FEDERAL RESERVE SYSTEM

12 CFR Part 226

Regulation Z; Docket No. R-1286

Truth in Lending

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final Rule.

SUMMARY: The Board is amending Regulation Z, which implements the Truth in Lending Act (TILA), and the staff commentary to the regulation, following a comprehensive review of TILA's rules for open-end (revolving) credit that is not home-secured. Consumer testing was conducted as a part of the review.

Except as otherwise noted, the changes apply solely to open-end credit. Disclosures accompanying credit card applications and solicitations must highlight fees and reasons penalty rates might be applied, such as for paying late. Creditors are required to summarize key terms at account opening and when terms are changed. Specific fees are identified that must be disclosed to consumers in writing before an account is opened, and creditors are given flexibility regarding how and when to disclose other fees imposed as part of the open-end plan. Costs for interest and fees are separately identified for the cycle and year to date. Creditors are required to give 45 days' advance notice prior to certain changes in terms and before the rate applicable to a consumer's account is increased as a penalty. Rules of general applicability such as the definition of open-end credit, dispute resolution procedures, and payment processing limitations apply to all open-end plans, including home-equity lines of credit. Rules regarding the

disclosure of debt cancellation and debt suspension agreements are revised for both closed-end and open-end credit transactions. Loans taken against employer-sponsored retirement plans are exempt from TILA coverage.

DATES: The rule is effective July 1, 2010.

FOR FURTHER INFORMATION CONTACT: Benjamin K. Olson, Attorney, Amy Burke or Vivian Wong, Senior Attorneys, or Krista Ayoub, Ky Tran-Trong, or John Wood, 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 on TILA and Regulation Z

Congress enacted the Truth in Lending Act (TILA) based on findings that economic stability would be enhanced and competition among consumer credit providers would be strengthened by the informed use of credit resulting from consumers' awareness of the cost of credit. The purposes of TILA are (1) to provide a meaningful disclosure of credit terms to enable consumers to compare credit terms available in the marketplace more readily and avoid the uninformed use of credit; and (2) to protect consumers against inaccurate and unfair credit billing and credit card practices.

TILA's disclosures differ depending on whether consumer credit is an open-end (revolving) plan or a closed-end (installment) loan. TILA also contains procedural and substantive protections for consumers. TILA is implemented by the Board's Regulation Z. An Official Staff Commentary interprets the requirements of Regulation Z. By statute, creditors that follow in good faith Board or official staff interpretations are insulated from civil liability, criminal penalties, or administrative sanction.

II. Summary of Major Changes

The goal of the amendments to Regulation Z is to improve the effectiveness of the disclosures that creditors provide to consumers at application and throughout the life of an open-end (not home-secured) account. The changes are the result of the Board's review of the provisions that apply to open-end (not home-secured) credit. The Board is adopting changes to format, timing, and content requirements for the five main types of open-end credit disclosures governed by Regulation Z: (1) credit and charge card application and solicitation disclosures; (2) account-opening disclosures; (3) periodic statement disclosures; (4) change-in-terms notices; and (5) advertising provisions. The Board is also adopting additional protections that complement rules issued by the Board and other federal banking agencies published elsewhere in today's **Federal Register** regarding certain credit card practices.

Applications and solicitations. Format and content changes are adopted to make the credit and charge card application and solicitation disclosures more meaningful and easier for consumers to use. The changes include:

- Adopting new format requirements for the summary table, including rules regarding: type size and use of boldface type for certain key terms, and placement of information.

- Revising content, including: a requirement that creditors disclose the duration that penalty rates may be in effect, a shorter disclosure about variable rates, new descriptions when a grace period is offered on purchases or when no grace period is offered, and a reference to consumer education materials on the Board's Web site.

Account-opening disclosures. Requirements for cost disclosures provided at account opening are adopted to make the information more conspicuous and easier to read. The changes include:

- Disclosing certain key terms in a summary table at account opening, in order to summarize for consumers key information that is most important to informed decision-making. The table is substantially similar to the table required for credit and charge card applications and solicitations.

- Adopting a different approach to disclosing fees, to provide greater clarity for identifying fees that must be disclosed. In addition, creditors would have flexibility to disclose charges (other than those in the summary table) in writing or orally.

Periodic statement disclosures. Revisions are adopted to make disclosures on periodic statements more understandable, primarily by making changes to the format requirements, such as by grouping fees and interest charges together. The changes include:

- Itemizing interest charges for different types of transactions, such as purchases and cash advances, grouping interest charges and fees separately, and providing separate totals of fees and interest for the month and year-to-date.

- Eliminating the requirement to disclose an "effective APR."

- Requiring disclosure of the effect of making only the minimum required payment on the time to repay balances, as required by the Bankruptcy Act.

Changes in consumer's interest rate and other account terms. The final rule expands the circumstances under which consumers receive written notice of changes in the terms (e.g., an increase in the interest rate) applicable to their accounts, and increase the amount of time these notices must be sent before the change becomes effective. The changes include:

- Increasing advance notice before a changed term can be imposed from 15 to 45 days, to better allow consumers to obtain alternative financing or change their account usage.

- Requiring creditors to provide 45 days' prior notice before the creditor increases a rate either due to a change in the terms applicable to the consumer's account or due to the consumer's delinquency or default or as a penalty.

- When a change-in-terms notice accompanies a periodic statement, requiring a tabular disclosure on the front side of the periodic statement of the key terms being changed.

Advertising provisions. Rules governing advertising of open-end credit are revised to help ensure consumers better understand the credit terms offered. These revisions include:

- Requiring advertisements that state a periodic payment amount on a plan offered to finance the purchase of goods or services to state, in equal prominence to the periodic payment amount, the time period required to pay the balance and the total of payments if only periodic payments are made.

- Permitting advertisements to refer to a rate as "fixed" only if the advertisement specifies a time period for which the rate is fixed and the rate will not increase for any reason during that time, or if a time period is not specified, if the rate will not increase for any reason while the plan is open.

Additional protections. Rules are adopted that provide additional protections to consumers. These include:

- In setting reasonable cut-off hours for mailed payments to be received on the due date and be considered timely, deeming 5 p.m. to be a reasonable time.

- Requiring creditors that do not accept mailed payments on the due date, such as on weekends or holidays, to treat a mailed payment received on the next business day as timely.

- Clarifying that advances that are separately underwritten are generally not open-end credit, but closed-end credit for which closed-end disclosures must be given.

III. The Board's Review of Open-end Credit Rules

A. Advance Notices of Proposed Rulemaking

December 2004 ANPR. The Board began a review of Regulation Z in December 2004.[1] The Board initiated its review of Regulation Z by issuing an advance notice of proposed rulemaking (December 2004 ANPR). 69 FR 70925, December 8, 2004. At that time, the Board announced its intent to conduct its review of Regulation Z in stages, focusing first on the rules for open-end (revolving) credit accounts that are not home-secured, chiefly general-purpose credit cards and retailer credit card plans. The December 2004 ANPR sought public comment on a variety of specific issues relating to three broad categories: the format of open-end credit disclosures, the content of those disclosures, and the substantive protections provided for open-end credit under the regulation. The December 2004 ANPR solicited comment on the scope of the Board's review, and also requested commenters to identify other issues that the Board should address in the review. A summary of the comments received in response to the December 2004 ANPR is contained in the supplementary information to proposed revisions to Regulation Z published by the Board in June 2007 (June 2007 Proposal). 72 FR 32948, 32949, June 14, 2007.

October 2005 ANPR. The Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (the Bankruptcy Act) primarily amended the federal bankruptcy code, but also contained several provisions amending TILA. Public Law 109-8, 119 Stat. 23. The Bankruptcy Act's TILA amendments principally deal with open-end

[1] The review was initiated pursuant to requirements of section 303 of the Riegle Community Development and Regulatory Improvement Act of 1994, section 610(c) of the Regulatory Flexibility Act of 1980, and section 2222 of the Economic Growth and Regulatory Paperwork Reduction Act of 1996.

credit accounts and require new disclosures on periodic statements, on credit card applications and solicitations, and in advertisements.

In October 2005, the Board published a second ANPR to solicit comment on implementing the Bankruptcy Act amendments (October 2005 ANPR). 70 FR 60235, October 17, 2005. In the October 2005 ANPR, the Board stated its intent to implement the Bankruptcy Act amendments as part of the Board's ongoing review of Regulation Z's open-end credit rules. A summary of the comments received in response to the October 2005 ANPR also is contained in the supplementary information to the June 2007 Proposal. 72 FR 32948, 32950, June 14, 2007.

B. <u>Notices of Proposed Rulemakings</u>

<u>June 2007 Proposal</u>. The Board published proposed amendments to Regulation Z's rules for open-end plans that are not home-secured in June 2007. 72 FR 32948, June 14, 2007. The goal of the proposed amendments to Regulation Z was to improve the effectiveness of the disclosures that creditors provide to consumers at application and throughout the life of an open-end (not home-secured) account. In developing the proposal, the Board conducted consumer research, in addition to considering comments received on the two ANPRs. Specifically, the Board retained a research and consulting firm (Macro International) to assist the Board in using consumer testing to develop proposed model forms, as discussed in C. <u>Consumer Testing</u> of this section, below. The proposal would have made changes to format, timing, and content requirements for the five main types of open-end credit disclosures governed by Regulation Z: (1) credit and charge card application and solicitation disclosures; (2) account-opening disclosures;

(3) periodic statement disclosures; (4) change-in-terms notices; and (5) advertising provisions.

For credit and charge card application and solicitation disclosures, the June 2007 Proposal included new format requirements for the summary table, such as rules regarding type size and use of boldface type for certain key terms, placement of information, and the use of cross-references. Content revisions included requiring creditors to disclose the duration that penalty rates may be in effect and a shorter disclosure about variable rates.

For disclosures provided at account opening, the June 2007 Proposal called for creditors to disclose certain key terms in a summary table that is substantially similar to the table required for credit and charge card applications and solicitations. A different approach to disclosing fees was proposed, to provide greater clarity for identifying fees that must be disclosed, and to provide creditors with flexibility to disclose charges (other than those in the summary table) in writing or orally.

The June 2007 Proposal also included changes to the format requirements for periodic statements, such as by grouping fees, interest charges, and transactions together and providing separate totals of fees and interest for the month and year-to-date. The proposal also modified the provisions for disclosing the "effective APR," including format and terminology requirements to make it more understandable. Because of concerns about the disclosure's effectiveness, however, the Board also solicited comment on whether this rate should be required to be disclosed. The proposal required card issuers to disclose the effect of making only the minimum required payment on repayment of balances, as required by the Bankruptcy Act.

For changes in consumer's interest rate and other account terms, the June 2007 Proposal expanded the circumstances under which consumers receive written notice of changes in the terms (e.g., an increase in the interest rate) applicable to their accounts to include increases of a rate due to the consumer's delinquency or default, and increased the amount of time (from 15 to 45 days) these notices must be sent before the change becomes effective.

For advertisements that state a minimum monthly payment on a plan offered to finance the purchase of goods or services, the June 2007 Proposal required additional information about the time period required to pay the balance and the total of payments if only minimum payments are made. The proposal also limited the circumstances under which an advertisements may refer to a rate as "fixed."

The Board received over 2,500 comments on the June 2007 Proposal. About 85% of these were from consumers and consumer groups, and of those, nearly all (99%) were from individuals. Of the approximately 15% of comment letters received from industry representatives, about 10% were from financial institutions or their trade associations. The vast majority (90%) of the industry letters were from credit unions and their trade associations. Those latter comments mainly concerned a proposed revision to the definition of open-end credit that could affect how many credit unions currently structure their consumer loan products.

In general, commenters generally supported the June 2007 Proposal and the Board's use of consumer testing to develop revisions to disclosure requirements. There was opposition to some aspects of the proposal. For example, industry representatives opposed many of the format requirements for periodic statements, as being overly prescriptive. They also opposed the Board's proposal to require creditors to provide at least 45 days' advance notice before certain key terms change or interest rates are increased due to default or delinquency or as a penalty. Consumer groups opposed the Board's proposed alternative that would eliminate the effective annual percentage rate (effective APR) as a periodic statement disclosure. Consumers and consumer groups also believed the Board's proposal was too limited in scope and urged the Board to provide more substantive protections and prohibit certain card issuer practices. Comments on specific proposed revisions are discussed in **VI. Section-by-Section Analysis**, below.

May 2008 Proposal. In May 2008, the Board published revisions to several disclosures in the June 2007 Proposal (May 2008 Proposal). 73 FR 28866, May 19, 2008. In developing these revisions, the Board considered comments received on the June 2007 Proposal and worked with its testing consultant, Macro International, to conduct additional consumer research, as discussed in C. Consumer Testing of this section, below. In addition, the May 2008 Proposal contained proposed amendments to Regulation Z that complemented a proposal published by the Board, along with the Office of Thrift Supervision and the National Credit Union Administration, to adopt rules prohibiting specific unfair acts or practices with respect to consumer credit card accounts under their authority under the Federal Trade Commission Act (FTC Act).
See 15 U.S.C. 57a(f)(1). 73 FR 28904, May 19, 2008.

The May 2008 Proposal would have, among other things, required changes for the summary table provided on or with application and solicitations for credit and charge cards. Specifically, it would have required different terminology than the term "grace period" as a heading that describes whether the card issuer offers a grace period on purchases, and added a de minimis dollar amount trigger of more than $1.00 for disclosing minimum interest or finance charges.

Under the May 2008 Proposal, creditors assessing fees at account opening that are 25% or more of the minimum credit limit would have been required to provide in the account-opening summary table a notice of the consumer’s right to reject the plan after receiving disclosures if the consumer has not used the account or paid a fee (other than certain application fees).

Currently, creditors may require consumers to comply with reasonable payment instructions. The May 2008 Proposal would have deemed a cut-off hour for receiving mailed payments before 5 p.m. on the due date to be an unreasonable instruction. The proposal also would have prohibited creditors that set due dates on a weekend or holiday but do not accept mailed payments on those days from considering a payment received on the next business day as late for any reason.

For deferred interest plans that advertise “no interest” or similar terms, the May 2008 Proposal would have added notice and proximity requirements to require advertisements to state the circumstances under which interest is charged from the date of purchase and, if applicable, that the minimum payments required will not pay off the balance in full by the end of the deferral period.

The Board received over 450 comments on the May 2008 Proposal. About 88% of these were from consumers and consumer groups, and of those, nearly all (98%) were from individuals. Six comments (1%) were from government officials or organizations, and the remaining 11% represented industry, such as financial institutions or their trade associations and payment system networks.

Commenters generally supported the May 2008 Proposal, although like the June 2007 Proposal, some commenters opposed aspects of the proposal. For example, operational concerns and costs for system changes were cited by industry representatives that opposed limitations on when creditors may consider mailed payments to be untimely. Regarding revised disclosure requirements, some industry and consumer group commenters opposed proposed heading descriptions for accounts offering a grace period, although these commenters were split between those that favor retaining the current term ("grace period") and those that suggested other heading descriptions. Consumer groups opposed the May 2008 proposal to permit card issuers and creditors to omit charges in lieu of interest that are $1.00 or less from the table provided with credit or charge card applications and solicitations and the table provided at account opening. Some retailers opposed the proposed advertising rules for deferred interest offers. Comments on specific proposed revisions are discussed in **VI. Section-by-section Analysis**, below.

C. Consumer Testing

Developing the June 2007 Proposal. A principal goal for the Regulation Z review was to produce revised and improved credit card disclosures that consumers will be more likely to pay attention to, understand, and use in their decisions, while at the same time not creating undue burdens for creditors. In April 2006, the Board retained a research and consulting firm (Macro International) that specializes in designing and testing documents to conduct consumer testing to help the Board review Regulation Z's credit card rules. Specifically, the Board used consumer testing to develop model forms that were proposed in June 2007 for the following credit card disclosures required by Regulation Z:

- Summary table disclosures provided in direct-mail solicitations and applications;
- Disclosures provided at account opening;
- Periodic statement disclosures; and
- Subsequent disclosures, such as notices provided when key account terms are changed, and notices on checks provided to access credit card accounts.

Working closely with the Board, Macro International conducted several tests. Each round of testing was conducted in a different city, throughout the United States. In addition, the consumer testing groups contained participants with a range of ethnicities, ages, educational levels, and credit card behavior. The consumer testing groups also contained participants likely to have subprime credit cards as well as those likely to have prime credit cards.

Initial research and design of disclosures for testing. In advance of testing a series of revised disclosures, the Board conducted research to learn what information consumers currently use in making decisions about their credit card accounts, and how they currently use disclosures that are provided to them. In May and June 2006, the Board worked with Macro International to conduct two sets of focus groups with credit card consumers. Through these focus groups, the Board gathered information on what credit terms consumers usually consider when shopping for a credit card, what information they find useful when they receive a new credit card in the mail, and what information they find useful on periodic statements. In August 2006, the Board worked with Macro International to conduct one-on-one discussions with credit card account holders. Consumers were asked to view existing sample credit card disclosures. The goals of these interviews were: (1) to learn more about what information consumers read when they receive current credit card disclosures; (2) to research how easily consumers can find various pieces of information in these disclosures; and (3) to test consumers' understanding of certain credit card-related words and phrases. In the fall of 2006, the Board worked with Macro International to develop sample credit card disclosures to be used in the later rounds of testing, taking into account information learned through the focus groups and the one-on-one interviews.

Additional testing and revisions to disclosures. In late 2006 and early 2007, the Board worked with Macro International to conduct four rounds of one-on-one interviews (seven to nine participants per round), where consumers were asked to view new sample credit card disclosures developed by the Board and Macro International. The rounds of interviews were conducted sequentially to allow for revisions to the testing materials based on what was learned from the testing during each previous round.

Several of the model forms contained in the June 2007 Proposal were developed through the testing. A report summarizing the results of the testing is available on the Board's public Web site: http://www.federalreserve.gov (May 2007 Macro Report). [2] See also **VI. Section-by-Section Analysis**, below. To illustrate by example:

- Testing participants generally read the summary table provided in direct-mail credit card solicitations and applications and ignored information presented outside of the table. The June 2007 Proposal would have required that information about events that trigger penalty rates and about important fees (late-payment fees, over-the-credit-limit fees, balance transfer fees, and cash advance fees) be placed in the table. Currently, this information may be placed outside the table.

- With respect to the account-opening disclosures, consumer testing indicates that consumers commonly do not review their account agreements, which currently are often in small print and dense prose. The June 2007 Proposal would have required creditors to include a table summarizing the key terms applicable to the account, similar to the table required for credit card applications and solicitations. The goal of setting apart the most important terms in this way is to better ensure that consumers are apprised of those terms.

[2] Design and Testing of Effective Truth in Lending Disclosures, Macro International, May 16, 2007.

- With respect to periodic statement disclosures, many consumers more easily noticed the number and amount of fees when the fees were itemized and grouped together with interest charges. Consumers also noticed fees and interest charges more readily when they were located near the disclosure of the transactions on the account. The June 2007 Proposal would have required creditors to group all fees together and describe them in a manner consistent with consumers' general understanding of costs ("interest charge" or "fee"), without regard to whether the fees would be considered "finance charges," "other charges" or neither under the regulation.

- With respect to change-in-terms notices, creditors commonly provide notices about changes to terms or rates in the same envelope with periodic statements. Consumer testing indicates that consumers may not typically look at the notices if they are provided as separate inserts given with periodic statements. In such cases under the June 2007 Proposal, a table summarizing the change would have been required on the periodic statement directly above the transaction list, where consumers are more likely to notice the changes.

Developing the May 2008 Proposal. In early 2008, the Board worked with a testing consultant, Macro International, to revise model disclosures published in the June 2007 Proposal in response to comments received. In March 2008, the Board conducted an additional round of one-on-one interviews on revised disclosures provided with applications and solicitations, on periodic statements, and with checks that access a credit card account. A report summarizing the results of the testing is available on the Board's public Web site: http://www.federalreserve.gov (December 2008 Macro Report on Qualitative Testing). [3]

With respect to the summary table provided in direct-mail credit card solicitations and applications, participants who read the heading "How to Avoid Paying Interest on Purchases" on the row describing a grace period generally understood what the phrase meant. The May 2008 Proposal would have required issuers to use that phrase, or a substantially similar phrase, as the row heading to describe an account with a grace

---

[3] Design and Testing of Effective Truth in Lending Disclosures: Findings from Qualitative Consumer Research, Macro International, December 15, 2008.

period for purchases, and the phrase "Paying Interest," or a substantially similar phrase, if no grace period is offered. (The same row headings were also proposed for tables provided at account-opening and with checks that access credit card accounts.)

Prior to the May 2008 Proposal, the Board also tested a disclosure of a use-by date applicable to checks that access a credit card account. The responses given by testing participants indicated that they generally did not understand prior to the testing that there may be a use-by date applicable to an offer of a promotional rate for a check that accesses a credit card account. However, the participants that saw and read the tested language understood that a standard cash advance rate, not the promotional rate, would apply if the check was used after the date disclosed. Thus, in May 2008 the Board proposed to require that creditors disclose any use-by date applicable to an offer of a promotional rate for access checks.

Testing conducted after May 2008. In July and August 2008, the Board worked with Macro International to conduct two additional rounds of one-on-one interviews. See the December 2008 Macro Report on Qualitative Testing, which summarizes the results of these interviews. The results of this consumer testing were used to develop the final rule, and are discussed in more detail in **VI. Section-by-Section Analysis**.

For example, these rounds of interviews examined, among other things, whether consumers understand the meaning of a minimum interest charge disclosed in the summary table provided in direct-mail credit card solicitations and applications. Most participants could correctly explain the meaning of a minimum interest charge, and most participants indicated that a minimum interest charge would not be important to them because it is a relatively small sum of money ($1.50 on the forms tested). The final rule accordingly establishes a threshold of $1.00; if the minimum interest charge is $1.00 or less it is not required to be disclosed in the table.

Consumers also were asked to review periodic statements that disclosed an impending rate increase, with a tabular summary of the change appearing on statement, as proposed by the Board in June 2007. This testing was used in the development of final Samples G-20 and G-21, which give creditors guidance on how advance notice of impending rate increases or changes in terms should be presented.

Quantitative testing. In September 2008, the Board worked with Macro International to develop a survey to conduct quantitative testing. The goal of quantitative testing was to measure consumers' comprehension and the usability of the newly-developed disclosures relative to existing disclosures and formats. A report summarizing the results of the testing is available on the Board's public Web site: http://www.federalreserve.gov (December 2008 Macro Report on Quantitative Testing).[4]

The quantitative consumer testing conducted for the Board consisted of mall-intercept interviews of a total of 1,022 participants in seven cities: Dallas, TX; Detroit, MI; Los Angeles, CA; Seattle, WA; Springfield, IL; St. Louis, MO; and Tallahassee, FL. Each interview lasted approximately fifteen minutes and consisted of showing the participant models of the summary table provided in direct-mail credit card solicitations and applications and the periodic statement and asking a series of questions designed to assess the effectiveness of certain formatting and content requirements proposed by the Board or suggested by commenters.

[4] Design and Testing of Effective Truth in Lending Disclosures: Findings from Experimental Study, Macro International, December 15, 2008.

With regard to the summary table provided in direct-mail credit card solicitations and applications, consumers were asked questions intended to gauge the impact of (i) combining rows for APRs applicable to different transaction types, (ii) the inclusion of cross-references in the table, and (iii) the impact of splitting the table onto two pages instead of presenting the table entirely on a single page. More details about the specific forms used in the testing as well as the questions asked are available in the December 2008 Macro Report on Quantitative Testing.

The results of the testing demonstrated that combining the rows for APRs applicable to different transaction types that have the same applicable rate did not have a statistically significant impact on consumers' ability to identify those rates. Thus, the final rule permits creditors to combine rows disclosing the rates for different transaction types to which the same rate applies.

Similarly, the testing indicated that the inclusion of cross-references in the table did not have a statistically significant impact on consumers' ability to identify fees and rates applicable to their accounts. As a result, the Board has not adopted the proposed requirement that certain cross-references between certain rates and fees be included in the table.

Finally, the testing demonstrated that consumers have more difficulty locating fees applicable to their accounts when the table is split on two pages and the fee appears on the second page of the table. As discussed further in **VI. Section-by-Section Analysis**, the Board is not requiring that creditors use a certain paper size or present the entire table on a single page, but is requiring creditors that split the table onto two or more pages to include a reference indicating that additional important information regarding the account is presented on a separate page.

The Board also tested whether consumers' understanding of payment allocation practices could be improved through disclosure. The testing showed that a disclosure, even of the relatively simple payment allocation practice of applying payments to lower-interest balances before higher-interest balances,[5] improved understanding for very few consumers. The disclosure also confused some consumers who had understood payment allocation based on prior knowledge before reviewing the disclosure. Based on this result, and because of substantive protections adopted by the Board and other federal banking agencies published elsewhere in this **Federal Register**, the Board is not requiring a payment allocation disclosure in the summary table provided in direct-mail solicitations and applications or at account-opening.

With regard to periodic statements, the Board's testing consultant examined (i) the effectiveness of grouping transactions and fees on the periodic statement, (ii) consumers' understanding of the effective APR disclosure, (iii) the formatting and location of change-in-terms notices included with periodic statements, and (iv) the formatting and grouping of various payment information, including warnings about the effect of late payments and making only the minimum payment.

The testing demonstrated that grouping of fees and transactions, by type, separately on the periodic statement improved consumers' ability to find fees that were

[5] Under final rules issued by the Board and other federal banking agencies published elsewhere in today's **Federal Register**, issuers are prohibited from allocating payments to low-interest balances before higher-interest balances. However, the Board chose to test a disclosure of this practice in quantitative consumer testing because (i) it is currently the practice of many issuers and (ii) to test one of the simpler payment allocation methods on the assumption that consumers might be more likely to understand disclosure of a simpler payment allocation method than a more complex one.

charged to the account and also moderately improved consumers' ability to locate transactions. Grouping fees separately from transactions made it more difficult for some consumers to match a transaction fee to the relevant transaction, although most consumers could successfully match the transaction and fee regardless of how the transaction list was presented. As discussed in more detail in **VI. Section-by-Section Analysis**, the final rule requires grouping of fees and interest separate from transactions on the periodic statement, but the Board has provided flexibility for issuers to disclose transactions on the periodic statement.

With regard to the effective APR, testing overwhelmingly showed that few consumers understood the disclosure and that some consumers were less able to locate the interest rate applicable to cash advances when the effective APR also was disclosed on the periodic statement. Accordingly, and for the additional reasons discussed in more detail in **VI. Section-by-Section Analysis**, the final rule eliminates the requirement to disclose an effective APR for open-end (not home-secured) credit.

When a change-in-terms notice for the APR for purchases was included with the periodic statement, disclosure of a tabular summary of the change on the front of the statement moderately improved consumers' ability to identify the rate that would apply when the changes take effect. However, whether the tabular summary was presented on page one or page two of the statement did not have an effect on the ability of participants to notice or comprehend the disclosure. Thus, the final rule requires a tabular summary of key changes on the periodic statement, when a change-in-terms notice is included with the periodic statement, but permits creditors to disclose that summary on the front of any page of the statement.

The formatting of certain grouped information regarding payments, including the amount of the minimum payment, due date, and warnings regarding the effect of making late or minimum payments did not have an effect on consumers' ability to notice or comprehend these disclosures. Thus, while the final rule requires that this information be grouped, creditors are not required to format this information in any particular manner.

D. Other Outreach and Research

Throughout the Board's review of Regulation Z's rules affecting open-end (not home-secured) plans, the Board solicited input from members of the Board's Consumer Advisory Council on various issues. During 2005 and 2006, for example, the Council discussed the feasibility and advisability of reviewing Regulation Z in stages, ways to improve the summary table provided on or with credit card applications and solicitations, issues related to TILA's substantive protections (including dispute resolution procedures), and issues related to the Bankruptcy Act amendments. In 2007 and 2008, the Council discussed the June 2007 and May 2008 Proposals, respectively, and comments received by the Board in response to the proposals. In addition, Board met or conducted conference calls with various industry and consumer group representatives throughout the review process leading to the June 2007 and May 2008 Proposals. Consistent with the Bankruptcy Act, the Board also met with the other federal banking agencies, the National Credit Union Administration (NCUA), and the Federal Trade Commission (FTC) regarding the clear and conspicuous disclosure of certain information required by the Bankruptcy Act. The Board also reviewed disclosures currently provided by creditors, consumer complaints received by the federal banking agencies, and surveys on credit card usage to help inform the June 2007 Proposal.[6]

E. Reviewing Regulation Z in Stages

The Board is proceeding with a review of Regulation Z in stages. This final rule largely contains revisions to rules affecting open-end plans other than home-equity lines of credit (HELOCs) subject to § 226.5b. Possible revisions to rules affecting HELOCs will be considered in the Board's review of home-secured credit, currently underway. To minimize compliance burden for creditors offering HELOCs as well as other open-end credit, many of the open-end rules have been reorganized to delineate clearly the requirements for HELOCs and other forms of open-end credit. Although this reorganization increases the size of the regulation and commentary, the Board believes a clear delineation of rules for HELOCs and other forms of open-end credit pending the review of HELOC rules provides a clear compliance benefit to creditors.

In addition, as discussed elsewhere in this section and in **VI. Section-by-Section Analysis**, the Board has eliminated the requirement to disclose an effective annual percentage rate for open-end (not home-secured) credit. For a home-equity plan subject to § 226.5b, under the final rule a creditor has the option to disclose an effective APR (according to the current rules in Regulation Z for computing and disclosing the effective APR), or not to disclose an effective APR. The Board notes that the rules for computing and disclosing the effective APR for HELOCs could be the subject of comment during the review of rules affecting HELOCs.

---

[6] Surveys reviewed include: Thomas A. Durkin, Credit Cards: Use and Consumer Attitudes, 1970-2000, FEDERAL RESERVE BULLETIN, (September 2000); Thomas A. Durkin, Consumers and Credit Disclosures: Credit Cards and Credit Insurance, FEDERAL RESERVE BULLETIN (April 2002).

IV. The Board's Rulemaking Authority

TILA mandates that the Board prescribe regulations to carry out the purposes of the act. TILA also 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.

In adopting this final rule, the Board has considered the information collected from comment letters submitted in response to its ANPRs and the June 2007 and May 2008 Proposals, its experience in implementing and enforcing Regulation Z, and the results obtained from testing various disclosure options in controlled consumer tests. For the reasons discussed in this notice, the Board believes this final rule is appropriate to effectuate the purposes of TILA, to prevent the circumvention or evasion of TILA, and to facilitate compliance with the act.

Also as explained in this notice, the Board believes that the specific exemptions adopted are appropriate because the existing requirements do not provide a meaningful benefit to consumers in the form of useful information or protection. In reaching this conclusion, the Board considered (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. The rationales for these exemptions are explained in **VI. Section-by-Section Analysis**, below.

V. Discussion of Major Revisions

The goal of the revisions adopted in this final rule is to improve the effectiveness of the Regulation Z disclosures that must be provided to consumers for open-end accounts. A summary of the key account terms must accompany applications and solicitations for credit card accounts. For all open-end credit plans, creditors must disclose costs and terms at account opening, generally before the first transaction. Consumers must receive periodic statements of account activity, and creditors must provide notice before certain changes in the account terms may become effective.

To shop for and understand the cost of credit, consumers must be able to identify and understand the key terms of open-end accounts. However, the terms and conditions that impact credit card account pricing can be complex. The revisions to Regulation Z are intended to provide the most essential information to consumers when the information would be most useful to them, with content and formats that are clear and conspicuous.

The revisions are expected to improve consumers' ability to make informed credit decisions and enhance competition among credit card issuers. Many of the changes are based on the consumer testing that was conducted in connection with the review of Regulation Z.

In considering whether to adopt the revisions, the Board has also sought to balance the potential benefits for consumers with the compliance burdens imposed on creditors. For example, the revisions seek to provide greater certainty to creditors in identifying what costs must be disclosed for open-end plans, and when those costs must be disclosed. The Board has adopted the proposal that fees must be grouped on periodic statements, but has withdrawn from the final rule proposed requirements that would have required additional formatting changes to the periodic statement, such as the grouping of transactions, for which the burden to creditors may exceed the benefit to consumers. More effective disclosures may also reduce customer confusion and misunderstanding, which may also ease creditors' costs relating to consumer complaints and inquiries.

A. Credit Card Applications and Solicitations

Under Regulation Z, credit and charge card issuers are required to provide information about key costs and terms with their applications and solicitations.[7] This information is abbreviated, to help consumers focus on only the most important terms and decide whether to apply for the credit card account. If consumers respond to the offer and are issued a credit card, creditors must provide more detailed disclosures at account opening, generally before the first transaction occurs.

[7] Charge cards are a type of credit card for which full payment is typically expected upon receipt of the billing statement. To ease discussion, this notice will refer simply to "credit cards."

The application and solicitation disclosures are considered among the most effective TILA disclosures principally because they must be presented in a standardized table with headings, content, and format substantially similar to the model forms published by the Board. In 2001, the Board revised Regulation Z to enhance the application and solicitation disclosures by adding rules and guidance concerning the minimum type size and requiring additional fee disclosures.

Proposal. The proposal added new format requirements for the summary table[8], including rules regarding type size and use of boldface type for certain key terms, placement of information, and the use of cross-references. Content revisions included a requirement that creditors disclose the duration that penalty rates may be in effect, a shorter disclosure about variable rates, and a reference to consumer education materials available on the Board's Web site.

Summary of final rule.

Penalty pricing. The final rule makes several revisions that seek to improve consumers' understanding of default or penalty pricing. Currently, credit card issuers must disclose inside the table the APR that will apply in the event of the consumer's "default." Some creditors define a "default" as making one late payment or exceeding the credit limit once. The actions that may trigger the penalty APR are currently required to be disclosed outside the table.

Consumer testing indicated that many consumers did not notice the information about penalty pricing when it was disclosed outside the table. Under the final rule, card issuers are required to include in the table the specific actions that trigger penalty APRs (such as a late payment), the rate that will apply and the circumstances under which the

[8] This table is commonly referred to as the "Schumer box."

penalty rate will expire or, if true, the fact that the penalty rate could apply indefinitely. The regulation requires card issuers to use the term "penalty APR" because the testing demonstrated that some consumers are confused by the term "default rate."

Similarly, the final rule requires card issuers to disclose inside (rather than outside) the table the fees for paying late, exceeding a credit limit, or making a payment that is returned. Cash advance fees and balance transfer fees also must be disclosed inside the table. This change is also based on consumer testing results; fees disclosed outside the table were often not noticed. Requiring card issuers to disclose returned-payment fees, required credit insurance, debt suspension, or debt cancellation coverage fees, and foreign transaction fees are new disclosures.

<u>Variable-rate information</u>. Currently, applications and solicitations offering variable APRs must disclose inside the table the index or formula used to make adjustments and the amount of any margin that is added. Additional details, such as how often the rate may change, must be disclosed outside the table. Under the final rule, information about variable APRs is reduced to a single phrase indicating the APR varies "with the market," along with a reference to the type of index, such as "Prime." Consumer testing indicated that few consumers use the variable-rate information when shopping for a card. Moreover, participants were distracted or confused by details about margin values, how often the rate may change, and where an index can be found.

<u>Subprime accounts</u>. The final rule addresses a concern that has been raised about subprime credit cards, which are generally offered to consumers with low credit scores or credit problems. Subprime credit cards often have substantial fees associated with opening the account. Typically, fees for the issuance or availability of credit are billed to

consumers on the first periodic statement, and can substantially reduce the amount of credit available to the consumer. For example, the initial fees on an account with a $250 credit limit may reduce the available credit to less than $100. Consumer complaints received by the federal banking agencies state that consumers were unaware when they applied for subprime cards of how little credit would be available after all the fees were assessed at account opening.

The final rule requires additional disclosures if the card issuer requires fees or a security deposit to issue the card that are 15 percent or more of the minimum credit limit offered for the account. In such cases, the card issuer is required to include an example in the table of the amount of available credit the consumer would have after paying the fees or security deposit, assuming the consumer receives the minimum credit limit.

Balance computation methods. TILA requires creditors to identify their balance computation method by name, and Regulation Z requires that the disclosure be inside the table. However, consumer testing demonstrates that these names hold little meaning for consumers, and that consumers do not consider such information when shopping for accounts. The final rule requires creditors to place the name of the balance computation method outside the table, so that the disclosure does not detract from information that is more important to consumers.

Description of grace period. The final rule requires card issuers to use the heading “How to Avoid Paying Interest on Purchases” on the row describing a grace period offered on all purchases, and the phrase “Paying Interest” if a grace period is not offered on all purchases. Consumer testing indicates consumers do not understand the term “grace period” as a description of actions consumers must take to avoid paying interest.

B. Account-Opening Disclosures

Regulation Z requires creditors to disclose costs and terms before the first transaction is made on the account. The disclosures must specify the circumstances under which a “finance charge” may be imposed and how it will be determined.
A “finance charge” is any charge that may be imposed as a condition of or an incident to the extension of credit, and includes, for example, interest, transaction charges, and minimum charges. The finance charge disclosures include a disclosure of each periodic rate of interest that may be applied to an outstanding balance (e.g., purchases, cash advances) as well as the corresponding annual percentage rate (APR). Creditors must also explain any grace period for making a payment without incurring a finance charge. In addition, they must disclose the amount of any charge other than a finance charge that may be imposed as part of the credit plan (“other charges”), such as a late-payment charge. Consumers’ rights and responsibilities in the case of unauthorized use or billing disputes must also be explained. Currently, there are few format requirements for these account-opening disclosures, which are typically interspersed among other contractual terms in the creditor’s account agreement.

Proposal. Certain key terms were proposed to be disclosed in a summary table at account opening, which would be substantially similar to the table required for applications and solicitations. A different approach to disclosing fees was proposed, including providing creditors with flexibility to disclose charges (other than those in the summary table) in writing or orally after the account is opened, but before the charge is imposed.

Summary of final rule.

Account-opening summary table. Account-opening disclosures have often been criticized because the key terms TILA requires to be disclosed are often interspersed within the credit agreements, and such agreements are long and complex. To address this concern and make the information more conspicuous, the final rule requires creditors to provide at account-opening a table summarizing key terms. Creditors may continue, however, to provide other account-opening disclosures, aside from the fees and terms specified in the table, with other terms in their account agreements.

The new table provided at account opening is substantially similar to the table provided with direct-mail credit card applications and solicitations. Consumer testing indicates that consumers generally are aware of the table on applications and solicitations. Consumer testing also indicates that consumers may not typically read their account agreements, which are often in small print and dense prose. Thus, setting apart the most important terms in a summary table will better ensure that consumers are aware of those terms.

The table required at account opening includes more information than the table required at application. For example, it includes a disclosure whether or not there is a grace period for all features of an account. For subprime credit cards, to give consumers the opportunity to avoid fees, the final rule also requires issuers to provide consumers at account opening, a notice about the right to reject a plan when fees have been charged but the consumer has not used the plan. However, to reduce compliance burden for creditors that provide account-opening disclosures at application, the final rule allows creditors to provide the more specific and inclusive account-opening table at application in lieu of the table otherwise required at application.

How charges are disclosed. Under the current rules, a creditor must disclose any “finance charge” or “other charge” in the account-opening disclosures. A subsequent notice is required if one of the fees disclosed at account opening increases or if certain fees are newly introduced during the life of the plan. The terms “finance charge” and “other charge” are given broad and flexible meanings in the regulation and commentary. This ensures that TILA adapts to changing conditions, but it also creates uncertainty. The distinctions among finance charges, other charges, and charges that do not fall into either category are not always clear. As creditors develop new kinds of services, some find it difficult to determine if associated charges for the new services meet the standard for a “finance charge” or “other charge” or are not covered by TILA at all. This uncertainty can pose legal risks for creditors that act in good faith to comply with the law. Examples of included or excluded charges are in the regulation and commentary, but these examples cannot provide definitive guidance in all cases. Creditors are subject to civil liability and administrative enforcement for under-disclosing the finance charge or otherwise making erroneous disclosures, so the consequences of an error can be significant. Furthermore, over-disclosure of rates and finance charges is not permitted by Regulation Z for open-end credit.

The fee disclosure rules also have been criticized as being outdated. These rules require creditors to provide fee disclosures at account opening, which may be months, and possibly years, before a particular disclosure is relevant to the consumer, such as when the consumer calls the creditor to request a service for which a fee is imposed. In addition, an account-related transaction may occur by telephone, when a written disclosure is not feasible.

The final rule is intended to respond to these criticisms while still giving full effect to TILA's requirement to disclose credit charges before they are imposed. Accordingly, the rules are revised to (1) specify precisely the charges that creditors must disclose in writing at account opening (interest, minimum charges, transaction fees, annual fees, and penalty fees such as for paying late), which must be listed in the summary table, and; (2) permit creditors to disclose other less critical charges orally or in writing before the consumer agrees to or becomes obligated to pay the charge. Although the final rule permits creditors to disclose certain costs orally for purposes of TILA, the Board anticipates that creditors will continue to identify fees in the account agreement for contract or other reasons.

Under the final rule, some charges are covered by TILA that the current regulation, as interpreted by the staff commentary, excludes from TILA coverage, such as fees for expedited payment and expedited delivery. It may not have been useful to consumers to cover such charges under TILA when such coverage would have meant only that the charges were disclosed long before they became relevant to the consumer. The Board believes it will be useful to consumers to cover such charges under TILA as part of a rule that permits their disclosure at a time and in a manner that consumers would be likely to notice the disclosure of the charge. Further, as new services (and associated charges) are developed, the proposal minimizes risk of civil liability as well as inconsistency among creditors associated with the determination as to whether a fee is a finance charge or an other charge, or is not covered by TILA at all.

C. Periodic Statements

Creditors are required to provide periodic statements reflecting the account activity for the billing cycle (typically, about one month). In addition to identifying each transaction on the account, creditors must identify each "finance charge" using that term, and each "other charge" assessed against the account during the statement period. When a periodic interest rate is applied to an outstanding balance to compute the finance charge, creditors must disclose the periodic rate and its corresponding APR. Creditors must also disclose an "effective" or "historical" APR for the billing cycle, which, unlike the corresponding APR, includes not just interest but also finance charges imposed in the form of fees (such as cash advance fees or balance transfer fees). Periodic statements must also state the time period a consumer has to pay an outstanding balance to avoid additional finance charges (the "grace period"), if applicable.

Proposal. Interest charges for different types of transactions, such as purchases and cash advances would be itemized, and separate totals of fees and interest for the month and year-to-date would be disclosed. The proposal offered two approaches regarding the "effective APR." One modified the provisions for disclosing the "effective APR," including format and terminology requirements,[9] and the other solicited comment on whether this rate should be required to be disclosed. To implement changes required by the Bankruptcy Act, the proposal required creditors to disclose of the effect of making only the minimum required payment on repayment of balances.

[9] The "effective" APR reflects interest and other finance charges such as cash advance fees or balance transfer fees imposed for the billing cycle.

Summary of final rule.

Fees and interest costs. The final rule contains a number of revisions to the periodic statement to improve consumers' understanding of fees and interest costs. Currently, creditors must identify on periodic statements any "finance charges" added to the account during the billing cycle, and creditors typically intersperse these charges with other transactions, such as purchases, chronologically on the statement. The finance charges must be itemized by type. Thus, interest charges might be described as "finance charges due to periodic rates." Charges such as late payment fees, which are not "finance charges," are typically disclosed individually and are interspersed among other transactions.

Consumer testing indicated that consumers generally understand that "interest" is the cost that results from applying a rate to a balance over time and distinguish "interest" from other fees, such as a cash advance fee or a late payment fee. Consumer testing also indicated that many consumers more easily determine the number and amount of fees when the fees are itemized and grouped together.

Thus, under the final rule, creditors are required to group all fees together and to separately itemize interest charges by transaction type, and describe them in a manner consistent with consumers' general understanding of costs ("interest charge" or "fee"), without regard to whether the charges are considered "finance charges," "other charges," or neither. Interest charges must be identified by type (for example, interest on purchases or interest on balance transfers) as must fees (for example, cash advance fee or late-payment fee).

Consumer testing also indicated that many consumers more quickly and accurately determined the total dollar cost of credit for the billing cycle when a total dollar amount of fees for the cycle was disclosed. Thus, the final rule requires creditors to disclose the (1) total fees and (2) total interest imposed for the cycle. Creditors must also disclose year-to-date totals for interest charges and fees. For many consumers, costs disclosed in dollars are more readily understood than costs disclosed as percentage rates. The year-to-date figures are intended to assist consumers in better understanding the overall cost of their credit account and are an important disclosure and an effective aid in understanding annualized costs. The Board believes these figures will better ensure consumers understand the cost of credit than the effective APR currently provided on periodic statements.

<u>The effective APR</u>. The "effective" APR disclosed on periodic statements reflects the cost of interest and certain other finance charges imposed during the statement period. For example, for a cash advance, the effective APR reflects both interest and any flat or proportional fee assessed for the advance.

For the reasons discussed below, the Board is eliminating the requirement to disclose the effective APR.

Consumer testing conducted prior to the June 2007 Proposal, in March 2008, and after the May 2008 Proposal demonstrates that consumers find the current disclosure of an APR that combines rates and fees to be confusing. The June 2007 Proposal would have required disclosure of the nominal interest rate and fees in a manner that is more readily understandable and comparable across institutions. The Board believes that this approach can better inform consumers and further the goals of consumer protection and the informed use of credit for all types of open-end credit.

The Board also considered whether there were potentially competing considerations that would suggest retention of the requirement to disclose an effective APR. First, the Board considered the extent to which "sticker shock" from the effective APR benefits consumers, even if the disclosure may not enable consumers to meaningfully compare costs from month to month or between different credit products. A second consideration is whether the effective APR may be a hedge against fee-intensive pricing by creditors, and if so, the extent to which it promotes transparency. On balance, however, the Board believes that the benefits of eliminating the requirement to disclose the effective APR outweigh these considerations.

The consumer testing conducted for the Board strongly supports this determination. Although in one round of testing conducted prior to the June 2007 Proposal a majority of participants evidenced some understanding of the effective APR, the overall results of the testing show that most consumers do not correctly understand the effective APR. Some consumers in the testing offered no explanation of the difference between the corresponding and effective APR, and others appeared to have an incorrect understanding. The results were similar in the consumer testing conducted in March 2008 and after the May 2008 proposal; in all rounds of the testing, a majority of participants did not offer a correct explanation of the effective APR. In quantitative testing conducted for the Board in the fall of 2008, only 7% of consumers answered a question correctly that was designed to test their understanding of the effective APR. In addition, including the effective APR on the statement had an adverse effect on some consumers' ability to identify the interest rate applicable to the account.

Even if some consumers have some understanding of the effective APR, the Board believes sound reasons support eliminating the requirement for its disclosure. Disclosure of the effective APR on periodic statements does not assist consumers in credit shopping, because the effective APR disclosed on a statement on one credit card account cannot be compared to the nominal APR disclosed on a solicitation or application for another credit card account. In addition, even for the same account, the effective APR for a given cycle is unlikely to accurately indicate the cost of credit in a future cycle, because if any of several factors (such as timing of transactions and payments) is different in the future cycle, the effective APR will be different even if the amount of the transaction is the same. As to suggestions that the effective APR for a particular billing cycle provides the consumer a rough indication that it is costly to engage in transactions that trigger transaction fees, the Board believes the requirements adopted in the final rule to disclose interest and fee totals for the cycle and year-to-date will better serve the same purpose. In addition, the interest and fee total disclosure requirements should address concerns that elimination of the effective APR would remove disincentives for creditors to introduce new fees.

Transactions. Currently, there are no format requirements for disclosing different types of transactions, such as purchases, cash advances, and balance transfers on periodic statements. Often, transactions are presented together in chronological order. Consumer testing indicated that participants found it helpful to have similar types of transactions grouped together on the statement. Consumers also found it helpful, within the broad grouping of fees and transactions, when transactions were segregated by type (e.g., listing all purchases together, separate from cash advances or balance transfers). Further, consumers noticed fees and interest charges more readily when they were located near the transactions. For these reasons, the final rule requires creditors to group fees and interest charges together, itemized by type, with the list of transactions. The Board has not adopted the proposed requirement that creditors group transactions by type on the periodic statement. In consumer testing, most consumers indicated that they review the transactions on their periodic statements, and grouping transactions together only moderately improved consumers' ability to locate transactions compared to when the transaction list was presented chronologically. In addition, the cost to creditors of reformatting periodic statements to group transactions by type appears to outweigh any benefit to consumers.

