such a transaction would not involve "property or services purchased with the credit card."

ii. The purchase of goods or services by use of a check accessing an overdraft account and a credit card used solely for identification of the consumer. (On the other hand, if the credit card is used to make partial payment for the purchase and not merely for identification, the right to assert claims or defenses would apply to credit extended via the credit card, although not to the credit extended on the overdraft line.)

iii. Purchases made by use of a check guarantee card in conjunction with a cash advance check (or by cash advance checks alone). (See comment 12(c)-3.) A cash advance check is a check that, when written, does not draw on an asset account; instead, it is charged entirely to an open-end credit account.

iv. Purchases effected by use of either a check guarantee card or a debit card when used to draw on overdraft credit plans. (See comment 12(c)-3.) The debit card exemption applies whether the card accesses an asset account via point of sale terminals, automated teller machines, or in any other way, and whether the card qualifies as an "access device" under Regulation E or is only a paper based debit card. If a card serves both as an ordinary credit card and also as check guarantee or debit card, a transaction will be subject to this rule on asserting claims and defenses when used as an ordinary credit card, but not when used as a check guarantee or debit card.

12(c)(2) Adverse credit reports prohibited.

1. Scope of prohibition. Although an amount in dispute may not be reported as delinquent until the matter is resolved:

i. That amount may be reported as disputed.

ii. Nothing in this provision prohibits the card issuer from undertaking its normal collection activities for the delinquent and undisputed portion of the account.

2. Settlement of dispute. A card issuer may not consider a dispute settled and report an amount disputed as delinquent or begin collection of the disputed amount until it has completed a reasonable investigation of the cardholder's claim. A reasonable investigation requires an independent assessment of the cardholder's claim based on information obtained from both the cardholder and the merchant, if possible. In conducting an investigation, the card issuer may request the cardholder's reasonable cooperation. The card issuer may not automatically consider a dispute settled if the cardholder fails or refuses to comply with a particular request. However, if the card issuer otherwise has no means of obtaining information necessary to resolve the dispute, the lack of information resulting from the cardholder's failure or refusal to comply with a particular request may lead the card issuer reasonably to terminate the investigation.

12(c)(3) Limitations.

Paragraph 12(c)(3)(i)(A).

1. Resolution with merchant. The consumer must have tried to resolve the dispute with the merchant. This does not require any special procedures or correspondence between them, and is a matter for factual determination in each case. The consumer is not required to seek satisfaction from the manufacturer of the goods involved. When the merchant is in bankruptcy proceedings, the consumer is not required to file a claim in those proceedings, and may instead file a claim for the property or service purchased with the credit card with the card issuer directly.

Paragraph 12(c)(3)(i)(B).

1. Geographic limitation. The question of where a transaction occurs (as in the case of mail, Internet, or telephone orders, for example) is to be determined under state or other applicable law.

Paragraph 12(c)(3)(ii).

1. Merchant honoring card. The exceptions (stated in § 226.12(c)(3)(ii)) to the amount and geographic limitations in § 226.12(c)(3)(i)(B) do not apply if the merchant merely honors, or indicates through signs or advertising that it honors, a particular credit card.

12(d) Offsets by card issuer prohibited.

Paragraph 12(d)(1).

1. Holds on accounts. "Freezing" or placing a hold on funds in the cardholder's deposit account is the functional equivalent of an offset and would contravene the prohibition in § 226.12(d)(1), unless done in the context of one of the exceptions specified in § 226.12(d)(2). For example, if the terms of a security agreement permitted the card issuer to place a hold on the funds, the hold would not violate the offset prohibition. Similarly, if an order of a bankruptcy court required the card issuer to turn over deposit account funds to the trustee in bankruptcy, the issuer would not violate the regulation by placing a hold on the funds in order to comply with the court order.

2. Funds intended as deposits. If the consumer tenders funds as a deposit (to a checking account, for example), the card issuer may not apply the funds to repay indebtedness on the consumer's credit card account.

3. Types of indebtedness; overdraft accounts. The offset prohibition applies to any indebtedness arising from transactions under a credit card plan, including accrued finance charges and other charges on the account. The prohibition also applies to balances arising from transactions not using the credit card itself but taking place under plans that involve credit cards. For example, if the consumer writes a check that accesses an overdraft line of credit, the resulting indebtedness is subject to the offset prohibition since it is incurred through a credit card plan, even though the consumer did not use an associated check guarantee or debit card.

4. When prohibition applies in case of termination of account. The offset prohibition applies even after the card issuer terminates the cardholder's credit card privileges, if the indebtedness was incurred prior to termination. If the indebtedness was incurred after termination, the prohibition does not apply.

Paragraph 12(d)(2).

1. Security interest—limitations. In order to qualify for the exception stated in § 226.12(d)(2), a security interest must be affirmatively agreed to by the consumer and must be disclosed in the issuer's account-opening disclosures under § 226.6. The security interest must not be the functional equivalent of a right of offset; as a result, routinely including in agreements contract language indicating that consumers are giving a security interest in any deposit accounts maintained with the issuer does not result in a security interest that falls within the exception in § 226.12(d)(2). For a security interest to qualify for the exception under § 226.12(d)(2) the following conditions must be met:

i. The consumer must be aware that granting a security interest is a condition for the credit card account (or for more favorable account terms) and must specifically intend to grant a security interest in a deposit account. Indicia of the consumer's awareness and intent include at least one of the following (or a substantially similar procedure that evidences the consumer's awareness and intent):

A. Separate signature or initials on the agreement indicating that a security interest is being given.

B. Placement of the security agreement on a separate page, or otherwise separating the security interest provisions from other contract and disclosure provisions.

C. Reference to a specific amount of deposited funds or to a specific deposit account number.

ii. The security interest must be obtainable and enforceable by creditors generally. If other creditors could not obtain a security interest in the consumer's deposit accounts to the same extent as the card issuer, the security interest is prohibited by § 226.12(d)(2).

2. Security interest—after-acquired property. As used in § 226.12(d), the term "security interest" does not exclude (as it does for other Regulation Z purposes) interests in after-acquired property. Thus, a consensual security interest in deposit-account funds, including funds deposited after the granting of the security interest would constitute a permissible exception to the prohibition on offsets.

3. Court order. If the card issuer obtains a judgment against the cardholder, and if state and other applicable law and the terms of the judgment do not so prohibit, the card issuer may offset the indebtedness against the cardholder's deposit account.

Paragraph 12(d)(3).

1. Automatic payment plans—scope of exception. With regard to automatic debit plans under § 226.12(d)(3), the following rules apply:

i. The cardholder's authorization must be in writing and signed or initialed by the cardholder.

ii. The authorizing language need not appear directly above or next to the cardholder's signature or initials, provided it appears on the same document and that it clearly spells out the terms of the automatic debit plan.

iii. If the cardholder has the option to accept or reject the automatic debit feature (such option may be required under section 913 of the Electronic Fund Transfer Act), the fact that the option exists should be clearly indicated.

2. Automatic payment plans—additional exceptions. The following practices are not prohibited by § 226.12(d)(1):

i. Automatically deducting charges for participation in a program of banking services (one aspect of which may be a credit card plan).

ii. Debiting the cardholder's deposit account on the cardholder's specific request rather than on an automatic periodic basis (for example, a cardholder might check a box on the credit card bill stub, requesting the issuer to debit the cardholder's account to pay that bill).

12(e) Prompt notification of returns and crediting of refunds.

Paragraph 12(e)(1).

1. Normal channels. The term normal channels refers to any network or interchange system used for the processing of the original charge slips (or equivalent information concerning the transaction).

Paragraph 12(e)(2).

1. Crediting account. The card issuer need not actually post the refund to the consumer's account within three business days after receiving the credit statement, provided that it credits the account as of a date within that time period.

Section 226.13—Billing Error Resolution

1. Creditor's failure to comply with billing error provisions. Failure to comply with the error resolution procedures may result in the forfeiture of disputed amounts as prescribed in section 161(e) of the act. (Any failure to comply may also be a violation subject to the liability provisions of section 130 of the act.)

2. Charges for error resolution. If a billing error occurred, whether as alleged or in a different amount or manner, the creditor may not impose a charge related to any aspect of the error resolution process (including charges for documentation or investigation) and must credit the consumer's account if such a charge was assessed pending resolution. Since the act grants the consumer error resolution rights, the creditor should avoid any chilling effect on the good faith assertion of errors that might result if charges are assessed when no billing error has occurred.

13(a) Definition of billing error.

Paragraph 13(a)(1).

1. Actual, implied, or apparent authority. Whether use of a credit card or open-end credit plan is authorized is determined by state or other applicable law. (See comment 12(b)(1)(ii)-1.)

Paragraph 13(a)(3).

1. Coverage. i. Section 226.13(a)(3) covers disputes about goods or services that are "not accepted" or "not delivered . . . as agreed"; for example:

A. The appearance on a periodic statement of a purchase, when the consumer refused to take delivery of goods because they did not comply with the contract.

B. Delivery of property or services different from that agreed upon.

C. Delivery of the wrong quantity.

D. Late delivery.

E. Delivery to the wrong location.

ii. Section 226.13(a)(3) does not apply to a dispute relating to the quality of property or services that the consumer accepts. Whether acceptance occurred is determined by state or other applicable law.

2. Application to purchases made using a third-party payment intermediary. Section 226.13(a)(3) generally applies to disputes about goods and services that are purchased using a third-party payment intermediary, such as a person-to-person Internet payment service, funded through use of a consumer's open-end credit plan when the goods or services are not accepted by the consumer or not delivered to the consumer as agreed. However, the extension of credit must be made at the time the consumer

purchases the good or service and match the amount of the transaction to purchase the good or service (including ancillary taxes and fees). Under these circumstances, the property or service for which the extension of credit is made is not the payment service, but rather the good or service that the consumer has purchased using the payment service. Thus, for example, § 226.13(a)(3) would not apply to purchases using a third party payment intermediary that is funded through use of an open-end credit plan if:

i. The extension of credit is made to fund the third-party payment intermediary "account," but the consumer does not contemporaneously use those funds to purchase a good or service at that time.

ii. The extension of credit is made to fund only a portion of the purchase amount, and the consumer uses other sources to fund the remaining amount.

3. Notice to merchant not required. A consumer is not required to first notify the merchant or other payee from whom he or she has purchased goods or services and attempt to resolve a dispute regarding the good or service before providing a billing-error notice to the creditor under § 226.13(a)(3) asserting that the goods or services were not accepted or delivered as agreed.

Paragraph 13(a)(5).

1. Computational errors. In periodic statements that are combined with other information, the error resolution procedures are triggered only if the consumer asserts a computational billing error in the credit-related portion of the periodic statement. For example, if a bank combines a periodic statement reflecting the consumer's credit card transactions with the consumer's monthly checking statement, a computational error in the checking account portion of the combined statement is not a billing error.

Paragraph 13(a)(6).

1. Documentation requests. A request for documentation such as receipts or sales slips, unaccompanied by an allegation of an error under § 226.13(a) or a request for additional clarification under § 226.13(a)(6), does not trigger the error resolution procedures. For example, a request for documentation merely for purposes such as tax preparation or recordkeeping does not trigger the error resolution procedures.

13(b) Billing error notice.

1. Withdrawal of billing error notice by consumer. The creditor need not comply with the requirements of § 226.13(c) through (g) of this section if the consumer concludes that no billing error occurred and voluntarily withdraws the billing error notice. The consumer's withdrawal of a billing error notice may be oral, electronic or written.

2. Form of written notice. The creditor may require that the written notice not be made on the payment medium or other material accompanying the periodic statement if the creditor so stipulates in the billing rights statement required by §§ 226.6(a)(5) or (b)(5)(iii), and 226.9(a). In addition, if the creditor stipulates in the billing rights statement that it accepts billing error notices submitted electronically, and states the means by which a consumer may electronically submit a billing error notice, a notice sent in such manner will be deemed to satisfy the written notice requirement for purposes of § 226.13(b).

Paragraph 13(b)(1).

1. Failure to send periodic statement—timing. If the creditor has failed to send a periodic statement, the 60-day period runs from the time the statement should have been

sent. Once the statement is provided, the consumer has another 60 days to assert any billing errors reflected on it.

2. Failure to reflect credit—timing. If the periodic statement fails to reflect a credit to the account, the 60-day period runs from transmittal of the statement on which the credit should have appeared.

3. Transmittal. If a consumer has arranged for periodic statements to be held at the financial institution until called for, the statement is "transmitted" when it is first made available to the consumer.

Paragraph 13(b)(2).

1. Identity of the consumer. The billing error notice need not specify both the name and the account number if the information supplied enables the creditor to identify the consumer's name and account.

13(c) Time for resolution; general procedures.

1. Temporary or provisional corrections. A creditor may temporarily correct the consumer's account in response to a billing error notice, but is not excused from complying with the remaining error resolution procedures within the time limits for resolution.

2. Correction without investigation. A creditor may correct a billing error in the manner and amount asserted by the consumer without the investigation or the determination normally required. The creditor must comply, however, with all other applicable provisions. If a creditor follows this procedure, no presumption is created that a billing error occurred.

3. Relationship with § 226.12. The consumer's rights under the billing error provisions in § 226.13 are independent of the provisions set forth in § 226.12(b) and (c). (See comments 12(b)-4, 12(b)(3)-3, and 12(c)-1.)

Paragraph 13(c)(2).

1. Time for resolution. The phrase two complete billing cycles means two actual billing cycles occurring after receipt of the billing error notice, not a measure of time equal to two billing cycles. For example, if a creditor on a monthly billing cycle receives a billing error notice mid-cycle, it has the remainder of that cycle plus the next two full billing cycles to resolve the error.

2. Finality of error resolution procedure. A creditor must comply with the error resolution procedures and complete its investigation to determine whether an error occurred within two complete billing cycles as set forth in paragraph (c)(2) of this section. Thus, for example, the creditor would be prohibited from reversing amounts previously credited for an alleged billing error even if the creditor obtains evidence after the error resolution time period has passed indicating that the billing error did not occur as asserted by the consumer. Similarly, if a creditor fails to mail or deliver a written explanation setting forth the reason the reason why the billing error did not occur as asserted, or otherwise fails to comply with the error resolution procedures set forth in § 226.13(f), the creditor generally must credit the disputed amount and related finance or other charges, as applicable, to the consumer's account.

13(d) Rules pending resolution.

1. Disputed amount. Disputed amount is the dollar amount alleged by the consumer to be in error. When the allegation concerns the description or identification of

the transaction (such as the date or the seller's name) rather than a dollar amount, the disputed amount is the amount of the transaction or charge that corresponds to the disputed transaction identification. If the consumer alleges a failure to send a periodic statement under § 226.13(a)(7), the disputed amount is the entire balance owing.

13(d)(1) Consumer's right to withhold disputed amount; collection action prohibited.

1. Prohibited collection actions. During the error resolution period, the creditor is prohibited from trying to collect the disputed amount from the consumer. Prohibited collection actions include, for example, instituting court action, taking a lien, or instituting attachment proceedings.

2. Right to withhold payment. If the creditor reflects any disputed amount or related finance or other charges on the periodic statement, and is therefore required to make the disclosure under § 226.13(d)(4), the creditor may comply with that disclosure requirement by indicating that payment of any disputed amount is not required pending resolution. Making a disclosure that only refers to the disputed amount would, of course, in no way affect the consumer's right under § 226.13(d)(1) to withhold related finance and other charges. The disclosure under § 226.13(d)(4) need not appear in any specific place on the periodic statement, need not state the specific amount that the consumer may withhold, and may be preprinted on the periodic statement.

3. Imposition of additional charges on undisputed amounts. The consumer's withholding of a disputed amount from the total bill cannot subject undisputed balances (including new purchases or cash advances made during the present or subsequent cycles) to the imposition of finance or other charges. For example, if on an account with a grace

period (that is, an account in which paying the new balance in full allows the consumer to avoid the imposition of additional finance charges), a consumer disputes a $2 item out of a total bill of $300 and pays $298 within the grace period, the consumer would not lose the grace period as to any undisputed amounts, even if the creditor determines later that no billing error occurred. Furthermore, finance or other charges may not be imposed on any new purchases or advances that, absent the unpaid disputed balance, would not have finance or other charges imposed on them. Finance or other charges that would have been incurred even if the consumer had paid the disputed amount would not be affected.

4. Automatic payment plans—coverage. The coverage of this provision is limited to the card issuer's automatic payment plans, whether or not the consumer's asset account is held by the card issuer or by another financial institution. It does not apply to automatic or bill-payment plans offered by financial institutions other than the credit card issuer.

5. Automatic payment plans—time of notice. While the card issuer does not have to restore or prevent the debiting of a disputed amount if the billing error notice arrives after the three business-day cut-off, the card issuer must, however, prevent the automatic debit of any part of the disputed amount that is still outstanding and unresolved at the time of the next scheduled debit date.

13(d)(2) Adverse credit reports prohibited.

1. Report of dispute. Although the creditor must not issue an adverse credit report because the consumer fails to pay the disputed amount or any related charges, the creditor may report that the amount or the account is in dispute. Also, the creditor may report the account as delinquent if undisputed amounts remain unpaid.

2. Person. During the error resolution period, the creditor is prohibited from making an adverse credit report about the disputed amount to any person—including employers, insurance companies, other creditors, and credit bureaus.

3. Creditor's agent. Whether an agency relationship exists between a creditor and an issuer of an adverse credit report is determined by State or other applicable law.

13(e) Procedures if billing error occurred as asserted.

1. Correction of error. The phrase as applicable means that the necessary corrections vary with the type of billing error that occurred. For example, a misidentified transaction (or a transaction that is identified by one of the alternative methods in § 226.8) is cured by properly identifying the transaction and crediting related finance and any other charges imposed. The creditor is not required to cancel the amount of the underlying obligation incurred by the consumer.

2. Form of correction notice. The written correction notice may take a variety of forms. It may be sent separately, or it may be included on or with a periodic statement that is mailed within the time for resolution. If the periodic statement is used, the amount of the billing error must be specifically identified. If a separate billing error correction notice is provided, the accompanying or subsequent periodic statement reflecting the corrected amount may simply identify it as credit.

3. Discovery of information after investigation period. See comment 13(c)(2)-2.

13(f) Procedures if different billing error or no billing error occurred.

1. Different billing error. Examples of a different billing error include:

i. Differences in the amount of an error (for example, the customer asserts a $55.00 error but the error was only $53.00).

ii. Differences in other particulars asserted by the consumer (such as when a consumer asserts that a particular transaction never occurred, but the creditor determines that only the seller's name was disclosed incorrectly).

2. Form of creditor's explanation. The written explanation (which also may notify the consumer of corrections to the account) may take a variety of forms. It may be sent separately, or it may be included on or with a periodic statement that is mailed within the time for resolution. If the creditor uses the periodic statement for the explanation and correction(s), the corrections must be specifically identified. If a separate explanation, including the correction notice, is provided, the enclosed or subsequent periodic statement reflecting the corrected amount may simply identify it as a credit. The explanation may be combined with the creditor's notice to the consumer of amounts still owing, which is required under § 226.13(g)(1), provided it is sent within the time limit for resolution. (See commentary to § 226.13(e).)

3. Reasonable investigation. A creditor must conduct a reasonable investigation before it determines that no billing error occurred or that a different billing error occurred from that asserted. In conducting its investigation of an allegation of a billing error, the creditor may reasonably request the consumer's cooperation. The creditor may not automatically deny a claim based solely on the consumer's failure or refusal to comply with a particular request, including providing an affidavit or filing a police report. However, if the creditor otherwise has no knowledge of facts confirming the billing error, the lack of information resulting from the consumer's failure or refusal to comply with a particular request may lead the creditor reasonably to terminate the investigation. The

procedures involved in investigating alleged billing errors may differ depending on the billing error type.

i. Unauthorized transaction. In conducting an investigation of a notice of billing error alleging an unauthorized transaction under § 226.13(a)(1), actions such as the following represent steps that a creditor may take, as appropriate, in conducting a reasonable investigation:

A. Reviewing the types or amounts of purchases made in relation to the consumer's previous purchasing pattern.

B. Reviewing where the purchases were delivered in relation to the consumer's residence or place of business.

C. Reviewing where the purchases were made in relation to where the consumer resides or has normally shopped.

D. Comparing any signature on credit slips for the purchases to the signature of the consumer (or an authorized user in the case of a credit card account) in the creditor's records, including other credit slips.

E. Requesting documentation to assist in the verification of the claim.

F. Requesting a written, signed statement from the consumer (or authorized user, in the case of a credit card account). For example, the creditor may include a signature line on a billing rights form that the consumer may send in to provide notice of the claim. However, a creditor may not require the consumer to provide an affidavit or signed statement under penalty of perjury as a part of a reasonable investigation.

G. Requesting a copy of a police report, if one was filed.

H. Requesting information regarding the consumer's knowledge of the person who allegedly obtained an extension of credit on the account or of that person's authority to do so.

ii. Nondelivery of property or services. In conducting an investigation of a billing error notice alleging the nondelivery of property or services under § 226.13(a)(3), the creditor shall not deny the assertion unless it conducts a reasonable investigation and determines that the property or services were actually delivered, mailed, or sent as agreed.

iii. Incorrect information. In conducting an investigation of a billing error notice alleging that information appearing on a periodic statement is incorrect because a person honoring the consumer's credit card or otherwise accepting an access device for an open-end plan has made an incorrect report to the creditor, the creditor shall not deny the assertion unless it conducts a reasonable investigation and determines that the information was correct.

13(g) Creditor's rights and duties after resolution.

Paragraph 13(g)(1).