Late payments. Currently, creditors must disclose the date by which consumers must pay a balance to avoid finance charges. Creditors must also disclose any cut-off time for receiving payments on the payment due date; this is usually disclosed on the reverse side of periodic statements. The Bankruptcy Act amendments expressly require creditors to disclose the payment due date (or if different, the date after which a late-payment fee may be imposed) along with the amount of the late-payment fee.

Under the final rule, creditors are required to disclose the payment due date on the front side of the periodic statement. Creditors also are required to disclose, in close proximity to the due date, the amount of the late-payment fee and the penalty APR that could be triggered by a late payment, to alert consumers to the consequence of paying late.

Minimum payments. The Bankruptcy Act requires creditors offering open-end plans to provide a warning about the effects of making only minimum payments. The proposal would implement this requirement solely for credit card issuers. Under the final rule, card issuers must provide (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 a specified balance in full if only minimum payments are made; and (3) a toll-free telephone number that consumers may call to obtain an estimate of the time it would take to repay their actual account balance using minimum payments. Most card issuers must establish and maintain their own toll-free telephone numbers to provide the repayment estimates. However, the Board is required to establish and maintain, for two years, a toll-free telephone number for creditors that are depository institutions having assets of $250 million or less. This number is for the customers of those institutions to call to get answers to questions about how long it will take to pay their account in full making only the minimum payment. The FTC must maintain a similar toll-free telephone number for use by customers of creditors that are not depository institutions. In order to standardize the information provided to consumers through the toll-free telephone numbers, the Bankruptcy Act amendments direct 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 ("generic repayment estimate").

Pursuant to the Bankruptcy Act amendments, the final rule also allows a card issuer to establish a toll-free telephone number to provide customers with the actual number of months that it will take consumers to repay their outstanding balance ("actual repayment disclosure") instead of providing an estimate based on the Board-created table. A card issuer that does so need not include a hypothetical example on its periodic statements, but must disclose the warning statement and the toll-free telephone number.

The final rule also allows card issuers to provide the actual repayment disclosure on their periodic statements. Card issuers are encouraged to use this approach. Participants in consumer testing who typically carry credit card balances (revolvers) found an estimated repayment period based on terms that apply to their own account more useful than a hypothetical example. To encourage card issuers to provide the actual repayment disclosure on their periodic statements, the final rule provides that if card issuers do so, they need not disclose the warning, the hypothetical example and a toll-free telephone number on the periodic statement, nor need they maintain a toll-free telephone number to provide the actual repayment disclosure.

As described above, the Bankruptcy Act also requires the Board to develop a "table" that creditors, the Board and the FTC must use to create generic repayment estimates. Instead of creating a table, the final rule contains guidance for how to calculate generic repayment estimates. Consumers that call the toll-free telephone number may be prompted to input information about their outstanding balance and the APR applicable to their account. Although issuers have the ability to program their systems to obtain consumers' account information from their account management systems, for the reasons discussed in the section-by-section analysis to Appendix M1 to part 226, the final rule does not require issuers to do so.

D. <u>Changes in Consumer's Interest Rate and Other Account Terms</u>

Regulation Z requires creditors to provide advance written notice of some changes to the terms of an open-end plan. The proposal included several revisions to Regulation Z's requirements for notifying consumers about such changes.

Currently, Regulation Z requires creditors to send, in most cases, notices 15 days before the effective date of certain changes in the account terms. However, creditors need not inform consumers in advance if the rate applicable to their account increases due to default or delinquency. Thus, consumers may not realize until they receive their monthly statement for a billing cycle that their late payment triggered application of the higher penalty rate, effective the first day of the month's statement.

Proposal. The proposal generally would have increased advance notice before a changed term, such as a rate increase due to a change in the contract, can be imposed from 15 to 45 days. The proposal also would have required creditors to provide 45 days' prior notice before the creditor increases a rate due to the consumer's delinquency or default or as a penalty. When a change-in-terms notice accompanies a periodic statement, the proposal would have required a tabular disclosure on the front of the first page of the periodic statement of the key terms being changed.

Summary of final rule.

Timing. Under the final rule, creditors generally must provide 45 days' advance notice prior to a change in any term required to be disclosed in the tabular disclosure provided at account-opening, as discussed above. This increase in the advance notice for a change in terms is intended to give consumers approximately a month to act, either to change their usage of the account or to find an alternative source of financing before the change takes effect.

Penalty rates. Currently, creditors must inform consumers about rates that are increased due to default or delinquency, but not in advance of implementation of the increase. Contractual thresholds for default are sometimes very low, and currently penalty pricing commonly applies to all existing balances, including low-rate promotional balances.

The final rule generally requires creditors to provide 45 days' advance notice before rate increases due to the consumer's delinquency or default or as a penalty, as proposed. Permitting creditors to apply the penalty rate immediately upon the consumer triggering the rate may lead to undue surprise and insufficient time for a consumer to consider alternative options regarding use of the card. Even though the final rule contain provisions intended to improve disclosure of penalty pricing at account opening, the Board believes that consumers will be more likely to notice and be motivated to act if they receive a specific notice alerting them of an imminent rate increase, rather than a general disclosure stating the circumstances when a rate might increase.

When asked which terms were the most important to them when shopping for an account, participants in consumer testing seldom mentioned the penalty rate or penalty rate triggers. Some consumers may not find this information relevant when shopping for or opening an account because they do not anticipate that they will trigger penalty pricing. As a result, they may not recall this information later, after they have begun using the account, and may be surprised when penalty pricing is subsequently imposed.

In addition, the Board believes that the notice required by § 226.9(g) is the most effective time to inform consumers of the circumstances under which penalty rates can be applied to their existing balances for the reasons discussed above and in **VI. Section-by-Section Analysis**.

Format. Currently, there are few format requirements for change-in-terms disclosures. As with account-opening disclosures, creditors commonly intersperse change-in-terms notices with other amendments to the account agreement, and both are provided in pamphlets in small print and dense prose. Consumer testing indicates many consumers set aside and do not read densely-worded pamphlets.

Under the final rule, creditors may continue to notify consumers about changes to terms required to be disclosed by Regulation Z, together with other changes to the account agreement. However, if a changed term is one that must be provided in the account-opening summary table, creditors must provide that change in a summary table to enhance the effectiveness of the change-in-terms notice. Consumer testing conducted for the Board suggests that consumer understanding of change in terms notices is improved by presentation of that information in a tabular format.

Creditors commonly enclose notices about changes to terms or rates with periodic statements. Under the final rule, if a notice enclosed with a periodic statement discusses a change to a term that must be disclosed in the account-opening summary table, or announces that a penalty rate will be imposed on the account, a table summarizing the impending change must appear on the periodic statement. The table must appear on the front of the periodic statement, although it is not required to appear on the first page. Consumers who participated in testing often set aside change-in-terms pamphlets that accompanied periodic statements, while participants uniformly looked at the front side of periodic statements.

E. Advertisements

Currently, creditors that disclose certain terms in advertisements must disclose additional information, to help ensure consumers understand the terms of credit being offered.

Proposal. For advertisements that state a minimum monthly payment on a plan offered to finance the purchase of goods or services, additional information must also be stated about the time period required to pay the balance and the total of payments if only minimum payments are made. The proposal also limited the circumstances under which advertisements may refer to a rate as "fixed."

Summary of final rule.

Advertising periodic payments. Consumers commonly are offered the option to finance the purchase of goods or services (such as appliances or furniture) by establishing an open-end credit plan. The periodic payments (such as $20 a week or $45 per month) associated with the purchase are often advertised as part of the offer. Under current rules, advertisements for open-end credit plans are not required to include information about the time it will take to pay for a purchase or the total cost if only periodic payments are made; if the transaction were a closed-end installment loan, the number of payments and the total cost would be disclosed. Under the final rule, advertisements stating a periodic payment amount for an open-end credit plan that would be established to finance the purchase of goods or services must state, in equal prominence to the periodic payment amount, the time period required to pay the balance and the total of payments if only periodic payments are made.

Advertising "fixed" rates. Creditors sometimes advertise the APR for open-end accounts as a "fixed" rate even though the creditor reserves the right to change the rate at any time for any reason. Consumer testing indicated that many consumers believe that a "fixed rate" will not change, and do not understand that creditors may use the term "fixed" as a shorthand reference for rates that do not vary based on changes in an index or formula. Under the final rule, an advertisement may refer to a rate as "fixed" if the advertisement specifies a time period the rate will be fixed and the rate will not increase during that period. If a time period is not specified, the advertisement may refer to a rate as "fixed" only if the rate will not increase while the plan is open.

F. Other Disclosures and Protections

"Open-end" plans comprised of closed-end features. Some creditors give open-end credit disclosures on credit plans that include closed-end features, that is, separate loans with fixed repayment periods. These creditors treat these loans as advances on a revolving credit line for purposes of Regulation Z even though the consumer's credit information is separately evaluated, the consumer may have to complete a separate application for each "advance," and the consumer's payments on the "advance" do not replenish the line. Provisions in the commentary lend support to this approach.

Proposal. The proposal would have revised these provisions to indicate closed-end disclosures rather than open-end disclosures are appropriate when advances that are individually approved and underwritten are being extended, or if payments made on a particular sub-account do not replenish the credit line available for that sub-account.

Summary of final rule. The final rule generally adopts the proposal that would clarify that credit is not properly characterized as open-end credit if individual advances are separately underwritten. The proposed revision that would have required that payments on a sub-account of an open-end credit plan replenish that sub-account has been withdrawn, because of concerns that this revision would have had unintended consequences for credit cards and HELOCs that the Board believes are appropriately treated as open-end credit.

Checks that access a credit card account. Many credit card issuers provide accountholders with checks that can be used to obtain cash, pay the outstanding balance on another account, or purchase goods and services directly from merchants. The solicitation letter accompanying the checks may offer a low promotional APR for transactions that use the checks. The proposed revisions would require the checks mailed by card issuers to be accompanied by cost disclosures.

Currently, creditors need not disclose costs associated with using the checks if the finance charges that would apply (that is, the interest rate and transaction fees) have been previously disclosed, such as in the account agreement. If the check is sent 30 days or more after the account is opened, creditors must refer consumers to their account agreements for more information about how the rate and fees are determined.

Consumers may receive these checks throughout the life of the credit card account. Thus, significant time may elapse between the time account-opening disclosures are provided and the time a consumer considers using the check. In addition, consumer testing indicates that consumers may not notice references to other documents such as the account-opening disclosures or periodic statements for rate information because they tend to look for rates and dollar figures when reviewing the information accompanying access checks.

Proposal. Under the proposal, checks that can access credit card accounts would have been required to be accompanied by information about the rates and fees that will apply if the checks are used, about whether a grace period exists, and any date by which the consumer must use the checks in order to receive any discounted initial rate offered on the checks. This information would have been required to be presented in a table, on the front side of the page containing the checks.

Summary of final rule. The final rule requires the following key terms to be disclosed in a summary table on the front of the page containing checks that access credit card accounts: (1) any discounted initial rate, and when that rate will expire, if applicable; (2) the type of rate that will apply to the checks after expiration of any discounted initial rate (such as whether the purchase or cash advance rate applies) and the applicable APR; (3) any transaction fees applicable to the checks; (4) whether a grace period applies to the checks, and if one does not apply, that interest will be charged immediately; and (5) any date by which the consumer must use the checks in order to receive any discounted initial rate offered on the checks.

The final rule requires that the tabular disclosure accompanying checks that access a credit card account include a disclosure of the actual rate or rates applicable to the checks. While the actual post-promotional rate disclosed at the time the checks are sent to a consumer may differ from the rate disclosed by the time it becomes applicable to the consumer's account (if it is a variable rate tied to an index), disclosure of the actual post-promotional rate in effect at the time that the checks are sent to the consumer is an important piece of information for the consumer to use in making an informed decision about whether to use the checks. Consumer testing suggests that a disclosure of the actual rate, rather than a toll-free number, also will help to enhance consumer understanding regarding the rate that will apply when the promotional rate expires.

Cut-off times and due dates for mailing payments. TILA generally requires that payments be credited to a consumer's account as of the date of receipt, provided the payment conforms to the creditor's instructions. Under Regulation Z, creditors are permitted to specify reasonable cut-off times for receiving payments on the due date. Some creditors use different cut-off times depending on the payment method. Consumer groups and others have raised concerns that the use of certain cut-off times may effectively result in a due date that is one day earlier than the due date disclosed. In addition, in response to the June 2007 Proposal, consumer commenters urged the Board to address creditors' practice of using due dates on days that the creditor does not accept payments, such as weekends or holidays.

Proposal. The May 2008 Regulation Z Proposal provided that it would be unreasonable for a creditor to require that mailed payments be received earlier than 5:00 p.m. on the due date in order to be considered timely. In addition, the proposal would have provided that if a creditor does not receive and accept mailed payments on the due date (e.g., a Sunday or holiday), a payment received on the next business day is timely.

Recommendation. The draft final rule adopts the proposal regarding weekend and holiday due dates. In addition, the draft final rule adopts a modified version of the 5 p.m. cut-off time proposal to provide that a 5 p.m. cut-off time is an example of a reasonable requirement for payments.

<u>Credit insurance, debt cancellation, and debt suspension coverage</u>. Under Regulation Z, premiums for credit life, accident, health, or loss-of-income insurance are considered finance charges if the insurance is written in connection with a credit transaction. However, these costs may be excluded from the finance charge and APR (for both open-end and closed-end credit transactions), if creditors disclose the cost and the fact that the coverage is not required to obtain credit, and the consumer signs or initials an affirmative written request for the insurance. Since 1996, the same rules have applied to creditors' "debt cancellation" agreements, in which a creditor agrees to cancel the debt, or part of it, on the occurrence of specified events.

<u>Proposal and summary of final rule</u>. As proposed, the existing rules for debt cancellation coverage were applied to "debt suspension" coverage (for both open-end credit and closed-end transactions). "Debt suspension" products are related to, but different from, debt cancellation products. Debt suspension products merely defer consumers' obligation to make the minimum payment for some period after the occurrence of a specified event. During the suspension period, interest may continue to accrue, or it may be suspended as well. Under the proposal, to exclude the cost of debt suspension coverage from the finance charge and APR, creditors would have been required to inform consumers that the coverage suspends, but does not cancel, the debt.

Under the current rules, charges for credit insurance and debt cancellation coverage are deemed not to be finance charges if a consumer requests coverage after an open-end credit account is opened or after a closed-end credit transaction is consummated because the coverage is deemed not to be "written in connection" with the credit transaction. Since the charges are defined as non-finance charges in such cases, Regulation Z does not require a disclosure or written evidence of consent to exclude them from the finance charge. The proposal would have implemented a broader interpretation of "written in connection" with a credit transaction and required creditors to provide disclosures, and obtain evidence of consent, on sales of credit insurance or debt cancellation or suspension coverage during the life of an open-end account. If a consumer requests the coverage by telephone, creditors would have been permitted to provide the disclosures orally, but in that case they would have been required to mail written disclosures within three days of the call.[10] The final rule is unchanged from the proposal.

VI. Section-by-Section Analysis

In reviewing the rules affecting open-end credit, the Board proposed in June 2007 to reorganize some provisions to make the regulation easier to use. Rules affecting home-equity lines of credit (HELOCs) subject to § 226.5b would have been separately delineated in § 226.6 (account-opening disclosures), § 226.7 (periodic statements), and § 226.9 (subsequent disclosures). Rules contained in footnotes would have been moved to the text of the regulation or commentary, as appropriate, and the footnotes designated as reserved. Commenters generally supported this approach. One commenter questioned retaining the footnotes as reserved and suggested deleting references to the footnotes entirely. The final rule is organized, and rules currently stated in footnotes have been moved, as proposed. These revisions are identified in a table below. See **X. Redesignation Table.** The Board retains footnotes as "reserved" to preserve the current

[10] The revisions to Regulation Z requiring disclosures to be mailed within three days of a telephone request for these products are consistent with the rules of the federal banking agencies governing insured depository institutions' sales of insurance and with guidance published by the Office of the Comptroller of the Currency (OCC) concerning national banks' sales of debt cancellation and debt suspension products.

footnote numbers in provisions of Regulation Z that will be the subject of future rulemakings. When rules contained in all footnotes have been moved to the regulation or commentary, as appropriate, references to the footnotes will be removed.

Introduction

The official staff commentary to Regulation Z begins with an Introduction. Comment I-6 discusses reference materials published at the end of each section of the commentary adopted in 1981. 46 FR 50288, Oct. 9, 1981. The references were intended as a compliance aid during the transition to the 1981 revisions to Regulation Z. In June 2007, the Board proposed to delete provisions addressing references and transition rules applicable to 1981 revisions to Regulation Z. No comments were received. Thus, the Board deletes the references and comments I-3, I-4(b), I-6, and I-7, as obsolete and renumbers the remaining comments accordingly.

Section 226.1 Authority, Purpose, Coverage, Organization, Enforcement, and Liability

Section 226.1(c) generally outlines the persons and transactions covered by Regulation Z. Comment 1(c)-1 provides, in part, that the regulation applies to consumer credit extended to residents (including resident aliens) of a state. In June 2007, technical revisions were proposed for clarity, and comment was requested if further guidance on the scope of coverage would be helpful. No comments were received and the comment is adopted with technical revisions for clarity.

Section 226.1(d)(2), which summarizes the organization of the regulation's open-end credit rules (Subpart B), is amended to reinsert text inadvertently deleted in a previous rulemaking, as proposed. See 54 FR 24670, June 9, 1989. Section 226.1(d)(4), which summarizes miscellaneous provisions in the regulation (Subpart D), is updated to describe amendments made in 2001 to Subpart D relating to disclosures made in languages other than English, as proposed. See 66 FR 17339, Mar. 30, 2001. The substance of Footnote 1 is deleted as unnecessary, as proposed.

In July 2008, the Board revised Subpart E to address certain mortgage practices and disclosures. These changes are reflected in § 226.1(d)(5), as amended in the July 2008 Final HOEPA Rule. In addition, transition rules for the July 2008 rulemaking are added as comment 1(d)(5)-1. 73 FR 44522, July 30, 2008.

Section 226.2 Definitions and Rules of Construction

2(a) Definitions

2(a)(2) Advertisement

In the June 2007 Proposal, the Board proposed technical revisions to the commentary to § 226.2(a)(2), with no intended change in substance or meaning. No changes were proposed for the regulatory text. The Board received no comments on the proposed changes, and the changes are adopted as proposed.

2(a)(4) Billing cycle or cycle

Section 226.2(a)(4) defines "billing cycle" as the interval between the days or dates of regular periodic statements, and requires that billing cycles be equal (with a permitted variance of up to four days from the regular day or date) and no longer than a quarter of a year. Comment 2(a)(4)-3 states that the requirement for equal cycles does not apply to transitional billing cycles that occur when a creditor occasionally changes its billing cycles to establish a new statement day or date. The Board proposed in June 2007 to revise comment 2(a)(4)-3 to clarify that this exception also applies to the first billing cycle that occurs when a consumer opens an open-end credit account.

Few commenters addressed this provision. One creditor requested that the Board clarify that the proposed revision applies to the time period between the opening of the account and the generation of the first periodic statement (as opposed to the period between the generation of the first statement and the generation of the second statement). The comment has been revised to provide the requested clarification.

The same commenter also requested clarification that the same exception would apply when a previously closed account is reopened. The reopening of a previously closed account is no different, for purposes of comment 2(a)(4)-3, from the original opening of an account; therefore, this clarification is unnecessary. A consumer group suggested that an irregular first billing cycle should be limited to no longer than twice the length of a regular billing cycle, and that irregular billing cycles should permitted no more than once per year. The Board believes that these limitations might unduly restrict creditors' operations. Although it would be unlikely for a creditor to utilize a billing cycle more than twice the length of the regular cycle, or an irregular billing cycle more often than once per year, such cycles might need to be used on rare occasions for operational reasons.

2(a)(6) Business Day

Section 226.2(a)(6) and comment 2(a)(6)-2, as reprinted, reflect revisions adopted in the Board's July 2008 Final HOEPA Rule to address certain mortgage practices and disclosures. 73 FR 44522, 44599, 44605, July 30, 2008.

2(a)(15) Credit Card

TILA defines "credit card" as "any card, plate, coupon book or other credit device existing for the purpose of obtaining money, property, labor, or services on credit." TILA Section 103(k); 15 U.S.C. 1602(k). In addition, Regulation Z currently provides that a credit card is a "card, plate, coupon book, or other single credit device that may be used from time to time to obtain credit." <u>See</u> § 226.2(a)(15).

<u>Checks that access credit card accounts</u>. Credit card issuers sometimes provide cardholders with checks that access a credit card account (access checks), which can be used to obtain cash, purchase goods or services or pay the outstanding balance on another account. These checks are often mailed to cardholders on an unsolicited basis, sometimes with their monthly statements. When a consumer uses an access check, the amount of the check is billed to the consumer's credit card account.

Historically, checks that access credit card accounts have not been treated as "credit cards" under TILA because each check can be used only once and not "from time to time." <u>See</u> comment 2(a)(15)-1. As a result, TILA's protections involving merchant disputes, unauthorized use of the account, and the prohibition against unsolicited issuance, which apply only to "credit cards," do not apply to transactions involving these checks. <u>See</u> § 226.12. Nevertheless, billing error rights apply with to these check transactions. <u>See</u> § 226.13. In the June 2007 Proposal, the Board declined to extend TILA's protections for credit cards to access checks.

While industry commenters generally supported the Board's approach, consumer groups asserted that excluding access checks from treatment as credit cards does not adequately protect consumers, particularly insofar as consumers would not be able to assert unauthorized use claims under § 226.12(b). Consumer groups thus observed that the current rules lead to an anomalous result where a consumer would be protected from unauthorized use under § 226.12(b) if a thief used the consumer's credit card number to initiate a credit card transaction by telephone or on-line, but would not be similarly protected if the thief used the consumer's access check to complete the same transaction. Consumer groups also observed that consumers would be unable to assert a merchant claim or defense under § 226.12(c) in connection with a good or service purchased with an access check, nor would they be protected by the unsolicited issuance provisions in § 226.12(a).

As stated in the proposal, the Board believes that existing provisions under state law governing checks, specifically the Uniform Commercial Code (UCC), coupled with the billing error provisions under § 226.13, provide consumers with appropriate protections from the unauthorized use of access checks. For example, a consumer generally would not have any liability for a forged access check under the UCC, provided that the consumer complies with certain timing requirements in reporting the forgery. In addition, in the event the consumer asserts a timely notice of error for an unauthorized transaction involving an access check under § 226.13, the consumer would not have any liability if the creditor's investigation determines that the transaction was in fact unauthorized. Lastly, the Board understands that, in most instances, consumers may ask their creditor to stop sending access checks altogether, and these opt-out requests will be honored by the creditor.

<u>Coupon books</u>. The Board stated in the supplementary information for the June 2007 Proposal that it is unaware of devices existing today that would qualify as a "coupon book" for purposes of the definition of "credit card" under § 226.2(a)(15). In

addition, the Board noted that elimination of this obsolete term from the definition of “credit card” would help to reduce potential confusion regarding whether an access check or other single credit device that is used once, if connected in some way to other checks or devices, becomes a “coupon book,” thus becoming a “credit card” for purposes of the regulation. For these reasons, the June 2007 Proposal would have deleted the reference to the term “coupon book” from the definition of “credit card” under § 226.2(a)(15).

Consumer groups opposed the Board’s proposal, citing the statutory reference in TILA Section 103(k) to a “coupon book,” and noting that even if such products were not currently being offered, the proposed deletion could provide issuers an incentive to develop such products and in that event, consumers would be unable to avail themselves of the protections against unauthorized use and unsolicited issuance.

The final rule removes the reference to “coupon book” in the definition of “credit card,” as proposed. Commenters did not cite any examples of products that could potentially qualify as a “coupon book.” Thus, in light of the confusion today regarding whether access checks are “credit cards” as a result of the existing reference to “coupon books,” the Board believes removal of the term is appropriate in the final rule, and that the removal will not limit the availability of Regulation Z protections overall.

Plans in which no physical device is issued. The June 2007 Proposal did not explicitly address circumstances where a consumer may conduct a transaction on an open-end plan that does not have a physical device. In response, industry commenters agreed that it was premature and unnecessary to address such open-end plans. Consumer groups in contrast stated that it was appropriate to amend the regulation at this time to explicitly cover such plans, particularly in light of the Board’s decision elsewhere to update the commentary to refer to biometric means of verifying the identity of a cardholder or authorized user. See comment 12(b)(2)(iii)-1, discussed below. While the final rule does not explicitly address open-end plans in which no physical device is issued, the Board will continue to monitor developments in the marketplace and may update the regulation if and when such products become common. Of course, to the extent a creditor has issued a device that meets the definition of a "credit card" for an account, the provisions that require use of a "credit card," could apply even though a particular transaction itself is not conducted using the device (for example, in the case of telephone and Internet transactions; see comments 12(b)(2)(iii)-3 and 12(c)(1)-1).

Charge cards. Comment 2(a)(15)-3 discusses charge cards and identifies provisions in Regulation Z in which a charge card is distinguished from a credit card. The June 2007 Proposal would have updated comment 2(a)(15)-3 to reflect that the new late payment and minimum payment disclosure requirements set forth by the Bankruptcy Act do not apply to charge card issuers. As further discussed in more detail below under § 226.7, comment 2(a)(15)-3 is adopted as proposed.

2(a)(17) Creditor

In June 2007, the Board proposed to exempt from TILA coverage credit extended under employee-sponsored retirement plans. For reasons explained in the section-by-section analysis to § 226.3, this provision is adopted with modifications, as discussed below. Comment 2(a)(17)(i)-8, which provides guidance on whether such a plan is a creditor for purposes of TILA, is deleted as unnecessary, as proposed.

In addition, the substance of footnote 3 is moved to a new § 226.2(a)(17)(v), and references revised, accordingly, as proposed. The dates used to illustrate numerical tests for determining whether a creditor "regularly" extends consumer credit are updated in comments 2(a)(17)(i)-3 through -6, as proposed. References in § 226.2(a)(17)(iv) to provisions in § 226.6 and § 226.7 are renumbered consistent with this final rule.

2(a)(20) Open-end Credit

Under TILA Section 103(i), as implemented by § 226.2(a)(20) of Regulation Z, "open-end credit" is consumer credit extended by a creditor under a plan in which (1) the creditor reasonably contemplates repeated transactions, (2) the creditor may impose a finance charge from time to time on an outstanding unpaid balance, and (3) 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, generally is made available to the extent that any outstanding balance is repaid.

"Open-end" plans comprised of closed-end features. In the June 2007 Proposal, the Board proposed several revisions to the commentary regarding § 226.2(a)(20) to address the concern that currently some credit products are treated as open-end plans, with open-end disclosures given to consumers, when such products would more appropriately be treated as closed-end transactions. The proposal was based on the Board's belief that closed-end disclosures are more appropriate than open-end disclosures when the credit being extended is individual loans that are individually approved and underwritten. As stated in the June 2007 Proposal, the Board was particularly concerned about certain credit plans, where each individual credit transaction is separately evaluated.

For example, under certain so-called multifeatured open-end plans, creditors may offer loans to be used for the purchase of an automobile. These automobile loan transactions are approved and underwritten separately from other credit made available on the plan. (In addition, the consumer typically has no right to borrow additional amounts on the automobile loan "feature" as the loan is repaid.) If the consumer repays the entire automobile loan, he or she may have no right to take further advances on that "feature," and must separately reapply if he or she wishes to obtain another automobile loan, or use that aspect of the plan for similar purchases. Typically, while the consumer may be able to obtain additional advances under the plan as a whole, the creditor separately evaluates each request.

In the June 2007 Proposal, the Board proposed, among other things, two main substantive revisions to the commentary to § 226.2(a)(20). First, the Board proposed to revise comment 2(a)(20)-2 to clarify that while a consumer's account may contain different sub-accounts, each with different minimum payment or other payment options, each sub-account must meet the self-replenishing criterion. Proposed comment 2(a)(20)-2 would have provided that repayments of an advance for any sub-account must generally replenish a single credit line for that sub-account so that the consumer may continue to borrow and take advances under the plan to the extent that he or she repays outstanding balances without having to obtain separate approval for each subsequent advance.

Second, the Board proposed in June 2007 to clarify in comment 2(a)(20)-5 that in general, a credit line is self-replenishing if a consumer can obtain further advances or funds without being required to separately apply for those additional advances, and without undergoing a separate review by the creditor of that consumer's credit information, in order to obtain approval for each such additional advance. TILA Section 103(i) provides that a plan can be an open-end credit plan even if the creditor verifies credit information from time to time. 15 U.S.C. 1602(i). As stated in the June 2007 Proposal, however, the Board believes this provision is not intended to permit a creditor to separately underwrite each advance made to a consumer under an open-end plan or account. Such a process could result in closed-end credit being deemed open-end credit.

General comments. The Board received approximately 300 comment letters, mainly from credit unions, on the proposed changes to § 226.2(a)(20). (See below for a discussion of the comments specific to each portion of the proposed changes to § 226.2(a)(20); more general comments pertaining to the overall impact of recharacterizing certain multifeatured plans as closed-end credit are discussed in this subsection.)

Consumer groups and one credit union supported the proposed changes. The credit union commenter noted that it currently uses a multifeatured open-end lending program, but that it believes the changes would be beneficial to consumers and financial institutions, and that the benefit to consumers would outweigh any inconvenience and cost imposed on the credit union. This commenter noted that under a multifeatured open-end lending program, a consumer signs a master loan agreement but does not receive meaningful disclosures with each additional extension of credit. This commenter believes that consumers often do not realize that subsequent extensions of credit are subject to the terms of the master loan agreement.

Consumer groups stated that there is no meaningful difference between a customer who obtains a conventional car loan from a bank versus one who receives an advance to purchase a car via a sub-account from an open-end plan. Consumer groups further noted that to the extent a sub-account has fixed payments, fixed terms, and no replenishing line, it is functionally indistinguishable from any other closed-end loan for which closed-end disclosures must be given. The consumer groups' comments stated that there is no legitimate basis on which to continue to classify these plans as open-end credit.

Most comment letters opposed the proposed changes to the definition of "open-end credit." Many credit union commenters questioned the need for the proposed changes, and stated that the Board had not identified a specific harm arising out of multifeatured open-end lending. These commenters stated that there is no evidence of harm to consumers associated with these plans, such as complaints, information about credit union members paying higher rates or purchasing unnecessary products, or evidence of higher default rates. These commenters noted that such plans have been offered by credit unions for more than 25 years. These commenters also stated that open-end credit disclosures are adequate and provide members with the information they need on a timely basis, and that open-end lending members receive frequent reminders, via periodic statements, of key financial terms such as the APR. Also, commenters stated that to the extent credit unions do not charge fees for advances with fixed repayment periods, the APR disclosed for purposes of the open-end credit disclosures is the same as the APR that would be disclosed if the transaction were characterized as closed-end.

The National Credit Union Administration (NCUA) commented that there are no problems that appear to be generated by or inherent to the multifeatured aspect of credit unions' multifeatured open-end plans. This agency urged the Board not to ignore the identity of the creditor in considering the appropriateness of disclosures because doing so ignores the circumstances in which the disclosures are made; the comment letter further noted that multifeatured open-end plans offered by credit unions involve circumstances where there is an ongoing relationship between the consumer-member and a regulated financial institution.

Credit union commenters and the NCUA also stated that the proposed revisions would result in a loss of convenience to consumers because credit unions generally would not be able to continue to offer multifeatured open-end lending programs, and consumers would have to sign additional paperwork in order to obtain closed-end advances. Several of these commenters specifically noted that loss of convenience would be a concern with respect to military personnel and other customers they serve in geographically remote locations. Credit union commenters stated that the proposed revisions, if adopted, would result in increased costs of borrowing for consumers. Some comment letters noted that credit unions' rates would become less competitive and that consumers would be more likely to obtain financing from more expensive sources, such as auto dealers, check cashing shops, or payday lenders.

Several credit union commenters discussed the likely cost associated with providing closed-end disclosures instead of open-end disclosures. The commenters indicated that such costs would include re-training personnel, changing lending documents and data-processing systems, purchasing new lending forms, potentially increased staffing requirements, updating systems, and additional paperwork. Several commenters offered estimates of the probable cost to credit unions of converting multifeatured open-end plans to closed-end credit. Those comments with regard to small entities are discussed in more detail below in **VIII. Final Regulatory Flexibility Analysis**. One major service provider to credit unions estimated that the conversion in loan products would cost a credit union approximately $100,000, with total expenses of at least $350 million for all credit unions and their members. This commenter further noted that there would be annual ongoing costs totaling millions of dollars, largely due to additional staff costs that would arise because more business would take place in person at the credit union.

One commenter indicated that the proposed changes to the commentary could give rise to litigation risk, and may create more confusion and unintended consequences than currently exist under the existing commentary to Regulation Z. This commenter stated that changing the definition of open-end credit would jeopardize many legitimate open-end credit plans.

<u>Comments regarding hybrid disclosure</u>. Several comment letters from credit unions, one credit union trade association, and the NCUA suggested that the Board should adopt a hybrid disclosure approach for multifeatured open-end plans. Under this approach, these commenters indicated that the Board should continue to permit multifeatured open-end plans, as they are currently structured, to provide open-end disclosures to consumers, but should also impose a new subsequent disclosure requirement. Shortly after obtaining credit, such as for an auto loan, that is individually underwritten or not self-replenishing, the creditor would be required to give disclosures that mirror the disclosures given for closed-end credit.

The Board is not adopting this hybrid disclosure approach. The Board believes that the statutory framework clearly provides for two distinct types of credit, open-end and closed-end, for which different types of disclosures are deemed to be appropriate. Such a hybrid disclosure regime would be premised on the fact that the closed-end disclosures are beneficial to consumers in connection with certain types of advances made under these plans. If this is the case, the Board believes that consumers should receive the closed-end disclosures prior to consummation of the transaction, when a consumer is shopping for credit.

Replenishment. As discussed above, the Board proposed in June 2007 to revise comment 2(a)(20)-2 to clarify that while a consumer's account may contain different sub-accounts, each with different minimum payment or other payment options, each sub-account must meet the self-replenishing criterion.

Several industry commenters specifically objected to the new requirement in proposed comment 2(a)(20)-2 that open-end credit replenish on a sub-account by sub-account basis. Some commenters expressed concern about the applicability of proposed comment 2(a)(20)-2 to promotional rate offers. The commenters noted that a creditor may make a balance transfer offer or send out convenience checks at a promotional APR. As the balance subject to the promotional APR is repaid, the available credit on the account will be replenished, although the available credit for the original promotional rate offer is not replenished. These commenters stated that unless the Board can define sub-accounts in a manner that excludes balances subject to special terms, the Board should withdraw the proposed revision to comment 2(a)(20)-2. Other commenters indicated that the critical requirement should be that repayment of balances in any sub-account replenishes the overall account, not that each sub-account itself must be replenishing.

Similarly, the Board received several industry comment letters indicating that the proposed changes to comment 2(a)(20)-2 would have adverse consequences for certain HELOCs. The comments noted that many creditors use multiple features or sub-accounts in order to provide consumers with flexibility and choices regarding the terms applicable to certain portions of an open-end credit balance. They noted as an example a feature on a HELOC that permits a consumer to convert a portion of the balance into a fixed-rate, fixed-term sub-account; the sub-account is never replenished but payments on the sub-account replenish the master open-end account.

In addition, the Board received a comment from an association of state regulators of credit unions raising concerns that proposed comment 2(a)(20)-2 would present a safety and soundness concern for institutions. These comments noted that a self-replenishing sub-account for an auto loan, for example, would be a safety and soundness concern because the value of the collateral would decline and eventually be less than the credit limit.

In light of the comments received and upon further analysis, the Board has withdrawn the proposed changes to comment 2(a)(20)-2 from the final rule. The Board believes that one unintended consequence of the proposed requirement that payments on each sub-account replenish is that some sub-accounts (like HELOCs) would be re-characterized as closed-end credit when they are properly treated as open-end credit. Generally, the proposed changes to comment 2(a)(20)-2 were intended to ensure that repayments of advances on an open-end credit plan generally would replenish the credit available to the consumer. The Board believes that replenishment of an open-end plan on an overall basis achieves this purpose and that, as discussed below, the best way to address loans that are more properly characterized as closed-end credit being treated as features of open-end plans is through clarifications regarding verification of credit information and separate underwriting of individual advances.

Verification and underwriting of separate advances. As discussed above, the Board proposed in June 2007 to clarify in comment 2(a)(20)-5 that, in general, a credit line is self-replenishing if a consumer can obtain further advances or funds without being required to separately apply for those additional advances, and without undergoing a separate review by the creditor of that consumer's credit information, in order to obtain such additional advance.

Notwithstanding this proposed change, the Board noted that a creditor would be permitted to verify credit information to ensure that the consumer's creditworthiness has not deteriorated (and could revise the consumer's credit limit or account terms accordingly). This is consistent with the statutory definition of "open end credit plan," which provides that a credit plan may be an open end credit plan even if credit information is verified from time to time. See 15 U.S.C. 1602(i). However, the Board noted in the June 2007 Proposal its belief that performing a distinct underwriting analysis for each specific credit request would go beyond the verification contemplated by the statute and would more closely resemble underwriting of closed-end credit. For example, assume that based on the initial underwriting of an open-end plan, a consumer were initially approved for a line of credit with a $20,000 credit limit. Under the proposal, if that consumer subsequently took a large advance of $10,000, it would be inconsistent with the definition of open-end credit for the creditor to independently evaluate the consumer's creditworthiness in connection with that advance. However, proposed comment 2(a)(20)-5 would have stated that a creditor could continue to review, and as appropriate, decrease the amount of credit available to a consumer from time to time to address safety and soundness and other concerns.

The NCUA agreed with the Board that the statutory provision regarding verification is not intended to permit separate underwriting and applications for each sub-account. The agency encouraged the Board to focus any commentary changes regarding the definition of open-end credit on the distinctions between verification versus a credit evaluation as a more appropriate and less burdensome response to its concerns than the proposed revisions regarding replenishment.

Several industry commenters indicated that proposed comment 2(a)(20)-5 could have unintended adverse consequences for legitimate open-end products. One industry trade association and several industry commenters stated creditors finance purchases that may utilize a substantial portion of available credit or even exceed the credit line under pre-established credit criteria. According to these commenters, creditors may have over-the-limit buffers or strategies in place that contemplate such purchases, and these transactions should not be considered a separate underwriting. The commenters further stated that any legitimate authorization procedures or consideration of a credit line increase should not exclude a transaction from open-end credit.

One credit card association and one large credit card issuer commented that some credit cards have no preset spending limits, and issuers may need to review a cardholder's credit history in connection with certain transactions on such accounts. These commenters stated that regardless of how an issuer handles individual transactions on such accounts, they should be characterized as open-end.

One other industry commenter stated that a creditor should be able to verify the consumer's creditworthiness in connection with a request for an advance on an open-end credit account. This creditor noted that the statute does not impose any limitation on the frequency with which verification is made, nor does it indicate that verification can be made only as part of an account review, and not also when a consumer requests an advance. The commenter stated that the most important time to conduct verification is when an advance is requested.

This commenter further suggested that the concept of "verification" is, by itself, distinguishable from a de novo credit decision on an application for a new loan. This commenter posited that comment 2(a)(20)-5 recognizes this insofar as it contemplates a determination of whether the consumer continues to meet the lender's credit standards and provides that the consumer should have a reasonable expectation of obtaining additional credit as long as the consumer continues to meet those credit standards. An application for a new extension of credit contemplates a de novo credit determination, while verification involves a determination of whether a borrower continues to meet the lender's credit standards.

The changes to comment 2(a)(20)-5 are adopted as proposed, with one revision discussed below in the subsection titled Credit cards. Under revised comment 2(a)(20)-5, verification of a consumer's creditworthiness consistent with the statute continues to be permitted in connection with an open-end plan; however, underwriting of specific advances is not permitted for an open-end plan. The Board believes that underwriting of individual advances exceeds the scope of the verification contemplated by the statute and is inconsistent with the definition of open-end credit. The Board believes that the rule does not undermine safe and sound lending practices, but simply clarifies that certain types of advances for which underwriting is done must be treated as closed-end credit with closed-end disclosures provided to the consumer.

The revisions to comment 2(a)(20)-5 are intended only to have prospective application to advances made after the effective date of the final rule. A creditor may continue to give open-end disclosures in connection with an advance that met the definition of "open-end credit" under current § 226.2(a)(20) and the associated commentary, if that advance was made prior to the effective date of the final rule. However, a creditor that makes a new advance under an existing credit plan after the effective date of the final rule will need to determine whether that advance is properly characterized as open-end or closed-end credit under the revised definition, and give the appropriate disclosures.

One commenter asked the Board to clarify the "reasonable expectation" language in comment 2(a)(20)-5. This commenter noted that a consumer should not expect to obtain additional advances if the consumer is in default in any provision of the loan agreement (it is not enough to merely be "current" in their payments), and otherwise does not comply with the requirements for advances in the loan agreement (such as minimum advance requirements or the method for requesting advances). The Board believes that under the current rule a creditor may suspend a consumer's credit privileges or reduce a consumer's credit limit if the consumer is in default under his or her loan agreement. Thus, the Board does not believe that this clarification is necessary and has not adopted it in the final rule.

<u>Verification of collateral.</u> Several commenters stated that comment 2(a)(20)-5 should expressly permit routine collateral valuation and verification procedures at any time, including as a condition of approving an advance. One of these commenters stated that Regulation U (Credit by Banks and Persons Other than Brokers or Dealers for the

Purpose of Purchasing or Carrying Margin Stock) requires a bank in connection with margin lending, to not advance funds in excess of a certain collateral value. 12 CFR part 221. The commenter also pointed out that for some accounts, a borrower's credit limit is determined from time to time based on the market value of the collateral securing the account.

In response to commenters' concerns, new comment 2(a)(20)-(6) is added to clarify that 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 laws or verifies the value of collateral in connection with a particular advance under the plan. Current comment 2(a)(20)-6 is renumbered as comment 2(a)(20)-7.

<u>Credit cards</u>. Several credit and charge card issuers commented that the proposal could have adverse effects on those products. One credit card issuer indicated that the proposed changes could have unintended adverse consequences for certain credit card securitizations. This commenter noted that securitization documentation for credit cards typically provides that an account must be a revolving credit card account for the receivables arising in that account to be eligible for inclusion in the securitization. If the proposal were to recharacterize accounts that are currently included in securitizations as closed-end credit, this commenter stated that it could require restructuring of existing and future securitization transactions.

As discussed above, several industry commenters noted other circumstances in which proposed comment 2(a)(20)-5 could have adverse consequences for credit cards. Several commenters stated that creditors may have over-the-limit buffers or strategies in place that contemplate purchases utilizing a substantial portion of, or even exceed, the credit line, and these transactions should not be considered a separate underwriting. Commenters also stated that any legitimate authorization procedures or consideration of a credit line increase should not exclude a transaction from open-end credit. Finally, one credit card association and one large credit card issuer commented that some credit cards have no preset spending limits, and issuers may need to review a cardholder's credit history in connection with certain transactions on such accounts. These commenters stated that regardless of how an issuer handles individual transactions on such accounts, they should be characterized as open-end.

The Board has addressed credit card issuers' concerns about emergency underwriting and underwriting of amounts that may exceed the consumer's credit limit by expressly providing in comment 2(a)(20)-5 that 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. The Board did not intend in the June 2007 Proposal and does not intend in the final rule to exclude credit cards from the definition of open-end credit and believes that the revised final rule gives certainty to creditors offering credit cards. The Board believes that the strategies identified by commenters, such as over-the-limit buffers, treatment of certain advances for cards without preset spending limits, and consideration of credit line increases generally do not constitute separate underwriting of advances, and that open-end disclosures are appropriate for credit cards for which the plan as a whole replenishes. The Board also believes that this clarification will help to promote uniformity in credit card disclosures by clarifying that all credit cards are subject to the open-end disclosure rules. The Board notes that charge card accounts may not meet the definition of open-end credit but pursuant to § 226.2(a)(17)(iii) are subject to the rules that apply to open-end credit.

Examples regarding repeated transactions. Due to the concerns noted above regarding closed-end automobile loans being characterized as features of so-called open-end plans, the Board also proposed in June 2007 to delete comment 2(a)(20)-3.ii., which states that it would be more reasonable for a financial institution to make advances from a line of credit for the purchase of an automobile than it would be for an automobile dealer to sell a car under an open-end plan. As stated in the proposal, the Board was concerned that the current example placed inappropriate emphasis on the identity of the creditor rather than the type of credit being extended by that creditor. Similarly, the Board proposed to revise current comment 2(a)(20)-3.i., which referred to a thrift institution, to refer more generally to a bank or financial institution and to move the example into the body of comment 2(a)(20)-3. The Board received no comments opposing the revisions to these examples, and the changes are adopted as proposed.

Technical amendments. The Board also proposed in the June 2007 Proposal a technical update to comment 2(a)(20)-4 to delete, without intended substantive change, a reference to “china club plans,” which may no longer be very common. No comments were received on this aspect of the proposal, and the update to comment 2(a)(20)-4 is adopted as proposed.

Comment 2(a)(20)-5.ii. currently notes that a creditor may reduce a credit limit or refuse to extend new credit due to changes in the economy, the creditor’s financial condition, or the consumer’s creditworthiness. The Board’s proposal would have deleted the reference to changes in the economy to simplify this provision. No comments were received on this change, which is adopted as proposed.

Implementation date. Many credit union commenters on the June 2007 Proposal expressed concern about the effect of successive regulatory changes. These commenters stated that the June 2007 Proposal, if adopted, would require them to give closed-end disclosures in connection with certain advances, such as the purchase of an automobile, for which they currently give open-end disclosures. The commenters noted that because the Board is also considering regulatory changes to closed-end lending, it could require such creditors to make two sets of major systematic changes in close succession. These commenters stated that such successive regulatory changes could impose a significant burden that would impair the ability of credit unions to serve their members effectively. The Board expects all creditors to provide closed-end or open-end disclosures, as appropriate in light of revised § 226.2(a)(20) and the associated commentary, as of the effective date of the final rule. The Board has not delayed the effectiveness of the changes to the definition of "open-end credit." The Board is mindful that the changes to the definition may impose costs on certain credit unions and other creditors, and that any future changes to the provisions of Regulation Z dealing with closed-end credit may impose further costs. However, the Board believes that it is important that consumers receive the appropriate type of disclosures for a given extension of credit, and that it is not appropriate to delay effectiveness of these changes pending the Board's review of the rules pertaining to closed-end credit.

2(a)(24) Residential Mortgage Transaction

Comment 2(a)(24)-1, which identifies key provisions affected by the term "residential mortgage transaction," and comment 2(a)(24)-5.ii., which provides guidance on transactions financing the acquisition of a consumer's principal dwelling, are revised from the June 2007 Proposal to conform to changes adopted by the Board in the July 2008 Final HOEPA Rule to address certain mortgage practices and disclosures.
73 FR 44522, 44605, July 30, 2008.

Section 226.3 Exempt Transactions

Section 226.3 implements TILA Section 104 and provides exemptions for certain classes of transactions specified in the statute. 15 U.S.C. 1603.

In June 2007, the Board proposed several substantive and technical revisions to § 226.3 as described below. The Board also proposed to move the substance of footnote 4 to the commentary. See comment 3-1. No comments were received on moving footnote 4 to the commentary, and that change is adopted in the final rule.

3(a) Business, Commercial, Agricultural, or Organizational Credit

Section 226.3(a) provides, in part, that the regulation does not apply to extensions of credit primarily for business, commercial or agricultural purposes. As the Board noted in the supplementary information to the June 2007 Proposal, questions have arisen from time to time regarding whether transactions made for business purposes on a consumer-purpose credit card are exempt from TILA. The Board proposed to add a new comment 3(a)-2 to clarify transactions made for business purposes on a consumer-purpose credit card are covered by TILA (and, conversely, that purchases made for consumer purposes on a business-purpose credit card are exempt from TILA). The Board received several comments on proposed comment 3(a)-2. One consumer group and one large financial institution commented in support of the change. One industry trade association stated that the proposed clarification was anomalous given the general exclusion of business credit from TILA coverage. The Board acknowledges that this clarification will result in certain business purpose transactions being subject to TILA, and certain consumer purpose transactions being exempt from TILA. However, the Board believes that the determination as to whether a credit card account is primarily for consumer purposes or business purposes is best made when an account is opened (or when an account is reclassified as a business-purpose or consumer-purpose account) and that comment 3(a)-2 provides important clarification and certainty to consumers and creditors. In addition, determining whether specific transactions charged to the credit card account are for consumer or business purposes could be operationally difficult and burdensome for issuers. Accordingly, the Board adopts new comment 3(a)-2 as proposed with several technical revisions described below. Other sections of the commentary regarding § 226.3(a) are renumbered accordingly. The Board also adopts new comment 3(a)-7, which provides guidance on credit card renewals consistent with new comment 3(a)-2, as proposed.

The examples in proposed comment 3(a)-2 contained several references to credit plans, which are deleted from the final rule as unnecessary because comment 3(a)-2 was intended to address only credit cards. Credit plans are addressed by the examples in redesignated comment 3(a)-3, which is unaffected by this rulemaking.

3(g) Employer-Sponsored Retirement Plans

The Board has received questions from time to time regarding the applicability of TILA to loans taken against employer-sponsored retirement plans. Pursuant to TILA

Section 104(5), the Board has the authority to exempt transactions for which it determines that coverage is not necessary in order to carry out the purposes of TILA. 15 U.S.C. 1603(5). The Board also has the authority pursuant to TILA Section 105(a) to provide adjustments and exceptions for any class of transactions, as in the judgment of the Board are necessary or proper to effectuate the purposes of TILA. 15 U.S.C. 1604(a).

The June 2007 Proposal included a new § 226.3(g), which would have exempted loans taken by employees against their employer-sponsored retirement plans qualified under Section 401(a) of the Internal Revenue Code and tax-sheltered annuities under Section 403(b) of the Internal Revenue Code, 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.; 26 U.S.C. 401(a); 26 U.S.C. 403(b). The Board stated several reasons for this proposed exemption in the supplementary information to the June 2007 Proposal, including the fact that the consumer's interest and principal payments on such a loan are reinvested in the consumer's own account and there is no third-party creditor imposing finance charges on the consumer. In addition, the costs of a loan taken against assets invested in a 401(k) plan, for example, are not comparable to the costs of a third-party loan product, because a consumer pays the interest on a 401(k) loan to himself or herself rather than to a third party.

The Board received several comments regarding proposed § 226.3(g), which generally supported the proposed exemption for loans taken by employees against their employer-sponsored retirement plans. Two commenters asked the Board to expand the proposed exemption to include loans taken against governmental 457(b) plans, which are a type of retirement plan offered by certain state and local government employers. 26 U.S.C. 457(b). The comments noted that governmental 457(b) plans may permit participant loans, subject to the requirements of section 72(p) of the Internal Revenue Code (26 U.S.C. 1 et seq.), which are the same requirements that are applicable to qualified 401(a) plans and 403(b) plans. The comments also stated that the Board's reasons for proposing the exemption apply equally to governmental 457(b) plans. The final rule expands the scope of the exemption to include loans taken against governmental 457(b) plans. The exemption for loans taken against employer-sponsored retirement plans was intended to cover all such similar plans, and the omission of governmental 457(b) plans from the proposed exemption was unintentional. The Board believes the rationales stated above and in the June 2007 Proposal for the proposed exemption for qualified 401(a) plans and 403(b) plans apply equally to governmental 457(b) plans.

In addition to the rationales stated above, another reason given for the proposed exception in the June 2007 Proposal was a statement that plan administration fees must be disclosed under applicable Department of Labor regulations. One commenter noted that the Department of Labor regulations cited in the supplementary information to the June 2007 Proposal do not apply to governmental 403(b) plans, governmental 457(b) plans, and certain other 403(b) programs that are not subject to the Employee Retirement Income Security Act of 1974 (ERISA). 29 U.S.C. 1001 et seq. The commenter asked for clarification regarding whether the exemption will apply to loans taken from plans and programs which are not subject to ERISA. Section 226.3(g) itself does not contain a reference to ERISA or the Department of Labor regulations pertaining to ERISA, and, accordingly, the exemption applies even if the particular plan is not subject to ERISA. For the other reasons stated above and in the June 2007 Proposal, the Board believes that the exemption for the plans specified in new § 226.3(g) is appropriate even for those plans to which ERISA disclosure requirements do not apply.

Section 226.4 Finance Charge

Various provisions of TILA and Regulation Z specify how and when the cost of consumer credit expressed as a dollar amount, the "finance charge," is to be disclosed. The rules for determining which charges make up the finance charge are set forth in TILA Section 106 and Regulation Z § 226.4. 15 U.S.C. 1605. Some rules apply only to open-end credit and others apply only to closed-end credit, while some apply to both. With limited exceptions, the Board did not propose in June 2007 to change § 226.4 for either closed-end credit or open-end credit. The areas in which the Board did propose to revise § 226.4 and related commentary relate to (1) transaction charges imposed by credit card issuers, such as charges for obtaining cash advances from automated teller machines (ATMs) and for making purchases in foreign currencies or foreign countries, and (2) charges for credit insurance, debt cancellation coverage, and debt suspension coverage.

4(a) Definition

Transaction charges. Under the definition of "finance charge" in TILA Section 106 and Regulation Z § 226.4(a), a charge specific to a credit transaction is ordinarily a finance charge. 15 U.S.C. 1605. See also § 226.4(b)(2). However, under current comment 4(a)-4, a fee charged by a card issuer for using an ATM to obtain a cash advance on a credit card account is not a finance charge to the extent that it does not exceed the charge imposed by the card issuer on its cardholders for using the ATM to withdraw cash from a consumer asset account, such as a checking or savings account. Another comment indicates that the fee is an "other charge." See current comment 6(b)-1.vi. Accordingly, the fee must be disclosed at account opening and on the periodic statement, but it is not labeled as a "finance charge" nor is it included in the effective APR.

In the June 2007 Proposal, the Board proposed new comment 4(a)-4 to address questions that have been raised about the scope and application of the existing comment. For example, assume the issuer assesses an ATM fee for one kind of deposit account (for example, an account with a low minimum balance) but not for another. The existing comment does not indicate which account is the proper basis for comparison, nor is it clear in all cases which account should be the appropriate one to use.

Questions have also been raised about whether disclosure of an ATM cash advance fee pursuant to comments 4(a)-4 and 6(b)-1.vi. is meaningful to consumers. Under the comments, the disclosure a consumer receives after incurring a fee for taking a cash advance through an ATM depends on whether the credit card issuer provides asset accounts and offers debit cards on those accounts and whether the fee for using the ATM for the cash advance exceeds the fee for using the ATM for a cash withdrawal from an asset account. It is not clear that these distinctions are meaningful to consumers.

In addition, questions have arisen about the proper disclosure of fees that cardholders are assessed for making purchases in a foreign currency or outside the United States – for example, when the cardholder travels abroad. The question has arisen in litigation between consumers and major card issuers.[11] Some card issuers have reasoned by analogy to comment 4(a)-4 that a foreign transaction fee is not a finance charge if the fee does not exceed the issuer's fee for using a debit card for the same purchase. Some card issuers disclose the foreign transaction fee as a finance charge and include it in the effective APR, but others do not.

The uncertainty about proper disclosure of charges for foreign transactions and for cash advances from ATMs reflects the inherent complexity of seeking to distinguish transactions that are "comparable cash transactions" to credit card transactions from transactions that are not. In June 2007, the Board proposed to replace comment 4(a)-4 with a new comment of the same number stating a simple interpretive rule that any transaction fee on a credit card plan is a finance charge, regardless of whether the issuer imposes the same or lesser charge on withdrawals of funds from an asset account, such as a checking or savings account. The proposed comment would have provided as examples of such finance charges a fee imposed by the issuer for taking a cash advance at an ATM,[12] as well as a fee imposed by the issuer for foreign transactions. The Board stated its belief that clearer guidance might result from a new and simpler approach that treats as a finance charge any fee charged by credit card issuers for transactions on their credit card plans, and accordingly proposed new comment 4(a)-4.

Few commenters addressed proposed comment 4(a)-4. Some commenters supported the proposed comment, including a financial institution (although the

---

[11] See, e.g., Third Consolidated Amended Class Action Complaint at 47-48, In re Currency Conversion Fee Antitrust Litigation, MDL Docket No. 1409 (S.D.N.Y.). The court approved a settlement on a preliminary basis on November 8, 2006. See also, e.g., LiPuma v. American Express Company, 406 F. Supp. 2d 1298 (S.D.Fla. 2005).

[12] The change to comment 4(a)-4 does not affect disclosure of ATM fees assessed by institutions other than the credit card issuer. See proposed § 226.6(b)(1)(ii)(A), adopted in the final rule as § 226.6(b)(3)(iii)(A).

commenter noted that its support of the proposal was predicated on the effective APR disclosure requirements being eliminated, as the Board proposed under one alternative). Other commenters opposed the proposed comment, some expressing concern that including all transaction fees as finance charges might cause the effective APR to exceed statutory interest rate limits contained in other laws (for example, the 18 percent statutory interest rate ceiling applicable to federal credit unions).

One commenter stated particular concerns about the proposed inclusion of foreign transaction fees as finance charges. The commenter stated that the settlements in the litigation referenced above have already resolved the issues involved and that adopting the proposal would cause disruption to disclosure practices established under the settlements. A consumer group that supported including all transaction fees in the finance charge noted its concern that the positive effect of the proposal would be nullified by specifying a limited list of fees that must be disclosed in writing at account opening (see the section-by-section analysis to § 226.6(b)(2) and (b)(3), below), and by eliminating the effective APR assuming the Board adopted that alternative. The commenter urged the Board to go further and include a number of other types of fees in the finance charge.

The Board is adopting proposed comment 4(a)-4 with some changes for clarification. As adopted in final form, comment 4(a)-4 includes language clarifying that foreign transaction fees include charges imposed when transactions are made in foreign currencies and converted to U.S. dollars, as well as charges imposed when transactions are made in U.S. dollars outside the United States and charges 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. The comment also clarifies that foreign transaction fees include charges imposed by the card issuer and charges 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.)

However, the comment also clarifies that charges 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 that must 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 must be included in finance charges to be disclosed. The comment also makes clear that a card issuer is not required to disclose a charge imposed by a merchant. For example, if the merchant itself performs the currency conversion and adds a fee, this would be not be a foreign transaction fee that card issuers must disclose. Under § 226.9(d), the card issuer is not required to disclose finance charges imposed by a party honoring a credit card, such as a merchant, although the merchant itself is required to disclose such a finance charge (assuming the merchant is covered by TILA and Regulation Z generally).

The foreign transaction fee is determined by first calculating the dollar amount of the transaction, 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. The comment provides examples of conversion rates outside the card issuer's and third party's control. (Such a rate is deemed to be outside the card issuer's and third party's control, even if the card issuer or third party could arguably in fact have some degree of control over the rate used, by selecting the rate from among a number of rates available.)

With regard to the conversion rate, the comment also clarifies that 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. The card issuer or third party may convert currency in bulk amounts, as opposed to performing a conversion for each individual transaction. The comment also clarifies that the rate used for a particular transaction need not be the rate in effect on the date of the transaction (purchase or cash advance), because the conversion calculation may take place on a later date.

Concerns of some commenters that inclusion of all transaction charges in the finance charge would cause the effective APR to exceed permissible ceilings are moot due to the fact that the final rule eliminates the effective APR requirements as to open-end (not home-secured) credit, as discussed in the general discussion on the effective APR in the section-by-section analysis to § 226.7(b). As to the consumer group comment that eliminating the effective APR would negate the beneficial impact of the proposed comment for consumers, the Board believes that adoption of the comment will nevertheless result in better and more meaningful disclosures to consumers. Transaction fees such as ATM cash advance fees and foreign transaction fees will be disclosed more consistently. The Board also believes that the comment will provide clearer guidance to card issuers, as discussed above.

With regard to foreign transaction fees, the Board believes that although the settlements in the litigation mentioned above may have led to some standardization of disclosure practices, the proposed comment is appropriate because it will bring a uniform disclosure approach to foreign transaction fees (as opposed to possibly differing approaches under the different settlement terms), and will be a continuing federal regulatory requirement (whereas settlements can be modified or expire).

Existing comment 4(b)(2)-1 (which is not revised in the final rule) states that if a checking or transaction account charge imposed on 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. Comment 4(b)(2)-1 and revised comment 4(a)-4 address different situations.

<u>Charges in comparable cash transactions</u>. Comment 4(a)-1 provides examples of charges in comparable cash transactions that are not finance charges. Among the examples are 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 institution. In the June 2007 Proposal, the Board solicited comment on whether the example is still useful, or should be deleted as unnecessary or obsolete. No comments were received on this issue. Nonetheless, because many of the examples provide guidance to creditors offering closed-end credit, comment 4(a)-1 is retained in

the final rule and the examples will be reviewed in a future rulemaking addressing closed-end credit.

4(b) Examples of Finance Charges

Charges for credit insurance or debt cancellation or suspension coverage. Premiums or other charges for credit life, accident, health, or loss-of-income insurance are finance charges if the insurance or coverage is "written in connection with" a credit transaction. 15 U.S.C. 1605(b); § 226.4(b)(7). Creditors may exclude from the finance charge premiums for credit insurance if they disclose the cost of the insurance and the fact that the insurance is not required to obtain credit. In addition, the statute requires creditors to obtain an affirmative written indication of the consumer's desire to obtain the insurance, which, as implemented in § 226.4(d)(1)(iii), requires creditors to obtain the consumer's initials or signature. 15 U.S.C. 1605(b). In 1996, the Board expanded the scope of the rule to include plans involving charges or premiums for debt cancellation coverage. See § 226.4(b)(10) and (d)(3). See also 61 FR 49237, Sept. 19, 1996. Currently, however, insurance or coverage sold after consummation of a closed-end credit transaction or after the opening of an open-end plan and upon a consumer's request is considered not to be "written in connection with the credit transaction," and, therefore, a charge for such insurance or coverage is not a finance charge. See comment 4(b)(7) and (8)-2.

In June 2007, the Board proposed a number of revisions to these rules:

(1) The same rules that apply to debt cancellation coverage would have been applied explicitly to debt suspension coverage. However, to exclude the cost of debt suspension coverage from the finance charge, creditors would have been required to

inform consumers, as applicable, that the obligation to pay loan principal and interest is only suspended, and that interest will continue to accrue during the period of suspension. These proposed revisions would have applied to all open-end plans and closed-end credit transactions.

(2) Creditors could exclude from the finance charge the cost of debt cancellation and suspension coverage for events in addition to those permitted today, namely, life, accident, health, or loss-of-income. This proposed revision would also have applied to all open-end plans and closed-end credit transactions.

(3) The meaning of insurance or coverage "written in connection with" an open-end plan would have been expanded to cover sales made throughout the life of an open-end (not home-secured) plan. Under the proposal, for example, consumers solicited for the purchase of optional insurance or debt cancellation or suspension coverage for existing credit card accounts would have received disclosures about the cost and optional nature of the product at the time of the consumer's request to purchase the insurance or coverage. HELOCs subject to § 226.5b and closed-end transactions would not have been affected by this proposed revision.

(4) For telephone sales, creditors offering open-end (not home-secured) plans would have been provided with flexibility in evidencing consumers' requests for optional insurance or debt cancellation or suspension coverage, consistent with rules published by federal banking agencies to implement Section 305 of the Gramm-Leach-Bliley Act regarding the sale of insurance products by depository institutions and guidance published by the Office of the Comptroller of the Currency (OCC) regarding the sale of debt cancellation and suspension products. <u>See</u> 12 CFR § 208.81 <u>et</u> <u>seq</u>. regarding

insurance sales; 12 CFR part 37 regarding debt cancellation and debt suspension products. For telephone sales, creditors could have provided disclosures orally, and consumers could have requested the insurance or coverage orally, if the creditor maintained evidence of compliance with the requirements, and mailed written information within three days after the sale. HELOCs subject to § 226.5b and closed-end transactions would not have been affected by this proposed revision.

All of these products serve similar functions but some are considered insurance under state law and others are not. Taken together, the proposed revisions were intended to provide consistency in how creditors deliver, and consumers receive, information about the cost and optional nature of similar products. The revisions are discussed in detail below.

4(b)(7) and (8) Insurance Written in Connection with Credit Transaction

Premiums or other charges for insurance for credit life, accident, health, or loss-of-income, loss of or damage to property or against liability arising out of the ownership or use of property are finance charges if the insurance or coverage is written in connection with a credit transaction. 15 U.S.C. 1605(b) and (c); § 226.4(b)(7) and (b)(8). Comment 4(b)(7) and (8)-2 provides that insurance is not written in connection with a credit transaction if the insurance is sold after consummation on a closed-end transaction or after an open-end plan is opened and the consumer requests the insurance. As stated in the June 2007 Proposal, the Board believes this approach remains sound for closed-end transactions, which typically consist of a single transaction with a single advance of funds. Consumers with open-end plans, however, retain the ability to obtain advances of funds long after account opening, so long as they pay down the principal balance. That is, a consumer can engage in credit transactions throughout the life of a plan.

Accordingly, in June 2007 the Board proposed revisions to comment 4(b)(7) and (8)-2, to state that insurance purchased after an open-end (not home-secured) plan was opened would be considered to be written "in connection with a credit transaction." Proposed new comment 4(b)(10)-2 would have given the same treatment to purchases of debt cancellation or suspension coverage. As proposed, therefore, purchases of voluntary insurance or debt cancellation or suspension coverage after account opening would trigger disclosure and consent requirements.

Few commenters addressed this issue. One financial institution trade association supported the proposed revisions to comments 4(b)(7) and (8)-2 and 4(b)(10)-2, while two other commenters (a financial institution and a trade association) opposed them, arguing that the rules for open-end (not home-secured) plans should remain consistent with the rules for home-equity and closed-end credit, that there is no demonstrable harm to consumers from the existing rule, and that other state and federal law provides adequate protection.

The revisions to comments 4(b)(7) and (8)-2 and 4(b)(10)-2 are adopted as proposed. In an open-end plan, where consumers can engage in credit transactions after the opening of the plan, a creditor may have a greater opportunity to influence a consumer's decision whether or not to purchase credit insurance or debt cancellation or suspension coverage than in the case of closed-end credit. Accordingly, the disclosure and consent requirements are important in open-end plans, even after the opening of the plan, to ensure that the consumer is fully informed about the offer of insurance or coverage and that the decision to purchase it is voluntary. In addition, under the final rule, creditors will be permitted to provide disclosures and obtain consent by telephone (provided they mail written disclosures to the consumer after the purchase), so long as they meet requirements intended to ensure the purchase is voluntary. See the section-by-section analysis to § 226.4(d)(4) below. As to consistency between the rules for open-end (not home-secured) plans and home-equity plans, the Board intends to consider this issue when the home-equity credit plan rules are reviewed in the future.

4(b)(9) Discounts

Comment 4(b)(9)-2, which addresses cash discounts to induce consumers to use cash or other payment means instead of credit cards or other open-end plans is revised for clarity, as proposed in June 2007. No substantive change is intended. No comments were received on this change.

4(b)(10) Debt Cancellation and Debt Suspension Fees

As discussed above, premiums or other charges for credit life, accident, health, or loss-of-income insurance are finance charges if the insurance or coverage is written in connection with a credit transaction. This same rule applies to charges for debt cancellation coverage. See § 226.4(b)(10). Although debt cancellation fees meet the definition of "finance charge," they may be excluded from the finance charge on the same conditions as credit insurance premiums. See § 226.4(d)(3).

The Board proposed in June 2007 to revise the regulation to provide the same treatment to debt suspension coverage as to credit insurance and debt cancellation coverage. Thus, under proposed § 226.4(b)(10), charges for debt suspension coverage would be finance charges. (The conditions under which debt suspension charges may be excluded from the finance charge are discussed in the section-by-section analysis to § 226.4(d)(3), below.) Debt suspension is the creditor's agreement to suspend, on the occurrence of a specified event, the consumer's obligation to make the minimum payment(s) that would otherwise be due. During the suspension period, interest may continue to accrue or it may be suspended as well, depending on the plan. The borrower may be prohibited from using the credit plan during the suspension period. In addition, debt suspension may cover events other than loss of life, health, or income, such as a wedding, a divorce, the birth of child, or a medical emergency.

In the June 2007 Proposal, debt suspension coverage would have been defined as coverage that suspends the consumer's obligation to make one or more payments on the date(s) otherwise required by the credit agreement, when a specified event occurs. See proposed comment 4(b)(10)-1. The comment would have clarified that the term debt suspension coverage as used in § 226.4(b)(10) does not include "skip payment" arrangements in which the triggering event is the borrower's unilateral election to defer repayment, or the bank's unilateral decision to allow a deferral of payment.

This aspect of the proposal would have applied to closed-end as well as open-end credit transactions. As discussed in the supplementary information to the June 2007 Proposal, it appears appropriate to consider charges for debt suspension products to be finance charges, because these products operate in a similar manner to debt cancellation, and reallocate the risk of nonpayment between the borrower and the creditor.

Industry commenters supported the proposed approach of including charges for debt suspension coverage as finance charges generally, but permitting exclusion of such charges if the coverage is voluntary and meets the other conditions contained in the proposal. Consumer group commenters did not address this issue. Comment 4(b)(10)-1 is adopted as proposed with some minor changes for clarification. Exclusion of charges for debt suspension coverage from the definition of finance charge is discussed in the section-by-section analysis to § 226.4(d)(3) below.

4(d) Insurance and Debt Cancellation Coverage

4(d)(3) Voluntary Debt Cancellation or Debt Suspension Fees

As explained in the section-by-section analysis to § 226.4(b)(10), debt cancellation fees and, as clarified in the final rule, debt suspension fees meet the definition of "finance charge." Under current § 226.4(d)(3), debt cancellation fees may be excluded from the finance charge on the same conditions as credit insurance premiums. These conditions are: the coverage is not required and this fact is disclosed in writing, and the consumer affirmatively indicates in writing a desire to obtain the coverage after the consumer receives written disclosure of the cost. Debt cancellation coverage that may be excluded from the finance charge is limited to coverage that provides for cancellation of all or part of a debtor's liability (1) in case of accident or loss of life, health, or income; or (2) for amounts exceeding the value of collateral securing the debt (commonly referred to as "gap" coverage, frequently sold in connection with motor vehicle loans).

Debt cancellation coverage and debt suspension coverage are fundamentally similar to the extent they offer a consumer the ability to pay in advance for the right to reduce the consumer's obligations under the plan on the occurrence of specified events that could impair the consumer's ability to satisfy those obligations. The two types of coverage are, however, different in a key respect. One cancels debt, at least up to a certain agreed limit, while the other merely suspends the payment obligation while the debt remains constant or increases, depending on coverage terms.

In June 2007, the Board proposed to revise § 226.4(d)(3) to expressly permit creditors to exclude charges for voluntary debt suspension coverage from the finance charge when, after receiving certain disclosures, the consumer affirmatively requests such a product. The Board also proposed to add a disclosure (§ 226.4(d)(3)(iii)), to be provided as applicable, that the obligation to pay loan principal and interest is only suspended, and that interest will continue to accrue during the period of suspension. These proposed revisions would have applied to closed-end as well as open-end credit transactions. Model clauses and samples were proposed at Appendix G-16(A) and G-16(B) and Appendix H-17(A) and H-17(B) to part 226.

In addition, the Board proposed in the June 2007 Proposal to continue to limit the exclusion permitted by § 226.4(d)(3) to charges for coverage for accident or loss of life, health, or income or for gap coverage. The Board also proposed, however, to add comment 4(d)(3)-3 to clarify that, if debt cancellation or debt suspension coverage for two or more events is sold 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. The proposal is adopted in the final rule, with a few modifications discussed below.

A few industry commenters suggested that the exclusion of debt cancellation or debt suspension coverage from the finance charge should not be limited to instances where one of the triggering events is accident or loss of life, health, or income. The commenters contended that such a rule would lead to an inconsistent result; for example, if debt cancellation or suspension coverage has only divorce as a triggering event, the charge could not be excluded from the finance charge, while if the coverage applied to divorce and loss of income, the charge could be excluded. The proposal is adopted without change in this regard. The identification of accident or loss of life, health, or income in current § 226.4(d)(3)(ii) (renumbered § 226.4(d)(3) in the final rule) with respect to debt cancellation coverage is based on TILA Section 106(b), which addresses credit insurance for accident or loss of life or health. 15 U.S.C. 1605(b). That statutory provision reflects the regulation of credit insurance by the states, which may limit the types of insurance that insurers may sell. The approach in the final rule is consistent with the purpose of Section 106(b), but also recognizes that debt cancellation and suspension coverage often are not limited by applicable law to the events allowed for insurance.

A few commenters addressed the proposed disclosure for debt suspension programs that the obligation to pay loan principal and interest is only suspended, and that interest will continue to accrue during the period of suspension. A commenter suggested that in programs combining elements of debt cancellation and debt suspension, the disclosure should not be required. The final rule retains the disclosure requirement in § 226.4(d)(3)(iii). However, comment 4(d)(3)-4 has been added stating that if the 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, to avoid "information overload."

Another commenter noted that the model disclosures proposed at Appendix G-16(A), G-16(B), H-17(A), and H-17(B) to part 226 were phrased assuming interest continues to accrue in all cases of debt suspension programs. The commenter contended that interest does not continue to accrue during the period of suspension in all cases, and suggested revising the forms. However, the disclosures under § 226.4(d)(3)(iii) are only required as applicable; thus, if the disclosure that interest will continue to accrue during the period of suspension is not applicable, it need not be provided.

A commenter noted that proposed model and sample forms G-16(A) and G-16(B), for open-end credit, and H-17(A) and H-17(B), for closed-end credit are virtually identical, but that the model language regarding cost of coverage is more appropriate for open-end credit. Model Clause H-17(A) and Sample H-17(B) have been revised in the final rule to include language regarding cost of coverage that is appropriate for closed-end credit.

A consumer group suggested that in debt suspension programs where interest continues to accrue during the suspension period, periodic statements should be required to include a disclosure of the amount of the accrued interest. The Board believes that the requirement under § 226.7, as adopted in the final rule, for each periodic statement to disclose total interest for the billing cycle as well as total year-to-date interest on the account adequately addresses this concern.

The Board noted in the June 2007 Proposal that the regulation provides guidance on how to disclose the cost of debt cancellation coverage (in proposed § 226.4(d)(3)(ii)), and sought comment on whether additional guidance was needed for debt suspension coverage, particularly for closed-end loans. No commenters addressed this issue except for one industry commenter that responded that no additional guidance was needed.

In a technical revision, as proposed in June 2007, the substance of footnotes 5 and 6 is moved to the text of § 226.4(d)(3).

4(d)(4) Telephone Purchases

Under § 226.4(d)(1) and (d)(3), creditors may exclude from the finance charge premiums for credit insurance and debt cancellation or (as provided in revisions in the final rule) debt suspension coverage if, among other conditions, the consumer signs or initials an affirmative written request for the insurance or coverage. In the June 2007 Proposal, the Board proposed an exception to the requirement to obtain a written signature or initials for telephone purchases of credit insurance or debt cancellation and debt suspension coverage on an open-end (not home-secured) plan. Under proposed new § 226.4(d)(4), for telephone purchases, the creditor would have been permitted to make the disclosures orally and the consumer could affirmatively request the insurance or coverage orally, provided that the creditor (1) maintained reasonable procedures to provide the consumer with the oral disclosures and maintains evidence that demonstrates the consumer then affirmatively elected to purchase the insurance or coverage; and (2) mailed the disclosures under § 226.4(d)(1) or (d)(3) within three business days after the telephone purchase. Comment 4(d)(4)-1 would have provided that a creditor does not satisfy the requirement to obtain an affirmative request if the creditor uses a script with leading questions or negative consent.

Commenters supported proposed § 226.4(d)(4), with some suggested modifications, and it is adopted in final form with a few modifications discussed below. A few commenters requested that the Board expand the proposed telephone purchase rule to home-equity plans and closed-end credit for consistency. HELOCs and closed-end credit are largely separate product lines from credit card and other open-end (not home-secured) plans, and the Board anticipates reviewing the rules applying to these types of credit separately; the issue of telephone sales of credit insurance and debt cancellation or suspension coverage can better be addressed in the course of those reviews. In addition, as discussed above, comment 4(b)(7) and (8)-2, as amended in the final rule, provides that insurance is not written in connection with a credit transaction if the insurance is sold after consummation of a closed-end transaction, or after a home-equity plan is opened, and the consumer requests the insurance. Accordingly, the requirements for disclosure and affirmative written consent to purchase the insurance or coverage do not apply in these situations, and thus the relief that would be afforded by the telephone purchase rule appears less necessary.

A commenter stated that the requirement (in § 226.4(d)(4)(ii)) to mail the disclosures under § 226.4(d)(1) or (d)(3) within three business days after the telephone purchase would be difficult operationally, and recommended that the rule allow five business days instead of three. The Board believes that three business days should provide adequate time to creditors to mail the written disclosures. In addition, the three-business-day period for mailing written disclosures is consistent with the rules published by the federal banking agencies to implement Section 305 of the Gramm-Leach-Bliley Act regarding the sale of insurance products by depository institutions, as well as with the OCC rules regarding the sale of debt cancellation and suspension products.

A few commenters expressed concern about proposed comment 4(d)(4)-1, prohibiting the use of leading questions or negative consent in telephone sales. The commenters stated that the leading questions rule would be difficult to comply with, because the distinction between a leading question and routine marketing language may not be apparent in many cases. The commenters were particularly concerned about being able to ensure that the enrollment question itself not be considered leading. The final comment includes an example of an enrollment question ("Do you want to enroll in this optional debt cancellation plan?") that would not be considered leading.

Section 226.4(d)(4)(i) in the June 2007 Proposal would have required that the creditor must, in addition to providing the required disclosures orally and maintaining evidence that the consumer affirmatively elected to purchase the insurance or coverage, also maintain reasonable procedures to provide the disclosures orally. The final rule does not contain the requirement to maintain procedures to provide the disclosures orally; this requirement is unnecessary because creditors must actually provide the disclosures orally in each case.

The Board proposed this approach 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 uniformed use of credit. 15 U.S.C. 1601(a), 1604(a). Section 105(f) authorizes the Board to exempt any class of transactions (with an exception not relevant here) 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. 15 U.S.C. 1604(f)(1). Section 105(f) directs the Board to make this determination in light of specific factors. 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 stated in the June 2007 Proposal, the Board has considered each of these factors carefully, and based on that review, believes it is appropriate to exempt, for open-end (not home-secured) plans, telephone sales of credit insurance or debt cancellation or debt suspension plans from the requirement to obtain a written signature or initials from the consumer. Requiring a consumer's written signature or initials is intended to evidence that the consumer is purchasing the product voluntarily; the proposal contained safeguards intended to insure that oral purchases are voluntary. Under the proposal and as adopted in the final rule, creditors must maintain tapes or other evidence that the consumer received required disclosures orally and affirmatively requested the product. Comment 4(d)(4)-1 indicates that a creditor does not satisfy the requirement to obtain an affirmative request if the creditor uses a script with leading questions or negative consent. In addition to oral disclosures, under the proposal consumers will receive written disclosures shortly after the transaction.

The fee for the credit insurance or debt cancellation or debt suspension coverage will also appear on the first monthly periodic statement after the purchase, and, as applicable, thereafter. Consumer testing conducted for the Board suggests that consumers review the transactions on their statements carefully. Moreover, as discussed in the section-by-section analysis under § 226.7, under the final rule fees, including insurance and debt cancellation or suspension coverage charges, will be better highlighted on statements. Consumers who are billed for insurance or coverage they did not purchase may dispute the charge as a billing error. These safeguards are expected to ensure that purchases of credit insurance or debt cancellation or suspension coverage by telephone are voluntary.

At the same time, the amendments should facilitate the convenience to both consumers and creditors of conducting transactions by telephone. The amendments, therefore, have the potential to better inform consumers and further the goals of consumer protection and the informed use of credit for open-end (not home-secured) credit.

Section 226.5 General Disclosure Requirements

Section 226.5 contains format and timing requirements for open-end credit disclosures. In the June 2007 Proposal, the Board proposed, among other changes to § 226.5, to reform the rules governing the disclosure of charges before they are imposed in open-end (not home-secured) credit. Under the proposal, all charges imposed as part of the plan would have had to be disclosed before they were imposed; however, while certain specified charges would have continued to be disclosed in writing in the account-opening disclosures, other charges imposed as part of the plan could have been disclosed orally or in writing at any time before the consumer becomes obligated to pay the charge.

5(a) Form of Disclosures

In the June 2007 Proposal, the Board proposed changes to § 226.5(a) and the associated commentary regarding the standard to provide "clear and conspicuous" disclosures. In addition, in both the June 2007 Proposal and the May 2008 Proposal, the Board proposed changes to § 226.5(a) and the associated commentary with respect to terminology. To improve clarity, the Board also proposed technical revisions to § 226.5(a) in the June 2007 Proposal.

5(a)(1) General

Clear and conspicuous standard. Under TILA Section 122(a), all required disclosures must be "clear and conspicuous." 15 U.S.C. 1632(a). The Board has interpreted "clear and conspicuous" for most open-end disclosures to mean that they must be in a reasonably understandable form. Comment 5(a)(1)-1. In most cases, this standard does not require that disclosures be segregated from other material or located in any particular place on the disclosure statement, nor that disclosures be in any particular type size. Certain disclosures in credit and charge card applications and solicitations subject to § 226.5a, however, must meet a higher standard of clear and conspicuous due to the importance of the disclosures and the context in which they are given. For these disclosures, the Board has required that they be both in a reasonably understandable form and readily noticeable to the consumer. Comment 5(a)(1)-1. In the June 2007 Proposal, the Board proposed to amend comment 5(a)(1)-1 to expand the list of disclosures that must be both in a reasonably understandable form and readily noticeable to the consumer.

Readily noticeable standard. Certain disclosures in credit and charge card applications and solicitations subject to § 226.5a are currently required to be in a tabular format. In the June 2007 Proposal, the Board proposed to require information be highlighted in a tabular format in additional circumstances, including: in the account-opening disclosures pursuant to § 226.6(b)(4) (adopted as § 226.6(b)(1) below); with checks that access a credit card account pursuant to § 226.9(b)(3); in change-in-terms notices pursuant to § 226.9(c)(2)(iii)(B); and in disclosures when a rate is increased due to delinquency, default or as a penalty pursuant to § 226.9(g)(3)(ii). Because these disclosures would be highlighted in a tabular format similar to the table required with respect to credit card applications and solicitations under § 226.5a, the Board proposed that these disclosures also be in a reasonably understandable form and readily noticeable to the consumer.

As discussed in further detail in the section-by-section analysis to §§ 226.6(b), 226.9(b), 226.9(c), and 226.9(g), many commenters supported the Board's proposal to require certain information to be presented in a tabular format, and consumer testing showed that tabular presentation of disclosures improved consumer attention to, and understanding of, the disclosures. As a result, the Board adopts the proposal to require a tabular format for certain information required by these sections as well as the proposal to amend comment 5(a)(1)-1. Technical amendments proposed under the June 2007 Proposal, including moving the guidance on the meaning of "reasonably understandable form" to comment 5(a)(1)-2, and moving guidance on what constitutes an "integrated document" to comment 5(a)(1)-4, are also adopted.

In the June 2007 Proposal, the Board also proposed to add comment 5(a)(1)-3 to provide guidance on the meaning of the readily noticeable standard. Specifically, the Board proposed that to meet the readily noticeable standard, the following disclosures must be given in a minimum of 10-point font: disclosures for credit card applications and solicitations under § 226.5a, highlighted account-opening disclosures under § 226.6(b)(4) (adopted as § 226.6(b)(1) below), highlighted disclosures accompanying checks that access a credit card account under § 226.9(b)(3), highlighted change-in-terms disclosures under § 226.9(c)(2)(iii)(B), and highlighted disclosures when a rate is increased due to delinquency, default or as a penalty under § 226.9(g)(3)(ii).

The Board received numerous consumer comments that credit card disclosures are in fine print and that disclosures should be given in a larger font. Many consumer and consumer group commenters suggested that disclosures should be given in a minimum 12-point font. Several of these comments also suggested that the 12-point font minimum be applied to disclosures other than the highlighted disclosures proposed to be subjected to the readily noticeable standard as proposed in comment 5(a)(1)-1. Industry commenters suggested that there be no minimum font size or that the minimum should be 9-point font. One industry commenter stated that the 10-point font minimum should not apply to any disclosures on a periodic statement.

The Board adopts comment 5(a)(1)-3 as proposed. As discussed in the June 2007 Proposal, the Board believes that for certain disclosures, special formatting requirements, such as a tabular format and font size requirements, are needed to highlight for consumers the importance and significance of the disclosures. The Board does not believe, however, that all TILA-required disclosures should be subject to this same standard. For certain disclosures, such as periodic statements, requiring all TILA-required disclosures to be highlighted in the same way could be burdensome for creditors because it would cause the disclosures to be longer and more expensive to provide to consumers. In addition, the benefits to consumers would not outweigh such costs. The Board believes that a more balanced approach is to require such highlighting only for certain important disclosures. The Board, thus, declines to extend the minimum font size requirement to disclosures other than those listed in proposed comment 5(a)(1)-3. Similarly, for disclosures that may appear on periodic statements, such as the highlighted change-in-terms disclosures under § 226.9(c)(2)(iii)(B) and highlighted disclosures when a rate is increased due to delinquency, default or as a penalty under § 226.9(g)(3)(ii), the Board believes that the minimum 10-point font size for these disclosures is appropriate because these are disclosures that consumers do not expect to see each billing cycle. Therefore, the Board believes that it is especially important to highlight these disclosures.

As discussed in the June 2007 Proposal, the Board proposed a minimum of 10-point font for these disclosures to be consistent with the approach taken by eight federal agencies (including the Board) in issuing a proposed model form that financial institutions may use to comply with the privacy notice requirements under Section 503 of the Gramm-Leach-Bliley Act. 15 U.S.C. 6803(e); 72 FR 14940, Mar. 29, 2007. Furthermore, in consumer testing conducted for the Board, participants were able to read and notice information in a 10-point font. Therefore, the Board adopts the comment as proposed.

Disclosures subject to the clear and conspicuous standard. The Board proposed comment 5(a)(1)-5 in the June 2007 Proposal to address questions on the types of communications that are subject to the clear and conspicuous standard. The comment would have clarified that all required disclosures and other communications under subpart B of Regulation Z are considered disclosures required to be clear and conspicuous, including the disclosure by a person other than the creditor of a finance charge imposed at the time of honoring a consumer’s credit card under § 226.9(d) and any correction notice required to be sent to the consumer under § 226.13(e). No comments were received regarding the proposed comment, and the comment is adopted as proposed.

Oral disclosure. In order to give guidance about the meaning of “clear and conspicuous” for oral disclosures, the Board proposed in the June 2007 Proposal to amend the guidance on what constitutes a “reasonably understandable form,” in proposed comment 5(a)(1)-2. Specifically, the Board proposed that oral disclosures be considered to be in a reasonably understandable form when they are given at a volume and speed sufficient for a consumer to hear and comprehend the disclosures. No comments were received on the Board’s proposed guidance concerning clear and conspicuous oral disclosures. Comment 5(a)(1)-2 is adopted as proposed. The Board believes the comment provides necessary guidance not only for the oral disclosure of certain charges under § 226.5(a)(1)(ii), but also for other oral disclosure, such as radio and television advertisements.

5(a)(1)(ii)

Section 226.5(a)(1)(ii) provides that in general, disclosures for open-end plans must be provided in writing and in a retainable form.

Oral disclosures. As discussed in the June 2007 Proposal, the Board proposed that certain charges may be disclosed after account opening and that disclosure of those charges may be provided orally or in writing before the cost is imposed. Many industry commenters supported the Board’s proposal to permit oral disclosure of certain charges while consumer group commenters opposed the Board’s proposal. Some of these consumer group commenters acknowledged the usefulness of oral disclosure of fees at a time when the consumer is about to incur the fee but suggested that it should be in addition to, but not take the place of, written disclosure.

As the Board discussed in the June 2007 Proposal, in proposing to permit certain charges to be disclosed after account opening, the Board's goal was to better ensure that consumers receive disclosures at a time and in a manner that they would be likely to notice them. As discussed in the June 2007 Proposal, at account opening, written disclosure has obvious merit because it is a time when a consumer must assimilate information that may influence major decisions by the consumer about how, or even whether, to use the account. During the life of an account, however, a consumer will sometimes need to decide whether to purchase a single service from the creditor that may not be central to the consumer's use of the account (for example, the service of providing documentary evidence of transactions). The consumer may become accustomed to purchasing such services by telephone, and will, accordingly, expect to receive an oral disclosure of the charge for the service during the same telephone call. Permitting oral disclosure of charges that are not central to the consumer's use of the account would be consistent with consumer expectations and with the business practices of creditors. For these reasons, the Board adopts its proposal to permit creditors to disclose orally charges not specifically identified in the account-opening table in § 226.6(b)(2) (proposed as § 226.6(b)(4)). Further, the Board adopts its proposal that creditors be provided with the same flexibility when the cost of such a charge changes or is newly introduced, as discussed in the section-by-section analysis to § 226.9(c).

One industry commenter stated its concerns that oral disclosure may make it difficult for creditors to demonstrate compliance with TILA. As the Board discussed in the June 2007 Proposal, creditors may continue to comply with TILA by providing written disclosures at account opening for all fees. The Board anticipates that creditors will likely continue to identify fees in the account agreement for contract and other reasons even if the regulation does not specifically require creditors to do so.

In technical revisions, as proposed in the June 2007 Proposal, the final rule moves to § 226.5(a)(1)(ii)(A) the current exemption in footnote 7 under § 226.5(a)(1) that disclosures required by § 226.9(d) need not be in writing. Section 226.9(d) requires disclosure when a finance charge is imposed by a person other than the card issuer at the time of a transaction. Specific wording in § 226.5(a)(1)(ii)(A) also has been amended from the proposal in order to provide greater clarity, with no intended substantive change from the June 2007 Proposal. In another technical revision, the substance of footnote 8, regarding disclosures that do not need to be in a retainable form the consumer may keep, is moved to § 226.5(a)(1)(ii)(B) as proposed.

Electronic communication. Commenters on the June 2007 Proposal suggested that for disclosures that need not be provided in writing at account opening, creditors should be permitted to provide disclosures in electronic form, without having to comply with the consumer notice and consent procedures of the Electronic Signatures in Global and National Commerce Act (E-Sign Act), 15 U.S.C. 7001 et seq., at the time an on-line or other electronic service is used. For example, commenters suggested, if a consumer wishes to make an on-line payment on the account, for which the creditor imposes a fee (which has not previously been disclosed), the creditor should be allowed to disclose the fee electronically, without E-Sign notice and consent, at the time the on-line payment service is requested. Commenters contended that such a provision would not harm consumers and would expedite transactions, and also that it would be consistent with the Board's proposal to permit oral disclosure of such fees.

Under section 101(c) of the E-Sign Act, if a statute or regulation requires that consumer disclosures be provided in writing, certain notice and consent procedures must be followed in order to provide the disclosures in electronic form. Accordingly because the disclosures under § 226.5(a)(1)(ii)(A) are not required to be provided in writing, the Board proposed to add comment 5(a)(1)(ii)(A)-1 in May 2008 to clarify that disclosures not required to be in writing may be provided in writing, orally, or in electronic form without regard to the consumer consent or other provisions of the E-Sign Act.

Most commenters supported the Board's proposal. Some consumer group commenters, however, suggested that the Board require that any electronic disclosure be in a format that can be printed and retained. The Board declines to impose such a requirement. Disclosures that the Board permits to be made orally are not required to be in written or retainable form. The Board believes that the same standard should apply if such disclosures are made electronically. In order to clarify this point, the Board has amended § 226.5(a)(1)(ii)(B) to specify that disclosures that need not be in writing also do not need to be in retainable form. This would encompass both oral and electronic disclosures.

5(a)(1)(iii)

In a final rule addressing electronic disclosures published in November 2007 (November 2007 Final Electronic Disclosure Rule), the Board adopted amendments to § 226.5(a)(1) to clarify that creditors may provide open-end disclosures to consumers in electronic form, subject to compliance with the consumer consent and other applicable provisions of the E-Sign Act. 72 FR 63462, Nov. 9, 2007; 72 FR 71058, Dec. 14, 2007. These amendments also provide that the disclosures required by §§ 226.5a, 226.5b, and 226.16 may be provided to the consumer in electronic form, under the circumstances set forth in those sections, without regard to the consumer consent or other provisions in the E-Sign Act. These amendments have been moved to § 226.5(a)(1)(iii) for organizational purposes.

Furthermore, in May 2008, the Board proposed comment 5(a)(1)(iii)-1 to clarify that the disclosures specified in § 226.5(a)(1)(ii)(A) also may be provided in electronic form without regard to the E-Sign Act when the consumer requests the service in electronic form, such as on a creditor's Web site. Consistent with the Board's decision to adopt comment 5(a)(1)(ii)(A)-1, as discussed above, the Board adopts comment 5(a)(1)(iii)-1.

5(a)(2) Terminology

Consistent terminology. As proposed in June 2007, disclosures required by the open-end provisions of Regulation Z (Subpart B) would have been required to use consistent terminology under proposed § 226.5(a)(2)(i). The Board also proposed comment 5(a)(2)-4 to clarify that terms do not need to be identical but must be close enough in meaning to enable the consumer to relate the disclosures to one another.

The Board received no comments objecting to this proposal. Accordingly, the Board adopts § 226.5(a)(2)(i) and comment 5(a)(2)-4 as proposed. The Board, however, received one comment requesting clarification on the implementation of this provision. Specifically, the commenter pointed out that creditors will likely phase in changes during a transitional period, and as a result, may not be able to align terminology in all their disclosures to consumers during this transitional period. The Board agrees; thus, some disclosures may contain existing terminology required currently under Regulation Z while other disclosures may contain new terminology required in this final rule or the final rules issued by the Board and other federal banking agencies published elsewhere in today's **Federal Register**. Therefore, during this transitional period, terminology need not be consistent across all disclosures. By the effective date of this rule, however, all disclosures must have consistent terminology.

Terms required to be more conspicuous than others. TILA Section 122(a) requires that the terms "annual percentage rate" and "finance charge" be disclosed more conspicuously than other terms, data, or information. 15 U.S.C. 1632(a). The Board has implemented this provision in current § 226.5(a)(2) by requiring that the terms "finance charge" and "annual percentage rate," when disclosed with a corresponding amount or percentage rate, be disclosed more conspicuously than any other required disclosure. Currently, the terms do not need to be more conspicuous when used under §§ 226.5a, 226.7(d), 226.9(e), and 226.16. In June 2007, the Board proposed to expand this list to include the account-opening disclosures that would be highlighted under proposed § 226.6(b)(4) (adopted as § 226.6(b)(1) and (b)(2) below), the disclosure of the effective APR under proposed § 226.7(b)(7) under one approach, disclosures on checks that access a credit card account under proposed § 226.9(b)(3), the information on change-in-terms notices that would be highlighted under proposed § 226.9(c)(2)(iii)(B), and the disclosures given when a rate is increased due to delinquency, default or as a penalty under proposed § 226.9(g)(3)(ii). In addition, the Board sought comment in the June 2007 Proposal on ways to address criticism by the United States Government

Accountability Office (GAO) that credit card disclosure documents "unnecessarily emphasized specific terms."[13]

As discussed in the June 2007 Proposal, the Board agreed with the GAO's assessment that overemphasis of these terms may make disclosures more difficult for consumers to read. One approach the Board had considered to remedy this problem was to prohibit the terms "finance charge" and "annual percentage rate" from being disclosed more conspicuously than other required disclosures except when the regulation so requires. However, the Board acknowledged in the June 2007 Proposal that this approach could produce unintended consequences. Commenters agreed with the Board.

Many industry commenters suggested that in light of the Board's requirement to disclose APRs and certain other finance charges at account-opening and at other times in the life of the account in a tabular format with a minimum 10-point font size pursuant to comment 5(a)(1)-3 (or 16-point font size as required for the APR for purchases under §§ 226.5a(b)(1) and 226.6(b)(2)), requiring the terms "annual percentage rate" and "finance charge" to be more conspicuous than other disclosures to draw attention to the terms was not necessary. Furthermore, commenters pointed out that the Board is no longer requiring use of the term "finance charge" in TILA disclosures to consumers for open-end (not home-secured) plans, and in fact, is requiring creditors to disclose finance charges as either "fees" or "interest" on periodic statements. As a result, creditors would, in many cases, no longer have the term "finance charge" to make more conspicuous than other terms.