1. Amounts owed by consumer. Amounts the consumer still owes may include both minimum periodic payments and related finance and other charges that accrued during the resolution period. As explained in the commentary to § 226.13(d)(1), even if the creditor later determines that no billing error occurred, the creditor may not include finance or other charges that are imposed on undisputed balances solely as a result of a consumer's withholding payment of a disputed amount.

2. Time of notice. The creditor need not send the notice of amount owed within the time period for resolution, although it is under a duty to send the notice promptly after resolution of the alleged error. If the creditor combines the notice of the amount owed with the explanation required under § 226.13(f)(1), the combined notice must be provided within the time limit for resolution.

Paragraph 13(g)(2).

1. Grace period if no error occurred. If the creditor determines, after a reasonable investigation, that a billing error did not occur as asserted, and the consumer was entitled to a grace period at the time the consumer provided the billing error notice, the consumer must be given a period of time equal to the grace period disclosed under § 226.6(a)(1) or (b)(2) and § 226.7(a)(8) or (b)(8) to pay any disputed amounts due without incurring additional finance or other charges. However, the creditor need not allow a grace period disclosed under the above-mentioned sections to pay the amount due under § 226.13(g)(1) if no error occurred and the consumer was not entitled to a grace period at the time the consumer asserted the error. For example, assume that a creditor provides a consumer a grace period of 20 days to pay a new balance to avoid finance charges, and that the consumer did not carry an outstanding balance from the prior month. If the consumer subsequently asserts a billing error for the current statement period within the 20-day grace period, and the creditor determines that no billing error in fact occurred, the consumer must be given at least 20 days (i.e., the full disclosed grace period) to pay the amount due without incurring additional finance charges. Conversely, if the consumer was not entitled to a grace period at the time the consumer asserted the billing error, for example, if the consumer did not pay the previous monthly balance of undisputed charges

in full, the creditor may assess finance charges on the disputed balance for the entire period the item was in dispute.

Paragraph 13(g)(3).

1. Time for payment. The consumer has a minimum of 10 days to pay (measured from the time the consumer could reasonably be expected to have received notice of the amount owed) before the creditor may issue an adverse credit report; if an initially disclosed grace period allows the consumer a longer time in which to pay, the consumer has the benefit of that longer period.

Paragraph 13(g)(4).

1. Credit reporting. Under § 226.13(g)(4)(i) and (iii) the creditor's additional credit reporting responsibilities must be accomplished promptly. The creditor need not establish costly procedures to fulfill this requirement. For example, a creditor that reports to a credit bureau on scheduled updates need not transmit corrective information by an unscheduled computer or magnetic tape; it may provide the credit bureau with the correct information by letter or other commercially reasonable means when using the scheduled update would not be "prompt." The creditor is not responsible for ensuring that the credit bureau corrects its information immediately.

2. Adverse report to credit bureau. If a creditor made an adverse report to a credit bureau that disseminated the information to other creditors, the creditor fulfills its § 226.13(g)(4)(ii) obligations by providing the consumer with the name and address of the credit bureau.

<u>13(i) Relation to Electronic Fund Transfer Act and Regulation E</u>.

1. <u>Coverage</u>. Credit extended directly from a non-overdraft credit line is governed solely by Regulation Z, even though a combined credit card/access device is used to obtain the extension.

2. <u>Incidental credit under agreement</u>. Credit extended incident to an electronic fund transfer under an agreement between the consumer and the financial institution is governed by § 226.13(i), which provides that certain error resolution procedures in both this regulation and Regulation E apply. Incidental credit that is not extended under an agreement between the consumer and the financial institution is governed solely by the error resolution procedures in Regulation E. For example, credit inadvertently extended incident to an electronic fund transfer, such as under an overdraft service not subject to Regulation Z, is governed solely by the Regulation E error resolution procedures, if the bank and the consumer do not have an agreement to extend credit when the consumer's account is overdrawn.

3. <u>Application to debit/credit transactions-examples</u>. If a consumer withdraws money at an automated teller machine and activates an overdraft credit feature on the checking account:

i. An error asserted with respect to the transaction is subject, for error resolution purposes, to the applicable Regulation E provisions (such as timing and notice) for the entire transaction.

ii. The creditor need not provisionally credit the consumer's account, under § 205.11(c)(2)(i) of Regulation E, for any portion of the unpaid extension of credit.

iii. The creditor must credit the consumer's account under § 205.11(c) with any finance or other charges incurred as a result of the alleged error.

iv. The provisions of §§ 226.13(d) and (g) apply only to the credit portion of the transaction.

Section 226.14—Determination of Annual Percentage Rate

14(a) General rule.

1. Tolerance. The tolerance of ⅛th of 1 percentage point above or below the annual percentage rate applies to any required disclosure of the annual percentage rate. The disclosure of the annual percentage rate is required in §§ 226.5a, 226.5b, 226.6, 226.7, 226.9, 226.15, 226.16, 226.26, 226.55, and 226.56.

2. Rounding. The regulation does not require that the annual percentage rate be calculated to any particular number of decimal places; rounding is permissible within the ⅛th of 1 percent tolerance. For example, an exact annual percentage rate of 14.33333% may be stated as 14.33% or as 14.3%, or even as 14¼%; but it could not be stated as 14.2% or 14%, since each varies by more than the permitted tolerance.

3. Periodic rates. No explicit tolerance exists for any periodic rate as such; a disclosed periodic rate may vary from precise accuracy (for example, due to rounding) only to the extent that its annualized equivalent is within the tolerance permitted by § 226.14(a). Further, a periodic rate need not be calculated to any particular number of decimal places.

4. Finance charges. The regulation does not prohibit creditors from assessing finance charges on balances that include prior, unpaid finance charges; state or other applicable law may do so, however.

5. Good faith reliance on faulty calculation tools. The regulation relieves a creditor of liability for an error in the annual percentage rate or finance charge that resulted from a corresponding error in a calculation tool used in good faith by the creditor. Whether or not the creditor's use of the tool was in good faith must be determined on a case-by-case basis, but the creditor must in any case have taken reasonable steps to verify the accuracy of the tool, including any instructions, before using it. Generally, the safe harbor from liability is available only for errors directly attributable to the calculation tool itself, including software programs; it is not intended to absolve a creditor of liability for its own errors, or for errors arising from improper use of the tool, from incorrect data entry, or from misapplication of the law.

14(b) Annual percentage rate - in general.

1. Corresponding annual percentage rate computation. For purposes of §§ 226.5a, 226.5b, 226.6, 226.7(a)(4) or (b)(4), 226.9, 226.15, 226.16, 226.26, 226.55, and 226.56, the annual percentage rate is determined by multiplying the periodic rate by the number of periods in the year. This computation reflects the fact that, in such disclosures, the rate (known as the corresponding annual percentage rate) is prospective and does not involve any particular finance charge or periodic balance.

14(c) Optional effective annual percentage rate for periodic statements for creditors offering open-end plans subject to the requirements of § 226.5b.

1. General rule. The periodic statement may reflect (under § 226.7(a)(7)) the annualized equivalent of the rate actually applied during a particular cycle; this rate may differ from the corresponding annual percentage rate because of the inclusion of, for example, fixed, minimum, or transaction charges. Sections 226.14(c)(1) through (c)(4)

state the computation rules for the effective rate.

2. Charges related to opening, renewing, or continuing an account. Sections 226.14(c)(2) and (c)(3) exclude from the calculation of the effective annual percentage rate finance charges that are imposed during the billing cycle such as a loan fee, points, or similar charge that relates to opening, renewing, or continuing an account. The charges involved here do not relate to a specific transaction or to specific activity on the account, but relate solely to the opening, renewing, or continuing of the account. For example, an annual fee to renew an open-end credit account that is a percentage of the credit limit on the account, or that is charged only to consumers that have not used their credit card for a certain dollar amount in transactions during the preceding year, would not be included in the calculation of the annual percentage rate, even though the fee may not be excluded from the finance charge under § 226.4(c)(4). (See comment 4(c)(4)–2.) This rule applies even if the loan fee, points, or similar charges are billed on a subsequent periodic statement or withheld from the proceeds of the first advance on the account.

3. Classification of charges. If the finance charge includes a charge not due to the application of a periodic rate, the creditor must use the annual percentage rate computation method that corresponds to the type of charge imposed. If the charge is tied to a specific transaction (for example, 3 percent of the amount of each transaction), then the method in § 226.14(c)(3) must be used. If a fixed or minimum charge is applied, that is, one not tied to any specific transaction, then the formula in § 226.14(c)(2) is appropriate.

4. Small finance charges. Section 226.14(c)(4) gives the creditor an alternative to § 226.14(c)(2) and (c)(3) if small finance charges (50 cents or less) are involved; that is,

if the finance charge includes minimum or fixed fees not due to the application of a periodic rate and the total finance charge for the cycle does not exceed 50 cents. For example, while a monthly activity fee of 50 cents on a balance of $20 would produce an annual percentage rate of 30 percent under the rule in § 226.14(c)(2), the creditor may disclose an annual percentage rate of 18 percent if the periodic rate generally applicable to all balances is 1½ percent per month.

5. <u>Prior-cycle adjustments</u>. i. The annual percentage rate reflects the finance charges imposed during the billing cycle. However, finance charges imposed during the billing cycle may relate to activity in a prior cycle. Examples of circumstances when this may occur are:

A. A cash advance occurs on the last day of a billing cycle on an account that uses the transaction date to figure finance charges, and it is impracticable to post the transaction until the following cycle.

B. An adjustment to the finance charge is made following the resolution of a billing error dispute.

C. A consumer fails to pay the purchase balance under a deferred payment feature by the payment due date, and finance charges are imposed from the date of purchase.

ii. Finance charges relating to activity in prior cycles should be reflected on the periodic statement as follows:

A. If a finance charge imposed in the current billing cycle is attributable to periodic rates applicable to prior billing cycles (such as when a deferred payment balance was not paid in full by the payment due date and finance charges from the date of purchase are now being debited to the account, or when a cash advance occurs on the last day of a billing cycle on an account that uses the transaction date to figure finance charges and it is impracticable to post the transaction until the following cycle), and the creditor uses the quotient method to calculate the annual percentage rate, the numerator would include the amount of any transaction charges plus any other finance charges posted during the billing cycle. At the creditor's option, balances relating to the finance charge adjustment may be included in the denominator if permitted by the legal obligation, if it was impracticable to post the transaction in the previous cycle because of timing, or if the adjustment is covered by comment 14(c)-5.ii.B.

B. If a finance charge that is posted to the account relates to activity for which a finance charge was debited or credited to the account in a previous billing cycle (for example, if the finance charge relates to an adjustment such as the resolution of a billing error dispute, or an unintentional posting error, or a payment by check that was later returned unpaid for insufficient funds or other reasons), the creditor shall at its option:

1. Calculate the annual percentage rate in accordance with ii.A. of this paragraph, or

2. Disclose the finance charge adjustment on the periodic statement and calculate the annual percentage rate for the current billing cycle without including the finance charge adjustment in the numerator and balances associated with the finance charge adjustment in the denominator.

14(c)(1) Solely periodic rates imposed.

1. Periodic rates. Section 226.14(c)(1) applies if the only finance charge imposed is due to the application of a periodic rate to a balance. The creditor may compute the

annual percentage rate either:

i. By multiplying each periodic rate by the number of periods in the year; or

ii. By the ‘‘quotient’’ method. This method refers to a composite annual percentage rate when different periodic rates apply to different balances. For example, a particular plan may involve a periodic rate of 1½ percent on balances up to $500, and 1 percent on balances over $500. If, in a given cycle, the consumer has a balance of $800, the finance charge would consist of $7.50 (500×.015) plus $3.00 (300×.01), for a total finance charge of $10.50. The annual percentage rate for this period may be disclosed either as 18% on $500 and 12 percent on $300, or as 15.75 percent on a balance of $800 (the quotient of $10.50 divided by $800, multiplied by 12).

<u>14(c)(2) Minimum or fixed charge, but not transaction charge, imposed</u>.

1. <u>Certain charges not based on periodic rates</u>. Section 226.14(c)(2) specifies use of the quotient method to determine the annual percentage rate if the finance charge imposed includes a certain charge not due to the application of a periodic rate (other than a charge relating to a specific transaction). For example, if the creditor imposes a minimum $1 finance charge on all balances below $50, and the consumer’s balance was $40 in a particular cycle, the creditor would disclose an annual percentage rate of 30 percent (1/40×12).

2. <u>No balance</u>. If there is no balance to which the finance charge is applicable, an annual percentage rate cannot be determined under § 226.14(c)(2). This could occur not only when minimum charges are imposed on an account with no balance, but also when a periodic rate is applied to advances from the date of the transaction. For example, if on May 19 the consumer pays the new balance in full from a statement dated May 1, and has

no further transactions reflected on the June 1 statement, that statement would reflect a finance charge with no account balance.

14(c)(3) Transaction charge imposed.

1. Transaction charges. i. Section 226.14(c)(3) transaction charges include, for example:

A. A loan fee of $10 imposed on a particular advance.

B. A charge of 3 percent of the amount of each transaction.

ii. The reference to avoiding duplication in the computation requires that the amounts of transactions on which transaction charges were imposed not be included both in the amount of total balances and in the "other amounts on which a finance charge was imposed" figure. In a multifeatured plan, creditors may consider each bona fide feature separately in the calculation of the denominator. A creditor has considerable flexibility in defining features for open-end plans, as long as the creditor has a reasonable basis for the distinctions. For further explanation and examples of how to determine the components of this formula, see appendix F to part 226.

2. Daily rate with specific transaction charge. Section 226.14(c)(3) sets forth an acceptable method for calculating the annual percentage rate if the finance charge results from a charge relating to a specific transaction and the application of a daily periodic rate. This section includes the requirement that the creditor follow the rules in appendix F to part 226 in calculating the annual percentage rate, especially the provision in the introductory section of appendix F which addresses the daily rate/transaction charge situation by providing that the "average of daily balances" shall be used instead of the "sum of the balances."

14(d) Calculations where daily periodic rate applied.

1. Quotient method. Section 226.14(d) addresses use of a daily periodic rate(s) to determine some or all of the finance charge and use of the quotient method to determine the annual percentage rate. Since the quotient formula in § 226.14(c)(1)(ii) and (c)(2) cannot be used when a daily rate is being applied to a series of daily balances, § 226.14(d) provides two alternative ways to calculate the annual percentage rate—either of which satisfies the provisions of § 226.7(a)(7).

2. Daily rate with specific transaction charge. If the finance charge results from a charge relating to a specific transaction and the application of a daily periodic rate, see comment 14(c)(3)-2 for guidance on an appropriate calculation method.

Section 226.16—Advertising

1. Clear and conspicuous standard—general. Section 226.16 is subject to the general "clear and conspicuous" standard for subpart B (see § 226.5(a)(1)) but prescribes no specific rules for the format of the necessary disclosures, other than the format requirements related to the disclosure of a promotional rate or payment under § 226.16(d)(6), a promotional rate under § 226.16(g), or a deferred interest or similar offer under § 226.16(h). Other than the disclosure of certain terms described in §§ 226.16(d)(6), (g), or (h), the credit terms need not be printed in a certain type size nor need they appear in any particular place in the advertisement.

2. Clear and conspicuous standard—promotional rates or payments; deferred interest or similar offers.

i. For purposes of § 226.16(d)(6), a clear and conspicuous disclosure means that the required information in § 226.16(d)(6)(ii)(A)-(C) is disclosed with equal prominence and in close proximity to the promotional rate or payment to which it applies. If the information in § 226.16(d)(6)(ii)(A)-(C) is the same type size and is located immediately next to or directly above or below the promotional rate or payment to which it applies, without any intervening text or graphical displays, the disclosures would be deemed to be equally prominent and in close proximity. Notwithstanding the above, for electronic advertisements that disclose promotional rates or payments, compliance with the requirements of § 226.16(c) is deemed to satisfy the clear and conspicuous standard.

ii. For purposes of § 226.16(g)(4) as it applies to written or electronic advertisements only, a clear and conspicuous disclosure means the required information in § 226.16(g)(4)(i) and (g)(4)(ii) must be equally prominent to the promotional rate to which it applies. If the information in § 226.16(g)(4)(i) and (g)(4)(ii) is the same type size as the promotional rate to which it applies, the disclosures would be deemed to be equally prominent. For purposes of § 226.16(h)(3) as it applies to written or electronic advertisements only, a clear and conspicuous disclosure means the required information in § 226.16(h)(3) must be equally prominent to each statement of "no interest," "no payments," "deferred interest," "same as cash," or similar term regarding interest or payments during the deferred interest period. If the information required to be disclosed under § 226.16(h)(3) is the same type size as the statement of "no interest," "no payments," "deferred interest," "same as cash," or similar term regarding interest or payments during the deferred interest period, the disclosure would be deemed to be equally prominent.

3. Clear and conspicuous standard—Internet advertisements for home-equity plans. For purposes of this section, a clear and conspicuous disclosure for visual text

advertisements on the Internet for home-equity plans subject to the requirements of § 226.5b means that the required disclosures are not obscured by techniques such as graphical displays, shading, coloration, or other devices and comply with all other requirements for clear and conspicuous disclosures under § 226.16(d). (See also comment 16(c)(1)-2.)

4. Clear and conspicuous standard—televised advertisements for home-equity plans. For purposes of this section, including alternative disclosures as provided for by § 226.16(e), a clear and conspicuous disclosure in the context of visual text advertisements on television for home-equity plans subject to the requirements of § 226.5b means that the required disclosures are not obscured by techniques such as graphical displays, shading, coloration, or other devices, are displayed in a manner that allows for a consumer to read the information required to be disclosed, and comply with all other requirements for clear and conspicuous disclosures under § 226.16(d). For example, very fine print in a television advertisement would not meet the clear and conspicuous standard if consumers cannot see and read the information required to be disclosed.

5. Clear and conspicuous standard—oral advertisements for home-equity plans. For purposes of this section, including alternative disclosures as provided for by § 226.16(e), a clear and conspicuous disclosure in the context of an oral advertisement for home-equity plans subject to the requirements of § 226.5b, whether by radio, television, the Internet, or other medium, means that the required disclosures are given at a speed and volume sufficient for a consumer to hear and comprehend them. For example, information stated very rapidly at a low volume in a radio or television advertisement

would not meet the clear and conspicuous standard if consumers cannot hear and comprehend the information required to be disclosed.

6. Expressing the annual percentage rate in abbreviated form. Whenever the annual percentage rate is used in an advertisement for open-end credit, it may be expressed using a readily understandable abbreviation such as APR.

7. Effective date. For guidance on the applicability of the Board's revisions to § 226.16 published on July 30, 2008, see comment 1(d)(5)-1.

16(a) Actually available terms.

1. General rule. To the extent that an advertisement mentions specific credit terms, it may state only those terms that the creditor is actually prepared to offer. For example, a creditor may not advertise a very low annual percentage rate that will not in fact be available at any time. Section 226.16(a) is not intended to inhibit the promotion of new credit programs, but to bar the advertising of terms that are not and will not be available. For example, a creditor may advertise terms that will be offered for only a limited period, or terms that will become available at a future date.

2. Specific credit terms. Specific credit terms is not limited to the disclosures required by the regulation but would include any specific components of a credit plan, such as the minimum periodic payment amount or seller's points in a plan secured by real estate.

16(b) Advertisement of terms that require additional disclosures.

Paragraph (b)(1).

1. Triggering terms. Negative as well as affirmative references trigger the requirement for additional information. For example, if a creditor states no interest or no

annual membership fee in an advertisement, additional information must be provided. Other examples of terms that trigger additional disclosures are:

i. Small monthly service charge on the remaining balance, which describes how the amount of a finance charge will be determined.

ii. 12 percent Annual Percentage Rate or A $15 annual membership fee buys you $2,000 in credit, which describe required disclosures under § 226.6.

2. Implicit terms. Section 226.16(b) applies even if the triggering term is not stated explicitly, but may be readily determined from the advertisement.

3. Membership fees. A membership fee is not a triggering term nor need it be disclosed under § 226.16(b)(3) if it is required for participation in the plan whether or not an open-end credit feature is attached. (See comment 6(a)(2)-1 and § 226.6(b)(3)(iii)(B).)

4. Deferred billing and deferred payment programs. Statements such as "Charge it—you won't be billed until May" or "You may skip your January payment" are not in themselves triggering terms, since the timing for initial billing or for monthly payments are not terms required to be disclosed under § 226.6. However, a statement such as "No interest charges until May" or any other statement regarding when interest or finance charges begin to accrue is a triggering term, whether appearing alone or in conjunction with a description of a deferred billing or deferred payment program such as the examples above.

5. Variable-rate plans. In disclosing the annual percentage rate in an advertisement for a variable-rate plan, as required by § 226.16(b)(1)(ii), the creditor may use an insert showing the current rate; or may give the rate as of a specified recent date.

The additional requirement in § 226.16(b)(1)(ii) to disclose the variable-rate feature may be satisfied by disclosing that the annual percentage rate may vary or a similar statement, but the advertisement need not include the information required by § 226.6(a)(1)(ii) or (b)(4)(ii).

6. Membership fees for open-end (not home-secured) plans. For purposes of § 226.16(b)(1)(iii), membership fees that may be imposed on open-end (not home-secured) plans shall have the same meaning as in § 226.5a(b)(2).

Paragraph (b)(2).

1. Assumptions. In stating the total of payments and the time period to repay the obligation, assuming that the consumer pays only the periodic payment amounts advertised, as required under § 226.16(b)(2), the following additional assumptions may be made:

i. Payments are made timely so as not to be considered late by the creditor;

ii. Payments are made each period, and no debt cancellation or suspension agreement, or skip payment feature applies to the account;

iii. No interest rate changes will affect the account;

iv. No other balances are currently carried or will be carried on the account;

v. No taxes or ancillary charges are or will be added to the obligation;

vi. Goods or services are delivered on a single date; and

vii. The consumer is not currently and will not become delinquent on the account.

2. Positive periodic payment amounts. Only positive periodic payment amounts trigger the additional disclosures under § 226.16(b)(2). Therefore, if the periodic payment amount advertised is not a positive amount (e.g., “No payments”), the

advertisement need not state the total of payments and the time period to repay the obligation.

16(c) Catalogs or other multiple-page advertisements; electronic advertisements.

1. Definition. The multiple-page advertisements to which § 226.16(c) refers are advertisements consisting of a series of sequentially numbered pages—for example, a supplement to a newspaper. A mailing consisting of several separate flyers or pieces of promotional material in a single envelope does not constitute a single multiple-page advertisement for purposes of § 226.16(c).

Paragraph 16(c)(1).

1. General. Section 226.16(c)(1) permits creditors to put credit information together in one place in a catalog or other multiple-page advertisement or an electronic advertisement (such as an advertisement appearing on an Internet Web site). The rule applies only if the advertisement contains one or more of the triggering terms from § 226.16(b).

2. Electronic advertisement. If an electronic advertisement (such as an advertisement appearing on an Internet Web site) contains the table or schedule permitted under § 226.16(c)(1), any statement of terms set forth in § 226.6 appearing anywhere else in the advertisement must clearly direct the consumer to the location where the table or schedule begins. For example, a term triggering additional disclosures may be accompanied by a link that directly takes the consumer to the additional information.

Paragraph 16(c)(2).

1. Table or schedule if credit terms depend on outstanding balance. If the credit terms of a plan vary depending on the amount of the balance outstanding, rather than the

amount of any property purchased, a table or schedule complies with § 226.16(c)(2) if it includes the required disclosures for representative balances. For example, a creditor would disclose that a periodic rate of 1.5% is applied to balances of $500 or less, and a 1% rate is applied to balances greater than $500.

16(d) Additional requirements for home-equity plans.

1. Trigger terms. Negative as well as affirmative references trigger the requirement for additional information. For example, if a creditor states no annual fee, no points, or we waive closing costs in an advertisement, additional information must be provided. (See comment 16(d)-4 regarding the use of a phrase such as no closing costs.) Inclusion of a statement such as low fees, however, would not trigger the need to state additional information. References to payment terms include references to the draw period or any repayment period, to the length of the plan, to how the minimum payments are determined and to the timing of such payments.

2. Fees to open the plan. Section 226.16(d)(1)(i) requires a disclosure of any fees imposed by the creditor or a third party to open the plan. In providing the fee information required under this paragraph, the corresponding rules for disclosure of this information apply. For example, fees to open the plan may be stated as a range. Similarly, if property insurance is required to open the plan, a creditor either may estimate the cost of the insurance or provide a statement that such insurance is required. (See the commentary to § 226.5b(d)(7) and (d)(8).)

3. Statements of tax deductibility. An advertisement that refers to deductibility for tax purposes is not misleading if it includes a statement such as "consult a tax advisor regarding the deductibility of interest." An advertisement distributed in paper form or

through the Internet (rather than by radio or television) that states that the advertised extension of credit may exceed the fair market value of the consumer's dwelling is not misleading if it clearly and conspicuously states the required information in §§ 226.16(d)(4)(i) and (d)(4)(ii).

4. Misleading terms prohibited. Under § 226.16(d)(5), advertisements may not refer to home-equity plans as free money or use other misleading terms. For example, an advertisement could not state "no closing costs" or "we waive closing costs" if consumers may be required to pay any closing costs, such as recordation fees. In the case of property insurance, however, a creditor may state, for example, "no closing costs" even if property insurance may be required, as long as the creditor also provides a statement that such insurance may be required. (See the commentary to this section regarding fees to open a plan.)

5. Promotional rates and payments in advertisements for home-equity plans. Section 226.16(d)(6) requires additional disclosures for promotional rates or payments.

i. Variable-rate plans. In advertisements for variable-rate plans, if the advertised annual percentage rate is based on (or the advertised payment is derived from) the index and margin that will be used to make rate (or payment) adjustments over the term of the loan, then there is no promotional rate or promotional payment. If, however, the advertised annual percentage rate is not based on (or the advertised payment is not derived from) the index and margin that will be used to make rate (or payment) adjustments, and a reasonably current application of the index and margin would result in a higher annual percentage rate (or, given an assumed balance, a higher payment) then there is a promotional rate or promotional payment.

ii. Equal prominence, close proximity. Information required to be disclosed in § 226.16(d)(6)(ii) that is immediately next to or directly above or below the promotional rate or payment (but not in a footnote) is deemed to be closely proximate to the listing. Information required to be disclosed in § 226.16(d)(6)(ii) that is in the same type size as the promotional rate or payment is deemed to be equally prominent.

iii. Amounts and time periods of payments. Section 226.16(d)(6)(ii)(C) requires disclosure of the amount and time periods of any payments that will apply under the plan. This section may require disclosure of several payment amounts, including any balloon payment. For example, if an advertisement for a home-equity plan offers a $100,000 five-year line of credit and assumes that the entire line is drawn resulting in a minimum payment of $800 per month for the first six months, increasing to $1,000 per month after month six, followed by a $50,000 balloon payment after five years, the advertisement must disclose the amount and time period of each of the two monthly payment streams, as well as the amount and timing of the balloon payment, with equal prominence and in close proximity to the promotional payment. However, if the final payment could not be more than twice the amount of other minimum payments, the final payment need not be disclosed.

iv. Plans other than variable-rate plans. For a plan other than a variable-rate plan, if an advertised payment is calculated in the same way as other payments based on an assumed balance, the fact that the minimum payment could increase solely if the consumer made an additional draw does not make the payment a promotional payment. For example, if a payment of $500 results from an assumed $10,000 draw, and the payment would increase to $1000 if the consumer made an additional $10,000 draw, the payment is not a promotional payment.

v. Conversion option. Some home-equity plans permit the consumer to repay all or part of the balance during the draw period at a fixed rate (rather than a variable rate) and over a specified time period. The fixed-rate conversion option does not, by itself, make the rate or payment that would apply if the consumer exercised the fixed-rate conversion option a promotional rate or payment.

vi. Preferred-rate provisions. Some home-equity plans contain a preferred-rate provision, where the rate will increase upon the occurrence of some event, such as the consumer-employee leaving the creditor's employ, the consumer closing an existing deposit account with the creditor, or the consumer revoking an election to make automated payments. A preferred-rate provision does not, by itself, make the rate or payment under the preferred-rate provision a promotional rate or payment.

6. Reasonably current index and margin. For the purposes of this section, an index and margin is considered reasonably current if:

i. For direct mail advertisements, it was in effect within 60 days before mailing;

ii. For advertisements in electronic form it was in effect within 30 days before the advertisement is sent to a consumer's e-mail address, or in the case of an advertisement made on an Internet Web site, when viewed by the public; or

iii. For printed advertisements made available to the general public, including ones contained in a catalog, magazine, or other generally available publication, it was in effect within 30 days before printing.

7. Relation to other sections. Advertisements for home-equity plans must comply with all provisions in § 226.16, not solely the rules in § 226.16(d). If an advertisement contains information (such as the payment terms) that triggers the duty under § 226.16(d) to state the annual percentage rate, the additional disclosures in § 226.16(b) must be provided in the advertisement. While § 226.16(d) does not require a statement of fees to use or maintain the plan (such as membership fees and transaction charges), such fees must be disclosed under § 226.16(b)(1)(i) and (b)(1)(iii).

8. Inapplicability of closed-end rules. Advertisements for home-equity plans are governed solely by the requirements in § 226.16, except § 226.16(g), and not by the closed-end advertising rules in § 226.24. Thus, if a creditor states payment information about the repayment phase, this will trigger the duty to provide additional information under § 226.16, but not under § 226.24.

9. Balloon payment. See comment 5b(d)(5)(ii)–3 for information not required to be stated in advertisements, and on situations in which the balloon payment requirement does not apply.

16(e) Alternative disclosures—television or radio advertisements.

1. Multi-purpose telephone number. When an advertised telephone number provides a recording, disclosures must be provided early in the sequence to ensure that the consumer receives the required disclosures. For example, in providing several options—such as providing directions to the advertiser's place of business—the option allowing the consumer to request disclosures should be provided early in the telephone message to ensure that the option to request disclosures is not obscured by other information.

2. Statement accompanying toll free number. Language must accompany a telephone number indicating that disclosures are available by calling the telephone number, such as "call 1-800-000-0000 for details about credit costs and terms."

16(g) Promotional rates.

1. Rate in effect at the end of the promotional period. If the annual percentage rate that will be in effect at the end of the promotional period (i.e., the post-promotional rate) is a variable rate, the post-promotional rate for purposes of § 226.16(g)(2)(i) is the rate that would have applied at the time the promotional rate was advertised if the promotional rate was not offered, consistent with the accuracy requirements in § 226.5a(c)(2) and (e)(4), as applicable.

2. Immediate proximity. For written or electronic advertisements, including the term "introductory" or "intro" in the same phrase as the listing of the introductory rate is deemed to be in immediate proximity of the listing.

3. Prominent location closely proximate. For written or electronic advertisements, information required to be disclosed in § 226.16(g)(4)(i) and (g)(4)(ii) that is in the same paragraph as the first listing of the promotional rate is deemed to be in a prominent location closely proximate to the listing. Information disclosed in a footnote will not be considered in a prominent location closely proximate to the listing.

4. First listing. For purposes of § 226.16(g)(4) as it applies to written or electronic advertisements, the first listing of the promotional rate is the most prominent listing of the rate on the front side of the first page of the principal promotional document. The principal promotional document is the document designed to be seen first by the consumer in a mailing, such as a cover letter or solicitation letter. If the

promotional rate does not appear on the front side of the first page of the principal promotional document, then the first listing of the promotional rate is the most prominent listing of the rate on the subsequent pages of the principal promotional document. If the promotional rate is not listed on the principal promotional document or there is no principal promotional document, the first listing is the most prominent listing of the rate on the front side of the first page of each document listing the promotional rate. If the promotional rate does not appear on the front side of the first page of a document, then the first listing of the promotional rate is the most prominent listing of the rate on the subsequent pages of the document. If the listing of the promotional rate with the largest type size on the front side of the first page (or subsequent pages if the promotional rate is not listed on the front side of the first page) of the principal promotional document (or each document listing the promotional rate if the promotional rate is not listed on the principal promotional document or there is no principal promotional document,) is used as the most prominent listing, it will be deemed to be the first listing. Consistent with comment 16(c)-1, a catalog or multiple-page advertisement is considered one document for purposes of § 226.16(g)(4).

5. <u>Post-promotional rate depends on consumer's creditworthiness</u>. For purposes of disclosing the rate that may apply after the end of the promotional rate period, at the advertiser's option, the advertisement may disclose the rates that may apply as either specific rates, or a range of rates. For example, if there are three rates that may apply (9.99%, 12.99% or 17.99%), an issuer may disclose these three rates as specific rates (9.99%, 12.99% or 17.99%) or as a range of rates (9.99%-17.99%).

16(h) Deferred interest or similar offers.

1. Deferred interest or similar offers clarified. Deferred interest or similar offers do not include offers that allow a consumer to skip payments during a specified period of time, and under which the consumer is not obligated under any circumstances for any interest or other finance charges that could be attributable to that period. Deferred interest or similar offers also do not include 0% annual percentage rate offers where a consumer is not obligated under any circumstances for interest attributable to the time period the 0% annual percentage rate was in effect, though such offers may be considered promotional rates under § 226.16(g)(2)(i). Deferred interest or similar offers also do not include skip payment programs that have no required minimum payment for one or more billing cycles but where interest continues to accrue and is imposed during that period.

2. Deferred interest period clarified. Although the terms of an advertised deferred interest or similar offer may provide that a creditor may charge the accrued interest if the balance is not paid in full by a certain date, creditors sometimes have an informal policy or practice that delays charging the accrued interest for payment received a brief period of time after the date upon which a creditor has the contractual right to charge the accrued interest. The advertisement need not include the end of an informal "courtesy period" in disclosing the deferred interest period under § 226.16(h)(3).

3. Immediate proximity. For written or electronic advertisements, including the deferred interest period in the same phrase as the statement of "no interest," "no payments," "deferred interest," or "same as cash" or similar term regarding interest or payments during the deferred interest period is deemed to be in immediate proximity of the statement.

4. Prominent location closely proximate. For written or electronic advertisements, information required to be disclosed in § 226.16(h)(4)(i) and (ii) that is in the same paragraph as the first statement of "no interest," "no payments," "deferred interest," or "same as cash" or similar term regarding interest or payments during the deferred interest period is deemed to be in a prominent location closely proximate to the statement. Information disclosed in a footnote is not considered in a prominent location closely proximate to the statement.

5. First listing. For purposes of § 226.16(h)(4) as it applies to written or electronic advertisements, the first statement of "no interest," "no payments," "deferred interest," "same as cash," or similar term regarding interest or payments during the deferred interest period is the most prominent listing of one of these statements on the front side of the first page of the principal promotional document. The principal promotional document is the document designed to be seen first by the consumer in a mailing, such as a cover letter or solicitation letter. If one of the statements does not appear on the front side of the first page of the principal promotional document, then the first listing of one of these statements is the most prominent listing of a statement on the subsequent pages of the principal promotional document. If one of the statements is not listed on the principal promotional document or there is no principal promotional document, the first listing of one of these statements is the most prominent listing of the statement on the front side of the first page of each document containing one of these statements. If one of the statements does not appear on the front side of the first page of a document, then the first listing of one of these statements is the most prominent listing of a statement on the subsequent pages of the document. If the listing of one of these

statements with the largest type size on the front side of the first page (or subsequent pages if one of these statements is not listed on the front side of the first page) of the principal promotional document (or each document listing one of these statements if a statement is not listed on the principal promotional document or there is no principal promotional document) is used as the most prominent listing, it will be deemed to be the first listing. Consistent with comment 16(c)-1, a catalog or multiple-page advertisement is considered one document for purposes of § 226.16(h)(4).

6. Additional information. Consistent with comment 5(a)-2, the information required under § 226.16(h)(4) need not be segregated from other information regarding the deferred interest or similar offer. Advertisements may also be required to provide additional information pursuant to § 226.16(b) though such information need not be integrated with the information required under § 226.16(h)(4).

7. Examples. Examples of disclosures that could be used to comply with the requirements of § 226.16(h)(3) include: "no interest if paid in full within 6 months" and "no interest if paid in full by December 31, 2010."

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Section 226.26—Use of Annual Percentage Rate in Oral Disclosures

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26(a) Open-end credit.

1. Information that may be given. The creditor may state periodic rates in addition to the required annual percentage rate, but it need not do so. If the annual percentage rate is unknown because transaction charges, loan fees, or similar finance

charges may be imposed, the creditor must give the corresponding annual percentage rate (that is, the periodic rate multiplied by the number of periods in a year, as described in §§ 226.6(a)(1)(ii) and (b)(4)(i)(A) and 226.7(a)(4) and (b)(4)). In such cases, the creditor may, but need not, also give the consumer information about other finance charges and other charges.

* * * * *

Section 226.27—Language of Disclosures

1. Subsequent disclosures. If a creditor provides account-opening disclosures in a language other than English, subsequent disclosures need not be in that other language. For example, if the creditor gave Spanish-language account-opening disclosures, periodic statements and change-in-terms notices may be made in English.

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Section 226.28—Effect on State Laws

28(a) Inconsistent disclosure requirements.

* * * * *

6. Rules for other fair credit billing provisions. The second part of the criteria for fair credit billing relates to the other rules implementing chapter 4 of the act (addressed in §§ 226.4(c)(8), 226.5(b)(2)(ii), 226.6(a)(5) and (b)(5)(iii), 226.7(a)(9) and (b)(9), 226.9(a), 226.10, 226.11, 226.12(c) through (f), 226.13, and 226.21). Section 226.28(a)(2)(ii) provides that the test of inconsistency is whether the creditor can comply with state law without violating Federal law. For example:

i. A state law that allows the card issuer to offset the consumer's credit-card indebtedness against funds held by the card issuer would be preempted, since § 226.12(d) prohibits such action.

ii. A state law that requires periodic statements to be sent more than 14 days before the end of a free-ride period would not be preempted.

iii. A state law that permits consumers to assert claims and defenses against the card issuer without regard to the $50 and 100-mile limitations of § 226.12(c)(3)(ii) would not be preempted.

iv. In paragraphs ii. and iii. of this comment, compliance with state law would involve no violation of the Federal law.

* * * * *

<u>Section 226.30—Limitation on Rates</u>

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8. <u>Manner of stating the maximum interest rate</u>. The maximum interest rate must be stated in the credit contract either as a specific amount or in any other manner that would allow the consumer to easily ascertain, at the time of entering into the obligation, what the rate ceiling will be over the term of the obligation.

i. For example, the following statements would be sufficiently specific:

A. The maximum interest rate will not exceed X%.

B. The interest rate will never be higher than X percentage points above the initial rate of Y%.

C. The interest rate will not exceed X%, or X percentage points about [a rate to be determined at some future point in time], whichever is less.

D. The maximum interest rate will not exceed X%, or the state usury ceiling, whichever is less.

ii. The following statements would not comply with this section:

A. The interest rate will never be higher than X percentage points over the prevailing market rate.

B. The interest rate will never be higher than X percentage points above [a rate to be determined at some future point in time].

C. The interest rate will not exceed the state usury ceiling which is currently X%.

iii. A creditor may state the maximum rate in terms of a maximum annual percentage rate that may be imposed. Under an open-end credit plan, this normally would be the corresponding annual percentage rate. (See generally § 226.6(a)(1)(ii) and (b)(4)(i)(A).)

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

Section 226.51—Ability to pay

51(a) General rule.

1. Consideration of additional factors. Section 226.51(a) requires a card issuer to consider a consumer's ability to make the required minimum periodic payments under the terms of an account based on the consumer's income or assets and the consumer's current obligations. The card issuer may also consider credit reports, credit scores, and other factors, consistent with Regulation B (12 CFR part 202).

2. Ability to pay as of application or consideration of increase. A card issuer complies with § 226.51(a) if it bases its determination regarding a consumer's ability to make the required minimum periodic payments on the facts and circumstances known to the card issuer at the time the consumer applies to open the credit card account or when the card issuer considers increasing the credit line on an existing account.

3. Credit line increase. When a card issuer considers increasing the credit line on an existing account, § 226.51(a) applies when the consideration is based upon a request of the consumer or is initiated by the card issuer.

4. Income, assets, and employment. Any current or reasonably expected assets or income may be considered by the card issuer. For example, a card issuer may use information about current or expected salary, wages, bonus pay, tips and commissions. Employment may be full-time, part-time, seasonal, irregular, military, or self-employment. Other sources of income could include interest or dividends, retirement benefits, public assistance, alimony, child support, or separate maintenance payments. A card issuer may also take into account assets such as savings accounts or investments that the consumer can or will be able to use.

5. Current obligations. A card issuer may consider the consumer's current obligations based on information provided by the consumer or in a consumer report.

51(b) Rules affecting young consumers.

1. Age as of date of application or consideration of credit line increase. Sections 226.51(b)(1) and (b)(2) apply only to a consumer who has not attained the age of 21 as of the date of submission of the application under § 226.51(b)(1) or the date the credit line

increase is requested by the consumer (or if no request has been made, the date the credit line increase is considered by the card issuer) under § 226.51(b)(2).

2. Liability of cosigner, guarantor, or joint accountholder. Sections 226.51(b)(1)(i) and (b)(2) require the signature or written consent of a cosigner, guarantor, or joint accountholder agreeing either to be secondarily liable for any debt on the account incurred by the consumer before the consumer has attained the age of 21 in the event the consumer defaults on the account or to be jointly liable with the consumer for any debt on the account incurred by either party. Sections 226.51(b)(1)(i) and (b)(2) do not prohibit a card issuer from also requiring the cosigner, guarantor, or joint accountholder to assume liability for debts incurred after the consumer has attained the age of 21, consistent with any agreement made between the parties.

3. Authorized users exempt. If a consumer who has not attained the age of 21 is being added to another person's account as an authorized user and has no liability for debts incurred on the account, § 226.51(b)(1) and (b)(2) do not apply.

4. Electronic application. Consistent with § 226.5(a)(1)(iii), an application may be provided to the consumer in electronic form without regard to the consumer consent or other provisions of the Electronic Signatures in Global and National Commerce Act (E-Sign Act) (15 U.S.C. 7001 et seq.) in the circumstances set forth in § 226.5a. The electronic submission of an application from a consumer or a credit line increase approval from a consumer, cosigner, guarantor, or joint accountholder to a card issuer would constitute a written application or approval for purposes of § 226.51(b) and would not be considered a consumer disclosure for purposes of the E-Sign Act.

51(b)(1) Applications from young consumers.

1. Relation to Regulation B. In considering an application or credit line increase on the credit card account of a consumer who is less than 21 years old, creditors must comply with the applicable rules in Regulation B (12 CFR part 202).

51(b)(2) Credit line increases for young consumers.