---

[13] United States Government Accountability Office, Credit Cards: Increased Complexity in Rates and Fees Heightens Need for More Effective Disclosures to Consumers, 06-929 (September 2006).

For the reasons discussed above, the Board is eliminating for open-end (not home-secured) plans the requirement to disclose "annual percentage rate" and "finance charge" more conspicuously, using its authority under Section 105(a) of TILA to make "such adjustments and exceptions for any class of transaction as in the judgment of the Board are necessary or proper to effectuate the purposes of the title, to prevent circumvention or evasion thereof, or to facilitate compliance therewith." 15 U.S.C. 1604(a). Therefore, the requirement in § 226.5(a)(2)(ii) that "annual percentage rate" and "finance charge" be disclosed more conspicuously than any other required disclosures when disclosed with a corresponding amount or percentage rate applies only to home-equity plans subject to § 226.5b. As is currently the case, even for home-equity plans subject to § 226.5b, these terms need not be more conspicuous when used under § 226.7(a)(4) on periodic statements and under section § 226.16 in advertisements. Other exceptions currently in footnote 9 to § 226.5(a)(2), which reference §§ 226.5a and 226.9(e), have been deleted as unnecessary since these disclosures do not apply to home-equity plans subject to § 226.5b. The requirement, as it applies to home-equity plans subject to § 226.5b, may be re-evaluated when the Board conducts its review of the regulations related to home-equity plans.

Use of the term "grace period". In the June 2007 Proposal, the Board proposed § 226.5(a)(2)(iii) to require that the term "grace period" be used, as applicable, in any disclosure that must be in a tabular format under proposed § 226.5(a)(3). The Board's proposal was meant to make other disclosures consistent with credit card applications and solicitations where use of the term "grace period" is required by TILA Section 122(c)(2)(C) and § 226.5a(a)(2)(iii). 15 U.S.C. 1632(c)(2)(C). Based on comments received as part of the June 2007 Proposal and further consumer testing, the Board proposed in the May 2008 Proposal to delete § 226.5a(a)(2)(ii) and withdraw the requirement to use the term "grace period" in proposed § 226.5(a)(2)(iii).

As discussed in the section-by-section analysis to § 226.5a(b)(5), the Board is exercising its authority under TILA Sections 105(a) and (f), and TILA Section 127(c)(5) to delete the requirement to use the term "grace period" in the table required by § 226.5a. 15 U.S.C. 1604(a) and (f), 1637(c)(5). The purpose of the proposed requirement was to provide consistency for headings in a tabular summary. Accordingly, the Board withdraws the requirement to use the term "grace period" in proposed § 226.5(a)(2)(iii).

Other required terminology. The Board proposed § 226.5(a)(2)(iii) in the June 2007 Proposal to provide that if disclosures are required to be presented in a tabular format, the term "penalty APR" shall be used to describe an increased rate that may result because of the occurrence of one or more specific events specified in the account agreement, such as a late payment or an extension of credit that exceeds the credit limit. Therefore, the term "penalty APR" would have been required when creditors provide information about penalty rates in the table given with credit card applications and solicitations under § 226.5a, in the summary table given at account opening under § 226.6(b)(1) and (b)(2) (proposed as § 226.6(b)(4)), if the penalty rate is changing, in the summary table given on or with a change-in-terms notice under § 226.9(c)(2)(iii)(B), or if a penalty rate is triggered, in the table given under § 226.9(g)(3)(ii).

Commenters were generally supportive of the Board's efforts to develop some common terminology and the Board's proposal to require use of the term "penalty APR" to describe an increased rate resulting from the occurrence of one or more specific events.

Some industry commenters, however, urged the Board to reconsider requiring use of the term “penalty APR,” especially when used to describe the loss of an introductory rate or promotional rate. As discussed in the June 2007 Proposal, the term “penalty APR” proved the most successful of the terms tested with participants in the Board’s consumer testing efforts. In the interest of uniformity, the Board adopts the provision as proposed, with one exception for promotional rates. To prevent consumer confusion over use of the term “penalty rate” to describe the loss of a promotional rate where the rate applied is the same or is calculated in the same way as the rate that would have applied at the end of the promotional period, the Board is amending proposed § 226.5(a)(2)(iii) to provide that the term “penalty APR” need not be used in reference to the APR that applies with the loss of a promotional rate, provided the APR that applies is no greater than the APR that would have applied at the end of the promotional period; or if the APR that applies is a variable rate, the APR is calculated using the same index and margin as would have been used to calculate the APR that would have applied at the end of the promotional period. In addition, the Board is also modifying the required disclosure related to the loss of an introductory rate as discussed below in the section-by-section analysis to § 226.5a, which should also address these concerns.

Under the June 2007 Proposal, proposed § 226.5(a)(2)(iii) also would have provided that if credit insurance or debt cancellation or debt suspension coverage is required as part of the plan and information about that coverage is required to be disclosed in a tabular format, the term “required” shall be used in describing the coverage and the program shall be identified by its name. No comments were received on this provision, and the provision is adopted as proposed.

Consistent with the Board's proposal under the advertising rules in the June 2007 Proposal, proposed § 226.5(a)(2)(iii), would have provided that if required to be disclosed in a tabular format, an APR may be described as "fixed," or using any similar term, only if that rate will remain in effect unconditionally 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 remains in effect unconditionally until the plan is closed. The final rule adopts § 226.5(a)(2)(iii) as proposed, consistent with the Board's decision with respect to use of the term "fixed" in describing an APR stated in an advertisement, as further discussed in the section-by-section analysis to § 226.16(f) below.

5(a)(3) Specific Formats

As proposed in June 2007, for clarity, the special rules regarding the specific format for disclosures under § 226.5a for credit and charge card applications and solicitations and § 226.5b for home-equity plans have been consolidated in § 226.5(a)(3) as proposed. In addition, as discussed below, the Board is requiring certain account-opening disclosures, periodic statement disclosures and subsequent disclosures, such as change-in-terms disclosures, to be provided in specific formats under § 226.6(b)(1); § 226.7(b)(6) and (b)(13); and § 226.9(b), (c) and (g). The final rule includes these special format rules in § 226.5(a)(3), as proposed in the June 2007 Proposal, with one exception. Because the Board is not requiring disclosure of the effective APR pursuant to § 226.7(b)(7), as discussed further in the general discussion on the effective APR in the section-by-section analysis to § 226.7(b), the proposed special format rule relating to the effective APR is not contained in the final rule.

5(b) Time of Disclosures

5(b)(1) Account-opening Disclosures

Creditors are required to make certain disclosures to consumers "before opening any account." TILA Section 127(a) (15 U.S.C. 1637(a)). Under § 226.5(b)(1), these disclosures, as identified in § 226.6, must be furnished "before the first transaction is made under the plan," which the Board has interpreted as "before the consumer becomes obligated on the plan." Comment 5(b)(1)-1. There are limited circumstances under which creditors may provide the disclosures required by § 226.6 after the first transaction, and the Board proposed in the June 2007 Proposal to move this guidance from comment 5(b)(1)-1 to proposed § 226.5(b)(1)(iii)-(v). In the May 2008 Proposal, the Board proposed additional revisions to § 226.5(b)(1)(iv) regarding membership fees.

The Board also proposed revisions in the June 2007 Proposal to the timing rules for disclosing certain costs imposed on an open-end (not home-secured) plan and in connection with certain transactions conducted by telephone. Furthermore, the Board proposed additional guidance on providing timely disclosures when the first transaction is a balance transfer. Finally, technical revisions were proposed to change references from "initial" disclosures required by § 226.6 to "account-opening" disclosures, without any intended substantive change.

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

Creditors generally must provide the account-opening disclosures before the first transaction is made under the plan. The renumbering of this rule as § 226.5(b)(1)(i) is adopted as proposed in the June 2007 Proposal.

Balance transfers. Under existing commentary and consistent with the general rule on account-opening disclosures, creditors must provide account-opening disclosures before a balance transfer occurs. In the June 2007 Proposal, the Board proposed to update this commentary to reflect current business practices. As the Board discussed in the June 2007 Proposal, some creditors offer balance transfers for which the APRs that may apply are disclosed as a range, depending on the consumer's creditworthiness. Consumers who respond to such an offer, and are approved for the transfer later receive account-opening disclosures, including the actual APR that will apply to the transferred balance. The Board proposed to clarify in comment 5(b)(1)(i)-5 that a creditor must provide disclosures sufficiently in advance of the balance transfer to allow the consumer to review and respond to the terms that will apply to the transfer, including to contact the creditor before the balance is transferred and decline the transfer. The Board, however, did not propose a specific time period that would be considered "sufficiently in advance."

Industry commenters indicated that following the Board's guidance would cause delays in making transfers, which would be contrary to consumer expectations that these transfers be effected quickly. A consumer group commenter suggested that requiring the APR that will apply, as opposed to allowing a range, to be disclosed on the application or solicitation would be simpler. The Board notes that creditors may, at their option, provide account-opening disclosures, including the specific APRs, along with the balance transfer offer and account application to avoid delaying the transfer.

The Board believes that, consistent with the general rule, consumers should receive account-opening information, including the APR that will apply, before the first transaction, which is the balance transfer. Comment 5(b)(1)(i)-5 is adopted as proposed, and states that a creditor must provide 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. The Board has made one revision to comment 5(b)(1)(i)-5 as adopted. In response to commenters' requests for additional guidance, comment 5(b)(1)(i)-5 provides a safe harbor that may be used by creditors that permit a consumer to decline the balance transfer by telephone. In such cases, a creditor has provided sufficient time to the consumer to contact the creditor and withdraw the request if the creditor does not effect the balance transfer until 10 days after the creditor has sent out information, assuming the consumer has not canceled the transaction.

Disclosure before the first transaction. Comment 5(b)(1)-1, renumbered as comment 5(b)(1)(i)-1 in the June 2007 Proposal, addresses a creditor's general duty to provide account-opening disclosures "before the first transaction." In the May 2008 Proposal, the comment was proposed to be reorganized for clarity to provide existing examples of "first transactions" related to purchases and cash advances. Other guidance in current comment 5(b)(1)-1 was proposed to be amended and moved to proposed § 226.5(b)(1)(iv) and associated commentary in the June 2007 and May 2008 Proposals, as discussed below in the section-by-section analysis to § 226.5(b)(1)(iv).

The Board did not receive comment on the proposed reorganization but received many comments on the guidance that was amended and moved to proposed § 226.5(b)(1)(iv). These comments are discussed below in the section-by-section analysis to § 226.5(b)(1)(iv). Some consumer group commenters noted that the Board's reorganization of this comment made them realize that they opposed current guidance on cash advances in comment 5(b)(1)-1 (now renumbered as comment 5(b)(1)(i)-1), which permits creditors to provide account-opening disclosures along with the first cash advance check as long as the consumer can return the cash advance without obligation. The Board continues to believe that this approach is appropriate because of the lack of harm to consumers. Therefore, the Board declines to amend its current guidance on cash advances in comment 5(b)(1)(i)-1, which is renumbered as proposed without substantive change.

5(b)(1)(ii) Charges Imposed as Part of an Open-End (Not Home-Secured) Plan

Under the June 2007 Proposal, the Board proposed in new § 226.5(b)(1)(ii) and comment 5(b)(1)(ii)-1 to except charges imposed as part of an open-end (not home-secured) plan, other than those specified in proposed § 226.6(b)(4)(iii) (adopted as § 226.6(b)(2)), from the requirement to disclose charges before the first transaction. Creditors would have been permitted, at their option, to disclose those charges either before the first transaction or later, so long as they were disclosed before the cost was imposed. The current rule requiring the disclosure of costs before the first transaction (in writing and in a retainable form) would have continued to apply to certain specified costs. These costs are fees of which consumers should be aware before using the account, such as annual or late payment fees, or fees that the creditor would not otherwise have an opportunity to disclose before the fee is triggered, such as a fee for using a cash advance check during the first billing cycle.

Numerous industry commenters supported the Board's proposal. Consumer group commenters, on the other hand, opposed the Board's proposal, arguing that all charges should be required to be disclosed at account opening before the first transaction.

While consumer group commenters acknowledged that disclosure of the amount of the fee at a time when the consumer is about to incur it is a good business practice, the commenters indicated that the Board's proposal would encourage creditors to create new fees that are not specified to be given in writing at account-opening. The final rule adopts § 226.5(b)(1)(ii) and comment 5(b)(1)(ii)-1 largely as proposed with some clarifying amendments and additional illustrative examples.

As the Board discussed in the June 2007 Proposal, the charges covered by the proposed exception from disclosure at account opening are triggered by events or transactions that may take place months, or even years, into the life of the account, when the consumer may not reasonably be expected to recall the amount of the charge from the account-opening disclosure, nor readily to find or obtain a copy of the account-opening disclosure or most recent change-in-terms notice. Requiring such charges to be disclosed before account opening may not provide a meaningful benefit to consumers in the form of useful information or protection. The rule would allow flexibility in the timing of certain cost disclosures by permitting creditors to disclose such charges – orally or in writing – before the fee is imposed. As a result, creditors would be disclosing the charge when the consumer is deciding whether to take the action that would trigger the charge, such as purchasing a service, which is a time at which consumers would likely notice the charge. The Board intends to continue monitoring credit card fees and practices, and could add additional fees to the specified costs that must be disclosed in the account-opening table before the first transaction, as appropriate.

In addition, as discussed in the June 2007 Proposal, the Board believes the exception may facilitate compliance by creditors. Determining whether charges are a finance charge or an other charge or not covered by TILA (and thus whether advance notice is required) can be challenging, and the rule reduces these uncertainties and risks. The creditor will not have to determine whether a charge is a finance charge or other charge or not covered by TILA, so long as the creditor discloses the charge, orally or in writing, before the consumer becomes obligated to pay it, which creditors, in general, already do for business and other legal reasons.

Electronic Disclosures. In the May 2008 Proposal, the Board proposed to revise comment 5(b)(1)(ii)-1 to clarify that for disclosures not required to be provided in writing at account opening, electronic disclosure, without regard to the E-Sign Act notice and consent requirements, is a permissible alternative to oral or written disclosure, when a consumer requests a service in electronic form, such as on a creditor's Web site. As discussed in the section-by-section analysis to comment 5(a)(1)(ii)(A)-1 above, the Board received many comments in support of permitting electronic disclosure, without regard to the E-Sign Act notice and consent requirements, for disclosures that are not required to be provided in writing at account opening. Some consumer group commenters objected to allowing any electronic disclosure without the protections of the E-Sign Act. As discussed in the May 2008 Proposal, since the disclosure of charges imposed as part of an open-end (not home-secured) plan, other than those specified in § 226.6(b)(2), are not required to be provided in writing, the Board believes that E-Sign notice and consent requirements do not apply when the consumer requests the service in electronic form. The revision to comment 5(b)(1)(ii)-1 proposed in May 2008 is adopted as proposed.

5(b)(1)(iii) Telephone Purchases

In the June 2007 Proposal, the Board proposed § 226.5(b)(1)(iii) to address situations where a consumer calls a merchant to order goods by telephone and concurrently establishes a new open-end credit plan to finance that purchase. Because TILA account-opening disclosures must be provided before the first transaction under the current timing rule, merchants must delay the shipment of goods until a consumer has received the disclosures. Consumers who want goods shipped immediately may use another method to finance the purchase, but they may lose any incentives the merchant may offer with opening a new plan, such as discounted purchase prices or promotional payment plans. The Board's proposal was meant to provide additional flexibility to merchants and consumers in such cases.

Under proposed § 226.5(b)(1)(iii), merchants that established an open-end plan in connection with a telephone purchase of goods initiated by the consumer would have been able to provide account-opening disclosures as soon as reasonably practicable after the first transaction if the merchant (1) permits consumers to return any goods financed under the plan at the time the plan is opened and provides the consumer sufficient time to reject the plan and return the items free of cost after receiving the written disclosures required by § 226.6, and (2) informs the consumer about the return policy as a part of the offer to finance the purchase. Alternatively, the merchant would have been able to delay shipping the goods until after the account disclosures have been provided.

The Board also proposed comment 5(b)(1)(iii)-1 to provide that a return policy is of sufficient duration if the consumer is likely to receive the disclosures and have sufficient time to decide about the financing plan. A return policy includes returns via the United States Postal Service for goods delivered by private couriers. The proposed commentary also clarified that retailers' policies regarding the return of merchandise need not provide a right to return goods if the consumer consumes or damages the goods. As discussed in the June 2007 Proposal, the regulation and commentary would not have affected merchandise purchased after the plan was initially established or purchased by another means of financing, such as a credit card issued by another creditor.

Consumer group commenters opposed the proposal arguing that providing a right to cancel is much less protective of consumers' rights than requiring that a consumer receive disclosures before goods are shipped. As discussed above and in the June 2007 Proposal, the Board believes proposed § 226.5(b)(1)(iii) would provide consumers with greater flexibility. Consumers may have their goods shipped immediately, and in some cases, take advantage of merchant incentives, such as discounted purchase prices or promotional payment plans, but still retain the right to reject the plan, without cost, after receiving account-opening disclosures.

Industry commenters were supportive of the Board's proposal, but several commenters asked for additional extensions or clarifications to the policy. First, commenters requested clarification that the exception is available for third-party creditors that are not retailers, arguing that few merchants are themselves creditors and that the same flexibility should be available to creditors offering private label or co-brand credit arrangements in connection with the purchase of a merchant's goods. The Board agrees, and revisions have been made to § 226.5(b)(1)(iii) accordingly. Industry commenters also suggested that the provision in § 226.5(b)(1)(iii) be available not only for telephone purchases "initiated by the consumer," but also telephone purchases where the merchant contacts the consumer. Outbound calls to a consumer may raise many telemarketing issues and concerns about questionable marketing tactics. As a result, the Board declines to extend § 226.5(b)(1)(iii) to telephone purchases that have not been initiated by the consumer.

A few industry commenters also suggested that this exception be available for all creditors opening an account by telephone, regardless of whether it is in connection with the purchase of goods or not. These commenters stated that for certain consumers, such as active duty military members, immediate use of the account after it is opened may be necessary to take care of personal or family needs. The Board notes that the exception under § 226.5(b)(1)(iii) turns on the ability of consumers to return any goods financed under the plan free of cost after receiving the written disclosures required by § 226.6. In the case of an account opened by telephone that is not in connection with the purchase of goods from the creditor or an affiliated third party, a creditor would likely have no way to reverse any purchases or other transactions made before the disclosures required by § 226.6 are received by the consumer should the consumer wish to reject the plan if the purchase was made with an unaffiliated third party. Thus, the Board declines to extend § 226.5(b)(1)(iii) to accounts opened by telephone that are not in connection with the contemporaneous purchase of goods.

The Board also received comments requesting that § 226.5(b)(1)(iii) be made applicable to the on-line purchase of goods or that merchants have the option to refer consumers purchasing by telephone to a Web site to obtain disclosures required by § 226.6. This issue has been addressed in the November 2007 Final Electronic Disclosure Rule. The E-Sign Act clearly states that any consumer to whom written disclosures are required to be given must affirmatively consent to the use of electronic disclosures before such disclosures can be used in place of paper disclosures. The November 2007 Final Electronic Disclosure Rule created certain instances where E-Sign consent does not need to be obtained before disclosures may be provided electronically. Specifically, open-end credit disclosures required by §§ 226.5a (credit card applications and solicitations), 226.5b (HELOC applications), and 226.16 (open-end credit advertising) may be provided to the consumer in electronic form, under the circumstances set forth in those sections, without regard to the consumer consent or other provisions of the E-Sign Act. Disclosures required by § 226.6, however, may only be provided electronically if the creditor obtains consumer consent consistent with the E-Sign Act. 72 FR 63462, Nov. 9, 2007; 72 FR 71058, Dec. 14, 2007.

The Board also received comments requesting clarification of the return policy; in particular, whether this would cause creditors to provide those consumers who open a new credit plan concurrently with the purchase of goods over the telephone with a different return policy from other customers. For example, assume a merchant's customers are normally charged a restocking fee for returning goods, and the merchant does not wish to wait until the disclosures under § 226.6 are sent out before shipping the goods. A commenter asked whether this means that a customer opening a new credit plan concurrently with the purchase of goods over the telephone is exempted from paying that restocking fee if the goods are returned. As proposed in the June 2007 Proposal, the final rule requires that in order to use the exception from providing disclosures under § 226.6 before the consumer becomes obligated on the account, the consumer must have sufficient time to reject the plan and return the items free of cost after receiving the written disclosures required by § 226.6. This means that there can be no cost to the consumer for returning the goods even if for the merchant's other customers, a fee is normally charged. As the Board discussed in the June 2007 Proposal, merchants always have the option to delay shipping of the goods until after the disclosures are given if the merchant does not want to maintain a potentially different return policy for consumers opening a new credit plan concurrently with the purchase of goods over the telephone.

Commenters also requested guidance on what would be considered "sufficient time" for the consumer to reject the plan and return the goods. Because the amount of time that would be deemed to be sufficient would depend on the nature of the goods and the transaction, and the locations of the various parties to the transaction, the Board does not believe that it is appropriate to specify a particular time period applicable to all transactions.

The Board also received requests for other clarifications. One commenter suggested that the Board expressly acknowledge that if the consumer rejects the credit plan, the consumer may substitute another reasonable form of payment acceptable to the merchant other than the credit plan to pay for the goods in full. This clarification has been included in comment 5(b)(1)(iii)-1. Furthermore, this commenter also suggested that the exception in comment 5(b)(1)(iii)-1 allowing for no return policy for consumed or damaged goods should be revised to expressly cover installed appliances or fixtures, provided a reasonable repair or replacement policy covers defective goods or installations. The Board concurs and changes have been made to comment 5(b)(1)(iii)-1 accordingly.

5(b)(1)(iv) Membership Fees

TILA Section 127(a) requires creditors to provide specified disclosures "before opening any account." 15 U.S.C. 1637(a). Section 226.5(b)(1) requires these disclosures (identified in § 226.6) to be furnished before the first transaction is made under the plan. Currently and under the June 2007 and May 2008 Proposals, creditors may collect or obtain the consumer's promise to pay a membership fee before the account-opening disclosures are provided, if the consumer can reject the plan after receiving the disclosures. If a consumer rejects the plan, the creditor must promptly refund the fee if it has been paid or take other action necessary to ensure the consumer is not obligated to pay the fee. In the June 2007 Proposal, guidance currently in comment 5(b)(1)-1 about creditors' ability to assess certain membership fees before consumers receive the account-opening disclosures was moved to § 226.5(b)(1)(iv).

In the June 2007 and May 2008 Proposals, the Board proposed clarifications to the consumer's right not to pay membership fees that were assessed or agreed to be paid before the consumer received account-opening disclosures, if a consumer rejects a plan after receiving the account-opening disclosures. In the May 2008 Proposal, the Board proposed in revised § 226.5(b)(1)(iv) and new comment 5(b)(1)(iv)-1 that "membership fee" has the same meaning as fees for issuance or availability of a credit or charge card under § 226.5a(b)(2), including annual or other periodic fees, or "start-up" fees, such as account-opening fees. The Board also proposed in the May 2008 Proposal under revised § 226.5(b)(1)(iv) to clarify that if a consumer rejects an open-end (not home-secured) plan as permitted under that provision, consumers are not obligated to pay any membership fee, or any other fee or charge (other than an application fee that is charged to all applicants whether or not they receive the credit).

Some consumer group commenters opposed the Board's clarification on the term "membership fee" and argued that the definition could expand the ability of creditors to charge additional types of fees prior to sending out account-opening disclosures. These consumer group commenters, however, supported that the Board's clarification could allow for a greater number of fees that consumers would not be obligated to pay should they reject the plan. One industry commenter opposed the Board's reference to annual fees as "membership fees." The Board notes that the term "membership fee" is not currently defined, and, therefore, there is little guidance as to what fees would be covered by that term. As discussed in the May 2008 Proposal, the Board proposed that "membership fee" have the same meaning as fees for issuance or availability under § 226.5a(b)(2) for consistency and ease of compliance. The Board continues to believe this clarification is warranted, and § 226.5(b)(1)(iv) is adopted generally as proposed, with one change discussed below.

The final rule expands the types of fees for which consumers must not be obligated if they reject an open-end (not home-secured) plan as permitted under § 226.5(b)(1)(iv) to include application fees charged to all applicants. The Board believes that it is important that consumers have the opportunity, after receiving the account-opening disclosures which set forth the fees and other charges that will be applicable to the account, to reject the plan without being obligated for any charges. It is the Board's understanding that some creditors may debit application fees to the account, and thus these fees should be treated in the same manner as other fees debited at account opening. Conforming changes have been made to § 226.5a(d)(2).

Furthermore, in May 2008, the Board proposed to revise and move to comment 5(b)(1)(iv)-2, guidance in current comment 5(b)(1)-1 (renumbered as comment 5(b)(1)(i)-1 in the June 2007 Proposal) regarding instances when a creditor may consider an account not rejected. In the May 2008 Proposal, the Board proposed to revise the guidance to provide that 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. In the May 2008 Proposal, the Board also proposed to provide a "safe harbor" that a creditor may deem the plan to be rejected if, 60 days after the creditor mailed the account-opening disclosures, the consumer has not used the account or made a payment on the account.

The Board received mixed comments on the 60 day "safe harbor" proposal. Some industry commenters opposed the "safe harbor" citing operational complexity and uncertainty in account administration procedures. Some consumer group commenters and an industry trade group commenter supported the Board's proposal. These commenters also suggested that the Board either require or encourage as a "best practice" a notice to be given to consumers stating that inactivity for 60 days will cause an account to be closed. After considering comments on the proposal, the Board is amending comment 5(b)(1)(iv)-2 to delete the 60 day "safe harbor" because the Board believes the potential confusion this guidance may cause and the operational difficulties the guidance could impose outweigh the benefits of the guidance.

In the June 2007 Proposal, the Board proposed to provide guidance in comment 5(b)(1)(i)-1 on what it means to "use" the account. The June 2007 proposed clarification was intended to address concerns about some subprime card accounts that assess a large number of fees at account opening. In the May 2008 Proposal, this provision was moved to new proposed comment 5(b)(1)(iv)-3 and revised to clarify that a consumer does not "use" an account when the creditor assesses fees to 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). The May 2008 Proposal also clarified in comment 5(b)(1)(iv)-3 that the consumer does not "use" an account when, for example, 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. In the May 2008 Proposal, the Board also proposed to add that a consumer is not considered to "use" an account when, for example, a consumer receives a credit card in the mail and calls to activate the card for security purposes.

The Board received several comments regarding the guidance on whether activation of the card constitutes "use" of the account. Some commenters supported the Board's proposed guidance. Other commenters opposed the proposal noting that a consumer will have received account-opening disclosures at the time the consumer activates the card. These commenters also stated that when a consumer affirmatively activates a card, it should constitute acceptance of the account. Some consumer group commenters suggested that the Board also include guidance that payment of fees on the first billing statement should not constitute acceptance of the account and that consumers should only be considered to have used an account by affirmatively using the credit, such as by making a purchase or obtaining a cash advance.

The Board is adopting comment 5(b)(1)(iv)-3 as proposed with one modification. The Board believes that what constitutes "use" of the account should be consistent with consumer understanding of the term. A consumer is likely to think he or she has not "used" the account if the only action he or she has taken is to activate the account. Conversely, a consumer who has made a purchase or a payment on the account would likely believe that he or she is "using" the account. The Board, however, is amending the comment to delete the phrase "such as for security purposes" in relation to the discussion about card activation. One industry commenter, while supportive of the Board's general guidance that activation alone does not indicate a consumer's acceptance of a credit plan, was concerned about any suggestion that a customer should activate, for security purposes, an account that a consumer does not intend to use.

In technical revisions, comment 5(b)(1)-1, renumbered as comment 5(b)(1)(i)-1 in the June 2007 Proposal, currently addresses a creditor's general duty to provide account-opening disclosures "before the first transaction" and provides that HELOCs are not subject to the prohibition on the payment of fees other than application or refundable membership fees before account-opening disclosures are provided. See § 226.5b(h) regarding limitations on the collection of fees. In the May 2008 Proposal, the existing guidance about HELOCs was moved to revised § 226.5(b)(1)(iv) and a new comment 5(b)(1)(iv)-4 for clarity. The Board received no comment on the proposed reorganization, and the reorganization of the guidance regarding HELOCs is adopted as proposed.

5(b)(2) Periodic Statements

TILA Sections 127(b) and 163 set forth the timing requirements for providing periodic statements for open-end credit accounts. 15 U.S.C. 1637(b) and 1666b. In the June 2007 Proposal, the Board proposed to retain the existing regulation and commentary related to the timing requirements for providing periodic statements for open-end credit accounts, with a few changes and clarifications as discussed below.

5(b)(2)(i)

TILA Section 127(b) establishes that creditors generally must send periodic statements at the end of billing cycles in which there is an outstanding balance or a finance charge is imposed. 15 U.S.C. 1637(b). Section 226.5(b)(2)(i) provides for a number of exceptions to a creditor's duty to send periodic statements.

De minimis amounts. Under the current regulation, creditors need not send periodic statements if an account balance, whether debit or credit, is $1 or less and no finance charge is imposed. The Board proposed no changes to and received no comments on this provision. As a result, the Board retains this provision as currently written.

Uncollectible accounts. Creditors are not required to send periodic statements on accounts the creditor has deemed "uncollectible," which is not specifically defined. In the June 2007 Proposal, the Board sought comment on whether guidance on the term "uncollectible" would be helpful.

Commenters to the June 2007 Proposal stated that guidance would be helpful but differed on what that guidance should be. Several consumer group commenters suggested that an account should be deemed "uncollectible" only when a creditor has ceased collection efforts, either directly or through a third party. These commenters stated that for a consumer whose account is delinquent but still subject to collection, a periodic statement is important to show the consumer when and how much interest is accruing and whether the consumer's payments have been credited. Industry commenters suggested instead that an account should be deemed "uncollectible" once the account is charged off in accordance with loan-loss provisions.

Based on the plain language of the term "uncollectible" and the importance of periodic statements to show consumers when interest accrues or fees are assessed on the account, the Board is adopting new comment 5(b)(2)(i)-3 (accordingly, as discussed below comment 5(b)(2)(i)-3 as proposed in the June 2007 Proposal is adopted as 5(b)(2)(i)-4). The comment clarifies that an account is "uncollectible" when a creditor has ceased collection efforts, either directly or through a third party.

In addition, if an account has been charged off in accordance with loan-loss provisions and the creditor no longer accrues new interest or charges new fees on the account, the Board believes that the value of a periodic statement does not justify the cost of providing the disclosure because the amount of a consumer's obligation will not be increasing. As a result, the Board is modifying § 226.5(b)(2)(i) to state that in such cases, the creditor also need not provide a periodic statement. However, this provision does not apply if a creditor has charged off the account but continues to accrue new interest or charge new fees.

<u>Instituting collection proceedings</u>. Creditors need not send statements if "delinquency collection proceedings have been instituted" under § 226.5(b)(2)(i). In the June 2007 Proposal, the Board proposed to add comment 5(b)(2)(i)-3 to clarify that a collection proceeding entails a filing of a court action or other adjudicatory process with a

third party, and not merely assigning the debt to a debt collector. Several consumer groups strongly supported the Board's proposal while industry commenters recommended that the Board provide greater flexibility in interpreting when delinquency collection proceedings have been instituted. In particular, an industry commenter stated that the minimum payment warning could conflict with the creditor's collection demand and create consumer confusion. Nonetheless, as discussed in more detail in the section-by-section analysis to § 226.7(b)(12), the minimum payment disclosure is not required where a fixed repayment period has been specified in the account agreement, such as where the account has 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.

The Board believes that clarifying that a collection proceeding entails the filing of a court action or other adjudicatory process with a third party provides clear and uniform guidance to creditors as to when periodic statements are no longer required. Accordingly, the Board adopts the comment as proposed, though for organizational purposes, the comment is renumbered as comment 5(b)(2)(i)-4.

<u>Workout arrangements</u>. Comment 5(b)(2)(i)-2 provides that creditors must continue to comply with all the rules for open-end credit, including sending a periodic statement, when credit privileges end, such as when a consumer stops taking draws and pays off the outstanding balance over time. Another comment provides that "if an open-end credit account is converted to a closed-end transaction under a written agreement with the consumer, the creditor must provide a set of closed-end credit disclosures before consummation of the closed-end transaction." Comment 17(b)-2.

To provide flexibility and reduce burden and uncertainty, the Board proposed to clarify in the June 2007 Proposal that creditors entering into workout agreements for delinquent open-end plans without converting the debt to a closed-end transaction comply with the regulation if creditors continue to comply with the open-end provisions for the work-out period. The Board received only one comment concerning workout arrangements, which supported the Board's proposal. Therefore, amendments to comment 5(b)(2)(i)-2 are adopted as proposed.

5(b)(2)(ii)

TILA Section 163(a) requires creditors that provide a grace period to send statements at least 14 days before the grace period ends. 15 U.S.C. 1666b(a). The 14-day period runs from the date creditors mail their statements, not from the end of the statement period nor from the date consumers receive their statements. As discussed in the June 2007 Proposal, the Board has anecdotal evidence that some consumers receive statements relatively close to the payment due date, which leaves consumers with little time to review the statement before payment must be mailed to meet the due date. As a result, the Board requested comment on (1) whether it should recommend to Congress that the 14-day period be increased to a longer time period, so that consumers will have additional time to receive their statements and mail their payments to ensure that payments will be received by the due date, and (2) if so, what time period the Board should recommend to Congress.

The Board received numerous comments on this issue. Consumer and consumer group commenters complained that the time period from when consumers received their statements to the payment due date was too short, causing consumers often to incur late fees and lose the benefit of the grace period, and creditors to raise consumers' rates to the penalty rate. Industry commenters, on the other hand, stated that the 14-day period under TILA Section 163(a) was appropriate and that the Board should not recommend a longer time frame to Congress.

Based in part on these comments, the Board and other federal banking agencies proposed in May 2008 to prohibit institutions from treating a payment as late for any purpose unless the consumer has been provided a reasonable amount of time to make that payment. Treating a payment as late for any purpose includes increasing the APR as a penalty, reporting the consumer as delinquent to a credit reporting agency, or assessing a late or any other fee based on the consumer's failure to make payment within the amount of time provided. 73 FR 28904, May 19, 2008. The Board is opting not to address the 14-day period under TILA Section 163(a) and is retaining § 226.5(b)(2)(ii) as currently written. Consumer comment letters mainly focused on the due date with respect to having their payments credited in time to avoid a late fee and an increase in their APR to the penalty rate and not with the loss of a grace period. Therefore, the Board has chosen to address these concerns in final rules issued by the Board and other federal banking agencies published elsewhere in today's **Federal Register**.

<u>Technical Revisions</u>. Changes conforming with final rules issued by the Board and other federal banking agencies published elsewhere in today's **Federal Register** have been made to comment 5(b)(2)(ii)-1. In addition, the substance of comment 5(c)-4, which was inadvertently placed as commentary to § 226.5(c), has been moved and renumbered as comment 5(b)(2)(ii)-2.

5(b)(2)(iii)

As proposed in the June 2007 Proposal, the substance of footnote 10 is moved to the regulatory text.

5(c) through 5(e)

Sections 226.5(c), (d), and (e) address, respectively: the basis of disclosures and the use of estimates; multiple creditors and multiple consumers; and the effect of subsequent events.

In the June 2007 Proposal, the Board did not propose any changes to these provisions, except the addition of new comment 5(d)-3, referencing the statutory provisions pertaining to charge cards with plans that allow access to an open-end credit plan maintained by a person other than the charge card issuer. TILA 127(c)(4)(D); 15 U.S.C. 1637(c)(4)(D). (See the section-by-section analysis to § 226.5a(f).) No comments were received on comment 5(d)-3. The Board adopts this comment as proposed. In addition, comment 5(c)-4 is redesignated as comment 5(b)(2)(ii)-2 to correct a technical error in placement.

Section 226.5a Credit and Charge Card Applications and Solicitations

TILA Section 127(c), implemented by § 226.5a, requires card issuers to provide certain cost disclosures on or with an application or solicitation to open a credit or charge card account.[14] 15 U.S.C. 1637(c). The format and content requirements differ for cost disclosures in card applications or solicitations, depending on whether the applications or solicitations are given through direct mail, provided electronically, provided orally, or made available to the general public such as in "take-one" applications and in catalogs or

[14] Charge cards are a type of credit card for which full payment is typically expected upon receipt of the billing statement. To ease discussion, this section of the supplementary information will refer to "credit cards" which includes charge cards.

magazines. Disclosures in applications and solicitations provided by direct mail or electronically must be presented in a table. For oral applications and solicitations, certain cost disclosures must be provided orally, except that issuers in some cases are allowed to provide the disclosures later in a written form. Applications and solicitations made available to the general public, such as in a take-one application, must contain one of the following: (1) the same disclosures as for direct mail presented in a table; (2) a narrative description of how finance charges and other charges are assessed; or (3) a statement that costs are involved, along with a toll-free telephone number to call for further information.

5a(a) General Rules

Combining disclosures. Currently, comment 5a-2 states that account-opening disclosures required by § 226.6 do not substitute for the disclosures required by § 226.5a; however, a card issuer may establish procedures so that a single disclosure document meets the requirements of both sections. In the June 2007 Proposal, the Board proposed to retain this comment, but to revise it to account for proposed revisions to § 226.6. Specifically, the Board proposed to revise comment 5a-2 to provide that a card issuer may satisfy § 226.5a by providing the account-opening summary table on or with a card application or solicitation, in lieu of the § 226.5a table. See proposed § 226.6(b)(4). The account-opening table is substantially similar to the table required by § 226.5a, but the content required is not identical. The account-opening table requires information that is not required in the § 226.5a table, such as a reference to billing error rights. The Board adopts this comment provision as proposed, except for one technical edit which is discussed in the section-by-section analysis to § 226.5a(d)(2). Commenters on the June 2007 Proposal generally supported the proposed comment allowing the account-opening summary table to substitute for the table required by § 226.5a. For various reasons, card issuers may want to provide the account-opening disclosures with the card application or solicitation. To ease compliance burden on issuers, this comment allows them to provide the account-opening summary table in lieu of the table containing the § 226.5a disclosures. Otherwise, issuers in these circumstances would be required to provide the table required by § 226.5a and the account-opening table. In addition, allowing issuers to substitute the account-opening table for the table required by § 226.5a would not undercut consumers' ability to compare the terms of two credit card accounts where one issuer provides the account-opening table and the other issuer provides the table required by § 226.5a, because the two tables are substantially similar.

<u>Clear and conspicuous standard</u>. Section 226.5(a) requires that disclosures made under subpart B (including disclosures required by § 226.5a) must be clear and conspicuous**.** Currently, comment 5a(a)(2)-1 provides guidance on the clear and conspicuous standard for the § 226.5a disclosures. In the June 2007 Proposal, the Board proposed to provide guidance on applying the clear and conspicuous standard to the § 226.5a disclosures in comment 5(a)(1)-1. Thus, guidance currently in comment 5a(a)(2)-1 would have been deleted as unnecessary. The Board proposed to add comment 5a-3 to cross reference the clear and conspicuous guidance in comment 5(a)(1)-1. The final rule deletes current comment 5a(a)(2)-1 and adds comment 5a-3 as proposed.

<u>5a(a)(1) Definition of Solicitation</u>

<u>Firm offers of credit</u>. The term "solicitation" is defined in § 226.5a(a)(1) of Regulation Z to mean "an offer by the card issuer to open a credit or charge card account

that does not require the consumer to complete an application." 15 U.S.C. 1637(c). Board staff has received questions about whether card issuers making "firm offers of credit" as defined in the Fair Credit Reporting Act (FCRA) are considered to be making solicitations for purposes of § 226.5a. 15 U.S.C. 1681 et seq. In June 2007, the Board proposed to amend the definition of "solicitation" in § 226.5a(a)(1) to clarify that such "firm offers of credit" for credit cards are solicitations for purposes of § 226.5a. The final rule adopts the amendment to § 226.5a(a)(1) as proposed. Because consumers who receive "firm offers of credit" have been preapproved to receive a credit card and may be turned down for credit only under limited circumstances, the Board believes that these preapproved offers are of the type intended to be captured as a "solicitation," even though consumers are asked to provide some additional information in connection with accepting the offer.

Invitations to apply. In the June 2007 Proposal, the Board also proposed to add comment 5a(a)(1)-1 to distinguish solicitations from "invitations to apply," which are not covered by § 226.5a. An "invitation to apply" occurs when a card issuer contacts a consumer who has not been preapproved for a card account about opening an account (whether by direct mail, telephone, or other means) and invites the consumer to complete an application, but the contact itself does not include an application. The Board adopts comment 5a(a)(1)-1 as proposed. The Board believes that these "invitations to apply" do not meet the definition of "solicitation" because the consumer must still submit an application in order to obtain the offered card. Thus, comment 5a(a)(1)-1 clarifies that this "invitation to apply" is not covered by § 226.5a unless the contact itself includes (1) an application form in a direct mailing, electronic communication or "take-one"; (2) an oral application in a telephone contact initiated by the card issuer; or (3) an application in an in-person contact initiated by the card issuer.

5a(a)(2) Form of Disclosures and Tabular Format

Table must be substantially similar to model and sample forms in Appendix G-10. Currently and under the June 2007 Proposal, § 226.5a(a)(2)(i) provides that when making disclosures that are required to be disclosed in a table, issuers must use headings, content and format for the table substantially similar to any of the applicable tables found in Appendix G-10 to part 226. In response to the June 2007 Proposal, several consumer groups suggested that the Board explicitly require that the disclosures be made in the order shown on the proposed model and sample forms in Appendix G-10 to part 226. These consumer groups also suggested that the Board require issuers to use the headings for the rows provided in the proposed model and sample form in Appendix G to part 226, and not allow issuers to use headings that are "substantially similar" to the ones in the model and sample forms. The final rule adopts § 226.5a(a)(2)(i), as proposed. The Board believes that issuers may need flexibility to change the order of the disclosures or the headings for the row provided in the table, such as to accommodate differences in account terms that may be offered on products and different terminology used by the issuer to describe those account terms. In addition, as discussed elsewhere in the section-by-section analysis to Appendix G, the Board is permitting creditors in some circumstances to combine rows for APRs or fees, when the amount of the fee or rate is the same for two or more types of transactions. The Board believes that the "substantially similar" standard is sufficient to ensure uniformity of the tables used by different issuers.

In response to the June 2007 Proposal, several commenters suggested changes to the formatting of the proposed model and sample forms in Appendix G-10 to part 226. These comments are discussed in the section-by-section analysis to Appendix G.

<u>Fees for late payment, over-the-limit, balance transfers and cash advances</u>. Currently, § 226.5a(a)(2)(ii) and comment 5a(a)(2)-5, which implement TILA Section 127(c)(1)(B), provide that card issuers may disclose late-payment fees, over-the-limit fees, balance transfer fees, and cash advance fees in the table or outside the table. 15 U.S.C. 1637(c)(1)(B).

In the June 2007 Proposal, the Board proposed to amend § 226.5a(a)(2)(i) to require that these fees be disclosed in the table. In addition, the Board proposed to delete current § 226.5a(a)(2)(ii) and comment 5a(a)(2)-5, which currently allow issuers to place the fees outside the table.

The Board adopts § 226.5a(a)(2)(i) and deletes current § 226.5a(a)(2)(ii) and comment 5a(a)(2)-5 as proposed. The final rule amends § 226.5a(a)(2)(i) to require these fees to be disclosed in the table, so that consumers can easily identify them. In the consumer testing conducted for the Board prior to the June 2007 Proposal, participants consistently identified these fees as among the most important pieces of information they consider as part of the credit card offer. With respect to the disclosure of these fees, the Board tested placement of these fees in the table and immediately below the table. Participants who were shown forms where the fees were disclosed below the table tended not to notice these fees compared to participants who were shown forms where the fees were presented in the table. These final revisions are adopted in part pursuant to TILA

Section 127(c)(5), which authorizes the Board to add or modify § 226.5a disclosures as necessary to carry out the purposes of TILA. 15 U.S.C. 1637(c)(5).

Highlighting APRs and fee amounts in the table. Section 226.5a generally requires that certain information about rates and fees applicable to the card offer be disclosed to the consumer in card applications and solicitations. This information includes not only the APRs and fee amounts that will apply, but also explanatory information that gives context to these figures. The Board seeks to enable consumers to identify easily the rates and fees disclosed in the table. Thus, in the June 2007 Proposal, the Board proposed to add § 226.5a(a)(2)(iv) to require that when a tabular format is required, issuers must disclose in bold text any APRs required to be disclosed, any discounted initial rate permitted to be disclosed, and most fee amounts or percentages required to be disclosed. The Board also proposed to add comment 5a(a)(2)-5 to explain that proposed Samples G-10(B) and G-10(C) provide guidance on how to show the rates and fees described in bold text. In addition, proposed comment 5a(a)(2)-5 also would have explained that proposed Samples G-10(B) and G-10(C) provide guidance to issuers on how to disclose the percentages and fees described above in a clear and conspicuous manner, by including these percentages 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 consumer testing conducted for the Board prior to the June 2007 Proposal, participants who saw a table with the APRs and fees in bold and generally before any text in the table were more likely to identify the APRs and fees quickly and accurately than participants who saw other forms in which the APRs and fees were not highlighted in such a fashion.

The final rule adopts § 226.5a(a)(2)(iv) and comment 5a(a)(2)-5 with several technical revisions. Section 226.5a(a)(2)(iv) is amended to provide that maximum limits on fee amounts disclosed in the table that do not relate to fees that vary by state must not be disclosed in bold text. Comment 5a(a)(2)-5 provides guidance on when maximum limits must 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 text. In contrast, 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 amount must be highlighted in bold text. In both cases, the minimum fee amount (e.g., $5 or $15) must be disclosed in bold text.

Comment 5a(a)(2)-5 also provides guidance on highlighting 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.

Section 226.5a(a)(2)(iv) is amended to refer to discounted initial rates as "introductory" rates, as that term is defined in § 226.16(g)(2)(ii), for consistency, and to clarify that introductory rates that are disclosed in the table under new § 226.5a(b)(1)(vii) must be in bold text. Similarly, rates that apply after a premium initial rate expires that are disclosed in the table must also be in bold text.

Electronic applications and solicitations. Section 1304 of the Bankruptcy Act amends TILA Section 127(c) to require solicitations to open a card account using the Internet or other interactive computer service to contain the same disclosures as those made for applications or solicitations sent by direct mail. Regarding format, the Bankruptcy Act specifies that disclosures provided using the Internet or other interactive computer service must be "readily accessible to consumers in close proximity" to the solicitation. 15 U.S.C. 1637(c)(7).

In September 2000, the Board revised § 226.5a, and as part of these revisions, provided guidance on how card issuers using electronic disclosures may comply with the § 226.5a requirement that certain disclosures be "prominently located" on or with the application or solicitation. 65 FR 58903, Oct. 3, 2000. In March 2001, the Board issued interim final rules containing additional guidance for the electronic delivery of disclosures under Regulation Z. 66 FR 17329, Mar. 30, 2001. In November 2007, the Board adopted the November 2007 Final Electronic Disclosure Rule, which withdrew portions of the 2001 interim final rules and issued final rules containing additional guidance for the electronic delivery of disclosures under Regulation Z. 72 FR 63462, Nov. 9, 2007; 72 FR 71058, Dec. 14, 2007.

The Bankruptcy Act provision applies to solicitations to open a card account "using the Internet or other interactive computer service." The term "Internet" is defined as the international computer network of both Federal and non-Federal interoperable packet-switched data networks. The term “interactive computer service” is defined as any information service, system or access software provider that provides or enables computer access by multiple users to a computer server, including specifically a service or system that provides access to the Internet and such systems operated or services offered by libraries or educational institutions. 15 U.S.C. 1637(c)(7). Based on the definitions of “Internet” and “interactive computer service,” the Board believes that Congress intended to cover all card offers that are provided to consumers in electronic form, such as via e-mail or a Web site.

In addition, although this Bankruptcy Act provision refers to credit card solicitations (where no application is required), in the June 2007 Proposal, the Board proposed to apply the Bankruptcy Act provision relating to electronic offers to both electronic solicitations and applications 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. 1601(a), 1604(a). Specifically, the Board proposed to amend § 226.5a(c) to require that applications and solicitations that are provided in electronic form contain the same disclosures as applications and solicitations sent by direct mail. With respect to both electronic applications and solicitations, it is important for consumers who are shopping for credit to receive accurate cost information before submitting an electronic application or responding to an electronic solicitation. The final rule adopts this change to § 226.5a(c), as proposed.