1. Credit line request by joint accountholder aged 21 or older. The requirement under § 226.51(b)(2) that a cosigner, guarantor, or joint accountholder for a credit card account opened pursuant to § 226.51(b)(1)(i) must agree in writing to assume liability for the increase before a credit line is increased, does not apply if the cosigner, guarantor or joint accountholder who is at least 21 years old requests the increase.

Section 226.52—Limitations on Fees

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

52(a)(1)(i) 25 percent limit.

1. Example. 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 $15 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 226.52(a)(1)(i) 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 226.52(a)(1)(i) 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 226.52(a)(2)(i) permits the card issuer to charge a $15 late payment fee to the account. On July 15 of year one, the consumer uses the account for a $50 cash advance. Section 226.52(a)(1)(i) does not permit the card issuer to charge a $2.50 cash advance fee to the account. Furthermore, § 225.52(a)(1)(ii) 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 § 226.52(a)(1)(i) 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 at the end of the billing cycle during which the fee was charged. For example, assuming the facts in comment 52(a)(1)(i)-1 above, the card issuer complies with § 226.52(a)(1)(i) 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. Increases in credit limit. Because the limitation in § 226.52(a)(1)(i) is based on the credit limit in effect when the account is opened, a subsequent increase in the credit limit during the first year does not permit the card issuer to charge to the account 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 226.52(a)(1)(i) does not permit the card issuer to require the consumer to pay additional fees based on the increased credit limit.

52(a)(1)(ii) Additional fees.

1. Example. Section 226.52(a)(1)(ii) prohibits a card issuer that charges to a credit card account fees during the first year that total 25 percent of the initial credit limit from requiring the consumer to pay any additional fees through other means during the first year (such as through a payment from the consumer to the card issuer or from another credit account provided by the card issuer). For example, 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 226.52(a)(1)(i) permits the card issuer to charge the $125 in fees to the account. However, § 226.52(a)(1)(ii) prohibits the card issuer from requiring the consumer to make payments to the card issuer for additional fees with respect to the account during the first year after account opening or requiring the consumer to open a separate credit account with the card issuer to fund the payment of additional fees during the first year.

52(a)(2) Fees not subject to limitations.

1. Covered fees. Except as provided in § 226.52(a)(2), the limitations in § 226.52(a)(1) apply to any fees that a card issuer will or may require the consumer to pay with respect to a credit card account under an open-end (not home-secured) consumer credit plan during the first year after account opening. For example, § 226.52(a) applies to:

i. Fees that the consumer is required to pay for the issuance or availability of credit described in § 226.5a(b)(2), including any fee based on account activity or inactivity and any fee that a consumer is required to pay in order to receive a particular credit limit;

ii. Fees for insurance described in § 226.4(b)(7) or debt cancellation or debt suspension coverage described in § 226.4(b)(10) written in connection with a credit transaction, if the insurance or debt cancellation or debt suspension coverage is required by the terms of the account;

iii. Fees that the consumer is required to pay in order to engage in transactions using the account (such as cash advance fees, balance transfer fees, foreign transaction fees, and fees for using the account for purchases); and

iv. Fees that the consumer is required to pay for violating the terms of the account (except to the extent specifically excluded by § 226.52(a)(2)(i)).

2. Fees the consumer is not required to pay. Section 226.52(a)(2)(ii) provides that § 226.52(a) does not apply to fees that the consumer is not required to pay with respect to the account. For example, the limitations in § 226.52(a) generally do not apply to fees for making an expedited payment (to the extent permitted by § 226.10(e)), fees for optional services (such as travel insurance), fees for reissuing a lost or stolen card, or statement reproduction fees.

3. Security deposits. A security deposit that is charged to a credit card account is a fee for purposes of the limitations in § 226.52(a)(1). In contrast, however, a security deposit is not subject to the 25 percent limit in § 226.52(a)(1)(i) if it is not charged to the account. Similarly, § 226.52(a)(1)(ii) does not prohibit a card issuer from requiring a

consumer to provide a security deposit that exceeds 25 percent of the credit limit at account opening so long as the card issuer does not charge any portion of that security deposit to the account.

52(a)(3) Rule of construction.

1. Fees or charges otherwise prohibited by law. Section 226.52(a) does not authorize the imposition or payment of fees or charges otherwise prohibited by law. For example, see 16 CFR § 310.4(a)(4).

Section 226.53—Allocation of Payments

1. Required minimum periodic payment. Section 226.53 addresses the allocation of amounts paid by the consumer in excess of the minimum periodic payment required by the card issuer. Section 226.53 does not limit or otherwise address the card issuer's ability to determine, consistent with applicable law and regulatory guidance, the amount of the required minimum periodic payment or how that payment is allocated. A card issuer may, but is not required to, allocate the required minimum periodic payment consistent with the requirements in § 226.53 to the extent consistent with other applicable law or regulatory guidance.

2. Applicable rates and balances. Section 226.53 permits a card issuer to allocate an amount paid by the consumer in excess of the required minimum periodic payment based on the annual percentage rates and balances on the date the preceding billing cycle ends, on the date the payment is credited to the account, or on any day in between those two dates. For example:

i. Assume that the billing cycles for a credit card account start on the first day of the month and end on the last day of the month. On the date the March billing cycle ends

(March 31), the account has a purchase balance of $500 at a promotional annual percentage rate of 5% and another purchase balance of $200 at a non-promotional annual percentage rate of 15%. On April 5, a $100 purchase to which the 15% rate applies is charged to the account. On April 15, the promotional rate expires and § 226.55(b)(1) permits the card issuer to increase the rate that applies to the $500 balance from 5% to 18%. On April 25, the card issuer credits to the account $400 paid by the consumer in excess of the required minimum periodic payment. Under § 226.53, the card issuer could, based on the rates and balances on March 31, allocate the $400 payment to pay in full the $200 balance to which the 15% rate applied on March 31 and then allocate the remaining $200 to the $500 balance to which the 5% rate applied on March 31. In the alternative, the card issuer could, based on the rates and balances on April 25, allocate the $400 payment to the $500 balance to which the 18% rate applied on April 25.

ii. Same facts as above except that, on April 25, the card issuer credits to the account $750 paid by the consumer in excess of the required minimum periodic payment. Under § 226.53, the card issuer could, based on the rates and balances on March 31, allocate the $750 payment to pay in full the $200 balance to which the 15% rate applied on March 31 and the $500 balance to which the 5% rate applied on March 31 and then allocate the remaining $50 to the $100 purchase made on April 5. In the alternative, the card issuer could, based on the rates and balances on April 25, allocate the $750 payment to pay in full the $500 balance to which the 18% rate applied on April 25 and then allocate the remaining $250 to the $300 balance to which the 15% rate applied on April 25.

3. Claims or defenses under § 226.12(c). When a consumer has asserted a claim or defense against the card issuer pursuant to § 226.12(c), the card issuer must apply the consumer's payment in a manner that avoids or minimizes any reduction in the amount of that claim or defense.

4. Balances with the same rate. When the same annual percentage rate applies to more than one balance on an account and a different annual percentage rate applies to at least one other balance on that account, § 226.53 generally does not require that any particular method be used when allocating among the balances with the same annual percentage rate. Under these circumstances, a card issuer may treat the balances with the same rate as a single balance or separate balances. See example in comment 53(a)-1.iv. However, when a balance on a credit card account is subject to a deferred interest or similar program that provides that a consumer will not be obligated to pay interest that accrues on the balance if the balance is paid in full prior to the expiration of a specified period of time, that balance must be treated as a balance with an annual percentage rate of zero for purposes of § 226.53 during that period of time. For example, if an account has a $1,000 purchase balance and a $2,000 balance that is subject to a deferred interest program that expires on July 1 and a 15% annual percentage rate applies to both, the balances must be treated as balances with different rates for purposes of § 226.53 until July 1. In addition, for purposes of allocating pursuant to § 226.53, any amount paid by the consumer in excess of the required minimum periodic payment must be applied first to the $1,000 purchase balance except during the last two billing cycles of the deferred interest period (when it must be applied first to any remaining portion of the $2,000 balance). See example in comment 53(a)-1.v.

53(a) General rule.

1. Examples. For purposes of the following examples, assume that none of the required minimum periodic payment is allocated to the balances discussed (unless otherwise stated).

i. Assume that a credit card account has a cash advance balance of $500 at an annual percentage rate of 20% and a purchase balance of $1,500 at an annual percentage rate of 15% and that the consumer pays $800 in excess of the required minimum periodic payment. Under § 226.53(a), the card issuer must allocate $500 to pay off the cash advance balance and then allocate the remaining $300 to the purchase balance.

ii. Assume that a credit card account has a cash advance balance of $500 at an annual percentage rate of 20% and a purchase balance of $1,500 at an annual percentage rate of 15% and that the consumer pays $400 in excess of the required minimum periodic payment. Under § 226.53(a), the card issuer must allocate the entire $400 to the cash advance balance.

iii. Assume that a credit card account has a cash advance balance of $100 at an annual percentage rate of 20%, a purchase balance of $300 at an annual percentage rate of 18%, and a $600 protected balance on which the 12% annual percentage rate cannot be increased pursuant to § 226.55. If the consumer pays $500 in excess of the required minimum periodic payment, § 226.53(a) requires the card issuer to allocate $100 to pay off the cash advance balance, $300 to pay off the purchase balance, and $100 to the protected balance.

iv. Assume that a credit card account has a cash advance balance of $500 at an annual percentage rate of 20%, a purchase balance of $1,000 at an annual percentage rate of 15%, and a transferred balance of $2,000 that was previously at a discounted annual percentage rate of 5% but is now at an annual percentage rate of 15%. Assume also that the consumer pays $800 in excess of the required minimum periodic payment. Under § 226.53(a), the card issuer must allocate $500 to pay off the cash advance balance and allocate the remaining $300 among the purchase balance and the transferred balance in the manner the card issuer deems appropriate.

v. Assume that on January 1 a consumer uses a credit card account to make a $1,200 purchase subject to a deferred interest program under which interest accrues at an annual percentage rate of 15% but the consumer will not be obligated to pay that interest if the balance is paid in full on or before June 30. The billing cycles for this account begin on the first day of the month and end on the last day of the month. Each month from January through June, the consumer uses the account to make $200 in purchases that are not subject to the deferred interest program but are subject to the 15% rate. Each month from February through June, the consumer pays $400 in excess of the required minimum periodic payment on the payment due date, which is the twenty-fifth of the month. Any interest that accrues on the purchases not subject to the deferred interest program is paid by the required minimum periodic payment. Under § 226.53(a), the card issuer must allocate the $400 excess payments received on February 25, March 25, and April 25 as follows: $200 to pay off the balance not subject to the deferred interest program (which is subject to the 15% rate) and the remaining $200 to the deferred interest balance (which is treated as a balance with a rate of zero). Section 226.53(b), however, requires the card issuer to allocate the entire $400 excess payment received on May 25 to the deferred interest balance. Similarly, § 227.53(b) requires the card issuer to allocate the $400 excess payment received on June 25 as follows: $200 to the deferred interest balance (which pays that balance in full) and the remaining $200 to the balance not subject to the deferred interest program.

53(b) Special rule for balances subject to deferred interest or similar programs.

1. Expiration during billing cycle. For purposes of § 226.53(b), a billing cycle does not constitute one of the two billing cycles immediately preceding expiration of a deferred interest or similar program if the expiration date for the program precedes the payment due date in that billing cycle. For example, assume that a credit card account has a balance subject to a deferred interest program that expires on June 15. Assume also 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 required minimum periodic payment is due on the twenty-fifth day of the month. Because the expiration date for the deferred interest program (June 15) precedes the due date in the June billing cycle (June 25), § 226.53(b) requires the card issuer to allocate first to the deferred interest balance any amount paid by the consumer in excess of the required minimum periodic payment during the April and May billing cycles (as well as any amount paid by the consumer before June 15). However, if the deferred interest program expired on June 25 or on June 30 (or on any day in between), § 226.53(b) would apply only to the May and June billing cycles.

2. Grace periods. Section 226.53(b) applies to deferred interest or similar programs under which the consumer is not obligated to pay interest that accrues on a balance if that balance is paid in full prior to the expiration of a specified period of time. A grace period during which any credit extended may be repaid without incurring a

finance charge due to a periodic interest rate is not a deferred interest or similar program for purposes of § 226.53(b).

Section 226.54—Limitations on the Imposition of Finance Charges

54(a) Limitations on imposing finance charges as a result of the loss of a grace period.

54(a)(1) General rule.

1. Grace period not mandated. Section 226.54 prohibits the imposition of finance charges as a result of the loss of a grace period in certain specified circumstances. Section 226.54 does not require the card issuer to provide a grace period or prohibit the card issuer from placing limitations and conditions on a grace period to the extent consistent with § 226.54.

2. Charging accrued interest at expiration of deferred interest or similar promotional programs. When a card issuer offers a deferred interest or similar promotional program under which a consumer will not be obligated to pay interest that accrues on a balance if that balance is paid in full prior to the expiration of a specified period of time, § 226.54 does not prohibit the card issuer from charging that accrued interest to the account if the balance is not paid in full prior to expiration of the period (to the extent consistent with § 226.55 and other applicable law and regulatory guidance).

3. Relationship to payment allocation requirements in § 226.53. Card issuers must comply with the payment allocation requirements in § 226.53 even if doing so will result in the loss of a grace period.

4. Prohibition on two-cycle balance computation method. When a consumer ceases to be eligible for a grace period, § 226.54(a)(1)(i) prohibits the card issuer from

computing the finance charge using the two-cycle average daily balance computation method. This method calculates the finance charge using a balance that is the sum of the average daily balances for two billing cycles. The first balance is for the current billing cycle, and is calculated by adding the total balance (including or excluding new purchases and deducting payments and credits) for each day in the billing cycle, and then dividing by the number of days in the billing cycle. The second balance is for the preceding billing cycle.

5. Prohibition on imposing finance charges on amounts paid within grace period. When a balance on a credit card account is subject to a grace period and the card issuer receives payment for some but not all of that balance prior to the expiration of the grace period, § 226.54(a)(1)(ii) prohibits the card issuer from imposing finance charges on the portion of the balance paid. Card issuers are not required to use a particular method to comply with § 226.54(a)(1)(ii). However, a card issuer complies with § 226.54(a)(1)(ii) if it applies the consumer's payment to the balance subject to the grace period at the end of the prior billing cycle (in a manner consistent with the payment allocation requirements in § 226.53) and then calculates interest charges based on the amount of the balance that remains unpaid.

6. Examples. Assume that the annual percentage rate for purchases on a credit card account is 15%. The billing cycle starts on the first day of the month and ends on the last day of the month. The payment due date for the account is the twenty-fifth day of the month. Under the terms of the account, the consumer will receive a grace period and not be charged interest on purchases if the purchase balance at the end of a billing cycle is paid in full by the following payment due date. For purposes of this example, assume

that none of the required minimum periodic payment is allocated to the balances discussed. During the March billing cycle, the following transactions are charged to the account: a $100 purchase on March 10, a $200 purchase on March 15, and a $300 purchase on March 20. The balance for the February billing cycle is paid in full on March 25. At the end of the March billing cycle (March 31), the consumer's total purchase balance is $600 and the consumer will not be charged interest on that balance if it is paid in full by the following due date (April 25).

i. On April 10, a $150 purchase is charged to the account. On April 25, the card issuer receives $500 in excess of the required minimum periodic payment.
Section 226.54(a)(1)(i) prohibits the card issuer from reaching back and charging interest on any of the March transactions from the date of the transaction through the end of the March billing cycle (March 31). In these circumstances, the card issuer may comply with § 226.54(a)(1)(ii) by applying the $500 excess payment to the $600 purchase balance and then charging interest only on the portion of the $600 purchase balance that remains unpaid ($100) from the start of the April billing cycle (April 1) through the end of the April billing cycle (April 30). In addition, the card issuer may charge interest on the $150 purchase from the date of the transaction (April 10) through the end of the April billing cycle (April 31).

ii. Same facts as in paragraph 6 above except that, on March 18, a $250 cash advance is charged to the account at an annual percentage rate of 25%. The grace period does not apply to cash advances, but the consumer retains the grace period on purchases. On April 25, the card issuer receives $600 in excess of the required minimum periodic payment. As required by § 226.53, the card issuer allocates the $600 excess payment first to the balance with the highest annual percentage rate (the $250 cash advance balance). Although § 226.54(a)(1)(i) prohibits the card issuer from charging interest on the March transactions based on days in the March billing cycle, the card issuer may charge interest on the $250 cash advance from the date of the transaction (March 18) through April 24. In these circumstances, the card issuer may comply with § 226.54(a)(1)(ii) by applying the remainder of the excess payment ($350) to the $600 purchase balance and then charging interest only on the portion of the $600 purchase balance that remains unpaid ($250) from the start of the April billing cycle (April 1) through the end of the April billing cycle (April 30).

iii. Same facts as in paragraph 6 above except that the consumer does not pay the balance for the February billing cycle in full on March 25 and therefore, under the terms of the account, is not eligible for a grace period on the March purchases. Under these circumstances, § 226.54 does not apply and the card issuer may charge interest from the date of each transaction through April 24 and interest on the remaining $100 from April 25 through the end of the April billing cycle (April 25).

Section 226.55—Limitations on Increasing Annual Percentage Rates, Fees, and Charges.

55(a) General rule.

1. Examples. Section 226.55(a) prohibits card issuers from increasing an annual percentage rate or any fee or charge required to be disclosed under § 226.6(b)(2)(ii), (b)(2)(iii), or (b)(2)(xii) on a credit card account unless specifically permitted by one of the exceptions in § 226.55(b). The following examples illustrate the general application of § 226.55(a) and (b). Additional examples illustrating specific aspects of the exceptions in § 226.55(b) are provided in the commentary to those exceptions.

i. Account-opening disclosure of non-variable rate for six months, then variable rate. Assume that, at account opening on January 1 of year one, a card issuer discloses that the annual percentage rate for purchases is a non-variable rate of 15% and will apply for six months. The card issuer also discloses that, after six months, the annual percentage rate for purchases will be a variable rate that is currently 18% and will be adjusted quarterly by adding a margin of 8 percentage points to a publicly-available index not under the card issuer's control. Furthermore, the card issuer discloses that the annual percentage rate for cash advances is the same variable rate that will apply to purchases after six months. Finally, the card issuer discloses that, to the extent consistent with § 226.55 and other applicable law, a non-variable penalty rate of 30% may apply if the consumer makes a late payment. The payment due date for the account is the twenty-fifth day of the month and the required minimum periodic payments are applied to accrued interest and fees but do not reduce the purchase and cash advance balances.

A. Change-in-terms rate increase for new transactions after first year. On January 15 of year one, the consumer uses the account to make a $2,000 purchase and a $500 cash advance. No other transactions are made on the account. At the start of each quarter, the card issuer may adjust the variable rate that applies to the $500 cash advance consistent with changes in the index (pursuant to § 226.55(b)(2)). All required minimum periodic payments are received on or before the payment due date until May of year one, when the payment due on May 25 is received by the creditor on May 28. At this time, the card issuer is prohibited by § 226.55 from increasing the rates that apply to the $2,000 purchase, the $500 cash advance, or future purchases and cash advances. Six months after account opening (July 1), the card issuer may begin to accrue interest on the $2,000 purchase at the previously-disclosed variable rate determined using an 8-point margin (pursuant to § 226.55(b)(1)). Because no other increases in rate were disclosed at account opening, the card issuer may not subsequently increase the variable rate that applies to the $2,000 purchase and the $500 cash advance (except due to increases in the index pursuant to § 226.55(b)(2)). On November 16, the card issuer provides a notice pursuant to § 226.9(c) informing the consumer of a new variable rate that will apply on January 1 of year two (calculated using the same index and an increased margin of 12 percentage points). On December 15, the consumer makes a $100 purchase.

On January 1 of year two, the card issuer may increase the margin used to determine the variable rate that applies to new purchases to 12 percentage points (pursuant to § 227.55(b)(3)). On January 15 of year two, the consumer makes a $300 purchase. The card issuer may apply the variable rate determined using the 12-point margin to the $300 purchase but not the $2,000 purchase or the $100 purchase.