With respect to the form of disclosures required under § 226.5a, in the June 2007 Proposal, the Board proposed to amend § 226.5a(a)(2) by adding a new paragraph (v) to provide that if a consumer accesses an application or solicitation for a credit card in electronic form, the disclosures required on or with an application or solicitation for a credit card must be provided to the consumer in electronic form on or with the application or solicitation. The Board also proposed to add comment 5a(a)(2)-6 to clarify this point and also to make clear that if a consumer is provided with a paper application or solicitation, the required disclosures must be provided in paper form on or with the application or solicitation (and not, for example, by including a reference in the paper application or solicitation to the Web site where the disclosures are located).

In the November 2007 Final Electronic Disclosure Rule, the Board adopted the proposed changes to § 226.5a(a)(2)(v) and comment 5a(a)(2)-6 with several revisions. 72 FR 63462, Nov. 9, 2007; 72 FR 71058, Dec. 14, 2007. In the November 2007 Final Electronic Disclosure Rule, the guidance in proposed comment 5a(a)(2)-6 was contained in comment 5a(a)(2)-9. In this final rule, the guidance in comment 5a(a)(2)-9 added by the November 2007 Final Electronic Disclosure Rule is moved to comment 5a(a)(2)-6.

In the June 2007 Proposal, the Board also proposed to revise existing comment 5a(a)(2)-8 added by the 2001 interim final rule on electronic disclosures, which states that a consumer must be able to access the electronic disclosures at the time the application form or solicitation reply form is made available by electronic communication. The Board proposed to revise this comment to describe alternative methods for presenting electronic disclosures. This comment was intended to provide examples of the methods rather than an exhaustive list. In the November 2007 Final Electronic Disclosure Rule, the Board adopted the proposed changes to comment 5a(a)(2)-8 with several revisions. 72 FR 63462, Nov. 9, 2007; 72 FR 71058, Dec. 14, 2007.

In the June 2007 Proposal, the Board proposed to incorporate the "close proximity" standard for electronic applications and solicitations in § 226.5a(a)(2)(vi)(B), and the guidance regarding the location of the § 226.5a disclosures in electronic applications and solicitations in comment 5a(a)(2)-1.ii. This guidance, contained in proposed comment 5a(a)(2)-1.ii, was consistent with proposed changes to comment 5a(a)(2)-8, that provides guidance to issuers on providing access to electronic disclosures at the time the application form or solicitation reply form is made available in electronic form.

The final rule adopts § 226.5a(a)(2)(vi)(B) and comment 5a(a)(2)-1.ii as proposed, with several revisions. Specifically, comment 5a(a)(2)-1.ii is revised to be consistent with the revisions to comment 5a(a)(2)-8 made in the November 2007 Final Electronic Disclosure Rule. Comment 5a(a)(2)-1.ii provides that if the table required by § 226.5a 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: (1) the disclosures could automatically appear on the screen when the application or reply form appears; (2) 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; (3) 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 (4) 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. Comment 5a(a)(2)-8 is deleted as unnecessary.

As discussed in the June 2007 Proposal, the Board believes that the "close proximity" standard is designed to ensure that the disclosures are easily noticeable to consumers, and this standard is not met when consumers are only given a link to the disclosures on the Web page containing the application (or reply form), but not the disclosures themselves. Thus, the Board retains the requirement that if an electronic link to the disclosures is used, the consumer must not be able to bypass the link before submitting an application or a reply form.

Terminology. Section 226.5a currently requires terminology in describing the disclosures required by § 226.5a to be consistent with terminology used in the account-opening disclosures (§ 226.6) and the periodic statement disclosures (§ 226.7). TILA and § 226.5a also require that the term "grace period" be used to describe the date by which or the period within which any credit extended for purchases may be repaid without incurring a finance charge. 15 U.S.C. 1632(c)(2)(C). In the June 2007 Proposal, the Board proposed that all guidance for terminology requirements for § 226.5a disclosures be placed in proposed § 226.5(a)(2)(iii). See section-by-section analysis to § 226.5(a)(2). The Board also proposed to add comment 5a(a)(2)-7 to cross reference the guidance in § 226.5(a)(2). The Board adopts comment 5a(a)(2)-7 as proposed.

5a(a)(4) Fees that Vary by State

Currently, under § 226.5a, if the amount of a late-payment fee, over-the-limit fee, cash advance fee or balance transfer fee varies by state, a card issuer may either disclose in the table (1) the amount of the fee for all states; or (2) a range of fees and a statement that the amount of the fee varies by state. See current § 226.5a(a)(5), renumbered as proposed § 226.5a(a)(4); see also TILA Section 127(f). As discussed below, in the June 2007 Proposal, the Board proposed to require card issuers to disclose in the table any fee imposed when a payment is returned. See proposed § 226.5a(b)(12). The Board proposed to amend new § 226.5a(a)(4) to add returned-payment fees to the list of fees for which an issuer may disclose a range of fees.

The final rule adopts proposed § 226.5a(a)(4) with several modifications. The Board is revising proposed § 226.5a(a)(4) to provide that card issuers that impose a late-payment fee, over-the-limit fee, cash advance fee, balance transfer fee or returned-payment fee where the amount of those fees vary by state may, at the issuer's option, disclose in the table required by § 226.5a either (1) the specific fee applicable to the consumer's account, or (2) 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 § 226.5a table where the amount of the fee applicable to the consumer's account is disclosed, for example in a list of fees for all states. Listing fees for multiple states in the table is not permissible. For example, a card issuer may not list fees for all states in the table. Similarly, a card issuer that does business in six states may not list fees for all six of those states in the table. (Conforming changes are also made to comment 5a(a)(4)-1.)

As discussed in the section-by-section analysis to § 226.6(b)(1)(iii), the Board is adopting a similar rule for account-opening disclosures, with one notable exception discussed below. In general, a creditor must disclose the fee applicable to the consumer's account; listing all fees for all states in the account-opening summary table is not permissible. The Board is concerned in each case that an approach of listing all fees for all states would detract from the purpose of the table: to provide key information in a simplified way.

One difference between the fee disclosure requirement in § 226.5a(a)(4) and the similar requirement in § 226.6(b)(1)(iii) is that § 226.6(b)(1)(iii) limits use of the range of fees to point-of-sale situations while § 226.5a contains no similar limitation. As discussed further in the section-by-section analysis to § 226.6(b)(1)(iii), for creditors with retail stores in a number of states, it is not practicable to require fee-specific disclosures to be provided when an open-end (not home-secured) plan is established in person in connection with the purchase of goods or services. Thus, the final rule in § 226.6(b)(1)(iii) provides that creditors imposing fees such as late-payment fees or returned-payment fees that vary by state and providing the disclosures required by § 226.6(b) 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 either (1) the specific fee applicable to the consumer's account, or (2) 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 summary table where the amount of the fee applicable to the consumer's account is disclosed.

As with the account-opening table, the Board is concerned that including all fees for all states in the table required by § 226.5a would detract from the purpose of the table: to provide key information in a simplified way. Nonetheless, unlike with the account-opening table, the final rule does not limit the use of the range of fees for the table required by § 226.5a only to point-of-sale situations. With respect to the application and solicitation disclosures, there may be many situations in which it is impractical to provide the fee-specific disclosures with the application or solicitation, such as when the application is provided on the Internet or in "take-one" materials. For Internet or "take-one" applications or solicitations, a creditor will in most cases not be aware in which state the consumer resides and, consequently, will not be able to determine the amount of fees that would be charged to that consumer under applicable state law. The changes to § 226.5a(a)(4) are adopted in part pursuant to TILA Section 127(c)(5), which authorizes the Board to add or modify § 226.5a disclosures as necessary to carry out the purposes of TILA. 15 U.S.C. 1637(c)(5).

5a(a)(5) Exceptions

Section 226.5a currently contains several exceptions to the disclosure requirements. Some of these exceptions are in the regulation itself, while others are contained in the commentary. For clarity, in the June 2007 Proposal, the Board proposed to place all exceptions in new § 226.5a(a)(5). The final rule adopts new § 226.5a(a)(5) as proposed.

5a(b) Required Disclosures

Section 226.5a(b) specifies the disclosures that are required to be included on or with certain credit card applications and solicitations.

5a(b)(1) Annual Percentage Rate

Section 226.5a requires card issuers to disclose the rates applicable to the account, for purchases, cash advances, and balance transfers. 15 U.S.C. 1637(c)(1)(A)(i)(I).

16-point font for disclosure of purchase APRs. Currently, under § 226.5a(b)(1), the purchase rate must be disclosed in the table in at least 18-point font. This font requirement does not apply to (1) a temporary initial rate for purchases that is lower than the rate that will apply after the temporary rate expires; or (2) a penalty rate that will apply upon the occurrence of one or more specified events. In the June 2007 Proposal, the Board proposed to amend § 226.5a(b)(1) to reduce the 18-point font requirement to a 16-point font. Commenters generally did not object to the proposal to reduce the font size for the purchase APR. Several consumer groups suggested that the Board explicitly prohibit issuers from disclosing any discounted initial rate in 16-point font.

The final rule adopts the 16-point font requirement in § 226.5a(b)(1) as proposed, with several revisions as described below. The purchase rate is one of the most important terms disclosed in the table, and it is essential that consumers be able to identify that rate easily. A 16-point font size requirement for the purchase APR appears to be sufficient to highlight the purchase APR. In consumer testing conducted for the Board prior to June 2007, versions of the table in which the purchase rate was the same font as other rates included in the table were reviewed. In other versions, the purchase rate was in 16-point type while other disclosures were in 10-point type. Participants tended to notice the purchase rate more often when it was in a font larger than the font used for other rates. Nonetheless, there was no evidence from consumer testing that it was necessary to use a font size of 18-point in order for the purchase APR to be noticeable to participants.

Given that the Board is requiring a minimum of 10-point type for the disclosure of other terms in the table, based on document design principles, the Board believes that a 16-point font size for the purchase APR is effective in highlighting the purchase APR in the table.

The final rule requires that discounted initial rates for purchases must be in 16-point font. Section 226.5a(b)(1), as proposed, did not specifically prohibit disclosing any discounted initial rate in 16-point font but did not require such formatting. New § 226.5a(b)(1)(vii), discussed below, requires disclosure of the discounted initial rate in the table for issuers subject to final rules issued by the Board and other federal banking agencies published elsewhere in today's **Federal Register**. As a result, the Board believes that all rates that could apply to a purchase balance, other than a penalty rate, should be highlighted in 16-point font. For the same reasons, § 226.5a(b)(1)(iii) also has been amended to clarify that both the premium initial rate for purchases and any rate that applies after the premium initial rate for purchases expires must be disclosed in 16-point font.

The final rule in § 226.5a(b)(1) has also been revised to refer to discounted initial rates as "introductory" rates, as that term is defined in § 226.16(g)(2)(ii), for consistency.

Periodic rate. Currently, comment 5a(b)(1)-1 allows card issuers to disclose the periodic rate in the table in addition to the required disclosure of the corresponding APR. In the June 2007 Proposal, the Board proposed to delete comment 5a(b)(1)-1, and thus, prohibit disclosure of the periodic rate in the table. Based on consumer testing conducted for the Board prior to June 2007, consumers do not appear to shop using the periodic rate, nor is it clear that this information is important to understanding a credit card offer.

Allowing the periodic rate to be disclosed in the table may distract from more important information in the table, and contribute to "information overload." In an effort to streamline the information that appears in the table, the Board proposed to prohibit disclosure of the periodic rate in the table. Commenters generally did not oppose the Board's proposal to prohibit disclosure of the periodic rate in the table. Thus, the Board is deleting current comment 5a(b)(1)-1 as proposed. In addition, new comment 5a(b)(1)-8 is added to state that periodic rates must not be disclosed in the table. The Board notes that card issuers may disclose the periodic rate outside of the table. See § 226.5a(a)(2)(ii).

Variable rate information. Section 226.5a(b)(1)(i), which implements TILA Section 127(c)(1)(A)(i)(II), currently requires for variable-rate accounts, that the card issuer must disclose the fact that the rate may vary and how the rate is determined. 15 U.S.C. 1637(c)(1)(A)(i)(II). Under current comment 5a(b)(1)-4, in disclosing how the applicable rate will be determined, the card issuer is required to provide the index or formula used and disclose any margin or spread added to the index or formula in setting the rate. The card issuer may disclose the margin or spread as a range of the highest and lowest margins that may be applicable to the account. A disclosure of any applicable limitations on rate increases or decreases may also be included in the table.

1. Index and margins. Currently, the variable rate information is required to be disclosed separately from the applicable APR, in a row of the table with the heading "Variable Rate Information." Some card issuers include the phrase "variable rate" with the disclosure of the applicable APR and include the details about the index and margin under the "Variable Rate Information" heading. In the consumer testing conducted for

the Board prior to the June 2007 Proposal, many participants who saw the variable rate information as described above understood that the label “variable” meant that a rate could change, but could not locate information on the tested form regarding how or why these rates could change. This was true even if the index and margin information was taken out of the row of the table with the heading “Variable Rate Information” and placed in a footnote to the phrase “variable rate.” Many participants who did find the variable rate information were confused by the variable-rate margins, often interpreting them erroneously as the actual rate being charged. In addition, very few participants indicated that they would use the margins in shopping for a credit card account.

Accordingly, in the June 2007 Proposal, the Board proposed to amend § 226.5a(b)(1)(i) to specify that issuers may not disclose the amount of the index or margins in the table. Specifically, card issuers would not have been allowed to disclose in the table the current value of the index (for example, that the prime rate currently is 7.5 percent) or the amount of the margin that is used to calculate the variable rate. Card issuers would have been allowed to indicate only that the rate varies and the type of index used to determine the rate (such as the “prime rate,” for example). In describing the type of index, the issuer would have been precluded from including details about the index in the table. For example, if the issuer uses a prime rate, the issuer would have been allowed to describe the rate as tied to a “prime rate” and would not have been allowed to disclose in the table that the prime rate used 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. See proposed comment 5a(b)(1)-2. Also, the proposal would have required that the disclosure about a variable rate (the fact that the rate varies and the type of index used to determine the rate) must be disclosed with the applicable APRs, so that consumers can more easily locate this information. See proposed Model Form G-10(A), Samples G-10(B) and G-10(C). Proposed Samples G-10(B) and G-10(C) would have provided guidance to issuers on how to disclose the fact that the applicable rate varies and how it is determined.

Commenters generally supported the Board's proposal to amend § 226.5a(b)(1)(i) to specify that issuers may not disclose the amount of the index or margins in the table. Several commenters asked the Board to clarify that issuers may include the index and margin outside of the table, given that some consumers are interested in knowing the index and margin. One commenter suggested that issuers be allowed to disclose in the table additional information about the index used, such as the publication source of the index used to calculate the rate (e.g., describing that the prime rate used 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.) One commenter suggested that issuers be allowed to refer to an index as a "prime rate" only if it is a bank prime loan rate posted by the majority of the top 25 U.S. chartered commercial banks, as published by the Board.

The final rule amends § 226.5a(b)(1)(i) as proposed to specify that issuers may not disclose the amount of the index or margins in the table. Section 226.5a(b)(1)(i) is not amended to allow issuers to disclose in the table additional information about the index used, such as the publication source of the index. See comment 5a(b)(1)-2. The Board is concerned that allowing such information in the table could contribute to "information overload" for consumers, and may distract from more important information in the table. The Board notes that additional information about the variable rate, such as the amount of the index and margins and the publication source of the index used to calculate the rate, may be included outside of the table. See § 226.5a(a)(2)(ii).

In addition, the Board did not amend the rule to provide that issuers only be allowed to refer to an index as a "prime rate" if it is a bank prime loan rate posted by the majority of the top 25 U.S. chartered commercial banks, as published by the Board. The Board believes that this rule is unnecessary at this time. Credit card issuers typically use a prime rate that is published in the Wall Street Journal, where that published prime rate is based on prime rates offered by the 30 largest U.S. banks, and is a widely accepted measure of prime rate.

2. Rate floors and ceilings. Currently, card issuers may disclose in the table, at their option, any limitations on how high (i.e., a rate ceiling) or low (i.e., a rate floor) a particular rate may go. For example, assume that the purchase rate on an account could not go below 12 percent or above 24 percent. An issuer would be required to disclose in the table the current rate offered on the credit card (for example, 18 percent), but could also disclose in the table that the rate would not go below 12 percent and above 24 percent. See current comment 5a(b)(1)-4. In the June 2007 Proposal, the Board proposed to revise the commentary to prohibit the disclosure of the rate floors and ceilings in the table.

Several consumer group commenters suggested that the Board require floors and ceilings to be disclosed in the table because such information has a significant effect on consumers' economic risk. Several industry commenters suggested that the Board permit (but not require) issuers to include the floors and ceiling of the variable rate in the table so that consumers are aware of the potential variations in the rate. Section 226.5a(b)(1)(i) is revised to prohibit explicitly the disclosure of the rate floors and ceilings in the table, as proposed. See also comment 5a(b)(1)-2. Based on consumer testing conducted for the Board prior to June 2007 and in March 2008, consumers do not appear to shop based on these rate floors and ceilings, and allowing them to be disclosed in the table may distract from more important information in the table, and contribute to "information overload." Card issuers may, however, disclose this information outside of the table. See § 226.5a(a)(2)(ii).

Discounted initial rates. Currently, comment 5a(b)(1)-5 specifies that if the initial rate is temporary and is lower than the rate that will apply after the temporary rate expires, a card issuer must disclose the rate that will otherwise apply to the account. A discounted initial rate may be provided in the table along with the rate required to be disclosed if the card issuer also discloses the time period during which the discounted initial rate will remain in effect. In the June 2007 Proposal, the Board proposed to move comment 5a(b)(1)-5 to new § 226.5a(b)(1)(ii). The Board also proposed to add new comment 5a(b)(1)-3 to specify that if a card issuer discloses the discounted initial rate and expiration date in the table, the issuer is deemed to comply with the standard to provide this information clearly and conspicuously if the issuer uses the format specified in proposed Samples G-10(B) and G-10(C).

In addition, under TILA Sections 127(c)(6)(A) and 127(c)(7), as added by Sections 1303(a) and 1304 of the Bankruptcy Act, the term "introductory" must be used in immediate proximity to each listing of a discounted initial rate in a direct mail or electronic application or solicitation; or promotional materials accompanying such application or solicitation. In the June 2007 Proposal, the Board proposed to expand the requirement to other applications or solicitations where a table under § 226.5a is given, to promote the informed use of credit by consumers, 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). Thus, the Board proposed to add new § 226.5a(b)(1)(ii) to specify that if an issuer provides a discounted initial rate in the table along with the rate required to be disclosed, the card issuer must use the term "introductory" in immediate proximity to the listing of the initial discounted rate. Because "intro" is a commonly understood abbreviation of the term "introductory," and consumer testing indicates that consumers understand this term, the Board proposed to allow creditors to use "intro" as an alternative to the requirement to use the term "introductory" and proposed to clarify this approach in new § 226.5a(b)(1)(ii). Also, to give card issuers guidance on the meaning of "immediate proximity," the Board proposed to provide a safe harbor for card issuers that place the word "introductory" or "intro" within the same phrase as each listing of the discounted initial rate. This guidance was set forth in proposed comment 5a(b)(1)-3.

The Board adopts new § 226.5a(b)(1)(ii) and comment 5a(b)(1)-3, as proposed, with several modifications. Discounted initial rates are referred to as "introductory" rates, as that term is defined in § 226.16(g)(2)(ii), for consistency. In addition, as discussed below with respect to disclosing penalty rates, an issuer is required to disclose directly beneath the table the circumstances under which any discounted initial rate may be revoked and the rate that will apply after the discounted initial rate is revoked, if the issuer discloses the discounted initial rate in the table or in any written or electronic promotional materials accompanying a direct mail, electronic or take-one application or solicitation. See § 226.5a(b)(1)(iv)(B).

Comment 5a(b)(1)-3 has been amended to provide additional clarifications on discounted initial rates. Comment 5a(b)(1)-3.ii. has been added to clarify that an issuer's reservation of the right to change a rate after account opening, subject to the requirements of § 226.9(c), does not by itself make that rate an introductory rate, even if the issuer subsequently increases the rate after providing a change-in-terms notice. The comment notes, however, that issuers subject to the final rules issued by the Board and other federal banking agencies published elsewhere in today's **Federal Register** are subject to limitations on such rate increases. In addition, comment 5a(b)(1)-3.iii. has been added to clarify that 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.

Section 226.5a(b)(1)(ii) in the final rule has been revised, and a new § 226.5a(b)(1)(vii) has been added as discussed below, to provide that certain issuers must disclose any introductory rate applicable to the account in the table. Creditors that are subject to the final rules issued by the Board and other federal banking agencies published elsewhere in today's **Federal Register** are required to state at account opening the annual percentage rates that will apply to each category of transactions on a consumer credit card account, and generally may not increase those rates, except as expressly permitted pursuant to those rules. This requirement is intended, among other things, to promote fairness in the pricing of consumer credit card accounts by enabling consumers to rely on the rates disclosed at account opening for at least the first year that an account is open.

Consistent with those final rules, for such issuers, the Board believes that disclosure of introductory rates should be as prominent as other rates disclosed in the tabular summary given at account opening. Therefore, as discussed in the section-by-section analysis to § 226.6(b)(2)(i), the Board is requiring that a creditor subject to those rules must disclose any introductory rate in the account-opening table provided pursuant to § 226.6.

For consistency, the Board also is requiring in the final rule that such issuers also disclose any introductory rate in the table provided with applications and solicitations. The Board believes that this will promote consistency throughout the life of an account and will enable consumers to better compare the terms that the consumer receives at account opening with the terms that were offered. Thus, § 226.5a(b)(1)(vii) has been added to the final rule to clarify that an issuer subject to 12 CFR § 227.24 or similar law must disclose in the tabular disclosures given pursuant to § 226.5a any introductory rate that will apply to a consumer's account. The Board believes that it is important that any issuer required to disclose an introductory rate applicable to a consumer's account highlights that introductory rate or rates by disclosing it in the § 226.5a table.

Similarly, and for the same reasons stated above, § 226.5a(b)(1)(vii) also requires that card issuers subject to the final rules issued by the Board and other federal banking agencies published elsewhere in today's **Federal Register** disclose in the table any rate that will apply after a premium initial rate (as described in § 226.5a(b)(1)(iii)) expires. A conforming change has been made to § 226.5a(b)(1)(iii). Consistent with comment

5a(b)(1)-3.ii., discussed above, a new comment 5a(b)(1)-4 has been added to the final rule to clarify that an issuer's reservation of the right to change rates after account-opening does not by itself make an initial rate a premium initial rate, even if the issuer subsequently decreases the rate. The comment notes, however, that issuers subject to the final rules issued by the Board and other federal banking agencies published elsewhere in today's **Federal Register** may be subject to limitations on rate decreases.

Penalty rates. Currently, comment 5a(b)(1)-7 requires that if a rate may increase upon the occurrence of one or more specific events, such as a late payment or an extension of credit that exceeds the credit limit, the card issuer must disclose the increased penalty rate that may apply and the specific event or events that may result in the increased rate. If a tabular format is required, the issuer must disclose the penalty rate in the table under the heading "Other APRs," along with any balance transfer or cash advance rates.

Currently, the specific event or events must be described outside the table with a reference (an asterisk or other means) included with the penalty APR in the table to direct the consumer to the additional information. At its option, the issuer may include outside the table an explanation of the period for which the increased rate will remain in effect, such as "until you make three timely payments." The issuer need not disclose an increased rate that is imposed if credit privileges are permanently terminated.

In the consumer testing conducted for the Board prior to June 2007, when reviewing forms in which the specific events that trigger the penalty rate were disclosed outside the table, many participants did not readily notice the penalty rate triggers when they initially read through the document or when asked follow-up questions. In addition, many participants did not readily notice the penalty rate when it was included in the "Other APRs" row along with other rates. The GAO also found that consumers had difficulty identifying the default rate and circumstances that would trigger rate increases. See GAO Report on Credit Card Rates and Fees, at page 49. In the testing conducted for the Board prior to June 2007, when the penalty rate was placed in a separate row in the table, participants tended to notice the rate more often. Moreover, participants tended to notice the specific events that trigger the penalty rate more often when these events were included with the penalty rate in a single row in the table. For example, two types of forms related to placement of the events that could trigger the penalty rate were tested – several versions showed the penalty rate in one row of the table and the description of the events that could trigger the penalty rate in another row of the table. Several other versions showed the penalty rate and the triggering events in the same row. Participants who saw the versions of the table with the penalty rate in a separate row from the description of the triggering events tended to skip over the row that specified the triggering events when reading the table. In contrast, participants who saw the versions of the table in which the penalty rate and the triggering events were in the same row tended to notice the triggering events when they reviewed the table.

As a result of this testing, in the June 2007 Proposal, the Board proposed to add § 226.5a(b)(1)(iv) and amend new comment 5a(b)(1)-4 (previously comment 5a(b)(1)-7) to require card issuers to briefly disclose in the table the specific event or events that may result in the imposition of a penalty rate. In addition, the Board proposed that the penalty rate and the specific events that cause the penalty rate to be imposed must be disclosed in the same row of the table. See proposed Model Form G-10(A). In describing the specific event or events that may result in an increased rate, the Board proposed to amend new comment 5a(b)(1)-4 to provide that the descriptions of the triggering events in the table 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 proposal would have indicated that the issuer should describe this circumstance in the table as "make a late payment." Proposed Samples G-10(B) and G-10(C) would have provided additional guidance on the level of detail that issuers should use in describing the specific events can trigger the penalty rate.

The Board also proposed to specify in new § 226.5a(b)(1)(iv) that in disclosing a penalty rate, a card issuer also must specify the balances to which the increased rate will apply. This proposal was based on the Board's understanding that, currently, card issuers typically apply the increased rate to all balances on the account. The Board believed that this information would help consumers better understand the consequences of triggering the penalty rate.

In addition, the Board proposed to specify in new § 226.5a(b)(1)(iv) that in disclosing the penalty rate, a card issuer must describe how long the increased rate will apply. The Board proposed to amend proposed comment 5a(b)(1)-4 to provide that in describing how long the increased rate will remain in effect, the description should be brief, and referred issuers to Samples G-10(B) and G-10(C) for guidance on the level of detail that issuer should use to describe how long the increased rate will remain in effect. Also, proposed comment 5a(b)(1)-4 would have provided that if a card issuer reserves the right to apply the increased rate indefinitely, that fact should be stated. The Board stated its belief that this information may help consumers better understand the consequences of triggering the penalty rate.

Also, the Board proposed to add language to new § 226.5a(b)(1)(iv) to specify that in disclosing a penalty rate, card issuers must include a brief description of the circumstances under which any discounted initial rates may be revoked and the rate that will apply after the discounted initial rate is revoked. Sections 1303(a) and 1304 of the Bankruptcy Act require that for a direct mail or electronic credit card application or solicitation, a clear and conspicuous description of the circumstances that may result in revocation of a discounted initial rate offered with the card and the rate that will apply after the discounted initial rate is revoked must be disclosed in a prominent location on or with the application or solicitation. 15 U.S.C. 1637(c)(6)(C). The Board proposed that this information be disclosed in the table along with other penalty rate information for all applications and solicitations where a table under § 226.5a is given, to promote the informed use of credit by consumers, 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 response to the June 2007 Proposal, some consumer group commenters requested that the Board delete the statement that the card issuer need not disclose the increased rate that would be imposed if credit privileges are permanently terminated. They viewed this provision as inconsistent with the Board's other efforts to ensure that consumers are aware of penalty rates. They believed card issuers should be required to disclose this information in the table if the rate is different than the penalty rate that otherwise applies.

In the May 2008 Proposal, the Board proposed to delete the current provision that an issuer need not disclose in the table an increased rate that would be imposed if credit privileges are permanently terminated. Most consumer groups and industry commenters supported this aspect of the proposal.

The final rule adopts new § 226.5a(b)(1)(iv) and comment 5a(b)(1)-5 (proposed as comment 5a(b)(1)-4) as proposed in the May 2008 Proposal with several revisions. Section 226.5a(b)(1)(iv)(A) sets forth the disclosures that are required when rates that are not introductory rates may be increased as a penalty for one or more events specified in the account agreement. The final rule specifies that 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. Samples G-10(B) and G-10(C) (in the row labeled "Penalty APR and When it Applies") provide guidance to card issuers on how to meet the requirements in § 226.5a(b)(1)(iv)(A) and accompanying comment 5a(b)(1)-5. An issuer may use phrasing similar to either Sample G-10(B) or G-10(C) to disclose how long the increased rate will remain in effect, modified as appropriate to accurately reflect the terms offered by that issuer.

The proposed requirement that issuers must disclose a description of the types of balances to which the increased penalty rate will apply is not included in the final rule. When the Board proposed this requirement in June 2007, most issuers typically applied the increased penalty rate to all balances on the account. Nonetheless, under final rules issued by the Board and other federal banking agencies published elsewhere in today's **Federal Register**, most credit card issuers are precluded from applying an increased rate to existing balances, except in limited circumstances.[15] In particular, most issuers may not increase the interest rate on existing credit card balances to the penalty rate unless the consumer is more than 30 days late on the account. Because most issuers are restricted from applying the increased penalty rate to existing balances, except in limited circumstances, the Board is withdrawing the proposed requirement to disclose in the table a description of the types of balances to which the increased penalty rate will apply. Requiring issuers to explain in the table the types of balances to which the increased penalty rate will apply – such as disclosing that the increased penalty rate will apply to new transactions, except if the consumer is more than 30 days late on the account, then the increased penalty rate will apply to all balances – could lead to "information overload" for consumers. The Board notes if a penalty rate is triggered on an account, the issuer must provide the consumer with a notice under § 226.9(g) prior to the imposition of the penalty rate, and this notice must include an explanation of the balances to which the increased penalty rate would apply.

Similarly, issuers that apply penalty pricing only to some balances on the account, specifically issuers subject to the final rules issued by the Board and other federal banking agencies published elsewhere in today's **Federal Register** may not distinguish, in the disclosures required by § 226.5a(b)(1)(iv), between the events that may result in an increased rate for one type of balances and the events that may result in an

---

[15] The final rules published elsewhere in today's **Federal Register** do not apply to all issuers, such as state-chartered credit unions that are not subject to the National Credit Union Administration's final rules.

increased rate for other types of balances. Such issuers may provide a consolidated list of the event or events that may result in an increased rate for any balance.

The Board has amended comment 5a(b)(1)-5.i. (proposed as comment 5a(b)(1)-4) to provide specific guidance to issuers that are subject to the final rules issued by the Board and other federal banking agencies published elsewhere in today's **Federal Register**. Such an issuer may have penalty rate triggers that apply to new transactions that differ from the penalty rate triggers applicable to outstanding balances. For example, an issuer might apply the penalty rate to new transactions, subject to the notice requirements in § 226.9(g), based on a consumer making a payment three days late, but may increase the rate applicable to outstanding balances only if the consumer pays more than 30 days late. Comment 5a(b)(1)-5.i., as adopted, includes guidance stating that 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." The comment has also been amended to clarify that the 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.

In addition, as proposed in May 2008, the final rule deletes the current provision that an issuer need not disclose an increased rate that would be imposed if credit privileges were permanently terminated.[16] Thus, to the extent an issuer is charging an increased rate different from the penalty rate when credit privileges are permanently terminated, this different rate must be disclosed along with the penalty rate. The Board

[16] The Board notes that final rules published elsewhere in today's **Federal Register** would generally prohibit increases in rates applicable to outstanding balances, even if credit privileges have been terminated. However, if the consumer's account is 30 days late, those rules would permit a creditor to impose a rate increase on such balances.

agrees with consumer group commenters that requiring the disclosure of the rate when credit privileges are permanently terminated is consistent with the Board's efforts to ensure that consumers are aware of the potential for increased rates.

A commenter in response to the May 2008 Proposal asked for clarification of the interplay between the requirement to disclose an increased rate when credit privileges are permanently terminated and the restriction on issuers' ability to apply increased rates to existing balances, proposed by the Board and other federal banking agencies. See 73 FR 28904, May 19, 2008. As discussed above, under final rules issued by the Board and other federal banking agencies published elsewhere in today's **Federal Register**, most credit card issuers are precluded from applying an increased rate to existing balances, unless an exception applies, such as if the account is more than 30 days late. Nonetheless, for issuers subject to these restrictions, there still are cases where an issuer could impose on existing balances an increased rate when credit privileges are permanently terminated, for example when the account is more than 30 days late.

Section 226.5a(b)(1)(iv)(B) sets forth the disclosures that are required when discounted initial rates may be increased as a penalty for one or more events specified in the account agreement. (In § 226.5a(b)(1)(iv)(B), discounted initial rates are referred to as "introductory" rates, as that term is defined in § 226.16(g)(2)(ii), for consistency.) Specifically, § 226.5a(b)(1)(iv)(B) of the final rule states that an issuer is required to disclose directly beneath the table the circumstances under which any discounted initial rate may be revoked and the rate that will apply after the discounted initial rate is revoked only if the issuer discloses the discounted initial rate in the table, or in any written or electronic promotional materials accompanying a direct mail, electronic or take-one application or solicitation. As revised, this provision is consistent with the Bankruptcy Act requirement that a credit card application or solicitation must clearly and conspicuously disclose in a prominent location on or with the application or solicitation a general description of the circumstances that may result in revocation of a discounted initial rate offered with the card. Therefore, to the extent that an issuer is promoting the discounted initial rate in the disclosure table provided with the application or solicitation or in the promotional materials accompanying the application or solicitation, the issuer must also disclose directly beneath the table the circumstances that may result in revocation of the discounted initial rate, and the rate that will apply after the discounted initial rate is revoked. Requiring issuers to disclose that information directly beneath the table will help consumers better understand the terms under which the discounted initial rate is being offered on the account.

The final rule requires that the circumstances under which a discounted initial rate may be revoked be disclosed directly beneath the table, rather than in the table. Credit card issuers subject to the final rules issued by the Board and other federal banking agencies published elsewhere in today's **Federal Register** will be prohibited from increasing an introductory rate unless the consumer's account becomes more than 30 days late. Accordingly, for most issuers subject to § 226.5a, the disclosure provided under this paragraph will be identical, because an introductory rate may be increased only if the account becomes more than 30 days late. As a result, the Board does not believe that most consumers will use the information about the revocation of a discounted initial rate in shopping for a credit card, since it will not vary from product to product. Therefore, while this information should be disclosed clearly and conspicuously with the table, the Board believes it should not be included in the table, where it may contribute to "information overload" and detract from the disclosure of other terms that may be of more use to consumers in shopping for credit.

Comment 5a(b)(1)-5 (proposed as comment 5a(b)(1)-4) is restructured to be consistent with new § 226.5a(b)(1)(iv). In addition, comment 5a(b)(1)-5.ii. is revised to clarify that the information about revocation of a discounted initial rate and the rate that will apply after revocation must be provided even if the rate that will apply after the discounted initial rate is revoked is the rate that would have applied at the end of the promotional period, and not a higher "penalty rate." Also, comment 5a(b)(1)-5.ii. clarifies that in describing the rate that will apply after revocation of the discounted initial rate, if the rate that will apply after revocation of the discounted initial 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 a discounted initial 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 a discounted initial rate.

In addition, comment 5a(b)(1)-5.ii. is revised to specify that the description of the circumstances in which a discounted initial rate could be revoked should be brief. For example, if an issuer may increase a discounted initial rate because the consumer does not make the minimum payment within 30 days of the due date, the issuer should describe this circumstance directly beneath the table as "make a late payment." In addition, if the circumstances in which a discounted initial 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 initial discounted 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. Sample G-10(C) sets forth a disclosure labeled "Loss of Introductory APR" directly below the table to provide guidance to card issuers on how to meet the requirements in § 226.5a(b)(1)(iv)(B) and accompanying comment 5a(b)(1)-5.

Comment 5a(b)(1)-5.iii. also has been included in the final rule to expressly note that issuers subject to the final rules issued by the Board and other federal banking agencies published elsewhere in today's **Federal Register** are prohibited by those rules from increasing or revoking an introductory rate prior to its expiration, unless the account is more than 30 days late. The comment gives guidance on how such an issuer should comply with § 226.5a(b)(1)(iv)(B).

Rates that depend on consumers' creditworthiness. Credit card issuers often engage in risk-based pricing such that the rates offered on a credit card will depend on later determinations of a consumer's creditworthiness. For example, an issuer may use information collected in a consumer's application or solicitation reply form (e.g., income information) or obtained through a credit report from a consumer reporting agency to determine the rate for which a consumer qualifies. Issuers that use risk-based pricing may not be able to disclose the specific rate that would apply to a consumer, because issuers may not have sufficient information about a consumer's creditworthiness at the time the application is given or made available to the consumer.

In the June 2007 Proposal, the Board proposed to add § 226.5(b)(1)(v) and comment 5a(b)(1)-5 to address the circumstances in which an issuer is not required to state a single specific rate being offered at the time disclosures are given because the rate will depend on a later determination of the consumer's creditworthiness. In this situation, issuers would have been required to disclose the possible rates that might apply, and a statement that the rate for which the consumer may qualify at account opening depends on the consumer's creditworthiness. Under the proposal, a card issuer would have been allowed to disclose the possible rates as either specific rates or a range of rates. For example, if there are three possible rates that may apply (e.g., 9.99, 12.99 or 17.99 percent), an issuer would have been allowed to disclose specific rates (9.99, 12.99 or 17.99 percent) or a range of rates (9.99 to 17.99 percent). Proposed Samples G-10(B) and G-10(C) would have provided guidance for issuers on how to meet these requirements. In addition, the Board solicited comment on whether card issuers should alternatively be permitted to list only the highest possible rate that may apply instead of a range of rates (e.g., up to 17.99 percent).

In response to the June 2007 Proposal, several consumer group commenters suggested that the Board should not allow issuers to disclose a range of possible rates. Instead, issuers should be required to disclose the actual APR that the issuer is offering the consumer, because otherwise, consumers do not know the rate for which they are applying. Industry commenters generally supported the proposal clarifying that issuers may disclose the specific rates or range of possible rates, with an explanation that the rate obtained by the consumer is based on the consumer's creditworthiness. Several commenters suggested that the Board also allow issuers to disclose the highest APR that may apply instead of a range of rates, because they believed that this approach might be less confusing to consumers than seeing a range of rates. For example, a consumer may focus on the lowest rate in a range and be surprised when the final rate is higher than this lowest rate. Also, if the highest rate was the only rate disclosed, a consumer would not be upset by obtaining a lower rate than the rate initially disclosed. Other commenters indicated that disclosing only the highest APR should not be allowed, because consumers may believe this would be the APR that applied to them even though the highest APR may apply only to a small group of consumers solicited.

In addition, one commenter indicated that for some issuers, especially in the private label market, the actual rate for which a consumer qualifies may be determined using multiple factors, including the consumer's creditworthiness, whether the consumer is contemplating a purchase with the retailer named on the private label card, and other factors.

The Board adopts § 226.5a(b)(1)(v) and comment 5a(b)(1)-6 (proposed as comment 5a(b)(1)-5) with several revisions. Consistent with the proposal, § 226.5a(b)(1)(v) specifies that 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. Generally, issuers are not allowed to disclose only the lowest rate, the median rate or the highest rate that could apply. See comment 5a(b)(1)-6 (proposed as comment 5a(b)(1)-5). The Board believes that requiring card issuers to disclose all the possible rates (as either specific rates, or as a range of rates) provides more useful information to consumers than allowing issuers to disclose only the lowest, median or highest APR. If a consumer sees a range or several specific rates, the consumer may be better able to understand the possible rates that may apply to the account.

Nonetheless, if the rate is a penalty rate, 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. See § 226.5a(b)(1)(v). With respect to penalty rates, issuers may set a highest rate for the penalty rate (such as 28 percent) but may either decide not to increase a consumer's rates based on a violation of a penalty rate trigger or may impose a penalty rate that is less than that highest rate, depending on factors at the time the penalty rate is imposed. It would be difficult for the issuer to disclose a range of possible rates for the penalty rate that is meaningful because the issuer might decide not to increase a consumer's rates based on a violation of a penalty rate trigger. In the penalty rate context, a range of possible penalty rates would likely be more confusing to consumers than only disclosing the highest penalty rate.

Comment 5a(b)(1)-6 (proposed as comment 5a(b)(1)-5) also is revised to clarify that § 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 must 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, 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), § 226.5a(b)(1)(v) does not apply.

The Board is not requiring an issuer to provide the actual rate that the issuer is offering the consumer if that rate is not known. As explained above, issuers that use risk-based pricing may not be able to disclose the specific rate that would apply to a consumer because issuers may not have sufficient information about a consumer's creditworthiness at the time the application is given.

Proposed Samples G-10(B) and G-10(C) would have provided guidance for issuers on how to meet the requirements to provide 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. Specifically, proposed Samples G-10(B) and G-10(C) would have provided that issuers may meet these requirements by providing the specific rates or the range of rates and stating that the rate for which the consumer qualifies would be "based on your creditworthiness." As discussed above, in response to the June 2007 Proposal, one commenter indicated that for some issuers, especially in the private label market, the actual rate for which a consumer qualifies may be determined using multiple factors, including the consumer's creditworthiness, whether the consumer is contemplating a purchase with the retailer named on the private label card and other factors. Samples G-10(B) and G-10(C) as adopted contain the phrase "based on your creditworthiness," but pursuant to § 226.5a(b)(1)(v) discussed above, a creditor that considers other factors in addition to a consumer's creditworthiness in determining the APR applicable to a consumer's account would use language such as "based on your creditworthiness and other factors."

Transactions with both rate and fee. When a consumer initiates a balance transfer or cash advance, card issuers typically charge consumers both interest on the outstanding balance of the transaction and a fee to complete the transaction. It is important that consumers understand when both a rate and a fee apply to specific transactions. In the June 2007 Proposal, the Board proposed to add a new § 226.5a(b)(1)(vi) to require that if both a rate and fee apply to a balance transfer or cash advance transaction, a card issuer must disclose that a fee also applies when disclosing the rate, and provide a cross reference to the fee. In consumer testing conducted for the Board prior to the June 2007 Proposal, some participants were more aware that an interest rate applies to cash advances and balance transfers than they were aware of the fee component, so the Board believed that a cross reference between the rate and the fee may help those consumers notice both the rate and the fee components.

In response to the June 2007 Proposal, several industry commenters suggested that the cross reference be eliminated, as unnecessary and leading to "information overload." In addition, one industry commenter suggested that the Board also require a cross reference from the purchase APR to any transaction fee on purchases. One industry commenter suggested that issuers be allowed to modify the cross reference to state when the cash advance fee or balance transfer fee will not apply, such as "Cash advance fees will apply to cash advances except for convenience checks and fund transfers to other accounts with us." In addition, one industry commenter asked the Board for clarification on whether a 0 percent APR required the cross reference between the rate and the fee.

In quantitative consumer testing conducted for the Board after the May 2008 Proposal, the Board investigated whether the presence of a cross reference from the balance transfer APR to the balance transfer fee improved consumers' awareness of and ability to identify the balance transfer fee. The results of the testing indicate that there was no statistically significant improvement in consumers' ability to identify the balance transfer fee if the cross reference was present. Given the results of the consumer testing and concerns about "information overload," the Board has withdrawn proposed § 226.5a(b)(1)(vi). Proposed comment 5a(b)(1)-6, which would have given guidance on how to present a cross reference between a rate and fee, also is withdrawn.

APRs that vary by state. Currently, § 226.5a(b) requires card issuers to disclose the rates applicable to the account, for purchases, cash advances, and balance transfers. For disclosures required to be provided with credit card applications and solicitations, if the rate varies by state, card issuers must disclose in the table the rates for all states. Specifically, comment 5a(a)(2)-2 currently provides, in relevant part, that if rates or other terms vary by state, card issuers may list the states and the various disclosures in a single table or in separate tables.

The Board is concerned that such an approach of disclosing the rates for all states in the table (or having a table for each state) would detract from the purpose of the table:

to provide key information in a simplified way. Thus, consistent with the reasons discussed in the section-by-section analysis to § 226.5a(a)(4) with respect to fees that vary by state, the final rule adds § 226.5a(b)(1)(vi) to provide that card issuers imposing APRs that vary by state may, at the issuer's option, disclose in the table required by § 226.5a either (1) the specific APR applicable to the consumer's account, or (2) the range of APRs, if the disclosure includes a statement that the APR varies by state and refers the consumer to a disclosure provided with the § 226.5a table where the APR applicable to the consumer's account is disclosed, for example in a list of APRs for all states. Listing APRs for multiple states in the table (or having a table for each state) is not permissible. In addition, as discussed above, comment 5a(a)(2)-2 currently provides, in relevant part, that if rates or other terms vary by state, card issuers may list the states and the various disclosures in a single table or in a separate table. Because under the final rule, an issuer would no longer be allowed to list fees or rates for multiple states in the table (or have a table for each state), this provision in comment 5a(a)(2)-2 is deleted as obsolete. These changes to § 226.5a and comment 5a(a)(2)-2 are adopted in part pursuant to TILA Section 127(c)(5), which authorizes the Board to add or modify § 226.5a disclosures as necessary to carry out the purposes of TILA. 15 U.S.C. 1637(c)(5).

<u>Rate based on another rate on the account</u>. In response to the June 2007 Proposal, one commenter asked the Board to clarify how a rate should be disclosed if that rate is 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. The Board adopts new comment 5a(b)(1)-7 to

clarify how such a rate should be disclosed. Pursuant to comment 5a(b)(1)-7, a card issuer, in this example, 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 may 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, in this example, that the penalty rate is determined by adding 5 percentage points to the purchase rate.

Typical APR. Several consumer groups have indicated that the current disclosure requirements in § 226.5a allow card issuers to promote low APRs, that include interest but not fees, while charging high penalty fees and penalty rates when consumers, for example, pay late or exceed the credit limit. As a result, these consumer groups suggested that the Board require credit card issuers to disclose in the table a "typical rate" that would include fees and charges that consumers pay for a particular open-end credit product. This rate would be calculated as the average effective rate disclosed on periodic statements over the last three years for customers with the same or similar credit card product. These consumer groups believe that this "typical rate" would reflect the real rate that consumers pay for the credit card product.

In the June 2007 Proposal, the Board did not propose that card issuers disclose the "typical rate" as part of the § 226.5a disclosures because the Board did not believe that the proposed typical APR would be helpful to consumers that seek credit cards. There are many different ways consumers may use their credit cards, such as the features they use, what fees they incur, and whether a balance is carried from month to month. For example, some consumers use their cards only for purchases, always pay off the bill in full, and never incur fees. Other consumers may use their cards for purchases, balance transfers or cash advances, but never incur late-payment fees, over-the-limit fees or other penalty fees. Still others may incur penalty fees and penalty rates. A "typical rate," however, would be based on average fees and average balances that may not be typical for many consumers. Moreover, such a rate may confuse consumers about the actual rate that may apply to their account.

In response to the June 2007 Proposal, several consumers groups again suggested that the Board reconsider the issue of disclosing a "typical rate" in the table required by § 226.5a. The Board continues to believe that the proposed typical APR would not be helpful to consumers that seek credit cards for the reasons stated above. Thus, a requirement to disclose a "typical rate" is not included in the final rule.

5a(b)(2) Fees for Issuance or Availability

Section 226.5a(b)(2), which implements TILA Section 127(c)(1)(A)(ii)(I), requires card issuers to disclose any annual or other periodic fee, expressed as an annualized amount, that is imposed for the issuance or availability of a credit card, including any fee based on account activity or inactivity. 15 U.S.C. 1637(c)(1)(A)(ii)(I). In 1989, the Board used its authority under TILA Section 127(c)(5) to require that issuers also disclose non-periodic fees related to opening the account, such as one-time membership or participation fees. 15 U.S.C. 1637(c)(5); 54 FR 13855, Apr. 6, 1989.

Fees for issuance or availability of credit card products targeted to subprime borrowers. Often, subprime credit cards will have substantial fees related to the issuance and availability of credit. For example, these cards may impose an annual fee and a monthly maintenance fee for the card. In addition, these cards may impose multiple one-time fees when the consumer opens the card account, such as an application fee and a program fee. The Board believes that these fees should be clearly explained to consumers at the time of the offer so that consumers better understand when these fees will be imposed.

In the June 2007 Proposal, the Board proposed to amend § 226.5a(b)(2) to require additional information about periodic fees. 15 U.S.C. 1637(c)(5). Currently, issuers are required to disclose only the annualized amount of the fee. The Board proposed to amend § 226.5a(b)(2) to require issuers also to disclose the amount of the periodic fee, and how frequently it will be imposed. 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 addition, the Board proposed to amend § 226.5a(b)(2) to require additional information about non-periodic fees related to opening the account. Currently, issuers are required to disclose the amount of the non-periodic fee, but not that it is a one-time fee. The Board proposed to amend § 226.5a(b)(2) to require card issuers to disclose the amount of the fee and that it is a one-time fee. The final rule adopts § 226.5a(b)(2) as proposed. The Board believes that this additional information will allow consumers to better understand set-up and maintenance fees that are often imposed in connection with subprime credit cards. For example, the changes will provide consumers with additional information about how often the fees will be imposed by identifying which fees are one-time fees, which fees are periodic fees (such as monthly fees), and which fees are annual fees.

In addition, application fees that are charged regardless of whether the consumer receives credit currently are not considered fees as imposed for the issuance or availability of a credit card, and thus are not disclosed in the table. See current comment 5a(b)(2)-3 and § 226.4(c)(1). The Board proposed to delete the exception for these application fees and require that they be disclosed in the table as fees imposed for the issuance or availability of a credit card. Comment 5a(b)(2)-3 is adopted as proposed with stylistic changes. The Board believes that consumers should be aware of these fees when they are shopping for a credit card.

Currently, and under the June 2007 and May 2008 Proposals, comment 5a(b)(2)-2 provides that 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. The Board is aware that some subprime cards may charge a fee for an additional card on the account, beyond the first card on the account. For example, if there were two primary cardholders listed on the account, only one card on the account would be issued, and the cardholders would be charged a fee for another card if the cardholders request an additional card, so that each cardholder would have his or her own card. The Board is amending comment 5a(b)(2)-2 to clarify that 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 primary 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 in that the fee is charged only if the cardholder requests one or more additional cards.

5a(b)(3) Fixed Finance Charge; Minimum Interest Charge

Currently, § 226.5a(b)(3), which implements TILA Section 127(c)(1)(A)(ii)(II), requires that card issuers must disclose any minimum or fixed finance charge that could be imposed during a billing cycle. Card issuers typically impose a minimum charge (e.g., $0.50) in lieu of interest in those months where a consumer would otherwise incur an interest charge that is less than the minimum charge (a so-called "minimum interest charge").

In the June 2007 Proposal, the Board proposed to retain the minimum finance charge disclosure in the table but refer to the charge as a "minimum interest charge" or "minimum charge" in the table, as discussed in the section-by-section analysis to Appendix G. Although minimum charges currently may be small, the Board was concerned that card issuers may increase these charges in the future. Also, the Board noted that it was aware of at least one credit card product for which no APR is charged, but each month a fixed charge is imposed based on the outstanding balance (for example, $6 charge per $1,000 balance). If the minimum finance charge disclosure were eliminated from the table, card issuers that offer this type of pricing would no longer be required to disclose the fixed charge in the table and consumers would not receive important information about the cost of the credit card. The Board also did not propose a de minimis minimum finance charge threshold. The Board was concerned that this approach could undercut the uniformity of the table, and could be misleading to consumers. The Board also proposed to amend § 226.5a(b)(3) to require card issuers to disclose in the table a brief description of the minimum finance charge, to give consumers context for when this charge will be imposed. See also proposed comment 5a(b)(3)-1.

In response to the June 2007 Proposal, several industry commenters recommended that the Board delete this disclosure from the table unless the minimum finance charge is over a certain nominal amount. They indicated that in most cases, the minimum finance charge is so small as to be irrelevant to consumers. They believed that it should only be in the table if the minimum finance charge is a significant amount. Consumer groups agreed with the Board's proposal to require the disclosure of the minimum finance charge in all cases and not to allow issuers to exclude the minimum finance charge from the table if the charge was under a certain specific amount.

In consumer testing conducted by the Board in March 2008, participants were asked to compare disclosure tables for two credit card accounts and decide which account they would choose. In one of the disclosure tables, a small minimum finance charge, labeled as a "minimum interest charge," was disclosed. In the other disclosure table, no minimum finance charge was disclosed. None of the participants indicated that the small minimum finance charge on one card but not on the other would impact their decision to choose one card over the other.

Based on this consumer testing, the Board proposed in May 2008 to revise proposed § 226.5a(b)(3) to provide that an issuer must disclose in the table any minimum or fixed finance charge in excess of $1.00 that could be imposed during a billing cycle and a brief description of the charge, pursuant to the Board's authority under TILA Section 127(c)(5) which authorizes the Board to add or modify § 226.5a disclosures as necessary to carry out the purposes of TILA. 15 U.S.C. 1637(c)(5). The proposed rule would have continued to require disclosure in the table if any minimum or fixed finance charge was over this de minimis amount to ensure that consumers are aware of larger minimum or fixed finance charges that might impact them. Under the proposal, the $1.00 amount would have been adjusted to the next whole dollar amount when the sum of annual percentage changes in the Consumer Price Index in effect on June 1 of previous years equals or exceeds $1.00. <u>See</u> proposed comment 5a(b)(3)-2. This approach in adjusting the dollar amount that triggers the disclosure of a minimum or fixed finance charge is similar to TILA's rules for adjusting a dollar amount of fees that trigger additional protections for certain home-secured loans. TILA Section 103(aa), 15 U.S.C. 1602(aa). Under the proposal, at the issuer's option, the issuer would have been allowed to disclose in the table any minimum or fixed finance charge below the threshold. This flexibility was intended to facilitate compliance when adjustments are made to the dollar threshold. For example, if an issuer has disclosed a $1.50 minimum finance charge in its application and solicitation table at the time the threshold is increased to $2.00, the issuer could continue to use forms with the minimum finance charge disclosed, even though the issuer would no longer be required to do so.

In response to the May 2008 Proposal, industry commenters generally supported this aspect of the proposal. One industry commenter suggested a $5.00 threshold, because with the proposed $1.00 threshold, when operational costs are considered, for most banks it will be simpler to disclose any and all minimum or fixed finance charges.

Another industry commenter suggested eliminating the minimum or fixed finance charge disclosure altogether, and adding a disclosure for cards that charge a monthly fee in lieu of the APR. In addition, one industry commenter suggested that the Board eliminate the minimum or fixed finance charge disclosure and monitor if issuers change their minimum or fixed finance charge calculations as a result. Consumer group commenters generally opposed the proposal because issuers would no longer be required to disclose an important cost to consumers (especially subprime consumers, where the fee might be significant in relation to the small initial available credit on subprime cards).

The minimum interest charge was also tested in the Board's qualitative consumer testing. In the two rounds of consumer testing conducted by the Board after the May 2008 Proposal, participants were asked to compare disclosure tables for two credit card accounts. In one of the disclosure tables, a small minimum interest charge was disclosed. In the other disclosure table, no minimum interest charge was disclosed. Participants were specifically asked whether the minimum interest charge would influence which card they would choose. Of the participants who understood what a minimum interest charge was, almost all said that the minimum interest charge would not play a significant role in their decision whether or not to apply for the card that disclosed the minimum interest charge because of the small amount of the fee.

The final rule retains the $1.00 threshold, as proposed, in § 226.5a(b)(3) with several modifications. Pursuant to the Board's authority under TILA Section 127(c)(5), the final rule retains the $1.00 threshold for minimum interest charges because the Board believes that when the minimum interest charge is a de minimis amount (i.e., $1.00 or less, as adjusted for inflation), disclosure of the minimum interest charge is not information that consumers will use to shop for a card. 15 U.S.C. 1637(c)(5). The final rule limits the $1.00 threshold to apply only to minimum interest charges, which are charges in lieu of interest in those months where a consumer would otherwise incur an interest charge that is less than the minimum charge. Fixed finance charges must be disclosed regardless of whether they are equal to or less than $1.00. For example, for credit card products described above where no APR is charged, but each month a fixed charge is imposed based on the outstanding balance (e.g., $6 charge per $1,000 balance), this fixed charge must be disclosed regardless of whether the charge is equal to or less than $1.00. The Board is limiting the $1.00 threshold to minimum interest charges because the Board believes that minimum interest charges are imposed infrequently, and most likely are not imposed month after month on an account, unlike fixed finance charges.

In addition, in a technical edit, the final rule is amended to specify that the $1.00 amount would be adjusted periodically by the Board to reflect changes in the Consumer Price Index. The final rule specifies that 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. Comments 5a(b)(3)-1 and -2 are also adopted with technical modifications.

5a(b)(4) Transaction Charges

Section 226.5a(b)(4), which implements TILA Section 127(c)(1)(A)(ii)(III), requires that card issuers disclose any transaction charge imposed on purchases. In the

June 2007 Proposal, the Board proposed to amend § 226.5a(b)(4) to explicitly exclude from the table fees charged for transactions in a foreign currency or that take place in a foreign country. In an effort to streamline the contents of the table, the Board proposed to highlight only those fees that may be important for a significant number of consumers. In consumer testing for the Board prior to the June 2007 Proposal, participants did not mention foreign transaction fees as important fees they use to shop. In addition, there are few consumers who may pay these fees with any frequency. Thus, in the June 2007 Proposal, the Board proposed to except foreign transaction fees from disclosure of transaction fees in an application or solicitation, but to include such fees in the proposed account-opening summary table to ensure that interested consumers can learn of the fees before using the card. See proposed § 226.6(b)(4).

In response to the June 2007 Proposal, some consumer group commenters recommended that the Board mandate disclosure of foreign transaction fees in the table required under § 226.5a. They questioned the utility of the Board requiring foreign transaction fees in the account-opening table required under § 226.6, but prohibiting those fees to be disclosed in the table under § 226.5a. They believed that consumers as well as the industry would be better served by eliminating the few differences between the disclosures required at the two stages. In addition, one industry commenter recommended that the table required under § 226.5a include foreign transaction fees. This commenter believed that the foreign transaction fee is relevant to any consumer who travels in other countries, and the ability to choose a credit card based on the presence of the fee is important. In addition, the commenter noted that the large amount of press attention that the issue has received suggests that the presence or absence of the fee is now of interest to a significant number of consumers.

In the May 2008 Proposal, the Board proposed to require that foreign transaction fees imposed by the card issuer must be disclosed in the table required under § 226.5a. Specifically, the Board proposed to withdraw proposed § 226.5a(b)(4)(ii), which would have precluded a card issuer from disclosing a foreign transaction fee in the table required by § 226.5a. In addition, the Board proposed to add comment 5a(b)(4)-2 to indicate that foreign transaction fees charged by the card issuer are considered transaction charges for the use of a card for purchases, and thus must be disclosed in the table required under § 226.5a.

In the May 2008 Proposal, the Board noted its concern about the inconsistency in requiring foreign transaction fees in the account-opening table required by § 226.6, but prohibiting that fee in the table required by § 226.5a. In the June 2007 Proposal, the Board proposed that issuers may substitute the account-opening table for the table required by § 226.5a. See proposed comment 5a-2. Under the June 2007 Proposal, circumstances could have arisen where one issuer substitutes the account-opening table for the table required under § 226.5a (and thus is required to disclose the foreign transaction fee) but another issuer provides the table required under § 226.5a (and thus is prohibited from disclosing the foreign transaction fee). If a consumer was comparing the disclosures for these two offers, it may appear to the consumer that the issuer providing the account-opening table charges a foreign transaction fee and the issuer providing the table required under § 226.5a does not, even though the second issuer may charge the same or a higher foreign transaction fee than the first issuer. Thus, to promote uniformity, the Board proposed in May 2008 to require issuers to disclose the foreign transaction fee in both the account-opening table required by § 226.6 and the table required by § 226.5a. See proposed comment 5a(b)(4)-2. The Board also proposed that foreign transaction fees would be disclosed in the table required by § 226.5a similar to how those fees are disclosed in the proposed account-opening tables published in the June 2007 Proposal. See proposed Model Forms and Samples G-17(A), (B) and (C).

In response to the May 2008 Proposal, most consumer group and industry commenters supported the Board's proposal to require issuers to disclose foreign transaction fees in the table required by § 226.5a. Nonetheless, some industry commenters opposed the proposal because they believed that consumers would not shop on these fees. One industry commenter indicated that disclosing the foreign transaction fee in the table only in connection with purchases may be misleading to consumers as some issuers also charge this fee on cash advances in foreign currencies or in foreign countries. This commenter noted that in the June 2007 Proposal, the Board identified this fee in proposed § 226.5a(b)(4)(ii) as "a fee imposed by the issuer for transactions made in a foreign currency or that take place in a foreign country." This commenter encouraged the Board to adopt similar "transaction" language in the final rule for § 226.5a(b)(4).

Comment 5a(b)(4)-2 is adopted as proposed in the May 2008 Proposal with several modifications. As discussed above, the final rule requires issuers to disclose foreign transaction fees in the table required by § 226.5a, to be consistent with the requirement to disclose that fee in the account-opening table required by § 226.6. In addition, foreign transaction fees could be relevant to consumers who travel in other countries or conduct transactions in foreign currencies, and the ability to choose a credit card based on the presence of the fee may be important to those consumers.

The Board notes that § 226.5a(b)(4) requires issuers to disclose any transaction charge imposed by the card issuer for the use of the card for purchases. Thus, comment 5a(b)(4)-2 clarifies that 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. As noted by one commenter on the May 2008 Proposal, some issuers also charge a foreign transaction fee on cash advances in foreign currencies or in foreign countries. Issuers that charge a foreign transaction fee on cash advances in foreign currencies or in foreign countries are required to disclose that fee under § 226.5a(b)(8), which requires the issuer to disclose in the table any fee imposed for an extension of credit in the form of cash or its equivalent. Comment 5a(b)(8)-2 is added to clarify that cash advance fees include any charge imposed by the card issuer for cash advances in a foreign currency or that take place in a foreign country. In addition, both comments 5a(b)(4)-2 and 5a(b)(8)-2 clarify that if an issuer charges the same foreign transaction fee for purchases and cash advances in a foreign currency or in a foreign country, the issuer may disclose this foreign transaction fee as shown in Samples G-10(B) and G-10(C). Otherwise, the issuer will need to 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. Moreover, both comments 5a(b)(4)-2 and 5a(b)(8)-2 include a cross reference to comment 4(a)-4 for guidance on when a foreign transaction fee is considered charged by the card issuer.

<u>5a(b)(5) Grace Period</u>

Currently, § 226.5a(b)(5), which implements TILA Section 127(c)(A)(iii)(I), requires that card issuers disclose in the § 226.5a table the date by which or the period within which any credit extended for purchases may be repaid without incurring a finance charge. Section 226.5a(a)(2)(iii), which implements TILA Section 122(c)(2)(C), requires credit card applications and solicitations under § 226.5a to use the term "grace period" to describe the date by which or the period within which any credit extended for purchases may be repaid without incurring a finance charge. 15 U.S.C. 1632(c)(2)(C). In the June 2007 Proposal, the Board proposed new § 226.5(a)(2)(iii) to extend this requirement to use the term "grace period" to all references to such a term for the disclosures required to be in the form of a table, such as the account-opening table.

In response to the June 2007 Proposal, one industry commenter recommended that the Board no longer mandate the use of the term "grace period" in the table. Although TILA specifically requires use of the term "grace period" in the § 226.5a table, this commenter urged the Board to use its exception authority to choose a term that is more understandable to consumers. This commenter pointed out that its research as well as that conducted by the Board and the GAO had demonstrated that the term is confusing as a descriptor of the interest-free period between the purchase and the due date for customers who pay their balances in full. This commenter suggested that the Board revise the disclosure of the grace period in the table to use the heading "interest-free period" instead of "grace period."

In the May 2008 Proposal, the Board proposed to use its exemption authority to delete the requirement to use the term "grace period" in the table required by § 226.5a. 15 U.S.C. 1604(a) and (f) and 1637(c)(5). As the Board discussed in the June 2007 Proposal, consumer testing conducted for the Board prior to the June 2007 Proposal indicated that some participants misunderstood the term "grace period" to mean the time after the payment due date that an issuer may give the consumer to pay the bill without charging a late-payment fee. The GAO in its Report on Credit Card Rates and Fees found similar misunderstandings by consumers in its consumer testing. See page 50 of GAO Report. Furthermore, many participants in the GAO testing incorrectly indicated that the grace period was the period of time promotional interest rates applied. Nonetheless, in consumer testing conducted for the Board prior to the June 2007 Proposal, the Board found that participants tended to understand the term "grace period" more clearly when additional context was added to the language of the grace period disclosure, such as describing that if the consumer paid the bill in full each month, the consumer would have some period of time (e.g., 25 days) to pay the new purchase balance in full to avoid interest. Thus, the Board proposed to retain the term "grace period."

As discussed above, in response to the June 2007 Proposal, one commenter performed its own testing with consumers on the grace period disclosure proposed by the Board. This commenter found that the term "grace period" was still confusing to the participants in its testing, even with the additional context given in the grace period disclosure proposed by the Board. The commenter found that consumers understood the term “interest-free period” to more accurately describe the interest-free period between the purchase and the due date for customers who pay their balances in full.

In consumer testing conducted by the Board prior to the June 2007 Proposal, the Board tested the phrase “interest-free period.” The Board found that some consumers believed the phase “interest-free period” referred to the period of time that a zero percent introductory rate would be in effect, instead of the grace period. Subsequently, in consumer testing conducted by the Board in March 2008, the Board tested disclosure tables for a credit card solicitation that used the phrase “How to Avoid Paying Interest on Purchases” as the heading for the row containing the information on the grace period. Participants in this testing generally seemed to understand this phrase to describe the grace period. In addition, in the March 2008 consumer testing, the Board also tested the phrase “Paying Interest” in the context of a disclosure relating to a check that accesses a credit card account, where a grace period was not offered on this access check. Specifically, the phrase “Paying Interest” was used as the heading for the row containing information that no grace period was offered on the access check. Participants seemed to understand this phrase to mean that no grace period was being offered on the use of the access check. Thus, in the May 2008 Proposal the Board proposed to revise proposed § 226.5a(b)(5) to require that issuers use the phrase “How to Avoid Paying Interest on Purchases,” or a substantially similar phrase, as the heading for the row describing the grace period. If no grace period on purchases is offered, when an issuer is disclosing this fact in the table, the issuer would have been required to use the phrase “Paying Interest,” or a substantially similar phrase, as the heading for the row describing that no grace period is offered.

Comments on this aspect of the May 2008 Proposal were mixed. Some consumer group and industry commenters supported the new headings. Some of these commenters suggested that the new headings be mandated, that is, the Board should not allow "substantially similar" phrases to be used. Other industry and consumer group commenters suggested that the Board retain the use of the term "grace period" because they claimed that consumers generally understand the "grace period" phrase. In addition, other industry commenters suggested that the Board mandate one row heading (regardless of whether there is a grace period or not) and that heading should be "interest-free period." These commenters believed that the phrase "interest-free period" would help consumers better understand the "grace period" concept generally and would reinforce for consumers that they pay interest from the date of the transaction for transactions other than purchases.

In one of the rounds of consumer testing conducted by the Board after the May 2008 Proposal, the following three heading were tested for describing the "grace period" concept: "How to Avoid Paying Interest on Purchases," "Grace Period" and "Interest-free Period." Participants in this round of testing were asked which of the three heading most clearly communicates the information contained in that row of the table. Most of the participants selected the heading "How to Avoid Paying Interest on Purchases." A few of the participants selected the heading "Interest-Free Period." None of the participants selected "Grace Period" as the best heading. A few participants commented that the term "grace period" was misleading because some people might think of a "grace period" as a period of time after the due date that a consumer could pay without being considered late. In addition, the Board believes that the heading "How to Avoid Paying

Interest on Purchases" communicates in plain language the concept of the "grace period," without requiring consumers to understand a specific phrase like "grace period" or "interest-free period" to represent that concept.

In addition, in the consumer testing conducted after the May 2008 Proposal, the Board continued to test the phrase "Paying Interest" as a disclosure heading in the context of a check that accesses a credit card account, where no grace period was offered on this access check. When asked whether there was any way to avoid paying interest on transactions made with the access check, most participants in these rounds of testing understood the "Paying Interest" phrase to mean that no grace period was being offered on the use of the access check. Thus, the final rule in § 226.5a(b)(5) adopts the new headings as proposed in May 2008, pursuant to the Board's authority in TILA Section 105(a) to provide exceptions necessary or proper to effectuate the purposes of TILA. 15 U.S.C. 1604(a).

Although the heading of the row will change depending on whether or not a grace period for all purchases is offered on the account, the Board does not believe that different headings will significantly undercut a consumer's ability to compare terms of credit card accounts. Most issuers offer a grace period on all purchases; thus, most issuers will use the term "How to Avoid Paying Interest on Purchases." Nonetheless, in those cases where a consumer is reviewing the tables for two credit card offers – one which has a row with the heading "How to Avoid Paying Interest on Purchases" and one with a row "Paying Interest" – the Board believes that consumers will recognize that the information in those two rows relate to the same concept of when consumers will pay interest on the account.

As discussed above, some commenters suggested that the new headings be mandated to promote uniformity of the table, that is, the Board should not allow "substantially similar" phrases to be used. The Board agrees that consistent headings are important to enable consumers to better compare grace periods for different offers. Section 226.5a(b)(5) specifies that in disclosing a grace period that applies to all types of purchases in the table, the phrase "How to Avoid Paying Interest on Purchases" must be used as the heading for the row describing the grace period. If a grace period is not offered on all types of purchases or is not offered on any purchases, in describing this fact in the table, the phrase "Paying Interest" must be used as the heading for the row describing this fact.

As discussed above, § 226.5a(b)(5) currently requires that card issuers disclose in the § 226.5a table the date by which or the period within which any credit extended for purchases may be repaid without incurring a finance charge. Comment 5a(b)(5)-1 provides that a card issuer may, but need not, refer to the beginning or ending point of any grace period and briefly state any conditions on the applicability of the grace period. For example, the grace period disclosure might read "30 days" or "30 days from the date of the periodic statement (provided you have paid your previous balance in full by the due date)."

In the June 2007 Proposal, the Board proposed to amend § 226.5a(b)(5) to require card issuers to disclose briefly any conditions on the applicability of the grace period. The Board also proposed to amend comment 5a(b)(5)-1 to provide guidance for how issuers may meet the requirements in proposed § 226.5a(b)(5). Specifically, proposed comment 5a(b)(5)-1 would have provided that an issuer that conditions the grace period on the consumer paying his or her balance in full by the due date each month, or on the consumer paying the previous balance in full by the due date the prior month will be deemed to meet requirements to disclose conditions on the applicability of the grace period by providing the following disclosure: "If you pay your entire balance in full each month, you have [at least] ____ days after the close of each period to pay your balance on purchases without being charged interest."

In response to the June 2007 Proposal, several commenters suggested that the Board revise the model language provided in proposed comment 5a(b)(5)-1 to describe the grace period. One commenter suggested the following language: "Your due date is [at least] 25 days after your bill is totaled each month. If you don't pay your bill in full by your due date, you will be charged interest on the remaining balance." Other commenters also recommended that the Board revise the disclosure of the grace period to make clearer that the consumer must pay the total balance in full each month by the due date to avoid paying interest on purchases. In addition, some consumer groups commented that if the issuer does not provide a grace period, the Board should mandate specific language that draws the consumer's attention to this fact.

Two industry commenters to the June 2007 Proposal noted that the "grace period" description in proposed sample forms was conditioned on "if you pay your entire balance in full each month." One commenter suggested deleting the phrase as unnecessary; another asked the Board to provide flexibility in the description for creditors that offer a grace period on purchases if the purchase (not the entire) balance is paid in full.

In the March 2008 consumer testing, the Board tested the following language to describe a grace period: "Your due date is [at least] ____ days after the close of each billing cycle. We will not charge you interest on purchases if you pay your entire balance (excluding promotional balances) by the due date each month." Participants that read this language appeared to understand it correctly. That is, they understood that they could avoid paying interest on purchases is they paid their bill by the due date each month. Thus, in May 2008, the Board proposed to amend comment 5a(b)(5)-1 to provide this language as guidance to issuers on how to disclose a grace period. The Board noted that currently issuers typically require consumers to pay their entire balance in full each month to qualify for a grace period on purchases. However, in May 2008, the Board and other federal banking agencies proposed to prohibit most issuers from requiring consumers to pay off promotional balances in order to receive any grace period offered on non-promotional purchases. See 73 FR 28904, May 19, 2008. Thus, consistent with this proposed prohibition, the language in proposed comment 5a(b)(5)-1 would have indicated that the entire balance (excluding promotional balances) must be paid each month to avoid interest charges on purchases.

Also, in the March 2008 consumer testing, the Board tested language to describe that no grace period was being offered. Specifically, in the context of testing a disclosure related to an access check for which a grace period was not offered, the Board tested the following language: "We will begin charging interest on these check transactions on the transaction date." Most participants that read this language understood they could not avoid paying interest on this check transaction, and therefore, that no grace period was being offered on this check transaction. Thus, in May 2008, the Board proposed to add comment 5a(b)(5)-2 to provide guidance on how to disclose the fact that no grace period on purchases is offered on the account. Specifically, proposed comment 5a(b)(5)-2 would have provided that issuers may use the following language to describe that no grace period on purchases is offered, as applicable: "We will begin charging interest on purchases on the transaction date."

In response to the May 2008 Proposal, several industry commenters urged the Board to provide flexibility for card issuers to amend the "grace period" language to allow for a more accurate description of the grace period as may be appropriate or necessary. For example, these commenters indicated that this flexibility is needed since promotional balances may be described with more particularity (or using different terminology) on billing statements and elsewhere, and also since there may be circumstances in which the grace period could be conditioned on additional factors, aside from payment of a balance in full. In addition, several industry commenters noted that if the interagency proposal to prohibit most issuers from treating a payment as late unless consumers have been provided a reasonable amount of time to make that payment is adopted, issuers may have two due dates each month – one for the grace period end date and one for when payments will be considered late. Issuers would need flexibility to amend the grace period language to reference clearly the grace period end date. Also, several consumer group commenters suggested that the Board not adopt the proposed model language when a grace period is not offered on purchases, namely "We will begin charging interest on purchases on the transaction date." These commenters suggested instead that the Board mandate the following language: "No grace period."

In consumer testing conducted by the Board after the May 2008 Proposal, the Board tested the following language describing the grace period: "Your due date is [at least] ____ days after the close of each billing cycle. We will not charge you interest on purchases if you pay your entire outstanding balance (excluding promotional balances) by the due date each month." When asked whether there was any way not to pay interest on purchase, most participants noticed the language describing the grace period and appeared generally to understand that they could avoid paying interest on purchases by paying their balance in full each month. Nonetheless, most participants did not understand the phrase "(excluding promotional balances)." In the context of testing a disclosure related to an access check for which a grace period was not offered, the Board tested the following language: "We will begin charging interest on these check transactions on the transaction date." When asked where there was any way to avoid paying interest on these check transactions, most participants saw the above language and understood that there was no grace period for these check transactions.

Based on this testing, the Board adopts in comment 5a(b)(5)-1 the model language proposed in May 2008 for describing a grace period that is offered on all types of purchases, with one modification. Specifically, the phrase "(excluding promotional balances)" is deleted from the model language. Thus, the model language is revised to read: "Your due date is [at least] ___ days after the close of each billing cycle. We will not charge you interest on purchases if you pay your entire balance by the due date each month." As discussed in supplemental information to final rules issued by the Board and other federal banking agencies published elsewhere in today's **Federal Register**, the Board and the other federal banking agencies have withdrawn the proposal that would have prohibited most issuers from requiring consumers to pay off promotional balances in order to receive any grace period offered on non-promotional purchases. Thus, the phrase "(excluding promotional balances)" is deleted as unnecessary. In addition, other technical edits have been made to comment 5a(b)(5)-1.

The final rule adopts in comment 5a(b)(5)-2 the following model language proposed in May 2008 to describe that no grace period on any purchases is offered, as applicable: "We will begin charging interest on purchases on the transaction date." Comment 5a(b)(5)-3 is added to clarify that if an issuer provides a grace period on some types of purchases but no grace period on others, the issuer, as appropriate, may combine and revise the model language in comments 5a(b)(5)-1 and -2 to describe to which types of purchases a grace period applies and to which types of purchases no grace period is offered.

The Board's language in 5a(b)(5)-1 for describing a grace period on all purchases, and in 5a(b)(5)-2 for describing that no grace period exists on any purchases is not mandatory. This model language is meant as a safe harbor for issuers. Credit card issuers may amend this language as necessary or appropriate to describe accurately the grace period (or lack of grace period) offered on purchases on the account.

5a(b)(6) Balance Computation Method

TILA Section 127(c)(1)(A)(iv) requires the Board to name not more than five of the most common balance computation methods used by credit card issuers to calculate the balance for purchases on which finance charges are computed. 15 U.S.C. 1637(c)(1)(A)(iv). If issuers use one of the balance computation methods named by the Board, § 226.5a(b)(6) requires that issuers must disclose the name of that balance computation method in the table as part of the disclosures required by § 226.5a, but issuers are not required to provide a description of the balance computation method. If the issuer uses a balance computation method that is not named by the Board, however, the issuer must disclose a detailed explanation of the balance computation method. See current § 226.5a(b)(6); § 226.5a(a)(2)(i). In the June 2007 Proposal, the Board proposed to retain a brief reference to the balance computation method, but move the disclosure from the table to directly below the table. See proposed § 226.5a(a)(2)(iii).

Commenters generally supported the proposal. Many consumers urged the Board to ban the use of a computation method commonly called "two-cycle" as unfair. A federal banking agency urged the Board to require "cautionary disclosures" where technical explanations were insufficient, such as a for a description of two-cycle billing. Two commenters suggested expanding the list of commonly-used methods in § 226.5a(g) to include the daily balance method. One industry commenter suggested eliminating the requirement to provide the name of the balance computation method, and requiring a toll-free telephone number or an optional reference to the creditor's Web site instead.

Currently, the Board in § 226.5a(g) has named four balance computation methods: (1) average daily balance (including new purchases) or (excluding new purchases); (2) two-cycle average daily balance (including new purchases) or (excluding new purchases); (3) adjusted balance; and (4) previous balance. In the June 2007 Proposal, the Board proposed to retain these four balance computation methods.

In May 2008, the Board and other federal banking agencies proposed to prohibit most issuers from using a balance computation method commonly referred to as the "two-cycle" balance method. See 73 FR 28904, May 19, 2008. Nonetheless, in the May 2008 Regulation Z Proposal, the Board did not propose deleting the two-cycle average daily balance method from the list in § 226.5(g) because the prohibition would not have applied to all issuers, such as state-chartered credit unions that would not have been subject to the National Credit Union Administration's proposed rules.

In response to the May 2008 Proposal, several consumer groups suggested that the Board consider requiring issuers that use the two-cycle method to disclose that "this method is the most expensive balance computation method and is prohibited for most credit card issuers," assuming that the banking agencies' proposed rules prohibiting most issuers from using the "two cycle" method goes forward. In addition, these consumer groups continued to advocate use of an "Energy Star" approach in describing the balance calculation methods, where each balance computation method would be rated on how expensive it is, and that rating would be disclosed.

The Board is adopting the requirement to disclose the name of the balance computation method used by the creditor beneath the table, as proposed. In consumer testing conducted for the Board prior to the June 2007 Proposal, virtually no participants understood the two balance computation methods used by most card issuers—the average daily balance method and the two-cycle average daily balance method—when those methods were just described by name. The GAO found similar results in its consumer testing. See GAO Report on Credit Card Rates and Fees, at pages 50-51. In the consumer testing conducted for the Board prior to the June 2007 Proposal, a version of the table was used which attempted to explain briefly that the "two-cycle average daily balance method'" would be more expensive than the "average daily balance method" for those consumers that sometimes pay their bill in full and sometimes do not. Participants' answers suggested they did not understand this disclosure. They appeared to need more information about how balances are calculated.

In consumer testing conducted for the Board in March 2008, a version of the table was used which attempted to explain in more detail the "average daily balance method" and the "two-cycle average daily balance method" and the situation in which the two-cycle method results in higher interest charges – namely, in those months where a consumer paid his or her entire outstanding balance in full in one billing cycle but then does not pay the entire balance in full the following cycle. While participants that saw the table understood that under two-cycle billing, interest would be charged on balances during both the current and previous billing cycles, most participants did not understand that they would only be charged interest in the previous billing cycle if they had paid the outstanding balance in full for the previous cycle but not for the current cycle. Thus, most participants did not understand that two-cycle billing would not lead to higher interest charges than the "average daily balance method" if a consumer never paid in full.

TILA Section 122(c)(2) states that for certain disclosures set forth in Section TILA 127(c)(1)(A), including the balance computation method, the Board shall require that the disclosure of such information, to the extent the Board determines to be practicable and appropriate, be in the form of a table. 15 U.S.C. 1632(c)(2). The Board believes that it is no longer appropriate to continue to require issuers to disclose the balance computation method in the table, because the name of the balance computation method used by issuers does not appear to be meaningful to consumers and may distract from more important information contained in the table. Thus, the final rule retains a brief reference to the balance computation method, but moves the disclosure from the table to directly below the table. <u>See</u> § 226.5a(a)(2)(iii).

The final rule continues to require that issuers disclose the name of the balance computation method beneath the table because this disclosure is required by TILA Section 127(c)(1)(A)(iv). Consumers and others will have access to information about the balance calculation method used on the credit card account if they find it useful. Under final rules issued by the Board and other federal banking agencies published elsewhere in today's **Federal Register**, most credit card issuers are prohibited from using the "two cycle" balance computation method. Nonetheless, this final rule retains the "two-cycle" disclosure because not all issuers are covered by the final rules published elsewhere in today's **Federal Register** which preclude use of the two-cycle balance computation method.

The Board is not requiring issuers that are permitted to and choose to use the two-cycle method to disclose that "this method is the most expensive balance computation method and is prohibited for most credit card issuers." As discussed above, a statement that the two-cycle method is the most expensive balance computation method would be accurate only for those consumers who sometimes pay their bill in full and sometime do not. For consumers that never pay their bill in full, or always pay their bill in full, the interest paid under the two-cycle method is the same as paid under the one-cycle average daily balance method. For the same reasons, the Board is not requiring an "Energy Star" approach in describing the balance calculation methods, which would require each balance computation method to be rated on how expensive it is, and require that rating to be disclosed. Whether one balance computation method is more expensive than another would depend on how a consumer uses his or her account.

5a(b)(8) Cash Advance Fee

Currently, comment 5a(b)(8)-1 provides that a card issuer must disclose only those fees it imposes for a cash advance that are finance charges under § 226.4. For example, a charge for a cash advance at an ATM would be disclosed under § 226.5a(b)(8) unless a similar charge is imposed for ATM transactions not involving an extension of credit. In the June 2007 Proposal, the Board proposed to provide that all transaction fees on credit cards would be considered finance charges. Thus, the Board proposed to delete the current guidance discussed in comment 5a(b)(8)-1 as obsolete. As discussed in the section-by-section analysis to § 226.4, the final rule adopts the proposal that all transaction fees imposed by a card issuer on a cardholder are considered finance charges. Thus, the Board also deletes current comment 5a(b)(8)-1 as proposed.

A new comment 5a(b)(8)-1 is added to refer issuers to Samples G-10(B) and G-10(C) for guidance on how to disclose clearly and conspicuously the cash advance fee. In addition, as discussed in the section-by-section analysis to § 226.5a(b)(4), new comment 5a(b)(8)-2 is added to clarify that cash advance fees includes 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. In addition, comment 5a(b)(8)-2 clarifies that 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 will need to revise the foreign transaction fee 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. Moreover, comment 5a(b)(8)-2 provides a cross reference to comment 4(a)-4 for guidance on when a foreign transaction fee is considered charged by the card issuer.

In addition, consistent with the account-opening disclosures required in § 226.6, comment 5a(b)(8)-3 is added to clarify that any charge 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 is not a cash advance fee that must be disclosed in the table pursuant to § 226.5a(b)(8).

5a(b)(12) Returned-Payment Fee

Currently, § 226.5a does not require a card issuer to disclose a fee imposed when a payment is returned. In the June 2007 Proposal, the Board proposed to add § 226.5a(b)(12) to require issuers to disclose this fee in the table. Typically, card issuers will impose a fee and a penalty rate if a cardholder's payment is returned. As discussed above, the final rule adopts the Board's proposal to require card issuers to disclose in the table the reasons that a penalty rate may be imposed. See § 226.5a(b)(1)(iv). The final rule also requires card issuers to disclose the returned-payment fee, pursuant to the Board's authority under TILA Section 127(c)(5), so that consumers are told both consequences of returned payments. 15 U.S.C. 1637(c)(5). In addition, returned-payment fees are similar to late-payment fees in that returned-payment fees also can relate to a consumer not paying on time; if the only payment made by a consumer during a given billing cycle is returned, the return of the payment also could result in the consumer being deemed to have paid late. Late-payment fees are disclosed in the table and the Board believes that consumers also should be aware of returned-payment fees when shopping for a credit card. See section-by-section analysis to § 226.5a(a)(2).

Cross References to Penalty Rate

Card issuers often impose both a fee and penalty rate for the same behavior – such as a consumer paying late, exceeding the credit limit, or having a payment returned. In consumer testing conducted for the Board prior to the June 2007 Proposal, participants tended to associate paying penalty fees with certain behaviors (such as paying late or going over the credit limit), but they did not tend to associate rate increases with these same behaviors. By linking the penalty fees with the penalty rate, participants more easily understood that if they engage in certain behaviors, such as paying late, their rates may increase in addition to incurring a fee. Thus, in the June 2007 Proposal, the Board proposed to add § 226.5a(b)(13) to provide that if a card issuer may impose a penalty rate for any of the reasons that a penalty fee would be imposed (such as a late payment, going over the credit limit, or a returned payment), the issuer in disclosing the fee also must disclose that the penalty rate may apply, and must provide a cross reference to the penalty rate. Proposed Samples G-10(B) and G-10(C) would have provided guidance on how to provide these disclosures.

In response to the June 2007 Proposal, several industry commenters suggested that the cross reference be eliminated, as unnecessary and leading to "information overload." In addition, one commenter suggested that the cross reference not be required if one late payment cannot cause the APR to increase. Alternatively, this commenter suggested that the conditions be disclosed with the cross reference, for example, "If two consecutive payments are late, your APRs may also be increased; see Penalty APR section above."

In quantitative consumer testing conducted for the Board after the May 2008 Proposal, the Board investigated whether the presence of a cross reference from a penalty fee, specifically the over-the-limit fee, to the penalty APR improved consumers' awareness of the fact that a penalty rate could be applied to their accounts if they went over the credit limit. The results of the testing indicate that there was no statistically significant improvement in consumers' awareness that going over the limit could trigger penalty pricing when a cross reference was included. Because the testing suggests that cross-references from penalty fees to the penalty rate disclosure does not improve consumer understanding of the circumstances in which penalty pricing can be applied to their accounts, and due to concerns about "information overload," proposed § 226.5a(b)(13) and comment 5a(b)(13)-1 have been withdrawn from the final rule. Thus, the final rule does not require cross-references from penalty fees to penalty rates in the § 226.5a table.

5a(b)(13) Required Insurance, Debt Cancellation or Debt Suspension Coverage

Credit card issuers often offer optional insurance or debt cancellation or suspension coverage with the credit card. Under the current rules, costs associated with the insurance or debt cancellation or suspension coverage are not considered "finance charges" if the coverage is optional, the issuer provides certain disclosures to the consumer about the coverage, and the issuer obtains an affirmative written request for coverage after the consumer has received the required disclosures. Card issuers frequently provide the disclosures discussed above on the application form with a space to sign or initial an affirmative written request for the coverage. Currently, issuers are not required to provide any information about the insurance or debt cancellation or suspension coverage in the table that contains the § 226.5a disclosures.

In the event that a card issuer requires the insurance or debt cancellation or debt suspension coverage (to the extent permitted by state or other applicable law), the Board proposed new § 226.5a(b)(14) in the June 2007 Proposal to require that the issuer disclose any fee for this coverage in the table. In addition, proposed § 226.5a(b)(14) would have required that the card issuer also disclose a cross reference to where the consumer may find more information about the insurance or debt cancellation or debt suspension coverage, if additional information is included on or with the application or solicitation. Proposed Sample G-10(B) would have provided guidance on how to provide the fee information and the cross reference in the table. The final rule adopts new § 226.5a(b)(13) (renumbered from § 226.5a(b)(14)) as proposed. If insurance or debt cancellation or suspension coverage is required in order to obtain a credit card, the Board believes that fees required for this coverage should be highlighted in the table so that consumers are aware of these fees when considering an offer, because they will be required to pay the fee for this coverage every month in order to have the credit card.

5a(b)(14) Available Credit

Subprime credit cards often have substantial fees assessed when the account is opened. Those fees will be billed to the consumer as part of the first statement, and will substantially reduce the amount of credit that the consumer initially has available with which to make purchases or other transactions on the account. For example, for cards where a consumer is given a minimum credit line of $250, after the start-up fees have been billed to the account, the consumer may have less than $100 of available credit with which to make purchases or other transactions in the first month. In addition, consumers will pay interest on these fees until they are paid in full.

The federal banking agencies have received a number of complaints from consumers with respect to cards of this type. Complainants often claim that they were not aware of how little available credit they would have after all the fees were assessed. Thus, in the June 2007 Proposal, the Board proposed to add § 226.5a(b)(16) to inform consumers about the impact of these fees on their initial available credit. Specifically, proposed § 226.5a(b)(16) would have provided that if (1) a card issuer imposes required fees for the issuance or availability of credit, or a security deposit, that will be charged against the card when the account is opened, and (2) the total of those fees and/or security deposit equal 25 percent or more of the minimum credit limit applicable to the card, a card issuer must disclose in the table an example of the amount of the available credit that a consumer would have remaining after these fees or security deposit are debited to the account, assuming that the consumer receives the minimum credit limit offered on the relevant account. In determining whether the 25 percent threshold test is met, the issuer would have been required to consider only fees for issuance or availability of credit, or a security deposit, that are required. If certain fees for issuance or availability are optional, these fees would not have been required to be considered in determining whether the disclosure must be given. Nonetheless, if the 25 percent threshold test is met in connection with the required fees or security deposit, the issuer would have been required to disclose two figures – the available credit after excluding any optional fees from the amounts debited to the account, and the available credit after including any optional fees in the amounts debited to the account.

In addition, the Board proposed comment 5a(b)(16)-1 to clarify that in calculating the amount of available credit that must be disclosed in the table, an 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 would have been required to consider the first year's annual fee and the first month's maintenance fee (if applicable) if they are charged to the account immediately at account opening. Proposed Sample G-10(C) would have provided guidance to issuers on how to provide this disclosure. (See proposed comment 5a(b)(16)-2).

As described above, a card issuer would have been required to consider only required fees for issuance or availability of credit, or a security deposit, that will be charged against the card when the account is opened in determining whether the 25 percent threshold test is met. A card issuer would not have been required to consider other kinds of fees, such as late fees or over-the-limit fees when evaluating whether the 25 percent threshold test is met. The Board solicited comment on whether there are other fees (other than fees required for issuance or availability of credit) that are typically imposed on these types of accounts when the account is opened, and should be included in determining whether the 25 percent threshold test is met.

In response to the June 2007 Proposal, several commenters suggested start-up fees should be banned in some instances. Several consumer groups and one member of Congress suggested that start-up fees that equal 25 percent or more of the available credit line be banned. Another consumer group suggested that start-up fees exceeding 5 percent of the available credit line be banned. In addition, several consumer groups suggested that the Board should prohibit security deposits from being charged to the account as an unfair practice.

Assuming the Board did not ban start-up fees, several consumer groups suggested that the threshold for the available credit disclosure be lowered to 5 percent instead of 25 percent. In contrast, several industry commenters suggested that the threshold be lowered to 10 percent or 15 percent. In addition, while some commenters supported the Board's proposal to consider only required start-up fees (and not optional fees) in deciding whether the 25 percent threshold is met, some consumer groups suggested that the threshold test be based on required and optional fees. Several consumer groups also recommended that the language of the available credit disclosure be shortened and a percentage be disclosed, as follows: "AVAILABLE CREDIT: The fees charged when you open this account will be $25 (or $40 with an additional card), which is 10% (or 16% with an additional card) of the minimum credit limit of $250. If you receive a $250 credit limit, you will have $225 in available credit (or $210 with an additional card)." These consumer groups also suggested that the available credit disclosure be required in advertisements as well, especially in the solicitation letter for direct mail and Internet applications and solicitations.

In May 2008, the Board and other federal banking agencies proposed to address concerns regarding subprime credit cards by prohibiting institutions from financing security deposits and fees for credit availability (such as account-opening fees or membership fees) if those charges would exceed 50 percent of the credit limit during the first twelve months and from collecting at account opening fees that are in excess of 25 percent of the credit limit in effect on the consumer's account when opened. See 73 FR 28904, May 19, 2008. In the supplementary information to the May 2008 Regulation Z Proposal, the Board indicated that if such an approach is adopted as proposed, appropriate revisions would be made to ensure consistency among the regulatory requirements and to facilitate compliance when the Board adopted revisions to the Regulation Z rules for open-end (not home-secured) credit.

In response to the May 2008 Regulation Z Proposal, several commenters again suggested that the threshold for the available credit disclosure be reduced to 5 percent or 10 percent. Another consumer group commenter suggested that the Board always require the available credit disclosure if there are start-up fees on the account, including annual fees. In addition, several consumer group commenters reiterated their comments on the June 2007 Proposal that the threshold test for when the available credit disclosure must be given should be based on required and optional fees.

Under final rules issued by the Board and other federal banking agencies published elsewhere in today's **Federal Register**, most credit card issuers are precluded from financing security deposits and fees for credit availability if those charges would exceed 50 percent of the credit limit during the first six months and from collecting at account opening, fees that are in excess of 25 percent of the credit line in effect on the consumer's account when opened. Notwithstanding these substantive provisions, the Board believes that for subprime cards, a disclosure of available credit is needed in the table to inform consumers about the impact of start-up fees on the initial available credit.

The final rule adopts § 226.5a(b)(16) with several modifications, and renumbers the provision as § 226.5a(b)(14). Specifically, the final rule amends the proposal to provide that fees or security deposits that are not charged to the account are not subject to the disclosure requirements in § 226.5a(b)(14). In addition, comment 5a(b)(14)-1 (proposed as comment 5a(b)(16)-1) is revised from the proposal to clarify that 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 must assume that the cardholder requests only one additional card. Also, comment 5a(b)(14)-1 is revised to specify that in disclosing the available credit, an issuer must round down the available credit amount to the nearest whole dollar.

The final rule also differs from the proposal in that it contains a 15 percent threshold for when the credit availability disclosure must be given, namely, when required fees for issuance or availability of credit, or a security deposit, that will be charged against the card when the account is opened equal 15 percent or more of the minimum credit limit applicable to the card. The Board lowered the threshold to 15 percent to address commenters' concerns that a lower threshold would better inform consumers about offers of credit where large portions of the available credit on a new account are taken up by fees before the consumer has the opportunity to use the account. The Board has not lowered the threshold to 5 percent or 10 percent as suggested by some other commenters. The Board believes that a 15 percent threshold will ensure that consumers will receive the disclosure in connection with subprime credit card products, but that the disclosure will generally not be required in connection with a prime credit card account, for which credit limits are higher and less fees are charged when the account is opened. The Board believes that the disclosure is most useful to consumers when a substantial portion of the minimum credit line is not available because required start-up fees (or a required security deposit) are charged to the account. The available credit disclosure may not be as meaningful to consumers, when those consumers are receiving 90 to 95 percent of the minimum credit line in available credit at account opening.

In addition, the Board retained in the final rule that the available credit disclosure must be given if required start-up fees (or a required security deposit) charged against the account at account-opening equal 15 percent or more of the minimum credit line. Optional start-up fees are not considered when determining whether the 15 percent threshold is met. Nonetheless, if the 15 percent threshold is met in connection with the required fees or security deposit, the issuer must disclose two figures – the available credit after excluding any optional fees from the amounts debited to the account, and the available credit after including any optional fees in the amounts debited to the account (assuming that each optional fee is only charged once). The Board believes that it is appropriate not to consider optional fees when determining whether the 15 percent threshold is initially met because consumers are not required to incur these fees to obtain the credit card account. Consistent with the proposal, the final rule also requires an issuer to consider only fees for the issuance or availability of credit when determining whether the 15 percent threshold is met; other types of fees such as late-payment fees or over-the-limit fees are not required to be considered.