B. Account becomes more than 60 days delinquent during first year. Same facts as above except that the required minimum periodic payment due on May 25 of year one is not received by the card issuer until July 30 of year one. Because the card issuer received the required minimum periodic payment more than 60 days after the payment due date, § 226.55(b)(4) permits the card issuer to increase the annual percentage rate applicable to the $2,000 purchase, the $500 cash advance, and future purchases and cash advances. However, the card issuer must first comply with the notice requirements in § 226.9(g). Thus, if the card issuer provided a § 226.9(g) notice on July 25 stating that all rates on the account would be increased to the 30% penalty rate, the card issuer could apply that rate beginning on September 8 to all balances and to future transactions.

ii. Account-opening disclosure of non-variable rate for six months, then increased non-variable rate for six months, then variable rate; change-in-terms rate increase for new transactions after first year. Assume that, at account opening on January 1 of year one, a card issuer discloses that the annual percentage rate for purchases will increase as follows: a non-variable rate of 5% for six months; a non-variable rate of 10% for an additional six months; and thereafter a variable rate that is currently 15% and will be adjusted monthly by adding a margin of 5 percentage points to a publicly-available index not under the card issuer's control. The payment due date for the account is the fifteenth day of the month and the required minimum periodic payments are applied to accrued interest and fees but do not reduce the purchase balance. On January 15 of year one, the consumer uses the account to make a $1,500 purchase. Six months after account opening (July 1), the card issuer may begin to accrue interest on the $1,500 purchase at the previously-disclosed 10% non-variable rate (pursuant to § 226.55(b)(1)). On September 15, the consumer uses the account for a $700 purchase. On November 16, the card issuer provides a notice pursuant to § 226.9(c) informing the consumer of a new variable rate that will apply on January 1 of year two (calculated using the same index and an increased margin of 8 percentage points). One year after account opening (January 1 of year two), the card issuer may begin accruing interest on the $2,200 purchase balance at the previously-disclosed variable rate determined using a 5-point margin (pursuant to § 226.55(b)(1)). Because the variable rate determined using the 8-point margin was not disclosed at account opening, the card issuer may not apply that rate to the $2,200 purchase balance. Furthermore, because no other increases in rate were disclosed at account opening, the card issuer may not subsequently increase the variable rate that applies to the $2,200 purchase balance (except due to increases in the index pursuant to § 226.55(b)(2)). The card issuer may, however, apply the variable rate determined using the 8-point margin to purchases made on or after January 1 of year two (pursuant to § 226.55(b)(3)).

iii. Change-in-terms rate increase for new transactions after first year; penalty rate increase after first year. Assume that, at account opening on January 1 of year one, a card issuer discloses that the annual percentage rate for purchases is a variable rate determined by adding a margin of 6 percentage points to a publicly-available index outside of the card issuer's control. The card issuer also discloses that, to the extent consistent with § 226.55 and other applicable law, a non-variable penalty rate of 28% may apply if the consumer makes a late payment. The due date for the account is the fifteenth of the month. On May 30 of year two, the account has a purchase balance of $1,000. On May 31, the card issuer provides a notice pursuant to § 226.9(c) informing the consumer of a new variable rate that will apply on July 16 for all purchases made on or after June 15 (calculated by using the same index and an increased margin of 8 percentage points). On June 14, the consumer makes a $500 purchase. On June 15, the consumer makes a $200 purchase. On July 1, the card issuer has not received the payment due on June 15 and provides the consumer with a notice pursuant to § 226.9(g) stating that the 28% penalty rate will apply as of August 15 to all transactions made on or after July 16 and that, if the consumer becomes more than 60 days late, the penalty rate will apply to all balances on the account. On July 17, the consumer makes a $300 purchase.

A. Account does not become more than 60 days delinquent. The payment due on June 15 of year two is received on July 2. On July 16, § 226.55(b)(3) permits the card issuer to apply the variable rate determined using the 8-point margin disclosed in the § 226.9(c) notice to the $200 purchase made on June 15 but does not permit the card issuer to apply this rate to the $1,500 purchase balance. On August 15, § 226.55(b)(3) permits the card issuer to apply the 28% penalty rate disclosed at account opening and in the § 226.9(g) notice to the $300 purchase made on July 17 but does not permit the card issuer to apply this rate to the $1,500 purchase balance (which remains at the variable rate determined using the 6-point margin) or the $200 purchase (which remains at the variable rate determined using the 8-point margin).

B. Account becomes more than 60 days delinquent after provision of § 226.9(g) notice. Same facts as above except the payment due on June 15 of year two has not been received by August 15. Section 226.55(b)(4) permits the card issuer to apply the 28% penalty rate to the $1,500 purchase balance and the $200 purchase because it has not received the June 15 payment within 60 days after the due date. However, in order to do so, the card issuer must provide an additional notice pursuant to § 226.9(g). This notice must be sent no earlier than August 15, which is the first day the account became more than 60 days' delinquent. If the notice is sent on August 15, the card issuer may begin accruing interest on the $1,500 purchase balance and the $200 purchase at the 28% penalty rate beginning on September 29.

2. Relationship to grace period. Nothing in § 226.55 prohibits a card issuer from assessing interest due to the loss of a grace period to the extent consistent with § 226.54. In addition, a card issuer has not reduced an annual percentage rate on a credit card

account for purposes of § 226.55 if the card issuer does not charge interest on a balance or a portion thereof based on a payment received prior to the expiration of a grace period. For example, if the annual percentage rate for purchases on an account is 15% but the card issuer does not charge any interest on a $500 purchase balance because that balance was paid in full prior to the expiration of the grace period, the card issuer has not reduced the 15% purchase rate to 0% for purposes of § 226.55.

55(b) Exceptions.

1. Exceptions not mutually exclusive. A card issuer may increase an annual percentage rate or a fee or charge required to be disclosed under § 226.6(b)(2)(ii), (b)(2)(iii), or (b)(2)(xii) pursuant to an exception set forth in § 226.55(b) even if that increase would not be permitted under a different exception. For example, although a card issuer cannot increase an annual percentage rate pursuant to § 226.55(b)(1) unless that rate is provided for a specified period of at least six months, the card issuer may increase an annual percentage rate during a specified period due to an increase in an index consistent with § 226.55(b)(2). Similarly, although § 226.55(b)(3) does not permit a card issuer to increase an annual percentage rate during the first year after account opening, the card issuer may increase the rate during the first year after account opening pursuant to § 226.55(b)(4) if the required minimum periodic payment is not received within 60 days after the due date.

2. Delayed implementation of increase. If § 226.55(b) permits a card issuer to apply an increased annual percentage rate, fee, or charge on a date that is not the first day of a billing cycle, the card issuer may delay application of the increased rate, fee, or charge until the first day of the following billing cycle without relinquishing the ability to

apply that rate, fee, or charge. For example, assume that, at account opening on January 1, a card issuer discloses that a non-variable annual percentage rate of 10% will apply to purchases for six months and a non-variable rate of 15% will apply thereafter. The first day of each billing cycle for the account is the fifteenth of the month. If the six-month period expires on July 1, the card issuer may delay application of the 15% rate until the start of the next billing cycle (July 15) without relinquishing its ability to apply that rate under § 226.55(b)(1).

3. Application of a lower rate, fee, or charge. Nothing in § 226.55 prohibits a card issuer from lowering an annual percentage rate or a fee or charge required to be disclosed under § 226.6(b)(2)(ii), (b)(2)(iii), or (b)(2)(xii). However, a card issuer that does so cannot subsequently increase the rate, fee, or charge unless permitted by one of the exceptions in § 226.55(b). The following examples illustrate the application of the rule:

i. Application of lower rate during first year. Assume that a card issuer discloses at account opening on January 1 of year one that a non-variable annual percentage rate of 15% will apply to purchases. The card issuer also discloses that, to the extent consistent with § 226.55 and other applicable law, a non-variable penalty rate of 30% may apply if the consumer's required minimum periodic payment is received after the payment due date, which is the tenth of the month. The required minimum periodic payments are applied to accrued interest and fees but do not reduce the purchase balance.

A. Temporary rate returns to standard rate at expiration. On September 30 of year one, the account has a purchase balance of $1,400 at the 15% rate. On October 1, the card issuer provides a notice pursuant to § 226.9(c) informing the consumer that the rate for new purchases will decrease to a non-variable rate of 5% for six months (from October 1 through March 31 of year two) and that, beginning on April 1 of year two, the rate for purchases will increase to the 15% non-variable rate disclosed at account opening. The card issuer does not apply the 5% rate to the $1,400 purchase balance. On October 14 of year one, the consumer makes a $300 purchase at the 5% rate. On January 15 of year two, the consumer makes a $150 purchase at the 5% rate. On April 1 of year two, the card issuer may begin accruing interest on the $300 purchase and the $150 purchase at 15% as disclosed in the § 226.9(c) notice (pursuant to § 226.55(b)(1)).

B. Penalty rate increase. Same facts as above except that the required minimum periodic payment due on November 10 of year one is not received until November 15. Section 226.55 does not permit the card issuer to increase any annual percentage rate on the account at this time. The card issuer may apply the 30% penalty rate to new transactions beginning on April 1 of year two pursuant to § 226.55(b)(3) by providing a § 226.9(g) notice informing the consumer of this increase no later than February 14 of year two. The card issuer may not, however, apply the 30% penalty rate to the $1,400 purchase balance as of September 30 of year one, the $300 purchase on October 15 of year one, or the $150 purchase on January 15 of year two.

ii. Application of lower rate at end of first year. Assume that, at account opening on January 1 of year one, a card issuer discloses that a non-variable annual percentage rate of 15% will apply to purchases for one year and discloses that, after the first year, the card issuer will apply a variable rate that is currently 20% and is determined by adding a margin of 10 percentage points to a publicly-available index not under the card issuer's control. On December 31 of year one, the account has a purchase balance of $3,000.

A. Notice of temporary rate provided consistent with § 226.55(b)(1)(i). On November 16 of year one, the card issuer provides a notice pursuant to § 226.9(c) informing the consumer of a new variable rate that will apply on January 1 of year two (which is calculated using the same index and a reduced margin of 8 percentage points). The notice further states that, on July 1 of year two, the margin will increase to the margin disclosed at account opening (10 percentage points). On July 1 of year two, the card issuer may increase the margin used to determine the variable rate that applies to new purchases to 10 percentage points and apply that rate to any remaining portion of the $3,000 purchase balance (pursuant to § 226.55(b)(1)).

B. No notice provided. Same facts as above except that the card issuer does not send a notice on November 16 of year one. Instead, on January 1 of year two, the card issuer lowers the margin used to determine the variable rate to 8 percentage points and applies that rate to the $3,000 purchase balance and to new purchases. Section 226.9 does not require advance notice in these circumstances. However, unless the account becomes more than 60 days' delinquent, the card issuer may not subsequently increase the rate that applies to the $3,000 purchase balance except due to increases in the index (pursuant to § 226.55(b)(2)).

iii. Application of lower rate after first year; effect of 14-day period. Assume that a card issuer discloses at account opening on January 1 of year one that a non-variable annual percentage rate of 10% will apply to purchases for one year, after which that rate will increase to a non-variable rate of 15%. The card issuer also discloses that, to the extent consistent with § 226.55 and other applicable law, a non-variable penalty rate of 30% may apply if the consumer's required minimum periodic payment is received after the payment due date, which is the tenth of the month. The required minimum periodic payments are applied to accrued interest and fees but do not reduce the purchase balance. On June 30 of year two, the account has a purchase balance of $1,000 at the 15% rate. On July 1, the card issuer provides a notice pursuant to § 226.9(c) informing the consumer that the rate for new purchases will decrease to a non-variable rate of 5% for six months (from July 1 through December 31 of year two) and that, beginning on January 1 of year three, the rate for purchases will increase to a non-variable rate of 17%. On July 15 of year two, the consumer makes a $200 purchase. On July 16, the consumer makes a $100 purchase. On January 1 of year three, the card issuer may begin accruing interest on the $100 purchase at 17% (pursuant to § 226.55(b)(1)). However, § 226.55(b)(1)(ii)(B) does not permit the card issuer to apply the 17% rate to the $200 purchase because that transaction occurred within 14 days after provision of the § 226.9(c) notice. Instead, the card issuer may apply the 15% rate that applied to purchases prior to provision of the § 226.9(c) notice. In addition, if the card issuer applied the 5% rate to the $1,000 purchase balance, § 226.55(b)(ii)(A) would not permit the card issuer to increase the rate that applies to that balance on January 1 of year three to a rate that is higher than 15% that previously applied to the balance.

4. Date on which transaction occurred. When a transaction occurred for purposes of § 226.55 is generally determined by the date of the transaction. However, if a transaction that occurred within 14 days after provision of a § 226.9(c) or (g) notice is not charged to the account prior to the effective date of the change or increase, the card issuer

may treat the transaction as occurring more than 14 days after provision of the notice for purposes of § 226.55. See example in comment 55(b)(3)-4.iii.B. In addition, when a merchant places a "hold" on the available credit on an account for an estimated transaction amount because the actual transaction amount will not be known until a later date, the date of the transaction for purposes of § 226.55 is the date on which the card issuer receives the actual transaction amount from the merchant. See example in comment 55(b)(3)-4.iii.A.

5. Category of transactions. For purposes of § 226.55, a "category of transactions" is a type or group of transactions to which an annual percentage rate applies that is different than the annual percentage rate that applies to other transactions. Similarly, a type or group of transactions is a "category of transactions" for purposes of § 226.55 if a fee or charge required to be disclosed under § 226.6(b)(2)(ii), (b)(2)(iii), or (b)(2)(xii) applies to those transactions that is different than the fee or charge that applies to other transactions. For example, purchase transactions, cash advance transactions, and balance transfer transactions are separate categories of transactions for purposes of § 226.55 if a card issuer applies different annual percentage rates to each. Furthermore, if, for example, the card issuer applies different annual percentage rates to different types of purchase transactions (such as one rate for purchases of gasoline or purchases over $100 and a different rate for all other purchases), each type constitutes a separate category of transactions for purposes of § 226.55.

6. Relationship between exceptions in § 226.55(b) and 45-day advance notice requirements in § 226.9(c) and (g). Nothing in § 226.55 alters the requirements in § 226.9(c) and (g) that creditors provide written notice at least 45 days prior to the

effective date of certain increases in annual percentage rates, fees, and charges. For example, although § 226.55(b)(3)(ii) permits a card issuer that discloses an increased rate pursuant to § 226.9(c) or (g) to apply that rate to transactions that occurred more than 14 days after provision of the notice, the card issuer cannot begin to accrue interest at the increased rate until that increase goes into effect, consistent with § 226.9(c) or (g). See examples in comment 55(b)(3)-4. Similarly, on or after the effective date, the card issuer cannot calculate interest charges for days before the effective date based on the increased rate.

55(b)(1) Temporary rate exception.

1. Relationship to § 226.9(c)(2)(v)(B). A card issuer that has complied with the disclosure requirements in § 226.9(c)(2)(v)(B) has also complied with the disclosure requirements in § 226.55(b)(1)(i).

2. Period of six months or longer. A temporary annual percentage rate must apply to transactions for a specified period of six months or longer before a card issuer can increase that rate pursuant to § 226.55(b)(1). The specified period must expire no less than six months after the date on which the creditor provides the consumer with the disclosures required by § 226.55(b)(1)(i) or, if later, the date on which the account can be used for transactions to which the temporary rate applies. Section 226.55(b)(1) does not prohibit a card issuer from limiting the application of a temporary annual percentage rate to a particular category of transactions (such as balance transfers or purchases over $100). However, in circumstances where the card issuer limits application of the temporary rate to a particular transaction, the specified period must expire no less than six months after

the date on which that transaction occurred. The following examples illustrate the application of § 226.55(b)(1):

i. Assume that on January 1 a card issuer offers a consumer a 5% annual percentage rate on purchases made during the months of January through June. A 15% rate will apply thereafter. On February 15, a $500 purchase is charged to the account. On June 15, a $200 purchase is charged to the account. On July 1, the card issuer may begin accruing interest at the 15% rate on the $500 purchase and the $200 purchase (pursuant to § 226.55(b)(1)).

ii. Same facts as above except that on January 1 the card issuer offered the 5% rate on purchases beginning in the month of February. Section 226.55(b)(1) would not permit the card issuer to begin accruing interest at the 15% rate on the $500 purchase and the $200 purchase until August 1.

iii. Assume that on October 31 of year one the annual percentage rate for purchases on a credit card account is 17%. On November 1, the card issuer offers the consumer a 0% rate for six months on purchases made during the months of November and December. The 17% rate will apply thereafter. On November 15, a $500 purchase is charged to the account. On December 15, a $300 purchase is charged to the account. On January 15 of year two, a $150 purchase is charged to the account. Section 226.55(b)(1) would not permit the card issuer to begin accruing interest at the 17% rate on the $500 purchase and the $300 purchase until May 1 of year two. However, the card issuer may accrue interest at the 17% rate on the $150 purchase beginning on January 15 of year two.

iv. Assume that on June 1 of year one a card issuer offers a consumer a 0% annual percentage rate for six months on the purchase of an appliance. An 18% rate will apply thereafter. On September 1, a $5,000 transaction is charged to the account for the purchase of an appliance. Section 226.55(b)(1) would not permit the card issuer to begin accruing interest at the 18% rate on the $5,000 transaction until March 1 of year two.

v. Assume that on May 31 of year one the annual percentage rate for purchases on a credit card account is 15%. On June 1, the card issuer offers the consumer a 5% rate for six months on a balance transfer. The 15% rate will apply thereafter. On June 15, a $3,000 balance is transferred to the account. On July 15, a $200 purchase is charged to the account. Section 226.55(b)(1) would not permit the card issuer to begin accruing interest the 15% rate on the $3,000 transferred balance until December 15. However, the card issuer may accrue interest at the 15% rate on the $200 purchase beginning on July 15.

3. Deferred interest and similar promotional programs.

i. Application of § 226.55. The general prohibition in § 226.55(a) applies to the imposition of accrued interest upon the expiration of a deferred interest or similar promotional program under which the consumer is not obligated to pay interest that accrues on a balance if that balance is paid in full prior to the expiration of a specified period of time. However, the exception in § 226.55(b)(1) also applies to these programs, provided that, prior to the commencement of the deferred interest period, the card issuer discloses the length of the period and the rate at which interest will accrue on the balance subject to the deferred interest program if that balance is not paid in full prior to expiration of the deferred interest period. See comment 9(c)(2)(v)-7.

ii. Examples.

A. Deferred interest offer at account opening. Assume that, at account opening on January 1 of year one, the card issuer discloses the following with respect to a deferred interest program: "No interest on purchases made in January of year one if paid in full by December 31 of year one. If the balance is not paid in full by that date, interest will be imposed from the transaction date at a rate of 20%." On January 15 of year one, the consumer makes a purchase of $2,000. No other transactions are made on the account. The payment due on April 1 is not received until April 10. Section 226.55 does not permit the card issuer to charge to the account interest that has accrued on the $2,000 purchase at this time. Furthermore, if the consumer pays the $2,000 purchase in full on or before December 31 of year one, § 226.55 does not permit the card issuer to charge to the account any interest that has accrued on that purchase. If, however, the $2,000 purchase has not been paid in full by January 1 of year two, § 226.55(b)(1) permits the card issuer to charge to the account the interest accrued on that purchase at the 20% rate during year one (to the extent consistent with other applicable law).

B. Deferred interest offer after account opening. Assume that a card issuer discloses at account opening on January 1 of year one that the rate that applies to purchases is a variable annual percentage rate that is currently 18% and will be adjusted quarterly by adding a margin of 8 percentage points to a publicly-available index not under the card issuer's control. The card issuer also discloses that, to the extent consistent with § 226.55 and other applicable law, a non-variable penalty rate of 30% may apply if the consumer's required minimum periodic payment is received after the payment due date, which is the first of the month. On June 30 of year two, the consumer uses the account for a $1,000 purchase in response to an offer of a deferred interest program. Under the terms of this program, interest on the purchase will accrue at the variable rate for purchases but the consumer will not be obligated to pay that interest if the purchase is paid in full by December 31 of year two. The payment due on September 1 of year two is not received until September 6. Section 226.55 does not permit the card issuer to charge to the account interest that has accrued on the $1,000 purchase at this time. Furthermore, if the consumer pays the $1,000 purchase in full on or before December 31 of year two, § 226.55 does not permit the card issuer to charge to the account any interest that has accrued on that purchase. On December 31 of year two, the $1,000 purchase has been paid in full. Under these circumstances, the card issuer may not charge any interest accrued on the $1,000 purchase.

4. Contingent or discretionary rate increases. Section § 226.55(b)(1) permits a card issuer to increase a temporary annual percentage rate upon the expiration of a specified period of time. However, § 226.55(b)(1) does not permit a card issuer to apply an increased rate that is contingent on a particular event or occurrence or that may be applied at the card issuer's discretion. The following examples illustrate rate increases that are not permitted by § 226.55:

i. Assume that a card issuer discloses at account opening on January 1 of year one that a non-variable annual percentage rate of 15% applies to purchases but that all rates on an account may be increased to a non-variable penalty rate of 30% if a consumer's required minimum periodic payment is received after the payment due date, which is the fifteenth of the month. On March 1, the account has a $2,000 purchase balance. The payment due on March 15 is not received until March 20. Section 226.55

does not permit the card issuer to apply the 30% penalty rate to the $2,000 purchase balance. However, pursuant to § 226.55(b)(3), the card issuer could provide a § 226.9(c) or (g) notice on or before November 16 informing the consumer that, on January 1 of year two, the 30% rate (or a different rate) will apply to new transactions.

ii. Assume that a card issuer discloses at account opening on January 1 of year one that a non-variable annual percentage rate of 5% applies to transferred balances but that this rate will increase to a non-variable rate of 18% if the consumer does not use the account for at least $200 in purchases each billing cycle. On July 1, the consumer transfers a balance of $4,000 to the account. During the October billing cycle, the consumer uses the account for $150 in purchases. Section 226.55 does not permit the card issuer to apply the 18% rate to the $4,000 transferred balance or the $150 in purchases. However, pursuant to § 226.55(b)(3), the card issuer could provide a § 226.9(c) or (g) notice on or before November 16 informing the consumer that, on January 1 of year two, the 18% rate (or a different rate) will apply to new transactions.

<u>55(b)(2) Variable rate exception</u>.

1. <u>Increases due to increase in index</u>. Section 226.55(b)(2) provides that an annual percentage rate that varies according to an index that is not under the card issuer's control and is available to the general public may be increased due to an increase in the index. This section does not permit a card issuer to increase the rate by changing the method used to determine a rate that varies with an index (such as by increasing the margin), even if that change will not result in an immediate increase. However, a card issuer may change the day of the month on which index values are measured to determine changes to the rate.

2. External index. A card issuer may increase the annual percentage rate if the increase is based on an index or indices outside the card issuer's control. A card issuer may not increase the rate based on its own prime rate or cost of funds. A card issuer is permitted, however, to use a published prime rate, such as that in the Wall Street Journal, even if the card issuer's own prime rate is one of several rates used to establish the published rate.

3. Publicly available. The index or indices must be available to the public. A publicly-available index need not be published in a newspaper, but it must be one the consumer can independently obtain (by telephone, for example) and use to verify the annual percentage rate applied to the credit card account.

4. Changing a non-variable rate to a variable rate. Section 226.55 generally prohibits a card issuer from changing a non-variable annual percentage rate to a variable annual percentage rate because such a change can result in an increase. However, a card issuer may change a non-variable rate to a variable to the extent permitted by one of the exceptions in § 226.55(b). For example, § 226.55(b)(1) permits a card issuer to change a non-variable rate to a variable rate upon expiration of a specified period of time. Similarly, following the first year after the account is opened, § 226.55(b)(3) permits a card issuer to change a non-variable rate to a variable rate with respect to new transactions (after complying with the notice requirements in § 226.9(b), (c) or (g)).

5. Changing a variable rate to a non-variable rate. Nothing in § 226.55 prohibits a card issuer from changing a variable annual percentage rate to an equal or lower non-variable rate. Whether the non-variable rate is equal to or lower than the variable rate is determined at the time the card issuer provides the notice required by § 226.9(c). For

example, assume that on March 1 a variable annual percentage rate that is currently 15% applies to a balance of $2,000 and the card issuer sends a notice pursuant to § 226.9(c) informing the consumer that the variable rate will be converted to a non-variable rate of 14% effective April 15. On April 15, the card issuer may apply the 14% non-variable rate to the $2,000 balance and to new transactions even if the variable rate on March 2 or a later date was less than 14%.

6. <u>Substitution of index</u>. A card issuer may change the index and margin used to determine the annual percentage rate under § 226.55(b)(2) if the original index becomes unavailable, as long as historical fluctuations in the original and replacement indices were substantially similar, and as long as the replacement index and margin will produce a rate similar to the rate that was in effect at the time the original index became unavailable. If the replacement index is newly established and therefore does not have any rate history, it may be used if it produces a rate substantially similar to the rate in effect when the original index became unavailable.

<u>55(b)(3) Advance notice exception</u>.

1. <u>Relationship to § 226.9(h)</u>. A card issuer may not increase a fee or charge required to be disclosed under § 226.6(b)(2)(ii), (b)(2)(iii), or (b)(2)(xii) pursuant to § 226.55(b)(3) if the consumer has rejected the increased fee or charge pursuant to § 226.9(h).

2. <u>Notice provided pursuant to § 226.9(b) and (c)</u>. If an increased annual percentage rate, fee, or charge is disclosed pursuant to both § 226.9(b) and (c), that rate, fee, or charge may only be applied to transactions that occur more than 14 days after provision of the § 226.9(c) notice.

3. Account opening.

i. Multiple accounts with same card issuer. When a consumer has a credit card account with a card issuer and the consumer opens a new credit card account with the same card issuer (or its affiliate or subsidiary), the opening of the new account constitutes the opening of a credit card account for purposes of § 226.55(b)(3)(iii) if, more than 30 days after the new account is opened, the consumer has the option to obtain additional extensions of credit on each account. For example, assume that, on January 1 of year one, a consumer opens a credit card account with a card issuer. On July 1 of year one, the consumer opens a second credit card account with that card issuer. On July 15, a $1,000 balance is transferred from the first account to the second account. The opening of the second account constitutes the opening of a credit card account for purposes of § 226.55(b)(3)(iii) so long as, on August 1, the consumer has the option to engage in transactions using either account. Under these circumstances, the card issuer could not increase an annual percentage rate or a fee or charge required to be disclosed under § 226.6(b)(2)(ii), (b)(2)(iii), or (b)(2)(xii) on the second account pursuant to § 226.55(b)(3) until July 1 of year two (which is one year after the second account was opened).

ii. Substitution, replacement or consolidation.

A. Generally. A credit card account has not been opened for purposes of § 226.55(b)(3)(iii) when a credit card account issued by a card issuer is substituted, replaced, or consolidated with another credit card account issued by the same card issuer (or its affiliate or subsidiary). Circumstances in which a credit card account has not been opened for purposes of § 226.55(b)(3)(iii) include when:

(1) A retail credit card is replaced with a cobranded general purpose card that can be used at a wider number of merchants;

(2) A credit card account is replaced with another credit card account offering different features;

(3) A credit card account is consolidated or combined with one or more other credit card accounts into a single credit card account; or

(4) A credit card account acquired through merger or acquisition is replaced with a credit card account issued by the acquiring card issuer.

B. Limitation. A card issuer that replaces or consolidates a credit card account with another credit card account issued by the card issuer (or its affiliate or subsidiary) may not increase an annual percentage rate or a fee or charge required to be disclosed under § 226.6(b)(2)(ii), (b)(2)(iii), or (b)(2)(xii) in a manner otherwise prohibited by § 226.55. For example, assume that, on January 1 of year one, a consumer opens a credit card account with an annual percentage rate of 15% for purchases. On July 1 of year one, the account is replaced with a credit card account that offers different features (such as rewards on purchases). Under these circumstances, the card issuer cannot increase the annual percentage rate for new purchases to a rate that is higher than 15% pursuant to § 226.55(b)(3) until January 1 of year two (which is one year after the first account was opened).

4. Examples.

i. Change-in-terms rate increase; temporary rate increase. Assume that a credit card account is opened on January 1 of year one. On March 14 of year two, the account has a purchase balance of $2,000 at a non-variable annual percentage rate of 15%. On

March 15, the card issuer provides a notice pursuant to § 226.9(c) informing the consumer that the rate for new purchases will increase to a non-variable rate of 18% on May 1. The notice further states that the 18% rate will apply for six months (until November 1) and that thereafter the card issuer will apply a variable rate that is currently 22% and is determined by adding a margin of 12 percentage points to a publicly-available index that is not under the card issuer's control. The fourteenth day after provision of the notice is March 29 and, on that date, the consumer makes a $200 purchase. On March 30, the consumer makes a $1,000 purchase. On May 1, the card issuer may begin accruing interest at 18% on the $1,000 purchase made on March 30 (pursuant to § 226.55(b)(3)). Section 226.55(b)(3)(i) and (ii) do not permit the card issuer to apply the 18% rate to the $2,200 purchase balance as of March 29 because that balance reflects transactions that occurred prior to or within 14 days after the provision of the § 226.9(c) notice. After six months (November 2), the card issuer may begin accruing interest on any remaining portion of the $1,000 purchase at the previously-disclosed variable rate determined using the 12-point margin (pursuant to § 226.55(b)(1)).

ii. Checks that access a credit card account. Assume that a card issuer discloses at account opening on January 1 of year one that the annual percentage rate that applies to cash advances is a variable rate that is currently 24% and will be adjusted quarterly by adding a margin of 14 percentage points to a publicly available index not under the card issuer's control. On July 1 of year two, the card issuer provides checks that access the account and, pursuant to § 226.9(b)(3)(i)(A), discloses that a promotional rate of 15% will apply to credit extended by use of the checks until January 1 of year three, after which the cash advance rate determined using the 14-point margin will apply. On July 9 of year two, the consumer uses one of the checks to pay for a $500 transaction. Beginning on January 1 of year three, the card issuer may apply the cash advance rate determined using the 14-point margin to any remaining portion of the $500 transaction (pursuant to § 226.55(b)(1) and (b)(3)).

iii. Hold on available credit. Assume that a credit card account is opened on January 1 of year one. On September 14 of year two, the account has a purchase balance of $2,000 at a non-variable annual percentage rate of 17%. On September 15, the card issuer provides a notice pursuant to § 226.9(c) informing the consumer that the rate for new purchases will increase to a non-variable rate of 20% on October 30. The fourteenth day after provision of the notice is September 29. On September 28, the consumer uses the credit card to check into a hotel and the hotel obtains authorization for a $1,000 hold on the account to ensure there is adequate available credit to cover the anticipated cost of the stay.

A. The consumer checks out of the hotel on October 2. The actual cost of the stay is $1,100 because of additional incidental costs. On October 2, the hotel charges the $1,100 transaction to the account. For purposes of § 226.55(b)(3), the transaction occurred on October 2. Therefore, on October 30, § 226.55(b)(3) permits the card issuer to apply the 20% rate to new purchases and to the $1,100 transaction. However, § 226.55(b)(3)(ii) does not permit the card issuer to apply the 20% rate to any remaining portion of the $2,000 purchase balance.

B. Same facts as above except that the consumer checks out of the hotel on September 29. The actual cost of the stay is $250, but the hotel does not charge this amount to the account until November 1. For purposes of § 226.55(b)(3), the card issuer may treat the transaction as occurring more than 14 days after provision of the § 226.9(c) notice (i.e., after September 29). Accordingly, the card issuer may apply the 20% rate to the $250 transaction.

5. Application of increased fees and charges. See comment 55(c)(1)-3.

55(b)(4) Delinquency exception.

1. Receipt of required minimum periodic payment within 60 days of due date. Section 226.55(b)(4) applies when a card issuer has not received the consumer's required minimum periodic payment within 60 days after the due date for that payment. In order to satisfy this condition, a card issuer that requires monthly minimum payments generally must not have received two consecutive required minimum periodic payments. Whether a required minimum periodic payment has been received for purposes of § 226.55(b)(4) depends on whether the amount received is equal to or more than the first outstanding required minimum periodic payment. For example, assume that the required minimum periodic payments for a credit card account are due on the fifteenth day of the month. On May 13, the card issuer has not received the $50 required minimum periodic payment due on March 15 or the $150 required minimum periodic payment due on April 15. If the card issuer receives a $50 payment on May 14, § 226.55(b)(4) does not apply because the payment is equal to the required minimum periodic payment due on March 15 and therefore the account is not more than 60 days delinquent. However, if the card issuer instead received a $40 payment on May 14, § 226.55(b)(4) would apply because the payment is less than the required minimum periodic payment due on March 15. Furthermore, if the card issuer received the $50 payment on May 15, § 226.55(b)(4)

would apply because the card issuer did not receive the required minimum periodic payment due on March 15 within 60 days after the due date for that payment.

2. Relationship to § 226.9(g)(3)(i)(B). A card issuer that has complied with the disclosure requirements in § 226.9(g)(3)(i)(B) has also complied with the disclosure requirements in § 226.55(b)(4)(i).

3. Reduction in rate pursuant to § 226.55(b)(4)(ii). Section 226.55(b)(4)(ii) provides that, if the card issuer receives six consecutive required minimum periodic payments on or before the payment due date beginning with the first payment due following the effective date of the increase, the card issuer must reduce any annual percentage rate, fee, or charge increased pursuant to § 226.55(b)(4) to the annual percentage rate, fee, or charge that applied prior to the increase with respect to transactions that occurred prior to or within 14 days after provision of the § 226.9(g) notice.

i. Six consecutive payments immediately following effective date of increase. Section 226.55(b)(4)(ii) does not apply if the card issuer does not receive six consecutive required minimum periodic payments on or before the payment due date beginning with the payment due immediately following the effective date of the increase, even if, at some later point in time, the card issuer receives six consecutive required minimum periodic payments on or before the payment due date.

ii. Rate, fee, or charge that does not exceed rate, fee, or charge that applied before increase. Although § 226.55(b)(4)(ii) requires the card issuer to reduce an annual percentage rate, fee, or charge increased pursuant to § 226.55(b)(4) to the annual percentage rate, fee, or charge that applied prior to the increase, this provision does not prohibit the card issuer from applying an increased annual percentage rate, fee, or charge consistent with any of the other exceptions in § 226.55(b). For example, if a temporary rate applied prior to the § 226.55(b)(4) increase and the temporary rate expired before a reduction in rate pursuant to § 226.55(b)(4)(ii), the card issuer may apply an increased rate to the extent consistent with § 226.55(b)(1). Similarly, if a variable rate applied prior to the § 226.55(b)(4) increase, the card issuer may apply any increase in that variable rate to the extent consistent with § 226.55(b)(2).

iii. Delayed implementation of reduction. If § 226.55(b)(4)(ii) requires a card issuer to reduce an annual percentage rate, fee, or charge on a date that is not the first day of a billing cycle, the card issuer may delay application of the reduced rate, fee, or charge until the first day of the following billing cycle.

iv. Examples. The following examples illustrate the application of § 226.55(b)(4)(ii):

A. Assume 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 required minimum periodic payments are due on the fifteenth day of the month. Assume also that the account has a $5,000 purchase balance to which a non-variable annual percentage rate of 15% applies. On May 16 of year one, the card issuer has not received the required minimum periodic payments due on the fifteenth day of March, April, or May and sends a § 226.9(g) notice stating that the annual percentage rate applicable to the $5,000 balance and to new transactions will increase to 28% effective July 1. On July 1, § 226.55(b)(4) permits the card issuer to apply the 28% rate to the $5,000 balance and to new transactions. The card issuer receives the required minimum periodic payments due on the fifteenth day of July, August, September, October, November, and December. On January 1 of year two, § 226.55(b)(4)(ii) requires the card issuer to reduce the rate that applies to any remaining portion of the $5,000 balance to 15%. The card issuer is not required to reduce the rate that applies to any transactions that occurred on or after May 31 (which is the fifteenth day after provision of the § 226.55(b)(4) notice).

B. Same facts as paragraph iv.A. above except that the 15% rate that applied to the $5,000 balance prior to the § 226.55(b)(4) increase was scheduled to increase to 20% on August 1 of year one (pursuant to § 226.55(b)(1)). On January 1 of year two, § 226.55(b)(4)(ii) requires the card issuer to reduce the rate that applies to any remaining portion of the $5,000 balance to 20%.

C. Same facts as paragraph iv.A. above except that the 15% rate that applied to the $5,000 balance prior to the § 226.55(b)(4) increase was a variable rate that was determined by adding a margin of 10 percentage points to a publicly-available index not under the card issuer's control (consistent with § 226.55(b)(2)). On January 1 of year two, § 226.55(b)(4)(ii) requires the card issuer to reduce the rate that applies to any remaining portion of the $5,000 balance to the variable rate determined using the 10-point margin.

55(b)(5) Workout and temporary hardship arrangement exception.

1. Scope of exception. Nothing in § 226.55(b)(5) permits a card issuer to alter the requirements of § 226.55 pursuant to a workout or temporary hardship arrangement. For example, a card issuer cannot increase an annual percentage rate or a fee or charge required to be disclosed under § 226.6(b)(2)(ii), (b)(2)(iii), or (b)(2)(xii) pursuant to a workout or temporary hardship arrangement unless otherwise permitted by § 226.55.

In addition, a card issuer cannot require the consumer to make payments with respect to a protected balance that exceed the payments permitted under § 226.55(c).

2. Relationship to § 226.9(c)(2)(v)(D). A card issuer that has complied with the disclosure requirements in § 226.9(c)(2)(v)(D) has also complied with the disclosure requirements in § 226.55(b)(5)(i). See comment 9(c)(2)(v)-8.

3. Rate, fee, or charge that does not exceed rate, fee, or charge that applied before workout or temporary hardship arrangement. Upon the completion or failure of a workout or temporary hardship arrangement, § 226.55(b)(5)(ii) prohibits the card issuer from applying to any transactions that occurred prior to commencement of the arrangement an annual percentage rate, fee, or charge that exceeds the annual percentage rate, fee, or charge that applied to those transactions prior to commencement of the arrangement. However, this provision does not prohibit the card issuer from applying an increased annual percentage rate, fee, or charge upon completion or failure of the arrangement, to the extent consistent with any of the other exceptions in § 226.55(b). For example, if a temporary rate applied prior to the arrangement and that rate expired during the arrangement, the card issuer may apply an increased rate upon completion or failure of the arrangement to the extent consistent with § 226.55(b)(1). Similarly, if a variable rate applied prior to the arrangement, the card issuer may apply any increase in that variable rate upon completion or failure of the arrangement to the extent consistent with § 226.55(b)(2).

4. Examples.

i. Assume that, consistent with § 226.55(b)(4), the margin used to determine a variable annual percentage rate that applies to a $5,000 balance is increased from

5 percentage points to 15 percentage points. Assume also that the card issuer and the consumer subsequently agree to a workout arrangement that reduces the margin back to 5 points on the condition that the consumer pay a specified amount by the payment due date each month. If the consumer does not pay the agreed-upon amount by the payment due date, the card issuer may increase the margin for the variable rate that applies to the $5,000 balance up to 15 percentage points.

ii. Assume that a consumer fails to make four consecutive monthly minimum payments totaling $480 on a consumer credit card account with a balance of $6,000 and that, consistent with § 226.55(b)(4), the annual percentage rate that applies to that balance is increased from a non-variable rate of 15% to a non-variable penalty rate of 30%. Assume also that the card issuer and the consumer subsequently agree to a temporary hardship arrangement that reduces all rates on the account to 0% on the condition that the consumer pay an amount by the payment due date each month that is sufficient to cure the $480 delinquency within six months. If the consumer pays the agreed-upon amount by the payment due date during the six-month period and cures the delinquency, the card issuer may increase the rate that applies to any remaining portion of the $6,000 balance to 15% or any other rate up to the 30% penalty rate.

55(b)(6) Servicemembers Civil Relief Act exception.

1. Rate that does not exceed rate that applied before decrease. Once 50 U.S.C. app. 527 no longer applies, § 226.55(b)(6) prohibits a card issuer from applying an annual percentage rate to any transactions that occurred prior to a decrease in rate pursuant to 50 U.S.C. app. 527 that exceeds the rate that applied to those transactions prior to the decrease. However, this provision does not prohibit the card issuer from

applying an increased annual percentage rate once 50 U.S.C. app. 527 no longer applies, to the extent consistent with any of the other exceptions in § 226.55(b). For example, if a temporary rate applied prior to the decrease and that rate expired during the period that 50 U.S.C. app. 527 applied to the account, the card issuer may apply an increased rate once 50 U.S.C. app. 527 no longer applies to the extent consistent with § 226.55(b)(1). Similarly, if a variable rate applied prior to the decrease, the card issuer may apply any increase in that variable rate once 50 U.S.C. app. 527 no longer applies to the extent consistent with § 226.55(b)(2).

2. Example. Assume that on December 31 of year one the annual percentage rate that applies to a $5,000 balance on a credit card account is a variable rate that is determined by adding a margin of 10 percentage points to a publicly-available index that is not under the card issuer's control. On January 1 of year two, the card issuer reduces the rate that applies to the $5,000 balance to a non-variable rate of 6% pursuant to 50 U.S.C. app. 527. On January 1 of year three, 50 U.S.C. app. 527 ceases to apply and the card issuer provides a notice pursuant to § 226.9 informing the consumer that on February 15 of year three the variable rate determined using the 10-point margin will apply to any remaining portion of the $5,000 balance. On February 15 of year three, § 226.55(b)(6) permits the card issuer to begin accruing interest on any remaining portion of the $5,000 balance at the variable rate determined using the 10-point margin.

55(c) Treatment of protected balances.

55(c)(1) Definition of protected balance.

1. Example of protected balance. Assume that, on March 15 of year two, an account has a purchase balance of $1,000 at a non-variable annual percentage rate of 12%

and that, on March 16, the card issuer sends a notice pursuant to § 226.9(c) informing the consumer that the annual percentage rate for new purchases will increase to a non-variable rate of 15% on May 1. The fourteenth day after provision of the notice is March 29. On March 29, the consumer makes a $100 purchase. On March 30, the consumer makes a $150 purchase. On May 1, § 226.55(b)(3) permits the card issuer to begin accruing interest at 15% on the $150 purchase made on March 30 but does not permit the card issuer to apply that 15% rate to the $1,100 purchase balance as of March 29. Accordingly, the protected balance for purposes of § 226.55(c) is the $1,100 purchase balance as of March 29. The $150 purchase made on March 30 is not part of the protected balance.

2. First year after account opening. Section 226.55(c) applies to amounts owed for a category of transactions to which an increased annual percentage rate or an increased fee or charge cannot be applied after the rate, fee, or charge for that category of transactions has been increased pursuant to § 226.55(b)(3). Because § 226.55(b)(3)(iii) does not permit a card issuer to increase an annual percentage rate or a fee or charge required to be disclosed under § 226.6(b)(2)(ii), (b)(2)(iii), or (b)(2)(xii) during the first year after account opening, § 226.55(c) does not apply to balances during the first year after account opening.

3. Increased fees and charges. Once an account has been open for more than one year, § 226.55(b)(3) permits a card issuer to increase a fee or charge required to be disclosed under § 226.6(b)(2)(ii), (b)(2)(iii), or (b)(2)(xii) after complying with the applicable notice requirements in § 226.9(b) or (c), provided that the increased fee or charge is not applied to a protected balance. A card issuer is not prohibited from

increasing a fee or charge that applies to the account as a whole or to balances other than the protected balance. For example, after the first year following account opening, a card issuer may add a new annual or a monthly maintenance fee to an account or increase such a fee so long as the fee is not based solely on the protected balance. However, if the consumer rejects an increase in a fee or charge pursuant to § 226.9(h), the card issuer is prohibited from applying the increased fee or charge to the account and from imposing any other fee or charge solely as a result of the rejection. See § 226.9(h)(2)(i) and (ii); comment 9(h)(2)(ii)-2.

55(c)(2) Repayment of protected balance.