Moreover, the final rule does not adopt the language for the available credit disclosure suggested by several consumer groups. The Board believes that including percentages in the disclosure, as suggested by those consumer groups, would be confusing to consumers. The final rule also does not require that issuers provide the available credit disclosure in the solicitation letter for direct mail and Internet applications and solicitations, as suggested by several consumer group commenters. In consumer testing conducted by the Board, participants generally noticed and understood the available credit disclosure in the table required by § 226.5a. Thus, the Board does not believe that repeating that disclosure in the solicitation letter for direct mail and Internet applications and solicitations is needed. Sample G-10(C) sets forth an example of how the available credit disclosure may be made.

5a(b)(15) Web Site Reference

In June 2007, the Board proposed to revise § 226.5a to require that credit card issuers must disclose in the table a reference to a Board Web site and a statement that consumers can find on this Web site educational materials on shopping for and using credit card accounts. See proposed § 226.5a(b)(17). Such materials would expand those already available on choosing a credit card at the Board's Web site.[17] The Board recognized that some consumers may need general education about how credit cards work and an explanation of typical account terms that apply to credit cards. In the consumer testing conducted for the Board, participants showed a wide range of understanding about how credit cards work generally, with some participants showing a firm understanding of terms that relate to credit card accounts, while others had difficulty expressing basic financial concepts, such as how the interest rate differs from a one-time fee. The Board's current Web site explains some basic financial concepts – such as what an APR is – as well as terms that typically apply to credit card accounts. Through the

[17] The materials can be found at http://www.federalreserve.gov/pubs/shop/default.htm.

Web site, the Board may continue to expand the explanation of other credit card terms, such as grace periods, that may be difficult to explain concisely in the disclosures given with applications and solicitations.

In response to the June 2007 Proposal, several industry commenters questioned whether consumers would use the Web site resource, and suggested that the Board either not require the Web site disclosure or place the disclosure outside of the table to avoid "information overload." Consumer groups generally supported placing the Web site disclosure in the table, and requested that the Board provide an alternative information source for those consumers who lack Internet access, such as a toll-free telephone number at which consumers can obtain a free copy of similar information.

The final rule adopts § 226.5a(b)(15) (proposed as § 226.5a(b)(17)). As part of consumer testing, participants were asked whether they would use a Board Web site to obtain additional information about credit cards generally. Some participants indicated they might use the Web site, while others indicated that it was unlikely they would use such a Web site. Although it is hard to predict from the results of the testing how many consumers might use the Board's Web site, and recognizing that not all consumers have access to the Internet, the Board believes that this Web site may be helpful to some consumers as they shop for a credit card and manage their account once they obtain a credit card. Thus, the final rule requires a reference to a Board Web site to be included in the table because this is a cost-effective way to provide consumers with additional information on credit cards. The Board is not requiring creditors to also disclose a toll-free telephone number at which consumer can obtain a free copy of similar information from the Board. The Board anticipates that consumers are not likely to use a toll-free telephone number to request educational materials in these instances because they will not want to delay applying for a credit card until the materials are delivered. Thus, such a requirement would not significantly benefit consumers on the whole.

Payment Allocation and Other Suggested Disclosures Under § 226.5a(b)

Payment allocation. Currently, many credit card issuers allocate payments in excess of the minimum payment first to balances that are subject to the lowest APR. For example, if a cardholder made purchases using a credit card account and then initiated a balance transfer, the card issuer might allocate a payment (less than the amount of the balances) to the transferred balance portion of the account if that balance was subject to a lower APR than the purchases. Card issuers often will offer a discounted initial rate on balance transfers (such as 0 percent for an introductory period) with a credit card solicitation, but not offer the same discounted rate for purchases. In addition, the Board is aware of at least one issuer that offers the same discounted initial rate for balance transfers and purchases for a specified period of time, where the discounted rate for balance transfers (but not the discounted rate for purchases) may be extended until the balance transfer is paid off if the consumer makes a certain number of purchases each billing cycle. At the same time, issuers typically offer a grace period for purchases if a consumer pays his or her bill in full each month. Card issuers, however, do not typically offer a grace period on balance transfers or cash advances. Thus, on the offers described above, a consumer cannot take advantage of both the grace period on purchases and the discounted rate on balance transfers. The only way for a consumer to avoid paying interest on purchases—and thus have the benefit of the grace period—is to pay off the entire balance, including the balance transfer subject to the discounted rate.

In the consumer testing conducted for the Board prior to the June 2007 Proposal, many participants did not understand how payments would be allocated and that they could not take advantage of the grace period on purchases and the discounted rate on balance transfers at the same time. Model forms were tested that included a disclosure attempting to explain this to consumers. Nonetheless, testing showed that a significant percentage of participants still did not fully understand how payment allocation can affect their interest charges, even after reading the disclosure tested. In the supplementary information accompanying the June 2007 Proposal, the Board indicated its plans to conduct further testing of the disclosure to determine whether the disclosure could be improved to more effectively communicate to consumers how payment allocation can affect their interest charges.

In the June 2007 Proposal, the Board proposed to add § 226.5a(b)(15) to require card issuers to explain payment allocation to consumers. Specifically, the Board proposed that issuers explain how payment allocation would affect consumers, if an initial discounted rate were offered on balance transfers or cash advances but not purchases. The Board proposed that issuers must disclose to consumers (1) that the initial discounted rate applies only to balance transfers or cash advances, as applicable, and not to purchases; (2) that payments will be allocated to the balance transfer or cash advance balance, as applicable, before being allocated to any purchase balance during the time the discounted initial rate is in effect; and (3) that the consumer will incur interest on the purchase balance until the entire balance is paid, including the transferred balance or cash advance balance, as applicable.

In response to the June 2007 Proposal, several commenters recommended the Board test a simplified payment allocation disclosure that covers cases other than low rate balance transfers offered with a credit card. In consumer testing conducted for the Board in March 2008, the Board tested the following payment allocation disclosure: “Payments may be applied to balances with lower APRs first. If you have balances at higher APRs, you may pay more in interest because these balances cannot be paid off until all lower-APR balances are paid in full (including balance transfers you make at the introductory rate).” Some participants understood from prior experience that issuers typically will apply payments to lower APR balances first and the fact that this method causes them to incur higher interest charges. For those participants that did not know about payment allocation methods from prior experience, the disclosure tested was not effective in explaining payment allocation to them.

In May 2008, the Board and other federal banking agencies proposed substantive provisions on how issuers may allocate payments. 73 FR 28904, May 19, 2008. Specifically, under that proposal, when different annual percentage rates apply to different balances, most issuers would have been required to allocate amounts paid in excess of the minimum payment using one of three specified methods or a method that is no less beneficial to consumers. Furthermore, when an account has a discounted promotional rate balance or a balance on which interest is deferred, most issuers would have been required to give consumers the full benefit of that discounted rate or deferred interest plan by allocating amounts in excess of the minimum payment first to balances on which the rate is not discounted or interest is not deferred (except, in the case of a deferred interest plan, for the last two billing cycles during which interest is deferred).

Most issuers also would have been prohibited from denying consumers a grace period on non-promotional purchases (if one is offered) solely because they have not paid off a balance at a promotional rate or a balance on which interest is deferred.

In the supplementary information to the May 2008 Regulation Z Proposal, the Board indicated it would withdraw the proposal to require a card issuer to explain payment allocation to consumers in the table, if the substantive provisions on payment allocation proposed by the Board and other federal banking agencies in May 2008 were adopted.

In response to the May 2008 Regulation Z Proposal, several consumer group commenters suggested that the Board retain a payment allocation disclosure, even if the substantive provisions on payment allocation were adopted. Specifically, these commenters suggested that the Board require issuers to disclose which of the three proposed payment allocation methods they will use when there is no promotional rate on the account. Also, these commenters indicated that issuers should be required to disclose how they apply the minimum payment. These commenters suggested that the payment allocation disclosures could appear outside the table required by § 226.5a. Furthermore, these commenters suggested that some consumers might understand these disclosures and use them. In addition, these commenters indicated that disclosure of the payment allocation method would allow consumer groups to know which method an issuer is using and the consumer groups could rate the methods, to help consumers understand which card is better for the consumer.

In consumer testing conducted for the Board after May 2008, different versions of disclosures explaining payment allocation were tested, including language adapted from current credit card disclosures. Before participants were shown any disclosures explaining payment allocation, they were asked a series of questions designed to determine whether they had prior knowledge of payment allocation methods. This portion of the testing consisted of showing a hypothetical example to participants and asking them, based on their prior experience, (i) how they believed the card issuer would allocate the payment and (ii) how the participant would want the payment allocated. Participants were then shown language explaining how a hypothetical card issuer would allocate payments. Each disclosure that was used in testing indicated that the issuer would apply payments to balances with lower APRs before balances with higher APRs. Consumers were then shown the same hypothetical example and asked the same series of questions. More information about the specific disclosures tested and the results of the testing are available in the December 2008 Macro Report on Quantitative Testing.

Most participants who answered both questions correctly before being shown the disclosure, suggesting that they had prior knowledge of payment allocation, answered the questions correctly after reviewing the disclosure. Some of these participants, however, gave incorrect responses to questions that they had answered correctly before reviewing the disclosures, suggesting that the disclosure was detrimental to these participants' understanding of payment allocation practices. Only a small percentage of consumers who did not understand payment allocation prior to reviewing the disclosure, gave the correct responses after reviewing the disclosure. None of the versions of the disclosure that were tested performed significantly better than any of the others.

The final rule does not require a disclosure regarding payment allocation in the table. As described above, the consumer testing conducted on behalf of the Board suggests that disclosures of payment allocation practices have only a minor positive impact on consumer comprehension. In addition, the Board and other federal banking agencies are substantively addressing payment allocation practices in rules published elsewhere in today's **Federal Register**. Specifically, the Board and other federal banking agencies are requiring issuers to allocate amounts paid in excess of the minimum payment using one of two specified methods. These substantive rules regarding payment allocation would permit issuers to use payment allocation methods that may be more complicated to disclose than the relatively simple example used in consumer testing, i.e., application of payments to balances with lower APRs before balances with higher APRs. Consequently, the Board does not believe that disclosure requirements would be helpful as a supplement to the substantive rules. Finally, even if consumers were able to understand payment allocation disclosures, it is unclear whether they would be able to evaluate whether one payment allocation method is better than another at the time they are shopping for a credit card because which payment allocation method is the most beneficial to a given consumer would depend on how that consumer uses the account.

Additional disclosures. In response to the June 2007 Proposal, several commenters suggested that the Board require in the table information about the minimum payment formula, credit limit, any security interest, reasons terms on the account may change, and all fees imposed on the account.

1. Minimum payment formula. In response to the June 2007 Proposal, several consumer groups urged the Board to require issuers to disclose in the table the minimum payment formula. They believed that this would allow consumers to understand what portion of principal balance repayment is being included in the minimum payment.

Several industry commenters supported the Board's proposal not to require the minimum payment formula in the table. The final rule does not require the minimum payment formula in the table. In the consumer testing conducted for the Board, participants did not tend to mention the minimum payment formula as one of the terms on which they shop for a card. In addition, minimum payment formulas used by card issuers can be complicated and would be hard to describe concisely in the table.

2. Credit limit. Card issuers often state a credit limit in a cover letter sent with an application or solicitation. Frequently, this credit limit is not disclosed as a specific amount but, instead, is stated as an "up to" amount, indicating the maximum credit limit for which a consumer may qualify. The actual credit limit for which a consumer qualifies depends on the consumer's creditworthiness and other factors such as income, which is evaluated after the consumer submits the application or solicitation. As explained in the supplementary information to the June 2007 Proposal, the Board did not propose to include the credit limit in the table. As explained above, in most cases, the credit limit for which a consumer qualifies depends on the consumer's creditworthiness, which is fully evaluated after the consumer submits the application or solicitation. In addition, in consumer testing conducted for the Board prior to the June 2007 Proposal, participants were not generally confused by the "up to" credit limit. Most participants understood that the "up to" amount on the solicitation letter was a maximum amount, rather than the amount the issuer was promising them. Almost all participants tested understood that the credit limit for which they would qualify depended on their creditworthiness, such as credit history.

In response to the June 2007 Proposal, several consumer group commenters suggested that the Board require issuers to disclose the credit limit in the table required by § 226.5a. Several consumer groups suggested that the Board include the credit limit in the table because it is a key factor for many consumers in shopping for a credit card. These groups also suggested that the Board require issuers to state a specific credit limit, and not an "up to" amount. One industry commenter also suggested that the Board require issuers to disclose in the table the range of credit limits that are being offered. This commenter pointed out that currently credit card issuers generally have a range of credit limits in mind when marketing a card, and while the range is often disclosed in the marketing materials, the maximum and minimum credit lines are not necessarily found in the same place in the marketing materials or disclosed with the same prominence.

In May 2008, the Board and other federal banking agencies proposed that financial institutions that make "firm offers of credit" as defined in the FCRA and that advertise multiple APRs or "up to" credit limits would be required to disclose in the solicitation the factors that determine whether a consumer will qualify for the lowest APR and highest credit limit advertised. See 73 FR 28904, May 19, 2008. As discussed elsewhere in today's **Federal Register**, the Board and other federal banking agencies have not adopted a requirement that creditors disclose in the solicitation the factors that determine whether a consumer will qualify for the lowest APR and highest credit limit advertised.

Similarly, the Board has not included in the final rule a requirement that issuers disclose the credit limit in either the table required by § 226.5a or the solicitation. The Board's consumer testing indicates that consumers generally understand from prior experience that their credit limits will depend on their credit histories. Thus, the final rule does not require a disclosure of the credit limit in the § 226.5a table or the solicitation.

3. Security interest. In response to the June 2007 Proposal, several consumer group commenters suggested that any required security interest should be disclosed in the table. These commenters suggest that if a security interest is required, the disclosure in the table should describe it briefly, such as "in items purchased with card" or "required $200 deposit." These commenters indicated that a security deposit is a very important consideration in credit shopping, especially for low-income consumers. In addition, they stated that many credit cards issued by merchants are secured by the goods that the consumer purchases, but consumers are often unaware of the security interest.

The final rule does not require issuers to disclose in the table any required security interest. Credit card-issuing merchants may include in their account agreements a security interest in the goods that are purchased with the card. Any such security interest must be disclosed at account-opening pursuant to § 226.6(b)(5), as discussed below. It is not apparent that consumers would shop on whether a retail card has this type of security interest. Requiring or allowing this type of security interest to be disclosed in the table may distract from important information in the table, and contribute to "information overload." Thus, in an effort to streamline the information that may appear in the table, the final rule does not include this disclosure in the table.

With respect to security deposits, if a consumer is required to pay a security deposit prior to obtaining a credit card and that security deposit is not charged to the account but is paid by the consumer from separate funds, a card issuer must necessarily disclose to the consumer that a security deposit is required, so that the consumer knows to submit the deposit in order to obtain the card. A security deposit in these instances is likely to be sufficiently highlighted in the materials accompanying the application or solicitation, and does need to appear in the table. Nonetheless, the Board recognizes that a security deposit may need to be highlighted when the deposit is not paid from separate funds but is charged to the account when the account is opened, particularly when the security deposit may significantly decrease consumers' available credit when the account is opened. Thus, as described above, the final rule provides that if (1) a card agreement requires payment of a fee for issuance or availability of credit, or a security deposit, (2) the fee or security deposit will be charged to the account when it is opened, and (3) the total of those fees and security deposit equal 15 percent or more of the minimum credit limit offered with the card, the card issuer must disclose in the table an example of the amount of the available credit that a consumer would have remaining after these fees or security deposit are debited to the account, assuming that the consumer receives the minimum credit limit offered on the card.

4. Reasons terms may change. In response to the June 2007 Proposal, several commenters suggested that the Board should require in the table a disclosure of the reasons issuers may change terms on the account. Typically, a credit card issuer will reserve the right to change terms on the account at any time for any reason. These commenters believed that a disclosure of the issuer's ability to change terms for any reason at any time would alert consumers to the practice at the outset of the relationship and could promote competition among issuers regarding use of the practice.

The Board is not requiring in the table a disclosure of the reasons issuers may change terms on the account. In consumer testing conducted by the Board in March 2008, participants were asked to compare two credit card offers where the offers contained different account terms, such as APRs and fees. In addition, one of these offers included a disclosure in the table that the card issuer could change APRs "at any time for any reason," while the other offer did not include this disclosure. While about half of the participants indicated they considered it a positive factor that one of the offers did not include a disclosure that APRs could change at any time for any reason, this fact did not ultimately impact which offer they chose.

Thus, it does not appear consumers would shop for a credit card based on this disclosure, and allowing this disclosure in the table may distract from more important information in the table, and contribute to "information overload." Nonetheless, the Board believes that it is important for consumers to be properly informed when terms on their accounts are changing, and the final rule contains provisions relating to change-in-terms notices and penalty rate notices that are designed to achieve this goal. <u>See</u> section-by-section analysis to § 226.9(c) and (g). In addition, the Board and other federal banking agencies have issued final rules published elsewhere in today's **Federal Register** that generally prohibit the application of increased rates to existing balances. The Board believes that the substantive protection provided by these rules mitigates the impact of many rate increases, and decreases the need for an up-front disclosure of the issuer's reservation of the right to change terms.

5. <u>Fees</u>. In response to the June 2007 Proposal, several consumer groups suggested that in addition to the fees that the Board has proposed to be included in the

table, the Board should require that any fee that a creditor charges to more than 5 percent of its cardholders be disclosed in the table. In addition, one member of Congress suggested that issuers be required to disclose in the table fees to pay by phone or on the Internet.

As described above, under the final rule, issuers will be required to disclose certain transaction fees and penalty fees, such as cash advance fees, balance transfer fees, late-payment fees, and over-the-limit fees, in the table because these fees are frequently paid by consumers, and consumers in testing and comment letters have indicated these fees are important for shopping purposes. The Board is not requiring issuers to disclose other fees in the table, such as fees to pay by phone or on the Internet, because these fees tend to be imposed less frequently and are not fees on which consumers tend to shop. In consumer testing conducted for the Board prior to the June 2007 Proposal, participants tended to mention cash advance fees, balance transfer fees, late-payment fees, and over-the-limit fees as the most important fees they would want to know when shopping for a credit card. In addition, most participants understood that issuers were allowed to impose additional fees, beyond those disclosed in the table. Thus, the Board believes it is important to highlight in the table the fees that most consumers want to know when shopping for a card, rather than including infrequently-paid fees, to avoid creating "information overload" such that consumers could not easily identify the fees that are most important to them. In addition, the Board is not imposing a requirement that issuers disclose in the table any fee that the issuer charges to more than 5 percent of the cardholders for the card. This would undercut the uniformity of the table. For example, although most issuers may charge a certain fee, such as a fee to pay by phone, requiring issuers to disclose a fee if the issuer charges it to more than 5 percent of the cardholders for the card, could mean that some issuers would disclose the fee to pay by phone and some would not, even though most issuers charge this fee. The Board recognizes that fees can change over time, and the Board plans to monitor the market and update the fees required to be disclosed in the table as necessary.

In addition, in response to the June 2007 Proposal, one federal banking agency suggested that the Board include a disclosure in the table when an issuer may impose an over-the-limit or other penalty fee based on circumstances that result solely from the imposition of other fees or finance charges, or if the contract permits it to impose penalty fees in consecutive cycles based on a single failure by the consumer to abide by the terms of the account. The Board is not requiring this disclosure in the table. The Board believes that consumers are not likely to consider this information in shopping for a credit card. Requiring this disclosure in the table may distract from important information in the table, and contribute to "information overload."

5a(c) Direct Mail and Electronic Applications

5a(c)(1) General

Electronic applications and solicitations. As discussed above, the Bankruptcy Act amended TILA Section 127(c) to require that solicitations to open a card account using the Internet or other interactive computer service must contain the same disclosures as those made for applications or solicitations sent by direct mail. 15 U.S.C. 1637(c)(7). The interim final rules adopted by the Board in 2001 revised § 226.5a(c) to apply the direct mail rules to electronic applications and solicitations. In the June 2007 Proposal, the Board proposed to retain these provisions in § 226.5a(c)(1). (Current § 226.5a(c) would be revised and renumbered as new § 226.5a(c)(1).) The final rule adopts new § 226.5a(c)(1) as proposed.

The Bankruptcy Act also requires that the disclosures for electronic offers must be "updated regularly to reflect the current policies, terms, and fee amounts." In the June 2007 Proposal, the Board proposed to revise § 226.5a(c) to implement the "updated regularly" standard in the Bankruptcy Act with regard to the accuracy of variable rates. As proposed, a new § 226.5a(c)(2) would have been added to address the accuracy of variable rates in direct mail and electronic applications and solicitations. This new section would have required issuers to update variable rates disclosed on mailed applications and solicitations every 60 days and variable rates disclosed on applications and solicitations provided in electronic form every 30 days, and to update other terms when they change. As proposed, § 226.5a(c)(2) consisted of two subsections.

Section 226.5a(c)(2)(i) would have provided that § 226.5a disclosures mailed to a consumer must be accurate as of the time the disclosures are mailed. This section also would have provided that an accurate variable APR is one that is in effect within 60 days before mailing. Section 226.5a(c)(2)(ii) would have provided that § 226.5a disclosures provided in electronic form (except for a variable APR) must be accurate as of the time they are sent to a consumer's e-mail address, or as of the time they are viewed by the public on a Web site. As proposed, this section would have provided that a variable APR is accurate if it is in effect within 30 days before it is sent, or viewed by the public. Many of the provisions included in proposed § 226.5a(c)(2) were incorporated from current § 226.5a(b)(1). To eliminate redundancy, the Board proposed to revise § 226.5a(b)(1) by deleting § 226.5a(b)(1)(ii), (b)(1)(iii), and comment 5a(c)-1.

In response to the June 2007 Proposal, one commenter suggested that all variable APR accuracy standards should be simplified to allow for disclosures to be modified every 60 days. This commenter suggested that issuers should be able to follow a 60-day standard for accuracy for APR disclosures no matter how they are delivered to ease the burden of compliance. This commenter also indicated that issuers often mail a solicitation for a credit card to a consumer and post the same offer on a Web site or e-mail it to the consumer. The disclosures for the same offer could be different, if the rate mailed is 60 days old and the offer on the Web site is 30 days old. This commenter also indicated that having to create changes to the direct mail documents for offers delivered electronically is inefficient and costly. On the other hand, one consumer group commenter suggested that all electronic disclosures should be accurate as of the date when given, including variable rate APRs.

The Board adds § 226.5a(c)(2) and deletes § 226.5a(b)(1)(ii), (b)(1)(iii), and comment 5a(c)-1 as proposed. The Board believes the 30-day and 60-day accuracy requirements for variable rates strike an appropriate balance between seeking to ensure consumers receive updated information and avoiding imposing undue burdens on creditors. The Board believes it is unnecessary for creditors to disclose to consumers the exact variable APR in effect on the date the application or solicitation is accessed by the consumer, because consumers generally understand that variable rates are subject to change. Moreover, it would be costly and operationally burdensome for creditors to comply with a requirement to disclose the exact variable APR in effect at the time the application or solicitation is accessed. The obligation to update the other terms when they change ensures that consumers receive information that is accurate and current, and should not impose significant burdens on issuers. These terms generally do not fluctuate with the market like variable rates. In addition, the Board understands that issuers typically change other terms infrequently, perhaps once or twice a year.

5a(d) Telephone Applications and Solicitations

5a(d)(1) Oral Disclosure

Section 226.5a(d) specifies rules for providing cost disclosures in oral applications and solicitations initiated by a card issuer. Pursuant to TILA Section 127(c)(2), card issuers generally must provide certain cost disclosures during the oral conversation in which the application or solicitation is given. Alternatively, an issuer is not required to give the oral disclosures if the card issuer either does not impose a fee for the issuance or availability of a credit card (as described in § 226.5a(b)(2)) or does not impose such a fee unless the consumer uses the card, provided that the card issuer provides the disclosures later in a written form. 15 U.S.C. 1637(c)(2).

Consumer-initiated calls. In response to the June 2007 Proposal, several consumer group commenters suggested that the requirements to provide oral disclosures in § 226.5a(d)(1) should not be limited to applications and solicitations initiated by the card issuer. Instead, the Board should require oral disclosures for all calls resulting in an application or solicitation for a credit card-- even if the consumer rather than the issuer initiates the telephone call. Consistent with the statutory requirement in TILA Section 127(c)(2), the final rule in § 226.5a(d)(1) continues to limit the requirement to provide oral disclosure to situations where oral applications and solicitations are initiated by a card issuer. 15 U.S.C. 1637(c)(2).

Written applications. In response to the June 2007 Proposal, several consumer group commenters suggested that the Board require that all applications be made in writing. They indicated that while an issuer could offer the credit card over the phone, the consumer should be required to sign an application to ensure that he or she actually applied for the card and not a thief or errant household member. The final rule does not require all applications for credit cards to be made in writing. Allowing oral applications and solicitations is consistent with the statutory provision in TILA Section 127(c)(2). 15 U.S.C. 1637(c)(2).

Available credit disclosure. Currently, under § 226.5a(d)(1), if the issuer provides the disclosures orally, the issuer must provide information required to be disclosed under § 226.5a(b)(1) through (b)(7). This includes information about (1) APRs; (2) fees for issuance or availability of credit; (3) minimum or fixed finance charges; (4) transaction charges for purchases; (5) grace period on purchases; (6) balance computation method; and (7) as applicable, a statement that charges incurred by use of the charge card are due when the periodic statement is received.

In the June 2007 Proposal, the Board did not propose to revise § 226.5a(d)(1). In response to the June 2007 Proposal, some consumer group commenters urged the Board to revise § 226.5a(d)(1) to require issuers that are marketing credit cards by telephone to disclose certain additional information to consumers at the time of the phone call, such as the cash advance fee, the late-payment fee, the over-the-limit fee, the balance transfer fee, information about penalty rates, any fees for required insurance, and the disclosure about available credit in proposed § 226.5a(b)(16).

In the May 2008 Proposal, the Board proposed to amend § 226.5a(d)(1) to require that if an issuer provides the oral disclosures, the issuer must also disclose orally, if applicable, the information about available credit in proposed § 226.5a(b)(16) pursuant to the Board's authority under TILA Section 127(c)(5) to add or modify § 226.5a disclosures as necessary to carry out the purposes of TILA. 15 U.S.C. 1637(c)(5). In response to the May 2008 Proposal, commenters generally supported this aspect of the proposal.

The final rule amends § 226.5a(d)(1), as proposed. Currently, issuers that provide the oral disclosures must inform consumers about the fees for issuance and availability of credit that are applicable to the card. The Board believes that the information about available credit would complement this disclosure, by disclosing to consumers the impact of these fees on the available credit.

Other oral disclosures. In response to the June 2007 Proposal, several consumer groups suggested that issuers should be required to provide all of the disclosures required by proposed § 226.5a(b)(1) through (b)(17) orally with respect to an oral application or solicitation, including cash advance fees, late-payment fees, over-the-limit fees, balance transfer fees, and fees for required insurance. In the supplementary information to the May 2008 Proposal, the Board did not propose to require issuers to provide orally a disclosure of the fees described above. The Board was concerned that requiring this information in oral conversations about credit cards would lead to "information overload" for consumers. In response to the May 2008 Proposal, consumer groups still believed that consumers should receive this information when making the decision whether to apply for a card. They further suggested that the solution to "information overload" was to require a written application to be made whenever there is a telephone credit card application or solicitation. As explained above, the final rule does not require applications for credit cards to be made in writing. Allowing oral applications and solicitations is consistent with the statutory provision in TILA Section 127(c)(2). 15 U.S.C. 1637(c)(2).

5a(d)(2) Alternative Disclosure

Section 226.5a(d) specifies rules for providing cost disclosures in oral applications and solicitations initiated by a card issuer. Card issuers generally must provide certain cost disclosures orally during the conversation in which the application or solicitation is communicated to the consumer. Alternatively, an issuer is not required to give the oral disclosures if the card issuer either does not impose a fee for the issuance or availability of a credit card (as described in § 226.5a(b)(2)) or does not impose such a fee unless the consumer uses the card, provided that the card issuer provides the disclosures later in a written form. Specifically, the issuer must provide the disclosures required by § 226.5a(b) in a tabular format in writing within 30 days after the consumer requests the card (but in no event later than the delivery of the card), and disclose the fact that the consumer need not accept the card or pay any fee disclosed unless the consumer uses the card. In the June 2007 Proposal, the Board proposed to add comment 5a(d)-2 to indicate that an issuer may disclose in the table that the consumer is not required to accept the card or pay any fee unless the consumer uses the card.

Account is not approved. In response to the June 2007 Proposal, one commenter suggested that the Board clarify that the written alternative disclosures would only be necessary if the application for the account is approved. The Board notes that current comment 5a(d)-1 indicates that the oral and alternative written disclosure requirements do not apply in 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. This comment is retained in the final rule.

Substitution of account-opening table for table required by § 226.5a. In response to the June 2007 Proposal, one commenter suggested that the Board clarify that the account-opening table may substitute for the written alternative disclosures set forth in § 226.5a(d)(2). In the June 2007 Proposal, comment 5a-2 provided, in part, that issuers in complying with § 226.5a(d)(2) may substitute the account-opening table 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. See proposed § 226.6(b)(4). Because the written alternative disclosures are not provided with the application or solicitation, the Board recognizes that proposed comment 5a-2 might have led to confusion about whether the account-opening table described in § 226.6(b)(1) may be substituted for the written alternative disclosures. In the final rule, the Board has revised comment 5a-2 to delete the reference to the alternative written disclosures in § 226.5a(d). Instead, the Board adds new comment 5a(d)-3 to indicate that issuers may substitute the account-opening table described in § 226.6(b)(1) in lieu of the alternative written disclosures described in § 226.5a(d)(2).

Mailing of written alternative disclosures. In response to the June 2007 Proposal, several consumer group commenters suggested that the Board require issuers to provide the written alternative disclosures in the mailing that delivers the card, and should impose requirements that will ensure that the disclosures are prominent. Otherwise, issuers may make the written alternative disclosures in separate mailings, in an obscure part of the cover letter with the card, or in other ways that are designed not to attract consumers' attention. The final rule does not contain this provision. The Board expects that issuers will substitute the account-opening table described in § 226.6(b)(1) in lieu of the written alternative disclosures described in § 226.5a(d)(2). Card issuers typically mail account-opening disclosures with the card.

Right to reject account. As described above, an issuer is not required to give the oral disclosures if the card issuer either does not impose a fee for the issuance or availability of a credit card (as described in § 226.5a(b)(2)) or does not impose such a fee unless the consumer uses the card, provided that the card issuer provides the disclosures later in a written form. 15 U.S.C. 1637(c)(2). In the final rule, § 226.5a(d)(2) is revised to be consistent with the right to reject the account given in § 226.5(b)(1)(iv) with respect to account-opening disclosures. As discussed in the section-by-section analysis to § 226.5(b)(1)(iv), the final rule amends § 226.5(b)(1)(iv) to provide that creditors may collect or obtain the consumer's promise to pay a membership fee before the account-opening disclosures are provided, if the consumer can reject the plan after receiving the disclosures. In addition, as discussed in the section-by-section analysis to § 226.6(b)(2)(xiii), the final rule also requires creditors to disclose in the account-opening table described in § 226.6(b)(1) the right to reject described in § 226.5(b)(1)(iv) if required fees for the availability or issuance of credit, or a security deposit, equal 15 percent or more of the actual credit limit offered on the account at account opening. See § 226.6(b)(2)(xiii).

The Board expects that issuers will provide the account-opening table described in § 226.6(b)(1) in lieu of the alternative written disclosures described in § 226.5a(d)(2). The final rule revises comment 5a(d)-2 to specify that the right to reject the plan referenced in § 226.5a(d)(2) with respect to the alternative written disclosures is the same as the right to reject the plan described in § 226.5(b)(1)(iv) with respect to account-opening disclosures. An issuer may substitute the account-opening summary table described in § 226.6(b)(1) in lieu of the written alternative disclosures specified in § 226.5a(d)(2)(ii). In that case, the disclosure about the right to reject 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.

5a(d)(3) Accuracy

As proposed in June 2007 Proposal, § 226.5a(d)(3) would have provided guidance on the accuracy of telephone disclosures. Current comment 5a(b)(1)-3 specifies that for variable-rate disclosures in telephone applications and solicitations, the card issuer must provide the rates currently applicable when oral disclosures are provided. For the alternative disclosures under § 226.5a(d)(2), an accurate variable APR is one that is: (1) in effect at the time the disclosures are mailed or delivered; (2) in effect as of a specified date (which rate is then updated from time to time, for example, each calendar month); or (3) an estimate in accordance with § 226.5(c). Current comment 5a(b)(1)-3 was proposed to be moved to § 226.5a(d)(3) under the June 2007 Proposal, except that the option of estimating a variable APR would have been eliminated as the least meaningful of the three options. Proposed § 226.5a(d)(3) also would have specified that if an issuer discloses a variable APR as of a specified date, the issuer must update the rate on at least a monthly basis, the frequency with which variable rates on most credit card products are adjusted. The Board also proposed to amend § 226.5a(d)(3) to specify that oral disclosures under § 226.5a(d)(1) must be accurate when given, consistent with the requirement in § 226.5(c) that disclosures must reflect the terms of the legal obligation between the parties. For the alternative disclosures, the proposal would have specified that terms other than variable APRs must be accurate as of the time they are mailed or delivered.

In response to the June 2007 Proposal, one commenter indicated that the accuracy standard for oral disclosures could potentially require an issuer to update rates on a daily basis. This commenter believed that this proposed rule would create unnecessary burden on creditors and would provide little benefit to consumers since the rates do not generally vary by much from one day to the next. The Board understands that issuers typically adjust variable rates for most credit card products on a monthly basis, so as a practical matter, issuers will only need to update the oral disclosures on a monthly basis in order to meet the requirement that oral disclosures be accurate when given. Section 226.5a(d)(3) is adopted as proposed.

5a(e) Applications and Solicitations Made Available to General Public

TILA Section 127(c)(3) and § 226.5a(e) specify rules for providing disclosures in applications and solicitations made available to the general public such as “take-one” applications and applications in catalogs or magazines. 15 U.S.C. 1637(c)(3). These applications and solicitations must either contain: (1) the disclosures required for direct mail applications and solicitations, presented in a table; (2) a narrative that describes how finance charges and other charges are assessed; or (3) a statement that costs are involved, along with a toll-free telephone number to call for further information.

Narrative that describes how finance charges and other charges are assessed. TILA Section 127(c)(3)(D) and § 226.5a(e)(2) allow issuers to meet the requirements of § 226.5a for take-one applications and solicitations by giving a narrative description of certain account-opening disclosures (such as information about how finance charges and other charges are assessed), a statement that the consumer should contact the card issuer for any change in the required information and a toll-free telephone number or a mailing address for that purpose. 15 U.S.C. 1637(c)(3)(D). Currently, this information does not need to be in the form of a table, but may be a narrative description, as is also currently allowed for account-opening disclosures. In the June 2007 Proposal, the Board proposed to require that certain account-opening information (such as information about key rates and fees) must be given in the form of a table. Therefore, the Board also proposed that card issuers give this same information in a tabular form in take-one applications and solicitations. Specifically, the Board proposed to delete § 226.5a(e)(2) and comments 5a(e)(2)-1 and -2 as obsolete. Under the proposal, card issuers that provide cost disclosures in take-one applications and solicitations would have been required to provide the disclosures in the form of a table, for which they could use the account-opening summary table. See § 226.5a(e)(1) and comment 5a-2. As discussed in the section-by-section analysis to § 226.6(b)(1), the final rule requires creditors to provide certain account-opening information in the form of a table. Accordingly, the Board deletes current § 226.5a(e)(2) and current comments 5a(e)(2)-1 and -2 as proposed, pursuant to the Board's authority under TILA Section 127(c)(5). 15 U.S.C. 1637(c)(5). Current § 226.5a(e)(3) and comment 5a(e)(3)-1 are renumbered accordingly.

5a(e)(4) Accuracy

For applications or solicitations that are made available to the general public, if a creditor chooses to provide the cost disclosures on the application or solicitation, § 226.5a(b)(1)(ii) currently requires that any variable APR disclosed must be accurate within 30 days before printing. In the June 2007 Proposal, the Board proposed to move this provision to § 226.5a(e)(4). In addition, proposed § 226.5a(e)(4) also would have specified that other disclosures must be accurate as of the date of printing. The final rule adopts § 226.5a(e)(4) and accompanying commentary as proposed.

5a(f) In-Person Applications and Solicitations

Card issuer and person extending credit are not the same. Existing § 226.5a(f) and its accompanying commentary contain special charge card rules that address circumstances in which the card issuer and the person extending credit are not the same person. (These provisions implement TILA Section 127(c)(4)(D), 15 U.S.C. 1637(c)(4)(D).) The Board understands that these types of cards are no longer being offered. Thus, in the June 2007 Proposal, the Board proposed to delete these provisions and Model Clause G-12 from Regulation Z as obsolete, recognizing that the statutory provision in TILA Section 127(c)(4)(D) will remain in effect if these products are offered in the future. The Board also requested comment on whether these provisions should be retained in the regulation. Under the June 2007 Proposal, a commentary provision referencing the statutory provision would have been added to § 226.5(d), which addresses disclosure requirements for multiple creditors. See section-by-section analysis to § 226.5(d). The final rule deletes current § 226.5a(f), accompanying commentary, and Model Clause G-12 as proposed.

In-person applications and solicitations. In the June 2007 Proposal, the Board proposed a new § 226.5a(f) and accompanying commentary to address in-person applications and solicitations initiated by the card issuer. For in-person applications, a card issuer initiates a conversation with a consumer inviting the consumer to apply for a card account, and if the consumer responds affirmatively, the issuer takes application information from the consumer. For example, in-person applications include instances in which a retail employee, in the course of processing a sales transaction using the customer's bank credit card, invites the customer to apply for the retailer's credit card and the customer submits an application.

For in-person solicitations, a card issuer makes an in-person offer to a consumer to open an account that does not require an application. For example, in-person solicitations include instances where a bank employee offers a preapproved credit card to a consumer who came into the bank to open a checking account.

Currently, in-person applications in response to an invitation to apply are exempted from § 226.5a because they are considered applications initiated by consumers. (See current comments 5a(a)(3)-2 and 5a(e)-2.) On the other hand, in-person solicitations are not specifically addressed in § 226.5a. Neither in-person applications nor solicitations are specifically addressed in TILA.

In the June 2007 Proposal, the Board proposed to cover in-person applications and solicitations under § 226.5a, 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 the June 2007 Proposal, existing comment 5a(a)(3)-2 (which would be moved to comment 5a(a)(5)-1) and comment 5a(e)-2 would have been revised to be consistent with § 226.5a(f). No comments were received on these proposed changes.

Thus, the Board adopts these changes as proposed pursuant to its TILA Section 105(a) authority. 15 U.S.C. 1604(a). Requiring in-person applications and solicitations to include credit terms under § 226.5a would help serve TILA's purpose to provide meaningful disclosure of credit terms so that a consumer will be able to compare more readily the various credit terms available to him or her, and avoid the uninformed use of credit. 15 U.S.C. 1601(a). Also, the Board understands that card issuers routinely provide § 226.5a disclosures in these circumstances; therefore, any additional compliance burden would be minimal.

Card issuers must provide the disclosures required by § 226.5a in the form of a table, and those disclosures must be accurate either when given (consistent with the direct mail rules) or when printed (consistent with one option for the take-one rules). See § 226.5a(c) and (e)(1). These two alternatives provide issuers flexibility, while also providing consumers with the information they need to make informed credit decisions.

5a(g) Balance Computation Methods Defined

TILA Section 127(c)(1)(A)(iv) calls for the Board to name not more than five of the most common balance computation methods used by credit card issuers to calculate the balance for purchases on which finance charges are computed. 15 U.S.C. 1637(c)(1)(A)(iv). If issuers use one of the balance computation methods named by the Board, the issuer must disclose that name of the balance computation method as part of the disclosures required by § 226.5a and is not required to provide a description of the balance computation method. If the issuer uses a balance computation method that is not named by the Board, the issuer must disclose a detailed explanation of the balance computation method. <u>See</u> current § 226.5a(b)(6). Currently, the Board has named four balance computation methods: (1) average daily balance (including new purchases) or (excluding new purchases); (2) two-cycle average daily balance (including new purchases) or (excluding new purchases); (3) adjusted balance; and (4) previous balance. In the June 2007 and May 2008 Proposals, the Board proposed to retain these four balance computation methods.

In response to the June 2007 Proposal, several industry commenters suggested that the Board add the “daily balance method” to the list of balance computation methods listed in the regulation. These commenters indicated that the “daily balance method” is one of the most common balance computation methods used by card issuers. Currently, comment 5a(g)-1 provides that card issuers using the daily balance method may disclose it using the name <u>average daily balance (including new purchases)</u> or <u>average daily balance (excluding new purchases)</u>, as appropriate. Alternatively, such card issuers may explain the method. The final rule revises § 226.5a(g) to include daily balance method as one of the balance computation methods named in the regulation. As a result, card issuers may disclose “daily balance method” as the name of the balance computation method used as part of the disclosures required by § 226.5a, and are not required to provide a description of the balance computation method. The Board deletes current comment 5a(g)-1, which provides that card issuers using the daily balance method may disclose it using the name <u>average daily balance (including new purchases)</u> or <u>average daily balance (excluding new purchases)</u>, as appropriate. <u>See</u> <u>also</u> § 226.6(b)(2)(vi) and

§ 226.7(b)(5), which allow creditors using balance calculation methods identified in § 226.5a(g) to provide abbreviated disclosures at account opening and on periodic statements.

In addition, in response to the May 2008 Proposal, several industry commenters requested that if the proposal by the Board and other federal banking agencies to prohibit certain issuers from using the two-cycle balance computation method was adopted, the Board should include a cross reference in § 226.5a(g) indicating that some issuers are not allowed to use the two-cycle balance computation method described in § 226.5a(g). Under rules issued by the Board and other federal banking agencies published elsewhere in today's **Federal Register**, most credit card issuers are prohibited from using the two-cycle balance computation method described in § 226.5a(g). Comment 5a(g)-1 is amended to specify that some issuers may be prohibited from using the two-cycle balance computation method described in § 226.5a(g)(2)(i) and (ii) and to cross reference the rules issued by the federal banking agencies, as described above.

Section 226.6 Account-opening Disclosures

TILA Section 127(a), implemented in § 226.6, requires creditors to provide information about key credit terms before an open-end plan is opened, such as rates and fees that may be assessed on the account. Consumers' rights and responsibilities in the case of unauthorized use or billing disputes are also explained. 15 U.S.C. 1637(a). See also Model Forms G-2 and G-3 in Appendix G to part 226. For a discussion about account-opening disclosure rules and format requirements, see the section-by-section analysis to § 226.6(a) for HELOCs subject to § 226.5b, and § 226.6(b) for open-end (not home-secured) plans.

<u>6(a) Rules Affecting Home-equity Plans</u>

Account-opening disclosure and format requirements for HELOCs subject to § 226.5b were unaffected by the June 2007 Proposal, consistent with the Board's plan to review Regulation Z's disclosure rules for home-secured credit in a separate rulemaking. To facilitate compliance, the substantively unrevised rules applicable only to HELOCs are grouped together in § 226.6(a), as discussed in this section-by-section analysis to § 226.6(a). (<u>See</u> redesignation table below.)

Commenters supported the proposed organizational changes to ease compliance. All disclosure requirements applying exclusively to HELOCs subject to § 226.5b are set forth in § 226.6(a), as proposed. Rules relating to the disclosure of finance charges currently in § 226.6(a)(1) through (a)(4) are moved to § 226.6(a)(1)(i) through (a)(1)(iv); those rules and accompanying official staff interpretations are substantively unchanged. Rules relating to the disclosure of other charges are moved from current § 226.6(b) to § 226.6(a)(2), and specific HELOC-related disclosure requirements are moved from current § 226.6(e) to § 226.6(a)(3). Rules of general applicability to open-end credit plans relating to security interests and billing error disclosure requirements are moved without substantive change from current § 226.6(c) and (d) (proposed as § 226.6(c)(1) and (c)(2) in the June 2007 Proposal) to § 226.6(a)(4) and (a)(5), to ease compliance.

Several technical revisions to commentary provisions described in the June 2007 Proposal are adopted for clarity and in some cases for consistency with corresponding comments to § 226.6(b)(4), which addresses rate disclosures for open-end (not home-secured) plans; these revisions are not intended to be substantive. <u>See</u>, for example, comments 6(a)(1)(ii)-1 and 6(b)(4)(i)(B)-1, which address disclosing ranges of balances.

For the reasons set forth in the section-by-section analysis to § 226.6(b)(3), the Board updates references to "free-ride period" as "grace period" in the regulation and commentary to § 226.6(a), without any intended substantive change.

Also, commentary provisions that currently apply to open-end plans generally but are inapplicable to HELOCs are not included in the commentary provisions related to § 226.6(a), as proposed. For example, guidance in current 6(a)(2)-2 regarding a creditor's general reservation of the right to change terms is not included in comment 6(a)(1)(ii)-2, because § 226.5b(f)(1) prohibits "rate-reservation" clauses for HELOCs.

Model forms and clauses. Revisions to current forms and a new form that creditors offering HELOCs may use are adopted as proposed. In response to comments received on the June 2007 Proposal, the Board proposed in May 2008 to add a new paragraph to Appendix G-1 (Balance Computation Methods Model Clauses) to part 226 to describe the daily balance computation method. A new Appendix G-1(A) to part 226 was also proposed for creditors offering open-end (not home-secured) plans. See section by-section analysis to § 226.6(b)(4)(i)(D).

For the reasons set forth in the May 2008 Proposal, the Board is adopting the revisions to Appendix G-1 to part 226, retitled as Balance Computation Methods Model Clauses (Home-equity Plans) to ease compliance, as proposed. Comment App. G-1 is revised to clarify that a creditor offering HELOCs may use the model clauses in Appendix G-1 or G-1(A), at the creditor's option.

In addition, for the reasons discussed in the section-by-section analysis to §§ 226.12 and 226.13, model language has been added to Model Clause G-2 (Liability for Unauthorized Use Model Clause), Model Form G-3 (Long-form Billing-error Rights

Model Form Home-equity Plans) and Model Form G-4 (Alternative Billing-error Rights Model Form Home-equity Plans) regarding consumers' use of electronic communication relating to unauthorized transactions or billing disputes. Like with Model Clauses G-1 and G-1(A), the Board is adding new forms G-3(A) and G-4(A) for creditors offering open-end (not home-secured) plans, which a creditor offering HELOCs may use, at the creditor's option. See comment app. G-3.

6(b) Rules Affecting Open-end (not Home-secured) Plans

All account-opening disclosure requirements applying to open-end (not home-secured) plans are set forth in § 226.6(b). The Board is adopting two significant revisions to account-opening disclosures for open-end (not home-secured) plans, which are set forth in § 226.6(b), as proposed. The revisions (1) require a tabular summary of key terms to be provided before an account is opened (see § 226.6(b)(1) and (b)(2)), and (2) reform how and when cost disclosures must be made (see § 226.6(b)(3) for content, § 226.5(b) and § 226.9(c) for timing).

In response to comments received on the June 2007 Proposal, § 226.6(b) has been reorganized in the final rule for clarity. Rules relating to the account-opening tabular summary are set forth in § 226.6(b)(1) and (b)(2) and mirror, to the extent applicable, the organization and text of disclosure requirements for the tabular summary required to accompany credit or charge card applications or solicitations in § 226.5a. General disclosure requirements about costs imposed as part of the plan are set forth in § 226.6(b)(3), and additional requirements for disclosing rates are at § 226.6(b)(4). Rules about disclosures for optional credit insurance or debt cancellation or suspension coverage are set forth at § 226.6(b)(5). Rules of general applicability to open-end credit plans relating to security interests and billing error disclosure requirements, also are moved to § 226.6(b)(5) without substantive change from current § 226.6(c) and (d) (proposed as § 226.6(c)(1) and (2) in the June 2007 Proposal), to ease compliance.