1. No less beneficial to the consumer. A card issuer may provide a method of repaying the protected balance that is different from the methods listed in § 226.55(c)(2) so long as the method used is no less beneficial to the consumer than one of the listed methods. A method is no less beneficial to the consumer if the method results in a required minimum periodic payment that is equal to or less than a minimum payment calculated using the method for the account before the effective date of the increase. Similarly, a method is no less beneficial to the consumer if the method amortizes the balance in five years or longer or if the method results in a required minimum periodic payment that is equal to or less than a minimum payment calculated consistent with § 226.55(c)(2)(iii). For example:

i. If at account opening the cardholder agreement stated that the required minimum periodic payment would be either the total of fees and interest charges plus 1% of the total amount owed or $20 (whichever is greater), the card issuer may require the consumer to make a minimum payment of $20 even if doing so would pay off the balance in less than five years or constitute more than 2% of the balance plus fees and interest charges.

ii. A card issuer could increase the percentage of the balance included in the required minimum periodic payment from 2% to 5% so long as doing so would not result in amortization of the balance in less than five years.

iii. A card issuer could require the consumer to make a required minimum periodic payment that amortizes the balance in four years so long as doing so would not more than double the percentage of the balance included in the minimum payment prior to the date on which the increased annual percentage rate, fee, or charge became effective.

55(c)(2)(ii) Five-year amortization period.

1. Amortization period starting from effective date of increase. Section 226.55(c)(2)(ii) provides for an amortization period for the protected balance of no less than five years, starting from the date on which the increased annual percentage rate or fee or charge required to be disclosed under § 226.6(b)(2)(ii), (b)(2)(iii), or (b)(2)(xii) became effective. A card issuer is not required to recalculate the required minimum periodic payment for the protected balance if, during the amortization period, that balance is reduced as a result of the allocation of payments by the consumer in excess of that minimum payment consistent with § 226.53 or any other practice permitted by these rules and other applicable law.

2. Amortization when applicable rate is variable. If the annual percentage rate that applies to the protected balance varies with an index, the card issuer may adjust the interest charges included in the required minimum periodic payment for that balance

accordingly in order to ensure that the balance is amortized in five years. For example, assume that a variable rate that is currently 15% applies to a protected balance and that, in order to amortize that balance in five years, the required minimum periodic payment must include a specific amount of principal plus all accrued interest charges. If the 15% variable rate increases due to an increase in the index, the creditor may increase the required minimum periodic payment to include the additional interest charges.

55(c)(2)(iii) Doubling repayment rate.

1. Portion of required minimum periodic payment on other balances. Section 226.55(c)(2)(iii) addresses the portion of the required minimum periodic payment based on a the protected balance. Section 226.55(c)(2)(iii) does not limit or otherwise address the card issuer's ability to determine the portion of the required minimum periodic payment based on other balances on the account or the card issuer's ability to apply that portion of the minimum payment to the balances on the account.

2. Example. Assume that the method used by a card issuer to calculate the required minimum periodic payment for a credit card account requires the consumer to pay either the total of fees and accrued interest charges plus 2% of the total amount owed or $50, whichever is greater. Assume also that the account has a purchase balance of $2,000 at an annual percentage rate of 15% and a cash advance balance of $500 at an annual percentage rate of 20% and that the card issuer increases the rate for purchases to 18% but does not increase the rate for cash advances. Under § 226.55(c)(2)(iii), the card issuer may require the consumer to pay fees and interest plus 4% of the $2,000 purchase balance. Section 226.55(c)(2)(iii) does not limit the card issuer's ability to increase the

portion of the required minimum periodic payment that is based on the cash advance balance.

55(d) Continuing application.

1. Closed accounts. If a credit card account with a balance is closed, § 226.55 continues to apply to that balance. For example, if a card issuer or a consumer closes a credit card account with a balance, § 226.55(d)(1) prohibits the card issuer from increasing the annual percentage rate that applies to that balance or imposing a periodic fee based solely on that balance that was not charged before the account was closed (such as a closed account fee) unless permitted by one of the exceptions in § 226.55(b).

2. Acquired accounts. If, through merger or acquisition (for example), a card issuer acquires a credit card account with a balance, § 226.55 continues to apply to that balance. For example, if a credit card account has a $1,000 purchase balance with an annual percentage rate of 15% and the card issuer that acquires that account applies an 18% rate to purchases, § 226.55(d)(1) prohibits the card issuer from applying the 18% rate to the $1,000 balance unless permitted by one of the exceptions in § 226.55(b).

3. Balance transfers.

i. Between accounts issued by the same creditor. If a balance is transferred from a credit card account issued by a creditor to another credit account issued by the same creditor or its affiliate or subsidiary, § 226.55 continues to apply to that balance.

For example, if a credit card account has a $2,000 purchase balance with an annual percentage rate of 15% and that balance is transferred to another credit card account issued by the same creditor that applies an 18% rate to purchases, § 226.55(d)(2) prohibits the creditor from applying the 18% rate to the $2,000 balance unless permitted by one of the exceptions in § 226.55(b). However, the creditor would not generally be prohibited from charging a new periodic fee (such as an annual fee) on the second account so long as the fee is not based solely on the $2,000 balance and the creditor has notified the consumer of the fee either by providing written notice 45 days before imposing the fee pursuant to § 226.9(c) or by providing account-opening disclosures pursuant to § 226.6(b). See also § 226.55(b)(3)(iii); comment 55(b)(3)-3; comment 5(b)(1)(i)-6. Additional circumstances in which a balance is considered transferred for purposes of § 226.55(d)(2) include when:

A. A retail credit card with a balance is replaced or substituted with a cobranded general purpose card that can be used with a broader merchant base;

B. A credit card account with a balance is replaced or substituted with another credit card account offering different features;

C. A credit card account with a balance is consolidated or combined with one or more other credit card accounts into a single credit card account; and

D. A credit card account is replaced or substituted with a line of credit that can be accessed solely by an account number.

ii. Between accounts issued by different creditors. If a balance is transferred to a credit card account issued by a creditor from a credit card account issued by a different creditor or an institution that is not an affiliate or subsidiary of the creditor that issued the credit card account, § 226.55(d)(2) does not prohibit the creditor to which the balance is transferred from applying its account terms to that balance, provided that those terms comply with this part. For example, if a credit card account issued by creditor A has a $1,000 purchase balance at an annual percentage rate of 15% and the consumer transfers that balance to a credit card account with a purchase rate of 17% issued by creditor B, creditor B may apply the 17% rate to the $1,000 balance. However, creditor B may not subsequently increase the rate on that balance unless permitted by one of the exceptions in § 226.55(b).

Section 226.56—Requirements for over-the-limit transactions

56(b) Opt-in requirement.

1. Policy and practice of declining over-the-limit transactions. Section 226.56 does not apply to any creditor that has a policy and practice of declining to pay any over-the-limit transactions for the consumer's credit card account when the creditor has a reasonable belief that completing a transaction will cause the consumer to exceed the consumer's credit limit for that account. For example, if a creditor generally declines any transaction that may exceed a consumer's credit limit, it is not subject to the requirement to provide consumers notice and an opportunity to affirmatively consent to the creditor's payment of over-the-limit transactions.

2. Over-the-limit transactions not required to be paid or authorized. Section 226.56 does not require a creditor to pay or authorize an over-the-limit transaction even if the consumer has affirmatively consented to the creditor's over-the-limit service.

3. Periodic fees or charges. A creditor may not impose a periodic fee for paying over-the-limit transactions that is assessed whether or not the consumer has exceeded the credit limit during the billing cycle (for example, a monthly "over-the-limit protection" service fee) unless the consumer has affirmatively consented to or opted in to the service.

4. Examples of reasonable opportunity to provide affirmative consent. A creditor provides a reasonable opportunity for the consumer to affirmatively consent to the creditor's payment of over-the-limit transactions if –

i. On the application. The creditor provides the notice on the application form that the consumer can fill out to request the service as part of the application;

ii. By mail. The creditor provides a form with the account-opening disclosures or the periodic statement for the consumer to fill out and mail to affirmatively request the service;

iii. By telephone. The creditor provides a readily available telephone number that consumers may call to provide affirmative consent.

iv. By electronic means. The creditor provides an electronic means for the consumer to affirmatively consent. For example, a creditor could provide a form that can be accessed and processed at its Web site, where the consumer can check a box to opt in and confirm that opt-in choice by clicking on a consent box.

5. Separate consent required. A consumer's affirmative consent, or opt-in, to a creditor's payment of over-the-limit transactions must be separate from other consents or acknowledgments obtained by the creditor. For example, a consumer's signature on a credit application to request a credit card would not by itself sufficiently evidence the consumer's consent to the creditor's payment of over-the-limit transactions. However, a creditor may comply with the requirement to obtain separate consent if the creditor also includes a check box or signature line on the application that the consumer can initial or sign to request the over-the-limit service, provided that the box or line is used solely to

indicate the consumer's opt-in decision and not for any other purpose, such as to also obtain consumer consents for other account services or features.

56(b)(2) Completion of over-the-limit transactions without consumer consent.

1. Examples of over-the-limit transactions paid without consumer consent. Section 226.56(b)(2) provides that a creditor may pay an over-the-limit transaction even if the consumer has not provided affirmative consent, so long as the creditor does not impose a fee or charge for paying the transaction. The prohibition on imposing fees for paying an over-the-limit transaction applies even in circumstances where the creditor is unable to avoid paying a transaction that exceeds the consumer's credit limit.

i. Transactions not submitted for authorization. A consumer has not affirmatively consented to a creditor's payment of over-the-limit transactions. The consumer purchases a $3 cup of coffee using his debit card. Because of the small dollar amount of the transaction, the merchant does not submit the transaction to the creditor for authorization. The transaction causes the consumer to exceed the credit limit. Under these circumstances, the creditor is prohibited from imposing a fee or charge on the consumer's credit card account for paying the over-the-limit transaction because the consumer has not opted in to the creditor's over-the-limit service.

ii. Settlement amount exceeds authorization amount. A consumer has not affirmatively consented to a creditor's payment of over-the-limit transactions. The consumer uses his credit card at a pay-at-the-pump fuel dispenser to purchase $50 of fuel. Before permitting the consumer to use the fuel pump, the merchant verifies the validity of the card by requesting an authorization hold of $1. The subsequent $50 transaction amount causes the consumer to exceed his credit limit. Under these circumstances, the creditor is prohibited from imposing a fee or charge on the consumer's credit card account for paying the over-the-limit transaction because the consumer has not opted in to the creditor's over-the-limit service.

2. Permissible fees or charges when a consumer has not consented. Section 226.56(b)(2) does not preclude a creditor from assessing fees or charges other than over-the-limit fees when an over-the-limit transaction is completed. For example, if a consumer has not opted in, the creditor could assess a balance transfer fee in connection with a balance transfer, provided such a fee is assessed whether or not the transfer exceeds the credit limit. The creditor may also assess interest charges in connection with the over-the-limit transaction.

56(c) Method of election.

1. Creditor-determined methods. A creditor may determine the means available to consumers to affirmatively consent, or opt in, to the creditor's payment over-the-limit transactions. For example, a creditor may decide to obtain consents in writing, electronically, or orally, or through some combination of these methods.
Section 226.56(c) further requires, however, that such methods must be made equally available for consumers to revoke a prior consent.

2. Electronic requests. A consumer consent or revocation request submitted electronically is not considered a consumer disclosure for purposes of the E-Sign Act.

56(d) Timing of notices.

1. Revocation notice on each statement. A creditor may, but is not required to, include the notice informing the consumer of the right to revoke the consumer's prior consent to the creditor's payment of over-the-limit transactions on each periodic

statement sent to the consumer, even if the consumer has not incurred an over-the-limit fee during a particular billing cycle.

56(e) Content.

1. Range of fees. If the amount of an over-the-limit fee may vary, such as based on the amount of the over-the-limit transaction, the creditor may indicate that the consumer may be assessed a fee "up to" the maximum fee or provide the range of fees.

2. Additional notice content. In addition to the content required under § 226.56(e)(1), a creditor may briefly describe in its opt-in notice the benefits of the creditor's payment of over-the-limit transactions. For example, the creditor may state that if the consumer consents, or opts in, to the payment of over-the-limit transactions, the consumer may avoid having transactions declined when the issuer believes a transaction may cause the consumer to exceed the credit limit. Creditors may also indicate that there may be circumstances under which there creditor will decline an over-the-limit transaction even if the consumer has opted in or that the payment of over-the-limit transactions is at the discretion of the creditor.

56(f) Joint relationships.

1. Authorized users. Section 226.56(f) does not permit a creditor to treat a request to opt in to or to revoke a prior request for the creditor's payment of over-the-limit transactions from an authorized user that is not jointly liable on a credit card account as a consent or revocation request for that account.

56(g) Continuing right to opt in or revoke opt-in.

1. Fees or charges for over-the-limit transactions incurred prior to revocation. Section 226.56(g) provides that a consumer may revoke his or her prior consent at any

time. If a consumer does so, this provision does not require the creditor to waive or reverse any over-the-limit fees or charges assessed to the consumer's account prior to the creditor's implementation of the consumer's revocation request. Nor does this requirement prevent the creditor from assessing over-the-limit fees in subsequent cycles if the consumer's account balance continues to exceed the credit limit as a result of an over-the-limit transaction that was completed prior to the consumer's revocation of consent.

56(h) Duration of opt-in.

1. Creditor ability to stop paying over-the-limit transactions after consumer consent. A creditor may cease paying over-the-limit transactions for consumers that have previously opted in at any time and for any reason. For example, a creditor may stop paying over-the-limit transactions for a consumer to respond to changes in the credit risk presented by the consumer.

56(j) Prohibited practices.

1. Examples of limits on fees or charges imposed per billing cycle. Section 226.56(j)(1) generally prohibits a creditor from assessing a fee or charge due to the same over-the-limit transaction for more than three billing cycles. The following examples illustrate the prohibition.

i. Assume that a consumer has opted into a creditor's payment of over-the-limit transactions. The consumer exceeds the credit limit during the December billing cycle and does not make sufficient payment to bring the account balance back under the limit for four consecutive cycles. The consumer does not engage in any additional transactions during this period. In this case, § 226.56(j)(1) would permit a creditor to charge a maximum of three over-the-limit fees for the December over-the-limit transaction.

ii. Assume the same facts as above except that the consumer makes sufficient payment to reduce his account balance during the February billing cycle. The creditor may charge over-the-limit fees for the December and January billing cycles. However, because the consumer's account balance was below the credit limit prior to the end of the February billing cycle, the creditor may not charge an over-the-limit fee for the February billing cycle.

iii. Assume the same facts as in paragraph i, except that the consumer engages in another over-the-limit transaction during the February billing cycle. Because the consumer has obtained an additional extension of credit which causes the consumer to exceed his credit limit, the creditor may charge over-the-limit fees for the December transaction on the January, February and March billing statements, and additional over-the-limit fees for the February transaction on the April and May billing statements. The creditor may not charge an over-the-limit fee for each of the December and the February transactions on the March billing statement because it is prohibited from imposing more than one over-the-limit fee during a billing cycle.

2. Replenishment of credit line. Section 226.56(j)(2) does not prevent a creditor from delaying replenishment of a consumer's available credit where appropriate, for example, where the creditor may suspect fraud on the credit card account. However, a creditor may not assess an over-the-limit fee or charge if the over-the-limit transaction is caused by the creditor's decision not to promptly replenish the available credit after the consumer's payment is credited to the consumer's account.

3. Examples of conditioning. Section 226.56(j)(3) prohibits a creditor from conditioning or otherwise tying the amount of a consumer's credit limit on the consumer affirmatively consenting to the creditor's payment of over-the-limit transactions where the creditor assesses an over-the-limit fee for the transaction. The following examples illustrate the prohibition.

i. Amount of credit limit. Assume that a creditor offers a credit card with a credit limit of $1000. The consumer is informed that if the consumer opts in to the payment of the creditor's payment of over-the-limit transactions, the initial credit limit would be increased to $1300. If the creditor would have offered the credit card with the $1300 credit limit but for the fact that the consumer did not consent to the creditor's payment of over-the-limit transactions, the creditor would not be in compliance with § 226.56(j)(3). Section 226.56(j)(3) prohibits the creditor from tying the consumer's opt in to the creditor's payment of over-the-limit transactions as a condition of obtaining the credit card with the $1300 credit limit.

ii. Access to credit. Assume the same facts as above, except that the creditor declines the consumer's application altogether because the consumer has not affirmatively consented or opted in to the creditor's payment of over-the-limit transactions. The creditor is not in compliance with § 226.56(j)(3) because the creditor has required the consumer's consent as a condition of obtaining credit.

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 part-time 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 restrict 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.

Section 226.58—Internet posting of credit card agreements.

58(b) Definitions.

58(b)(1) Agreement.

1. Material included. For purposes of this section, the agreement is deemed to include certain information, such as annual percentage rates and fees, even if the issuer does not otherwise include this information in the basic credit contract. This information is listed under the defined term "pricing information" in § 226.58(b)(4). For example, the basic credit contract may not specify rates, fees and other information that constitutes pricing information as defined in § 226.58(b)(4); instead, such information may be provided to the cardholder in a separate document sent along with the card. However, this information nevertheless constitutes part of the agreement for purposes of § 226.58.

2. Material excluded. Documents that may be sent to the consumer along with the credit card or credit card agreement, but that are not deemed part of the agreement for purposes of this section, include items such as a cover letter, a validation sticker on the card, other information about card security, offers for credit insurance or other optional

products, advertisements, and disclosures required under federal or state law that are not incorporated into the agreement itself.

58(b)(3) Offers.

1. Cards offered to limited groups. A card issuer is deemed to offer a credit card agreement to the public even if the issuer solicits, or accepts applications from, only a limited group of persons. For example, an issuer may market affinity cards to students and alumni of a particular educational institution, or may solicit only high-net-worth individuals for a particular card; in these cases, the card agreement would be considered to be offered to the public.

2. Individualized agreements. A card issuer is deemed to offer a credit card agreement to the public even if the terms of the agreement are changed immediately upon opening of an account to terms not offered to the public.

58(c) Registration with Board.

1. Subsequent registration requirement. An issuer that is required to make a submission to the Board under § 226.58(d) that has not previously registered with the Board must register with the Board at least 21 days before the quarterly submission deadline specified in § 226.58(d)(1) on which the card issuer's first submission is due. This provision would apply, for example, if a new credit card issuer is organized or if an existing issuer that previously qualified for the de minimis exception under § 226.58(e) ceased to qualify. For example, a card issuer that previously qualified for the de minimis exception ceases to qualify as of September 30. That issuer's first submission to the Board is due on October 31, the next quarterly submission deadline. The issuer must register with the Board no later than October 10, 21 days before October 31.

2. Updates to registration information. Issuers that have registered with the Board under § 226.58(c)(1) or (c)(2) must provide updated registration information to the Board no later than the first quarterly submission deadline specified in § 226.58(d)(1) after the information changes. For example, a card issuer that has already registered with the Board changes its address on October 15. The issuer must submit revised registration information advising the Board of the address change no later than October 31, the next quarterly submission deadline specified in § 226.58(d)(1) after the change.

58(d) Submission of agreements to Board.

1. Quarterly submission requirement. Section 226.58(d)(1) requires card issuers to make quarterly submissions to the Board no later than the first business day on or after January 31, April 30, July 31, and October 31 of each year. For example, a card issuer has already submitted three credit card agreements to the Board. On October 15, the issuer stops offering agreement A. On November 20, the issuer makes changes to the terms of agreement B. On December 1, the issuer starts offering a new agreement D. The issuer must submit to the Board no later than the first business day on or after January 31: (i) notification that the issuer is withdrawing agreement A, because it is no longer offered to the public; (ii) the revised version of agreement B; and (iii) agreement D.

2. No quarterly submission required. Under § 226.58(d)(1), an issuer is not required to make any submission to the Board at a particular quarterly submission deadline if, during the previous calendar quarter, the issuer did not take any of the following actions: (i) offering a new credit card agreement that was not submitted to the Board previously; (ii) revising or amending an agreement previously submitted to the

Board; and (iii) ceasing to offer an agreement previously submitted to the Board. For example, a card issuer offers five agreements to the public as of September 30 and submits these to the Board by October 31, as required by § 226.58(d)(1). Between September 30 and December 31, the issuer continues to offer all five of these agreements to the public without amending or revising them and does not begin offering any new agreements. The issuer is not required to make any submission to the Board by the following January 31.

3. No requirement to resubmit unchanged agreements. Under § 226.58(d)(3), if a credit card agreement has been submitted to the Board, no changes have been made to the agreement, and the card issuer continues to offer the agreement to the public, no additional submission of that agreement is required. For example, a credit card issuer begins offering an agreement in October and submits the agreement to the Board the following January 31, as required by § 226.58(d)(1). As of March 31, the issuer has not revised or amended the agreement and is still offering the agreement to the public. The issuer is not required to submit anything to the Board regarding that agreement by April 30.

4. Submission of changed agreements. If an issuer makes changes to a credit card agreement previously submitted to the Board (including changes to the provisions of the agreement, the pricing information, or both), § 226.58(d)(3) requires the issuer to submit the entire revised agreement to the Board by the first quarterly submission deadline after the last day of the calendar quarter in which the change becomes effective. For example, an issuer submits an agreement to the Board on October 31. On November 15, the issuer changes the method used to calculate required minimum payments under

the agreement. Because an element of the pricing information has changed, the issuer must submit the entire revised agreement to the Board no later than January 31 of the following year.

5. Change-in-terms notices not permissible. Section 226.58(d)(3) requires that if a change is made to a credit card agreement previously submitted to the Board, the card issuer must submit the entire revised agreement to the Board. An issuer may not fulfill this requirement by submitting a change-in-terms or similar notice covering only the terms that have changed. In addition, amendments and revisions must be integrated into the text of the agreement (or the single addendum described in Appendix N, if applicable), not provided as separate riders. For example, an issuer changes the purchase APR associated with an agreement the issuer has previously submitted to the Board. The purchase APR for that agreement was included in an addendum of pricing information as described in Appendix N. The issuer may not submit a change-in-terms or similar notice reflecting the change in APR, either alone or accompanied by the original text of the agreement and original addendum of pricing information. Instead, the issuer must revise the addendum of pricing information to reflect the change in APR and submit to the Board the entire text of the agreement and the entire revised addendum, even though no changes have been made to the provisions of the agreement and only one item on the addendum has changed.

6. Notice of withdrawal of agreement. Section 226.58(d)(4) requires an issuer to notify the Board if any agreement previously submitted to the Board by that issuer is no longer offered to the public by the first quarterly submission deadline after the last day of the calendar quarter in which the issuer ceased to offer the agreement. For example, on

January 5 an issuer stops offering to the public an agreement it previously submitted to the Board. The issuer must notify the Board that the agreement is being withdrawn by April 30, the first quarterly submission deadline after March 31, the last day of the calendar quarter in which the issuer stopped offering the agreement.

58(e) De minimis exception.

1. De minimis exception. Under § 226.58(e)(1), an issuer is not required to submit any credit card agreements to the Board under § 226.58(d) if the card issuer has fewer than 10,000 open credit card accounts under open-end (not home-secured) consumer credit plans, as of the last business day of the calendar quarter. For example, an issuer offers five credit card agreements to the public as of September 30. However, the issuer has only 2,000 open credit card accounts under open-end (not home-secured) consumer credit plans as of September 30. The issuer is not required to submit any agreements to the Board by October 31 because the issuer qualifies for the de minimis exception.

2. Open accounts clarified. For purposes of the de minimis exception, a credit card account is considered to be open even if the account is inactive, as long as the account has not been closed by the cardholder or the card issuer and the cardholder can obtain extensions of credit on the account. If an account has been closed for new activity (for example, due to default by the cardholder), but the cardholder is still making payments to pay off the outstanding balance, it need not be considered open. If an account has only been suspended temporarily (for example, due to a report by the cardholder of unauthorized use of the card), the account is considered open.

3. Date for determining whether issuer qualifies clarified. Whether an issuer qualifies for the de minimis exception is determined as of the last business day of each calendar quarter. For example, as of December 31, an issuer offers three agreements to the public and has 9,500 credit card accounts under open-end (not home secured) consumer credit plans. As of January 30, the issuer still offers three agreements, but has 10,100 open accounts. As of March 31, the issuer still offers three agreements, but has only 9,700 open accounts. Even though the issuer had 10,100 open accounts at one time during the calendar quarter, the issuer qualifies for the de minimis exception because the number of open accounts was less than 10,000 as of March 31. The issuer therefore is not required to submit any agreements to the Board under § 226.58(d) by April 30.

4. Date for determining whether issuer ceases to qualify clarified. Whether an issuer has ceased to qualify for the de minimis exception under § 226.58(e)(2) is determined as of the last business day of the calendar quarter, as indicated in § 226.58(e)(1). For example, as of June 30, an issuer offers three agreements to the public and has 9,500 open credit card accounts under open-end (not home-secured) consumer credit plans. The issuer is not required to submit any agreements to the Board under § 226.58(d) because the issuer qualifies for the de minimis exception. As of July 15, the issuer still offers the same three agreements, but now has 10,000 open accounts. The issuer is not required to take any action at this time, because whether an issuer qualifies for the de minimis exception under § 226.58(e)(1) is determined as of the last business day of the calendar quarter. As of September 30, the issuer still offers the same three agreements and still has 10,000 open accounts. Because the issuer had 10,000 open accounts as of September 30, the issuer ceased to qualify for the de minimis exception

and must submit the three agreements it offers to the Board by October 31, the next quarterly submission deadline.

5. Option to withdraw agreements clarified. Section 226.58(e)(3) provides that if a card issuer that did not previously qualify comes within the de minimis exception, the card issuer may, but is not required to, notify the Board that the card issuer is withdrawing each agreement the card issuer previously submitted to the Board. Until the issuer notifies the Board that each agreement it previously submitted is being withdrawn, the issuer must continue to make quarterly submissions to the Board under § 226.58(d) and to provide updated registration information under § 226.58(c)(3). For example, an issuer has 10,001 open accounts and offers three agreements to the public as of December 31. The issuer has registered with the Board and submitted each of the three agreements to the Board as required under § 226.58(c) and (d). As of March 31, the issuer has only 9,999 open accounts. The issuer has two options. First, the issuer may notify the Board that the issuer is withdrawing each of the three agreements it previously submitted. Once the issuer has notified the Board, the issuer is no longer required to make quarterly submissions to the Board under § 226.58(d) or to provide updated registration information to the Board under § 226.58(c)(3). Alternatively, the issuer may choose not to notify the Board that it is withdrawing its agreements. In this case, the issuer must continue making quarterly submissions to the Board under § 226.58(d) and providing updated registration information to the Board under § 226.58(c)(3). The issuer might choose not to withdraw its agreements if, for example, the issuer believes that it will likely cease to qualify for the de minimis exception again in the near future.

58(f)(2) Agreements for all open accounts.

1. Credit card agreements provided upon request. Section 226.58(f)(2) states that card issuers may choose to make agreements available to cardholders upon request. Agreements provided upon request may be provided by the issuer in either electronic or paper form, regardless of the form of the cardholder's request.

2. Requirement applies to all open accounts. The requirement to provide access to credit card agreements under § 226.58(f)(2) applies to all open credit card accounts under open-end (not home-secured) consumer credit plans, regardless of whether such agreements are required to be submitted to the Board pursuant to § 226.58(d). For example, an issuer that is not required to submit agreements to the Board because it qualifies for the de minimis exception under § 226.58(e) would still be required to provide cardholders with access to their specific agreements under § 226.58(f)(2). Similarly, an agreement that is no longer offered to the public would not be required to be submitted to the Board under § 226.58(d), but would still need to be provided to the cardholder to whom it applies under § 226.58(f)(2).

3. Deadline for providing requested agreements clarified. Section 226.58(f)(2) requires that credit card agreements provided upon request must be sent to the cardholder or otherwise made available to the cardholder no later than 10 business days after the cardholder's request is received. For example, if an issuer chooses to respond to a cardholder's request by mailing a paper copy of the cardholder's agreement, the issuer must mail the agreement no later than 10 business days after receipt of the cardholder's request. Alternatively, if an issuer chooses to respond to a cardholder's request by posting the cardholder's agreement on the issuer's Web site, the issuer must post the

agreement on its Web site no later than 10 business days after receipt of the cardholder's request.

APPENDIX F—OPTIONAL ANNUAL PERCENTAGE RATE COMPUTATIONS FOR CREDITORS OFFERING OPEN-END PLANS SUBJECT TO THE REQUIREMENTS OF § 226.5B

1. Daily rate with specific transaction charge. If the finance charge results from a charge relating to a specific transaction and the application of a daily periodic rate, see comment 14(c)(3)-2 for guidance on an appropriate calculation method.

APPENDICES G AND H—OPEN-END AND CLOSED-END MODEL FORMS AND CLAUSES

1. Permissible changes. Although use of the model forms and clauses is not required, creditors using them properly will be deemed to be in compliance with the regulation with regard to those disclosures. Creditors may make certain changes in the format or content of the forms and clauses and may delete any disclosures that are inapplicable to a transaction or a plan without losing the act's protection from liability, except formatting changes may not be made to model forms and samples in G-2(A), G-3(A), G-4(A), G-10(A)-(E), G-17(A)-(D), G-18(A) (except as permitted pursuant to § 226.7(b)(2)), G-18(B)-(C), G-19, G-20, and G-21. The rearrangement of the model forms and clauses may not be so extensive as to affect the substance, clarity, or meaningful sequence of the forms and clauses. Creditors making revisions with that effect will lose their protection from civil liability. Except as otherwise specifically required, acceptable changes include, for example:

i. Using the first person, instead of the second person, in referring to the borrower.

ii. Using "borrower" and "creditor" instead of pronouns.

iii. Rearranging the sequences of the disclosures.

iv. Not using bold type for headings.

v. Incorporating certain state “plain English” requirements.

vi. Deleting inapplicable disclosures by whiting out, blocking out, filling in “N/A” (not applicable) or “0,” crossing out, leaving blanks, checking a box for applicable items, or circling applicable items. (This should permit use of multipurpose standard forms.)

vii. Using a vertical, rather than a horizontal, format for the boxes in the closed-end disclosures.

2. Debt-cancellation coverage. This regulation does not authorize creditors to characterize debt-cancellation fees as insurance premiums for purposes of this regulation. Creditors may provide a disclosure that refers to debt cancellation or debt suspension coverage whether or not the coverage is considered insurance. Creditors may use the model credit insurance disclosures only if the debt cancellation coverage constitutes insurance under state law.

APPENDIX G—OPEN-END MODEL FORMS AND CLAUSES

1. Models G-1 and G-1(A). The model disclosures in G-1 and G-1(A) (different balance computation methods) may be used in both the account-opening disclosures under § 226.6 and the periodic disclosures under § 226.7. As is clear from the models given, “shorthand” descriptions of the balance computation methods are not sufficient, except where § 226.7(b)(5) applies. For creditors using model G-1, the phrase “a portion of” the finance charge should be included if the total finance charge includes other amounts, such as transaction charges, that are not due to the application of a periodic rate.

If unpaid interest or finance charges are subtracted in calculating the balance, that fact must be stated so that the disclosure of the computation method is accurate. Only model G-1(b) contains a final sentence appearing in brackets, which reflects the total dollar amount of payments and credits received during the billing cycle. The other models do not contain this language because they reflect plans in which payments and credits received during the billing cycle are subtracted. If this is not the case, however, the language relating to payments and credits should be changed, and the creditor should add either the disclosure of the dollar amount as in model G-1(b) or an indication of which credits (disclosed elsewhere on the periodic statement) will not be deducted in determining the balance. (Such an indication may also substitute for the bracketed sentence in model G-1(b).) (See the commentary to § 226.7(a)(5) and (b)(5).) For open-end plans subject to the requirements of § 226.5b, creditors may, at their option, use the clauses in G-1 or G-1(A).

2. Models G-2 and G-2(A). These models contain the notice of liability for unauthorized use of a credit card. For home-equity plans subject to the requirements of § 226.5b, at the creditor's option, a creditor either may use G-2 or G-2(A). For open-end plans not subject to the requirements of § 226.5b, creditors properly use G-2(A).

3. Models G-3, G-3(A), G-4 and G-4(A).

i. These set out models for the long-form billing-error rights statement (for use with the account-opening disclosures and as an annual disclosure or, at the creditor's option, with each periodic statement) and the alternative billing-error rights statement (for use with each periodic statement), respectively. For home-equity plans subject to the requirements of § 226.5b, at the creditor's option, a creditor either may use G-3 or G-

3(A), and for creditors that use the short form, G-4 or G-4(A). For open-end (not home-secured) plans that not subject to the requirements of § 226.5b, creditors properly use G-3(A) and G-4(A). Creditors must provide the billing-error rights statements in a form substantially similar to the models in order to comply with the regulation. The model billing-rights statements may be modified in any of the ways set forth in the first paragraph to the commentary on appendices G and H. The models may, furthermore, be modified by deleting inapplicable information, such as:

A. The paragraph concerning stopping a debit in relation to a disputed amount, if the creditor does not have the ability to debit automatically the consumer's savings or checking account for payment.

B. The rights stated in the special rule for credit card purchases and any limitations on those rights.

ii. The model billing rights statements also contain optional language that creditors may use. For example, the creditor may:

A. Include a statement to the effect that notice of a billing error must be submitted on something other than the payment ticket or other material accompanying the periodic disclosures.

B. Insert its address or refer to the address that appears elsewhere on the bill.

C. Include instructions for consumers, at the consumer's option, to communicate with the creditor electronically or in writing.

iii. Additional information may be included on the statements as long as it does not detract from the required disclosures. For instance, information concerning the reporting of errors in connection with a checking account may be included on a combined statement as long as the disclosures required by the regulation remain clear and conspicuous.

* * * * *

5. Model G–10(A), samples G–10(B) and G–10(C), model G-10(D), sample G-10(E), model G-17(A), and samples G-17(B), 17(C) and 17(D). i. Model G–10(A) and Samples G–10(B) and G-10(C) illustrate, in the tabular format, the disclosures required under § 226.5a for applications and solicitations for credit cards other than charge cards. Model G-10(D) and Sample G-10(E) illustrate the tabular format disclosure for charge card applications and solicitations and reflect the disclosures in the table. Model G-17(A) and Samples G-17(B), G-17(C) and G-17(D) illustrate, in the tabular format, the disclosures required under § 226.6(b)(2) for account-opening disclosures.

ii. Except as otherwise permitted, disclosures must be substantially similar in sequence and format to Models G–10(A), G-10(D) and G-17(A). While proper use of the model forms will be deemed in compliance with the regulation, card issuers and other creditors offering open-end (not home-secured) plans are permitted to disclose the annual percentage rates for purchases, cash advances, or balance transfers in the same row in the table for any transaction types for which the issuer or creditor charges the same annual percentage rate. Similarly, card issuer and other creditors offering open-end (not home-secured) plans are permitted to disclose fees of the same amount in the same row if the fees are in the same category. Fees in different categories may not be disclosed in the same row. For example, a transaction fee and a penalty fee that are of the same amount may not be disclosed in the same row. Card issuers and other creditors offering open-end (not home-secured) plans are also permitted to use headings other than those in the forms if they are clear and concise and are substantially similar to the headings contained in model forms, with the following exceptions. The heading "penalty APR" must be used when describing rates that may increase due to default or delinquency or as a penalty, and in relation to required insurance, or debt cancellation or suspension coverage, the term "required" and the name of the product must be used. (See also §§ 226.5a(b)(5) and 226.6(b)(2)(v) for guidance on headings that must be used to describe the grace period, or lack of grace period, in the disclosures required under § 226.5a for applications and solicitations for credit cards other than charge cards, and the disclosures required under § 226.6(b)(2) for account-opening disclosures, respectively.)

iii. Models G-10(A) and G-17(A) contain two alternative headings ("Minimum Interest Charge" and "Minimum Charge") for disclosing a minimum interest or fixed finance charge under §§ 226.5a(b)(3) and 226.6(b)(2)(iii). If a creditor imposes a minimum charge in lieu of interest in those months where a consumer would otherwise incur an interest charge but that interest charge is less than the minimum charge, the creditor should disclose this charge under the heading "Minimum Interest Charge" or a substantially similar heading. Other minimum or fixed finance charges should be disclosed under the heading "Minimum Charge" or a substantially similar heading.

iv. Models G-10(A), G-10(D) and G-17(A) contain two alternative headings ("Annual Fees" and "Set-up and Maintenance Fees") for disclosing fees for issuance or availability of credit under § 226.5a(b)(2) or § 226.6(b)(2)(ii). If the only fee for issuance or availability of credit disclosed under § 226.5a(b)(2) or § 226.6(b)(2)(ii) is an annual fee, a creditor should use the heading "Annual Fee" or a substantially similar heading to disclose this fee. If a creditor imposes fees for issuance or availability of credit disclosed under § 226.5a(b)(2) or § 226.6(b)(2)(ii) other than, or in addition to, an annual fee, the creditor should use the heading "Set-up and Maintenance Fees" or a substantially similar heading to disclose fees for issuance or availability of credit, including the annual fee.

v. Although creditors are not required to use a certain paper size in disclosing the §§ 226.5a or 226.6(b)(1) and (2) disclosures, samples G-10(B), G-10(C), G-17(B), G-17(C) and G-17(D) are designed to be printed on an 8 ½ x 14 inch sheet of paper. A creditor may use a smaller sheet of paper, such as 8 ½ x 11 inch sheet of paper. If the table is not provided on a single side of a sheet of paper, the creditor must include a reference or references, such as "SEE BACK OF PAGE for more important information about your account." at the bottom of each page indicating that the table continues onto an additional page or pages. A creditor that splits the table onto two or more pages must disclose the table on consecutive pages and may not include any intervening information between portions of the table. In addition, the following formatting techniques were used in presenting the information in the sample tables to ensure that the information is readable:

A. A readable font style and font size (10-point Arial font style, except for the purchase annual percentage rate which is shown in 16-point type).

B. Sufficient spacing between lines of the text.

C. Adequate spacing between paragraphs when several pieces of information were included in the same row of the table, as appropriate. For example, in the samples in the row of the tables with the heading "APR for Balance Transfers," the forms disclose two components: the applicable balance transfer rate and a cross reference to the balance transfer fee. The samples show these two components on separate lines with adequate space between each component. On the other hand, in the samples, in the disclosure of the late payment fee, the forms disclose two components: the late payment fee, and the cross reference to the penalty rate. Because the disclosure of both these components is short, these components are disclosed on the same line in the tables.

D. Standard spacing between words and characters. In other words, the text was not compressed to appear smaller than 10-point type.

E. Sufficient white space around the text of the information in each row, by providing sufficient margins above, below and to the sides of the text.

F. Sufficient contrast between the text and the background. Generally, black text was used on white paper.

vi. While the Board is not requiring issuers to use the above formatting techniques in presenting information in the table (except for the 10-point and 16-point font requirement), the Board encourages issuers to consider these techniques when deciding how to disclose information in the table, to ensure that the information is presented in a readable format.

vii. Creditors are allowed to use color, shading and similar graphic techniques with respect to the table, so long as the table remains substantially similar to the model and sample forms in appendix G.

6. Model G–11. Model G–11 contains clauses that illustrate the general disclosures required under § 226.5a(e) in applications and solicitations made available to the general public.

7. Models G-13(A) and G-13(B). These model forms illustrate the disclosures required under § 226.9(f) when the card issuer changes the entity providing insurance on

a credit card account. Model G-13(A) contains the items set forth in § 226.9(f)(3) as examples of significant terms of coverage that may be affected by the change in insurance provider. The card issuer may either list all of these potential changes in coverage and place a check mark by the applicable changes, or list only the actual changes in coverage. Under either approach, the card issuer must either explain the changes or refer to an accompanying copy of the policy or group certificate for details of the new terms of coverage. Model G-13(A) also illustrates the permissible combination of the two notices required by § 226.9(f)—the notice required for a planned change in provider and the notice required once a change has occurred. This form may be modified for use in providing only the disclosures required before the change if the card issuer chooses to send two separate notices. Thus, for example, the references to the attached policy or certificate would not be required in a separate notice prior to a change in the insurance provider since the policy or certificate need not be provided at that time.

Model G-13(B) illustrates the disclosures required under § 226.9(f)(2) when the insurance provider is changed.

8. Samples G-18(A)-(D). For home-equity plans subject to the requirements of § 226.5b, if a creditor chooses to comply with the requirements in § 226.7(b), the creditor may use Samples G-18(A) through G-18(D) to comply with these requirements, as applicable.

9. Samples G-18(D). Sample G-18(D) illustrates how credit card issuers may comply with proximity requirements for payment information on periodic statements. Creditors that offer card accounts with a charge card feature and a revolving feature may change the disclosure to make clear to which feature the disclosures apply.

10. Forms G-18(F)-(G). Forms G-18(F) and G-18(G) are intended as a compliance aid to illustrate front sides of a periodic statement, and how a periodic statement for open-end (not home-secured) plans might be designed to comply with the requirements of § 226.7. The samples contain information that is not required by Regulation Z. The samples also present information in additional formats that are not required by Regulation Z.

i. Creditors are not required to use a certain paper size in disclosing the § 226.7 disclosures. However, Forms G-18(F) and G-18(G) are designed to be printed on an 8 x 14 inch sheet of paper.

ii. The due date for a payment, if a late payment fee or penalty rate may be imposed, must appear on the front of the first page of the statement. See Sample G-18(D) that illustrates how a creditor may comply with proximity requirements for other disclosures. The payment information disclosures appear in the upper right-hand corner on Samples G-18(F) and G-18(G), but may be located elsewhere, as long as they appear on the front of the first page of the periodic statement. The summary of account activity presented on Samples G-18(F) and G-18(G) is not itself a required disclosure, although the previous balance and the new balance, presented in the summary, must be disclosed in a clear and conspicuous manner on periodic statements.

iii. Additional information not required by Regulation Z may be presented on the statement. The information need not be located in any particular place or be segregated from disclosures required by Regulation Z, although the effect of proximity requirements for required disclosures, such as the due date, may cause the additional information to be segregated from those disclosures required to be disclosed in close proximity to one another. Any additional information must be presented consistent with the creditor's obligation to provide required disclosures in a clear and conspicuous manner.

iv. Model Forms G-18(F) and G-18(G) demonstrate two examples of ways in which transactions could be presented on the periodic statement. Model Form G-18(G) presents transactions grouped by type and Model Form G-18(F) presents transactions in a list in chronological order. Neither of these approaches to presenting transactions is required; a creditor may present transactions differently, such as in a list grouped by authorized user or other means.

11. Model Form G–19. See § 226.9(b)(3) regarding the headings required to be disclosed when describing in the tabular disclosure a grace period (or lack of a grace period) offered on check transactions that access a credit card account.

12. Sample G-24. Sample G-24 includes two model clauses for use in complying with § 226.16(h)(4). Model clause (a) is for use in connection with credit card accounts under an open-end (not home-secured) consumer credit plan. Model clause (b) is for use in connection with other open-end credit plans.

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By order of the Board of Governors of the Federal Reserve System, September 28, 2009.

Jennifer J. Johnson (signed)

Jennifer J. Johnson
Secretary of the Board