6(b)(1) Format for Open-end (not Home-secured) Plans

As provided by Regulation Z, creditors may, and typically do, include account-opening disclosures as a part of an account agreement document that also contains other contract terms and state law disclosures. The agreement is typically lengthy and in small print. The June 2007 Proposal would have introduced format requirements for account-opening disclosures for open-end (not home-secured) plans at § 226.6(b)(4), based on proposed format and content requirements for the tabular disclosures provided with direct mail applications for credit and charge cards under § 226.5a. Proposed forms under G-17 in Appendix G would have illustrated the account-opening tables. The proposal sought to summarize key information most important to informed decision-making in a table similar to that required on or with credit and charge card applications and solicitations. TILA disclosures that are typically lengthy or complex and less often utilized in determining how to use an account, such as how variable rates are determined, could continue to be integrated with the account agreement terms but could not be placed in the table. Uniformity in the presentation of key information promotes consumers' ability to compare account terms.

Commenters generally supported format rules that focus on presenting essential information in a simplified way. Consumer groups supported the use of a tabular format similar to the summary table required under § 226.5a, to ease consumers' ability to find important information in a uniform format, and as a means for consumers to compare terms that are offered with terms they actually receive. A state consumer protection body urged the Board to develop a glossary and, along with some consumer groups, to mandate use of uniform terms so that creditors use the same term to identify fees.

Industry commenters voiced a number of concerns about the account-opening summary table. Some suggested the purposes of TILA disclosures are different at application and account-opening, and a table at account-opening is redundant since consumers have already made their credit decisions. Some suggested that other techniques to summarize information, such as an index or table of contents, should be permitted. In particular, industry commenters asked for additional flexibility to disclose risk-based APRs outside the summary table, such as in a welcome letter or documents accompanying the account agreement, or on a sales receipt when an open-end plan is established at a retail store in connection with the purchase of goods or services. Others believed the information was too simple and could be misleading to consumers and in any event would quickly become outdated. To combat out-of-date disclosures, one creditor suggested requiring a “real time” version of account terms on-line, with a paper copy available upon request.

For the reasons stated in this section-by-section analysis to § 226.6, the Board is adopting the formatting requirements generally as proposed, with revisions noted below. In response to commenters’ suggestions, the regulatory text (moved from proposed § 226.6(b)(4) to § 226.6(b)(1) and (b)(2)) more closely tracks the regulatory text in § 226.5a, to ease compliance.

The Board’s revisions to rules affecting open-end (not home-secured) plans contain a limited number of specific words or phrases that creditors are required to use.

The Board, however, has not adopted a glossary of terms nor mandated use of terms as defined in such a glossary, to provide flexibility to creditors. Although the Board is supportive of creditors that provide real-time account agreements on their Web sites, the Board believes requiring all creditors to do so would be overly burdensome at this time, and has not adopted such a requirement.

Open-end (not home-secured) plans not involving a credit card. The June 2007 Proposal would have applied the tabular summary requirement to all open-end credit products, except HELOCs. Such products include credit card accounts, traditional overdraft credit plans, personal lines of credit, and revolving plans offered by retailers without a credit card.

In response to the June 2007 Proposal, some industry commenters asked the Board to limit any new disclosure rules to credit card accounts. They acknowledged that credit card accounts typically have complex terms, and a tabular summary is an effective way to present key disclosures. In contrast, these commenters noted that other open-end (not home-secured) products such as personal lines of credit or overdraft plans have very few of the cost terms required to be disclosed. Alternatively, if the Board continued to apply the new requirements to open-end plans other than HELOCs, commenters asked that the Board consider publishing model forms to ease compliance.

The Board believes that the benefits to consumers from receiving a concise and uniform summary of rates and important fees for these other types of open-end plans outweigh the costs, such as developing the new disclosures and revising them as needed. In the May 2008 Proposal, the Board proposed Sample Form 17(D), which would have illustrated disclosures for an open-end (not home-secured) plan not involving a credit card, to address commenters' requests for guidance.

Some consumer groups supported the requirement for a summary table for open-end (not home-secured) plans that are not credit card accounts. They believe the summary table will help consumers understand the terms of their credit agreements. An industry commenter also supported a model form for creditors' use but suggested adding additional terms to the form such as a fee for returned payment, or variable-rate disclosures. One industry commenter strongly objected to the requirement for a summary table. This commenter believes creditors will incur substantial costs to comply with the requirement and the commenter was not convinced that a tabular format is the only way creditors may provide accurate and meaningful disclosures.

For the reasons set forth above, the final rule, pursuant to the Board's TILA Section 105(a) authority, applies the tabular summary requirement to all open-end credit products, except HELOCs, as proposed. Sample Form 17(D) is adopted, with some revisions. The name of the balance calculation method and billing error summary were inadvertently omitted in the May 2008 Proposal below the table in the proposed sample form, and they properly appear in the final form. A returned payment fee has been added. The Board notes that § 226.6(b)(2) requires creditors to disclose in the account-opening table the items in that section, to the extent applicable. Thus, for example, if a creditor offered an overdraft protection line of credit with a variable rate, the creditor must provide the applicable variable-rate disclosures, even though such disclosures do not appear in Sample Form 17(D).

Comparison to summary table provided with credit card applications. The summary tables proposed in June 2007 to accompany credit and charge card applications and solicitations and to be provided at account opening were similar but not identical. Under the June 2007 Proposal, at the card issuer's option, a card issuer providing a table that satisfies the requirements of § 226.6 could satisfy the requirements of § 226.5a by providing the account-opening table.

In response to the June 2007 Proposal, some commenters urged the Board to require identical disclosure requirements under § 226.6 and § 226.5a. Others supported greater flexibility. As discussed below, the disclosure requirements for the two summary tables remain very similar but are not identical in all respects. The final rule includes comment 6(b)(1)-1, adopted substantially as proposed, which provides guidance on how the summary table for § 226.5a differs from the table for § 226.6. For clarity, rules under § 226.5a that do not apply to account-opening disclosures are specifically noted.

6(b)(1)(iii) Fees that Vary by State

For disclosures required to be provided with credit card applications and solicitations, if the amount of a fee such as a late-payment fee or returned-payment fee varies by state, card issuers currently may disclose a range of fees and a statement that the amount of the fee varies by state. See § 226.5a(a)(4). In the June 2007 Proposal, the Board noted that a goal of the proposed account-opening summary table is to provide to a consumer specific key information about the terms of the account and that permitting creditors to disclose a range of fees seems not to meet that standard. Thus, the proposal would have required creditors to disclose the amount of the fee applicable to the consumer. The Board solicited comment on whether there are any operational issues presented by the proposal.

One commenter discussed operational issues for creditors that are licensed to do business under state law and must vary late-payment fees, for example, according to state law. Although the letter focused on late-payment fee disclosures on the periodic statement, one alternative suggested to stating fees applicable to the consumer's account was to permit such creditors to refer to a disclosure where fees arranged by applicable states would be identified.

Upon further consideration of the issues related to disclosing fees in the account-opening table fees that vary by state, the Board is adopting a rule that requires creditors to disclose specific fees applicable to the consumer's account in the account-opening table, with a limited exception. In general, a creditor must disclose the fee applicable to the consumer's account; listing all fees for multiple states in the account-opening summary table is not permissible. The Board is concerned that such an approach would detract from the purpose of the table: to provide key information in a simplified way.

Currently, creditors licensed to do business under state laws commonly disclose at account opening as part of the account agreement or disclosure statement a matrix of fees applicable to residents of various states. Creditors that provide account-opening disclosures by mail can more easily generate account-opening summaries with rates and specific fees that apply to the consumer. However, for creditors with retail stores in a number of states, it is not practicable to require fee-specific disclosures to be provided when an open-end (not home-secured) plan is established in person in connection with the purchase of goods or services. If the Board were to impose such a requirement, retail stores may need to keep on hand copies of disclosures for all states, because consumers from one state can, and commonly do, shop and obtain credit cards at retail locations in other states. In addition, a retail store creditor would need to rely on its employees to determine at the point of sale which state's disclosures should be provided to each consumer who opens an open-end (not home-secured) plan.

Thus, the final rule provides in § 226.6(b)(1)(iii) that creditors imposing fees such as late-payment fees or returned-payment fees that vary by state and providing the disclosures required by § 226.6(b) 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 either (1) the specific fee applicable to the consumer's account, or (2) 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 summary table where the amount of the fee applicable to the consumer's account is disclosed, for example in a list of fees for all states. Currently, creditors that establish open-end plans at point of sale provide account-opening disclosures at point of sale before the first transaction, and commonly provide an additional set of account-opening disclosures when, for example, a credit card is sent to the consumer. The Board believes that this practice would continue and that the account-opening disclosures provided later, for example with the credit card, would contain the specific rates and fees applicable to the consumer's account, as the creditor must provide for consumers who open accounts other than at point of sale.

<u>6(b)(2) Required Disclosures for Account-opening Table for Open-end (not Home-secured) Plans</u>

<u>Fees</u>. Under the June 2007 Proposal, fees to be highlighted in the account-opening summary were identified in § 226.6(b)(4)(iii). The proposed list of fees and categories of fees was intended to be exclusive. The Board noted that it considered these fees, among the charges that TILA covers, to be the most important fees, at least in the current marketplace, for consumers to know about before they start to use an account. The fees identified in proposed § 226.6(b)(4)(iii) included charges that a consumer could incur and which a creditor likely would not otherwise be able to disclose in advance of the consumer engaging in the behavior that triggers the cost, such as fees triggered by a consumer's use of a cash advance check or by a consumer's late payment. Transaction fees imposed for transactions in a foreign currency or that take place in a foreign country also would have been among the fees to be disclosed at account opening.

Industry commenters generally supported the proposal. Some consumer groups believe it would be a mistake to adopt a static list of fees to be disclosed in the account-opening table. They stated the credit card market is dynamic, and a static list would encourage creditors to establish new fees that would not be disclosed as prominently as those in the table. These commenters suggested the Board also require creditors to disclose in the account-opening table any fee that a creditor charges to more than 5 percent of its cardholders.

The Board is adopting in § 226.6(b)(2) the list of fees proposed in § 226.4(b)(4)(iii) as the exclusive list of fees and categories of fees that must be disclosed in the table, although § 226.6(b)(2) has been reorganized to more closely track the requirements of § 226.5a. Accordingly, the fees required to be disclosed in the table are those identified in § 226.6(b)(2)(ii) through (b)(2)(iv) and (b)(2)(vii) through (b)(2)(xi); that is, fees for issuance or availability of credit, minimum or fixed finance charges, transaction fees, cash advance fees, late-payment fees, over-the-limit fees, balance transfer fees, and returned-payment fees.

The Board intends this list of fees to be exclusive, for two reasons. An exclusive list eases compliance and reduces the risk of litigation; creditors have the certainty of knowing that as new services (and associated fees) develop, fees not required to be disclosed in the summary table under the final rule need not be highlighted in the account-opening summary unless and until the Board requires their disclosure after notice and public comment. And as discussed in the section-by-section analysis to § 226.5(a)(1) and (b)(1), charges required to be highlighted in the account-opening table must be provided in a written and retainable form before the first transaction and before being increased or newly introduced. Creditors have more flexibility regarding disclosure of other charges imposed as part of an open-end (not home-secured) plan.

The exclusive list of fees also benefits consumers. The list focuses on fees consumer testing conducted for the Board showed to be most important to consumers. The list is manageable and focuses on key information rather than attempting to be comprehensive. Since consumers must be informed of all fees imposed as part of the plan before the cost is incurred, not all fees need to be included in the account-opening table provided at account opening.

Payment allocation. Section 226.6(b)(4)(vi) of the June 2007 Proposal would have required creditors to disclose in the account-opening tabular summary, if applicable, the information regarding how payments will be allocated if the consumer transfers balances at a low rate and then makes purchases on the account. The payment allocation disclosure requirements proposed for the account-opening table mirrored the proposed requirements in § 226.5a(b)(15) to be provided in the table given at application or solicitation.

In May 2008, the Board and other federal banking agencies proposed limitations on how creditors may allocate payments on outstanding credit card balances. See 73 FR 28904, May 19, 2008. The Board indicated in the May 2008 Regulation Z Proposal that if the proposed limitations were adopted, the Board contemplated withdrawing proposed § 226.6(b)(4)(vi). For the reasons discussed in the section-by-section analysis to § 226.5a(b), the Board is withdrawing proposed § 226.6(b)(4)(vi).

6(b)(2)(i) Annual Percentage Rate

Section 226.6(b)(2)(i) (proposed at § 226.6(b)(4)(i)) sets forth disclosure requirements for rates that would apply to accounts. Except as noted below, the disclosure requirements for APRs in the account-opening table are adopted for the same reasons underlying, and consistent with, the disclosure requirements adopted for APRs in the table provided with credit card applications and solicitations. See section-by-section analysis to § 226.5a(b)(1).

Periodic rates and index and margin values are not permitted to be disclosed in the table, for the same reasons underlying, and consistent with, the proposed requirements for the table provided with credit card applications and solicitations. See comments 5a(b)(1)-2 and -8. The index and margin must be provided in the credit agreement or other account-opening disclosures pursuant to § 226.6(b)(4). Creditors also must continue to disclose periodic rates, as a cost imposed as part of the plan, before the consumer agrees to pay or becomes obligated to pay for the charge, and these disclosures could be provided in the credit agreement or other disclosure, as is likely currently the case.

The rate disclosures required for the account-opening table differ from those required for the table provided with credit card applications and solicitations. For applications and solicitations, creditors may provide a range of APRs or specific APRs that may apply, where the APR is based at least in part on a later determination of the consumer's creditworthiness. At account opening, creditors must disclose the specific APRs that will apply to the account as proposed, with a limited exception.

Similar to the discussion in the section-by-section analysis to § 226.6(b)(1)(iii), the APR that some creditors may charge vary by state. In general, a creditor must disclose the APR applicable to the consumer's account. Listing all APRs for multiple states in the account-opening summary box is not permissible. The Board is concerned that such an approach would detract from the purpose of the table: to provide key information in a simplified way. However, for creditors with retail stores in a number of states, it is not practicable to require APR-specific disclosures to be provided when an open-end (not home-secured) plan is established in person in connection with the purchase of goods or services. Thus, the Board provides in § 226.6(b)(2)(i)(E) that creditors imposing APRs that vary by state and providing the disclosures required by § 226.6(b) 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 either (1) the specific APR applicable to the consumer's account, or (2) the range of the APRs, if the disclosure includes a statement that the APR varies by state and refers the consumer to the account agreement or other disclosure provided with the account-opening summary table where the APR applicable to the consumer's account is disclosed, for example in a list of APRs for all states. Currently, creditors that establish open-end plans at point of sale provide account-opening disclosures at point of sale before the first transaction, and commonly provide an additional set of disclosures when, for example, a credit card is sent to the consumer. The Board believes that this practice would continue and that the account-opening summary provided with the additional set of disclosures would contain the APRs applicable to the consumer's account, as the creditor must provide for consumers who open accounts other than at point of sale.

This limited exception does not extend to rates that vary due to creditors' pricing policies. Creditors that offer risk-based APRs commonly offer one or two rates, or perhaps three or four, as opposed to retail creditors that may offer a dozen or more rates, based on varying state laws. The multiplicity of rates and the training required for retail sales staff to identify correctly which state law governs the potential account holder increases these creditors' risk of inadvertent noncompliance. Creditors that choose to offer risk-based pricing, however, are better able to manage their potential risk of noncompliance. The exception is intended to have a limited scope because the Board believes consumers benefit by knowing, at account-opening, the actual rates that will apply to their accounts.

<u>Discounted and premium initial rates</u>. Currently, a discounted initial rate may, but is not required to, be disclosed in the table accompanying a credit or charge card

application or solicitation. Card issuers that choose to include such a rate must also disclose the time period during which the discounted initial rate will remain in effect. See § 226.5a(b)(1)(ii). Creditors, however, must disclose these terms in account-opening disclosures. The June 2007 Proposal would have required any initial temporary rate, the circumstances under which that rate expires, and the rate that will apply after the temporary rate expires to be disclosed in the account-opening table. See proposed § 226.6(b)(4)(ii)(B).

The final rule regarding the disclosure of temporary initial rates differs from the proposal in several ways, two of which are technical. As discussed above, the text of the disclosure requirements has been revised to more closely track the regulatory text under § 226.5a. Therefore, § 226.6(b)(2)(i)(B) and (b)(2)(i)(C), which set forth disclosure requirements for discounted initial rates and premium discount rates, replace proposed text in § 226.6(b)(4)(ii)(B) regarding initial temporary rates and are consistent with § 226.5a(b)(1)(ii) and (b)(1)(iii). For consistency, discounted initial rates are referred to as "introductory" rates as that term in defined in § 226.16(g)(2)(ii).

Under § 226.6(b)(2)(i)(B) and consistent with § 226.5a, creditors that offer a temporary discounted initial rate must disclose in the account-opening table the rate that otherwise would apply after the temporary rate expires. Also, to be consistent with § 226.5a, creditors under the final rule may, but generally are not required to (except as discussed below), disclose discounted initial rates in the account-opening table. Creditors that choose to include such a rate must also disclose the time period during which the discounted initial rate will remain in effect. Under § 226.6(b)(2)(i)(D), if a creditor discloses discounted initial rates in the account-opening table, the creditor must also disclose directly beneath the table the circumstances under which the discounted initial rate may be revoked and the rate that will apply after revocation.

As discussed in the section-by-section analysis to § 226.5a(b)(1), § 226.6(b)(2)(i) of the final rule has been revised to provide that issuers subject to the final rules issued by the Board and other federal banking agencies published elsewhere in today's **Federal Register** must disclose any introductory rate applicable to the account in the table. This requirement is intended to promote consistency with those final rules, which require issuers to state at account opening the annual percentage rates that will apply to each category of transactions on a consumer credit card account. Thus, § 226.6(b)(2)(i)(F) has been added to the final rule to clarify that an issuer subject to 12 CFR § 227.24 or similar law must disclose in the account-opening table any introductory rate that will apply to a consumer's account. A conforming change has been made to § 226.6(b)(2)(i)(B).

Similarly, and for the same reasons stated above, § 226.6(b)(2)(i)(F) also requires that card issuers subject to the final rules issued by the Board and other federal banking agencies published elsewhere in today's **Federal Register** disclose in the table any rate that will apply after a premium initial rate expires. Section 226.6(b)(2)(i)(C) also has been revised for consistency.

If a creditor that is not subject to 12 CFR § 227.24 or similar law does not disclose a discounted initial rate (and thus also does not disclose the reasons the rate may be revoked and the rate that will apply after revocation) in the account-opening table, the creditor must provide these disclosures at any time before the consumer agrees to pay or becomes obligated to pay for a charge based on the rate, pursuant to the disclosure timing requirements of § 226.5(b)(1)(ii). Creditors may provide disclosures of these charges in writing but creditors are not required to do so; only those charges identified in § 226.6(b)(2) that must appear in the account-opening table must be provided in writing. The Board expects, however, that for contract law or other reasons, most creditors as a practical matter will disclose the discounted initial rate in writing at account-opening. See section-by-section analysis to § 226.5(a)(1) above.

The Board believes aligning the disclosure requirements for the account-opening summary table with the requirements for the application summary table will ease compliance without lessening consumer protections. Many creditors will continue to disclose discounted initial rates, including issuers subject to the final rules issued by the Board and other federal banking agencies published elsewhere in today's **Federal Register**, and how an initial rate could be revoked in the account-opening table or in writing as part of the account-opening disclosures.

6(b)(2)(iii) Fixed Finance Charge; Minimum Interest Charge

TILA Section 127(a)(3), which is currently implemented in § 226.6(a)(4), requires creditors to disclose in account-opening disclosures the amount of the finance charge, including any minimum or fixed amount imposed as a finance charge. 15 U.S.C. 1637(a)(3). In the June 2007 Proposal, the Board would have required creditors to disclose in account-opening disclosures the amount of any finance charges in § 226.6(b)(1)(A), and further required creditors to disclose any minimum finance charge in the account-opening table in § 226.6(b)(4)(iii)(D). In May 2008, the Board proposed to require card issuers to disclose in the table provided with applications or solicitations minimum or fixed finance charges in excess of $1.00 that could be imposed during a billing cycle and a brief description of the charge under the heading "minimum interest charge" or "minimum charge," as discussed in the section-by-section analysis to Appendix G, for the reasons discussed in the section-by-section analysis to proposed § 226.5a(b)(3). At the card issuer's option, the card issuer could disclose in the table any minimum or fixed finance charge below the threshold. The Board proposed the same disclosure requirements to apply to the account-opening table for the same reasons.

For the reasons discussed in the section-by-section analysis to § 226.5a(b)(3), § 226.6(b)(2)(iii) is revised and new comment 6(b)(2)(iii)-1 is added, consistent with § 226.5a(b)(3). As noted in the section-by-section analysis to § 226.5a(b)(3), under the June 2007 Proposal, card issuers may substitute the account-opening table for the table required by § 226.5a. Conforming the fixed finance charge and minimum interest charge disclosure requirement for the two tables promotes consistency and uniformity. Because minimum interest charges of $1.00 or less would no longer be required to be disclosed in the account-opening table, these charges could be disclosed at any time before the consumer agrees to pay or becomes obligated to pay for the charge, pursuant to the disclosure timing requirements of § 226.5(b)(1)(ii). Creditors may provide disclosures of these charges in writing but are not required to do so. <u>See</u> section-by-section analysis to § 226.5(a)(1) above. The Board believes creditors will continue to disclose minimum interest charges of $1.00 or less in writing at account opening, to meet the timing requirement to disclose the fee before the consumer becomes obligated for the charge. In addition, creditors that choose to charge more than $1.00 would be required to include the cost in the account-opening table. Thus, the Board is adopting § 226.6(b)(2)(iii) (proposed in May 2008 as § 226.6(b)(4)(iii)(D)) without substantive change.

<u>6(b)(2)(v) Grace Period</u>

Under TILA, creditors providing disclosures with applications and solicitations must discuss grace periods on purchases; at account opening, creditors must explain grace periods more generally. 15 U.S.C. 1637(c)(1)(A)(iii); 15 U.S.C. 1637(a)(1). Section 226.6(b)(4)(iv) in the June 2007 Proposal would have required creditors to state for all balances on the account, whether or not a period exists in which consumers may avoid the imposition of finance charges, and if so, the length of the period.

In May 2008, as discussed in the section-by-section analysis to § 226.5(a)(2) and to § 226.5a(b)(5), the Board proposed to revise provisions relating to the description of grace periods. Under the proposal, § 226.6(b)(4)(iv) would have been revised and comment 6(b)(4)(iv)-1 added, consistent with the proposed revisions to § 226.5a(b)(5) and commentary. The heading "How to Avoid Paying Interest [on a particular feature]" would have been used where a grace period exists for that feature. The heading "Paying Interest" would have been used if there is no grace period on any feature of the account. A reference to required use of the phrase "grace period" in comment 6(b)(4)-3 of the June 2007 Proposal was proposed to be withdrawn.

Comments received on the proposed text of headings and the results of consumer testing are discussed in the section-by-section analysis to § 226.5a(b)(5). For the reasons stated in the section-by-section analysis to and consistent with § 226.5a(b)(5), the final rule (moved to § 226.6(b)(2)(v)) requires the heading "How to Avoid Paying Interest" to be used for the row that describes a grace period, and the heading "Paying Interest" to be used for the row that describes no grace period.

The final rule differs from the proposal in that the heading "Paying Interest" must be used for the heading in the account-opening table if any one feature on the account does not have a grace period. Comments 6(b)(2)(v)-1 through -3 provide language creditors may use to describe features that have grace periods and features that do not, and guidance on complying with § 226.6(b)(2)(v) when some features on an account have a grace period but others do not. See Samples G-17(B) and G-17(C).

As stated above under TILA, card issuers must disclose any grace period for purchases, which most credit cards currently offer, in the table provided on or with credit card applications or solicitations, and creditors must disclose at account opening whether or not grace periods exist for all features of an account. Cash advance and balance transfer features on credit card accounts typically do not offer grace periods. Under the final rule, the row heading describing grace periods in the account-opening table will likely be uniform among creditors, "Paying Interest." The Board recognizes that this row heading may not be consistent with the row heading describing grace periods for purchases in the table provided on or with credit card applications and solicitations. However, the Board does not believe that different headings will significantly undercut a consumer's ability to compare the terms of a credit card account to the terms that were offered in the solicitation. Currently most issuers offer a grace period on all purchase balances; thus, most issuers will use the term "How to Avoid Paying Interest on Purchases" in the table provided on or with credit card applications and solicitations. Nonetheless, when a consumer is reviewing the application and account-opening tables for a credit card account – the former having a row with the heading "How to Avoid Paying Interest on Purchases" and the latter having a row "Paying Interest" because no grace period is offered on balance transfers and cash advances – the Board believes that consumers will recognize that the information in those two rows relate to the same concept of when consumers will pay interest on the account.

6(b)(2)(vi) Balance Computation Methods

TILA requires creditors to explain as part of the account-opening disclosures the method used to determine the balance to which rates are applied. 15 U.S.C. 1637(a)(2). In June 2007, the Board proposed § 226.6(b)(4)(ix), which would have required that the name of the balance computation method used by the creditor be disclosed beneath the table, along with a statement that an explanation of the method is provided in the account agreement or disclosure statement. To determine the name of the balance computation method to be disclosed, the June 2007 Proposal would have required creditors to refer to § 226.5a(g) for a list of commonly-used methods; if the method used was not among those identified, creditors would be required to provide a brief explanation in place of the name.

Commenters generally supported the proposal. See section-by-section analysis to § 226.5a(b)(6) regarding the comments received on proposed disclosures of the name of balance computation method below the summary table provided on or with credit card applications or solicitations. Consistent with the reasons discussed in the section-by-section analysis to § 226.5a(b)(6), the Board adopts § 226.6(b)(2)(vi) (proposed as § 226.6(b)(4)(ix)) to require that the name of the balance computation method used by a creditor be disclosed beneath the table, along with a statement that an explanation of the method is provided in the account agreement or disclosure statement. Unlike § 226.5a(b)(6), creditors are required in § 226.6(b)(2)(vi) to disclose the balance computation method used for each feature on the account. Samples G-17(B) and G-

17(C) provide guidance on how to disclose the balance computation method where the same method is used for all features on the account.

6(b)(2)(viii) Late-payment Fee

Under the June 2007 Proposal, creditors were required to disclose penalty fees such as late-payment fees in the account-opening summary table. If the APR may increase due to a late payment, the proposal required creditors to disclose that fact. Cross references were proposed to aid consumer understanding. See proposed § 226.6(b)(4).

In response to the proposal, one federal banking agency suggested that in addition to the amount of the fee, the Board should consider additional cautionary disclosures to aid in consumer understanding, such as that late fees imposed on an account may cause the consumer to exceed the credit limit on the account. To keep the table manageable in size, the Board is not adopting a requirement to include cautionary information about the consequences of paying late beyond the requirement to provide information about penalty rates. See § 226.6(b)(2)(xii).

Cross References to Penalty Rate

For the reasons stated in the supplementary information regarding proposed § 226.5a(b)(13), the Board has withdrawn proposed § 226.(b)(4)(iii)(C) which provided that if a creditor may impose a penalty rate for one or more of the circumstances for which a late-payment fee, over-the-limit fee, or returned-payment fee is charged, the creditor must disclose the fact that the penalty rate also may apply and a cross reference to the penalty rate.

6(b)(2)(xii) Required Insurance, Debt Cancellation or Debt Suspension Coverage

For the reasons discussed in the section-by-section analysis to § 226.5a(b)(14), as permitted by applicable law, creditors that require credit insurance, or debt cancellation or debt suspension coverage, as part of the plan are required to disclose the cost of the product and a reference to the location where more information about the product can be found with the account-opening materials, as applicable. See § 226.6(b)(2)(xii).

6(b)(2)(xiii) Available Credit

The Board proposed in June 2007 a disclosure targeted at subprime card accounts that assess substantial fees at account opening and leave consumers with a limited amount of available credit. Proposed § 226.6(b)(4)(vii) would have applied to creditors that require fees for the availability or issuance of credit, or a security deposit, that in the aggregate equal 25 percent or more of the minimum credit limit offered on the account. If that threshold is met, a creditor would have been required to disclose in the table an example of the amount of available credit the consumer would have after the fees or security deposit are debited to the account, assuming the consumer receives the minimum credit limit. The account-opening disclosures regarding available credit also would have been required for credit and charge card applications or solicitations. See proposed § 226.5a(b)(16). The requirement in proposed § 226.6(b)(4)(vii) would have applied to all open-end (not home-secured) credit for which the threshold is met, unlike § 226.5a(b)(14) (proposed as § 226.5a(b)(16)), which only applies to card issuers.

Commenters generally supported the proposal, which is generally adopted as proposed with several revisions noted below. See section-by-section analysis to § 226.5a(b)(14) regarding comments received on the proposed disclosure of available credit in the summary table provided on or with credit card applications or solicitations.

Consistent with § 226.5a(b)(14), § 226.6(b)(2)(xiii) of the final rule (proposed as § 226.6(b)(4)(vii)) reduces the threshold for determining whether the available credit disclosure must be given to 15 percent or more of the minimum credit limit offered on the account.

Notice of right to reject plan. In May 2008, the Board proposed an additional disclosure to inform consumers about their right to reject a plan when set-up fees have been charged before the consumer receives account-opening disclosures. See section-by-section analysis to § 226.5(b)(1)(iv). Creditors would have been required to provide consumers with notice about the right to reject the plan in such circumstances. The Board intended to target the disclosure requirement to creditors offering subprime credit card accounts. Comment 6(b)(4)(vii)-1 also was proposed to provide creditors with model language to comply with the disclosure requirement.

Both industry and consumer group commenters that addressed the provision generally supported the proposed notice. See section-by-section analysis to § 226.5(b)(1)(iv) for a discussion of comments received regarding the circumstances under which a consumer could reject a plan. Regarding the notice itself, one industry commenter suggested adding to the notice information about how the consumer could contact the creditor to reject the plan. One commenter suggested expanding the disclosure requirement to the table provided with credit and charge card applications and solicitations; another suggested requiring the notice on the first billing statement.

The final rule adopts the requirement to provide a notice disclosure in the account-opening table to inform consumers about their right to reject a plan until the consumer has used the account or made a payment on the account after receiving a billing statement, when set-up fees have been charged before the consumer receives account-opening disclosures. The final rule provides model language creditors may use to comply with the disclosure requirement, as proposed. The final rule does not include a requirement that the creditor provide information about how to contact the creditor to reject the plan; the Board believes such a requirement would add to the length of the disclosure and is readily available to consumers in other account-opening materials. The Board also declines to require the notice on or with an application or solicitation or on the first billing statement; the Board believes the most effective time for the notice to be given is after the consumer has chosen to apply for the card account and before the consumer has used or had the opportunity to use the card.

Actual credit limit. The available credit disclosure proposed in June 2007 would have been triggered if start-up fees, or a security deposit financed by the creditor, in the aggregate equal 25 percent or more of the minimum credit limit offered on the account, consistent with the proposed disclosure in the summary table required on or with credit or charge card applications or solicitations. Some consumer groups urged the Board to base the disclosure on the actual credit limit received, rather than the minimum credit limit on the account. As discussed in the section-by-section analysis to § 226.5a(b)(14), final rules issued by the Board and other federal banking agencies published elsewhere in today's **Federal Register** address card issuers' ability to finance certain fee amounts.

The final rule, consistent with the proposal, bases the threshold for whether the available disclosure is required to be given on the minimum credit limit offered on the plan. Specifically, the final rule requires that the available credit disclosure be given in the account-opening table if the creditor requires fees for the availability or issuance of credit, or a security deposit, that in the aggregate equal 15 percent or more of the minimum credit limit offered on the plan. The Board believes that it is important that a consumer receive consistent disclosures in the table provided with an application or solicitation and in the account-opening table, regardless of the actual credit limit for which the consumer is approved. For example, if a creditor offers an open-end plan with a minimum credit limit of $300 and imposes start-up fees of $45, that creditor would be required to include the available credit disclosure in the table provided with applications and solicitations. If a consumer applies for that account and receives an initial credit limit of $400, the $45 in start-up fees would be less than 15% of the consumer's line. However, the Board believes that the consumer still should receive the available credit disclosure at account-opening so that the consumer is better able to compare the terms of the account he or she received with the terms of the offer.

Although, as discussed above, a creditor must determine whether the 15 percent threshold is met with reference to the minimum credit limit offered on the plan, the final rule requires creditors to base the available credit disclosure for the account-opening summary table, if required, on the actual credit limit received. The Board believes a disclosure of available credit based on the actual credit limit provides consumers with accurate information that is helpful in understanding the available credit remaining. Creditors typically state the credit limit for the account with account-opening materials, and permitting creditors to disclose in the table the minimum credit limit offered on the account – likely a different dollar amount than the actual credit limit – could result in confusion. The Board understands that creditors offering accounts that would be subject to the available credit disclosure typically establish a limited number of credit limits on such accounts. Therefore, for creditors that use pre-printed forms, the requirement should not be overly burdensome.

6(b)(2)(xiv) Web Site Reference

For the reasons stated under § 226.5a(b)(15), the Board adopts § 226.6(b)(2)(xiv) (proposed at § 226.6(b)(4)(viii)), which requires card issuers to provide a reference to the Board's Web site for additional information about shopping for and using credit card accounts.

6(b)(2)(xv) Billing Error Rights Reference

All creditors offering open-end plans must provide notices of billing rights at account opening. See current § 226.6(d). This information is important, but lengthy. The Board proposed § 226.6(b)(4)(x) in June 2007 to draw consumers' attention to the notices by requiring a statement that information about billing rights and how to exercise them is provided in the account-opening disclosures. Under the proposal, the statement, along with the name of the balance computation method, would have been required to be located directly below the table. The Board received no comments on the billing error rights reference and is adopting the requirement as proposed.

6(b)(3) Disclosure of Charges Imposed as Part of Open-end (not Home-secured) Plans

Currently, the rules for disclosing costs related to open-end plans create two categories of charges covered by TILA: finance charges (§ 226.6(a)) and "other charges" (§ 226.6(b)). According to TILA, a charge is a finance charge if it is payable directly or indirectly by the consumer and imposed directly or indirectly by the creditor "as an incident to the extension of credit." The Board implemented the definition by including as a finance charge under Regulation Z, any charge imposed "as an incident to or a condition of the extension of credit." TILA also requires a creditor to disclose, before opening an account, "other charges which may be imposed as part of the plan . . . in accordance with regulations of the Board." The Board implemented the provision virtually verbatim, and the staff commentary interprets the provision to cover "significant charges related to the plan." 15 U.S.C. 1605(a), § 226.4; 15 U.S.C. 1637(a)(5), § 226.6(b), current comment 6(b)-1.

The terms "finance charge" and "other charge" are given broad and flexible meanings in the current regulation and commentary. This ensures that TILA adapts to changing conditions, but it also creates uncertainty. The distinctions among finance charges, other charges, and charges that do not fall into either category are not always clear. As creditors develop new kinds of services, some creditors find it difficult to determine if associated charges for the new services meet the standard for a "finance charge" or "other charge" or are not covered by TILA at all. This uncertainty can pose legal risks for creditors that act in good faith to classify fees. Examples of charges that are included or excluded charges are in the regulation and commentary, but they cannot provide definitive guidance in all cases.

The June 2007 Proposal would have created a single category of "charges imposed as part of an open-end (not home-secured) plan" as identified in proposed § 226.6(b)(1)(i). These charges include finance charges under § 226.4(a) and (b), penalty charges, taxes, and charges for voluntary credit insurance, debt cancellation or debt suspension coverage.

Under the June 2007 Proposal, charges to be disclosed also would have included any charge the payment, or nonpayment of which affects the consumer's access to the plan, 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. Proposed commentary provided examples of charges covered by the provision, such as application fees and participation fees (which affect access to the plan), fees to expedite card delivery (which also affect access to the plan), and fees to expedite payment (which affect the timing and method of payment).

Three examples of types of charges that are not imposed as part of the plan were listed in proposed § 226.6(b)(1)(ii). These examples would have included charges imposed on a cardholder by an institution other than the card issuer for the use of the other institution's ATM; and charges 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. Proposed comment 6(b)(1)(ii)-1 provided examples of fees for packages of services that would have been considered to be imposed as part of the plan and fees for packages of services that would not. This comment is substantively identical to current comment 6(b)-1.v.

Commenters generally supported deemphasizing the distinction between finance charges and other charges. One trade association urged the Board to identify costs as "interest" or "fees," the labels proposed to describe costs on periodic statements, rather than "costs imposed as part of the plan," to ease compliance and consumer understanding.

Some industry commenters urged the Board to provide a specific and finite list of fees that must be disclosed, to avoid litigation risk. They stated the proposed categories of charges considered to be part of the plan were not sufficiently precise. They asked for additional guidance on what fees might be captured as fees for failure to use the card as agreed (except amounts payable for collection activity after default), or that affect the consumer's access to the plan, for example. One industry trade association asked the Board to clarify that creditors would be deemed to be in compliance with the regulation if the creditor disclosed a fee that was later deemed to be not a part of the plan.

The Board is adopting the requirement to disclose costs imposed as part of the plan as proposed, but renumbered for organizational clarity. General rules are set forth in § 226.6(b)(3)(i), charges imposed as part of the plan are identified in § 226.6(b)(3)(ii), and charges imposed that are not part of the plan are identified in § 226.6(b)(3)(iii). The final rule continues to use the term "charges." Although the Board's consumer testing indicates that consumers' understanding of costs incurred during a statement period improves when labeled as "fees" or "interest" on periodic statements, the Board believes the general term "charges," which encompasses interest and fees, is an efficient description of the requirement, and eases compliance by not requiring creditors to recite "fees and interest" wherever the term "charges" otherwise would appear.

As the Board acknowledged in the June 2007 Proposal, the disclosure requirements do not completely eliminate ambiguity about what are TILA charges. The commentary provides examples to ease compliance. To further mitigate ambiguity the rule provides a complete list in new § 226.6(b)(2) of which charges and categories of charges must be disclosed in writing at account opening (or before they are increased or newly introduced). See § 226.5(b)(1) and § 226.9(c)(2) for timing rules. Any fees aside from those fees or categories of fees identified in § 226.6(b)(2) are not required to be disclosed in writing at account opening. However, if they are not disclosed in writing at account opening, other charges imposed as part of an open-end (not home-secured) plan must be disclosed in writing or orally at a time and in a manner that a consumer would be likely to notice them before the consumer agrees to or becomes obligated to pay the charge. This approach is intended in part to reduce creditor burden. For example when a consumer orders a service by telephone, creditors presumably disclose fees related to that service at that time for business reasons and to comply with other state and federal laws.

Moreover, compared to the approach reflected in the current regulation, the broad application of the statutory standard of fees "imposed as part of the plan" should make it easier for a creditor to determine whether a fee is a charge covered by TILA, and reduce litigation and liability risks. Comment 6(b)(3)(ii)-3 is added to provide that if a 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 Truth in Lending purposes. In addition, this approach will help ensure that consumers receive the information they need when it would be most helpful to them.

Comment 6(b)(3)(ii)-2 has been revised from the June 2007 Proposal. The comment, as proposed in June 2007, included a fee to receive paper statements as an example of a fee that affects the plan. This example is not included in the final rule. Creditors are required to provide periodic statements in writing in connection with open-end plans, and the Board did not intend with the inclusion of this example to express a view on the permissibility of charging consumers a fee to receive paper statements.

Section 226.6(b)(3) applies to all open-end plans except HELOCs subject to § 226.5b. It retains TILA's general requirements for disclosing costs for open-end plans: Creditors are required to continue to disclose the circumstances under which charges are imposed as part of the plan, including the amount of the charge (e.g., $3.00) or an explanation of how the charge is determined (e.g., 3 percent of the transaction amount). For finance charges, creditors currently must include a statement of when the finance charge begins to accrue and an explanation of whether or not a "grace period" or "free-ride period" exists (a period within which any credit that has been extended may be repaid without incurring the charge). Regulation Z has generally referred to this period as a "free-ride period." To use consistent terminology to describe the concept, the Board is updating references to "free-ride period" as "grace period" in the regulation and commentary, without any intended substantive change, as proposed. Comment 6(b)(3)-2 is revised to provide that although the creditor need not use any particular descriptive phrase or term to describe a grace period, the descriptive phrase or term must be sufficiently similar to the disclosures provided pursuant to §§ 226.5a and 226.6(b)(2) to satisfy a creditor's duty to provide consistent terminology under § 226.5(a)(2).

6(b)(4) Disclosure of Rates for Open-end (not Home-secured) Plans

Rules for disclosing rates that affect the amount of interest that will be imposed are consolidated in § 226.6(b)(4) (proposed at § 226.6(b)(2)). (See redesignation table below.) Headings have been added for clarity.

6(b)(4)(i)

Currently, creditors must disclose finance charges attributable to periodic rates. These costs are typically interest charges but may include other costs such as premiums for required credit insurance. For clarity, the text of § 226.6(b)(4)(i) uses the term "interest" rather than "finance charge" and is adopted as proposed.

6(b)(4)(i)(D) Balance Computation Method

Section § 226.6(b)(4)(i) sets forth rules relating to the disclosure of rates. Section § 226.6(b)(4)(i)(D) (currently § 226.6(a)(3) and proposed in June 2007 as § 226.6(b)(2)(i)(D)) requires creditors to explain the method used to determine the balance to which rates apply. 15 U.S.C. 1637(a)(2).

The June 2007 Proposal would have required creditors to continue to explain the balance computation methods in the account-opening agreement or other disclosure statement. The name of the balance computation method and a reference to where the explanation can be found would have been required along with the account-opening summary table. Commenters generally supported the Board's approach, and the Board is adopting the requirement to provide an explanation of balance computation methods in the account agreement or other disclosure statement, as proposed. See also the section-by-section analysis to § 226.6(b)(2)(vi).

Model clauses. Model clauses that explain commonly used balance computation methods, such as the average daily balance method, are at Appendix G-1 to part 226. In the June 2007 Proposal, the Board requested comment on whether model clauses for methods such as "adjusted balance" and "previous balance" should be deleted as obsolete, and more broadly, whether Model Clauses G-1 should be eliminated entirely because creditors no longer use the model clauses.

One trade association asked that all model clauses be retained. In response to other comments received on the June 2007 Proposal, the Board proposed in May 2008 to add a new model clause to Model Clauses G-1 for the "daily balance" method. In addition, the Board proposed new Model Clauses G-1(A) for open-end (not home-secured) plans. The clauses in G-1(A) differ from the clauses in G-1 by referring to "interest charges" rather than "finance charges" to explain balance computation methods. Commenters did not specifically address this aspect of the May 2008 Proposal.

Based on the comments received on both proposals, the Board is adopting Model Clauses G-1(A). See section-by-section analysis to § 226.6(a) regarding Model Clauses G-1.

Current comment 6(a)(3)-2 clarifies that creditors may, but need not, explain how payments and other credits are allocated to outstanding balances as part of explaining a balance computation method. Two examples are deleted from the comment (renumbered in this final rule as 6(b)(4)(i)(D)-2), to avoid any unintended confusion or conflict with rules limiting how creditors may allocate payments on outstanding credit balances, published elsewhere in today's **Federal Register**.

6(b)(4)(ii) Variable-rate Accounts

New § 226.6(b)(4)(ii) sets forth the rules for variable-rate disclosures now contained in footnote 12. In addition, guidance on the accuracy of variable rates provided at account opening is moved from the commentary to the regulation and revised, as proposed. Currently, comment 6(a)(2)-3 provides that creditors may provide the current rate, a rate as of a specified date if the rate is updated from time to time, or an estimated rate under § 226.5(c). In June 2007, the Board proposed an accuracy standard for variable rates disclosed at account opening; the rate disclosed would have been accurate if it was in effect as of a specified date within 30 days before the disclosures are provided. Creditors' option to provide an estimated rate as the rate in effect for a variable-rate account would have been eliminated under the proposal. Current comment 6(a)(2)-10, which addresses discounted variable-rate plans, was proposed as comment 6(b)(2)(ii)-5, with technical revisions but no substantive changes.

The June 2007 Proposal also would have required that, in describing how a variable rate is determined, creditors must disclose the applicable margin, if any. See § 226.6(b)(2)(ii)(B).

The Board is adopting the rules for variable-rate disclosures provided at account-opening, as proposed. As to accuracy requirements, the Board believes 30 days provides sufficient flexibility to creditors and reasonably current information to consumers. The Board believes creditors are provided with sufficient flexibility under the proposal to provide a rate as of a specified date, so the use of an estimate would not be appropriate.

Comment 6(b)(4)(ii)-5 (proposed as 6(b)(2)(ii)-5) is adopted, with revisions consistent with the rule adopted under § 226.6(b)(2)(i)(B), which permits but does not require creditors, except those subject to 12 CFR § 227.24 or similar law, to disclose temporary initial rates in the account-opening summary table. However, creditors must comply with the general requirement to disclose charges imposed as part of the plan before the charge is imposed. The Board believes creditors not subject to 12 CFR § 227.24 or similar law will continue to disclose initial rates as part of the account agreement for contract and other reasons.

Pursuant to its TILA Section 105(a) authority, the Board is also adopting in § 226.6(b)(4)(ii)(B) the requirement to disclose any applicable margin when describing how a variable rate is determined. The Board believes creditors already state the margin for purposes of contract or other law and are currently required to disclose margins related to penalty rates, if applicable. No particular format requirements apply. Thus, the Board does not expect the revision will add burden.

6(b)(4)(iii) Rate Changes not Due to Index or Formula

The June 2007 Proposal would have consolidated existing rules for rate changes that are specifically set forth in the account agreement but are not due to changes in an index or formula, such as rules for disclosing introductory and penalty rates. See § 226.6(b)(2)(iii). In addition to requiring creditors to identify the circumstances under which a rate may change (such as the end of an introductory period or a late payment), the June 2007 Proposal would have required creditors to disclose how existing balances would be affected by the new rate. The change was intended to improve consumer understanding as to whether a penalty rate triggered by, for example, a late payment would apply not only to outstanding balances for purchases but to existing balances that were transferred at a low promotional rate. If the increase in rate is due to an increased margin, proposed comment 6(b)(2)(iii)-2 would require creditors to disclose the increase; the highest margin can be stated if more than one might apply.

Comment 6(b)(4)(iii)-1 (proposed as comment 6(b)(2)(iii)-1) is adopted with revisions consistent with the rule adopted under § 226.6(b)(2)(i)(B), which permits but does not require creditors to disclose temporary initial rates in the account-opening summary table. The effect of making the disclosure permissive is that creditors may disclose initial rates at any time before those rates are applied. However, the Board believes creditors will continue to disclose initial rates as part of the account agreement for contract and other reasons and to comply with the general requirement to disclose charges imposed as part of the plan before the charge is imposed.

Balances to which rates apply. The June 2007 Proposal would have required creditors to inform consumers whether any new rate would apply to balances outstanding at the time of the rate change. In May 2008, the Board and other federal banking agencies proposed rules to prohibit the application of a penalty rate to outstanding balances, with some exceptions. Elsewhere in today's **Federal Register**, the Board and other federal banking agencies are adopting the rule, with some revisions. To conform the requirements of § 226.6 to the rules addressing the application of a penalty rate to outstanding balances, creditors are required under § 226.6(b)(4)(iii)(D) and (b)(4)(iii)(E) to inform 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. Comment 6(b)(4)(iii)-3 is conformed accordingly.

Credit privileges permanently terminated. Under current rules, comment 6(a)(2)-11 provides that creditors need not disclose increased rates that may apply if credit privileges are permanently terminated. That rule was retained in the June 2007 Proposal, but was moved to § 226.6(b)(4)(ii)(C) and comment 6(b)(2)(iii)-2.iii., to be consistent with § 226.5a(b)(1)(iv) in the June 2007 Proposal. In May 2008, the Board proposed to eliminate that exception; accordingly, references to increased rates upon permanently terminated credit privileges in paragraph iii. to comment 6(b)(2)(iii)-2 would have been removed.

For the reasons stated in the section-by-section analysis to § 226.5a(b)(1), the Board is eliminating the exception: creditors that increase rates when credit privileges are permanently terminated must disclose that increased rate in the account-opening table.

6(b)(5) Additional Disclosures for Open-end (not Home-secured) Plans

6(b)(5)(i) Voluntary Credit Insurance; Debt Cancellation or Suspension

As discussed in the section-by-section analysis to § 226.4, the Board is adopting revisions to the requirements to exclude charges for voluntary credit insurance or debt cancellation or debt suspension coverage from the finance charge. See § 226.4(d). Creditors must provide information about the voluntary nature and cost of the credit insurance or debt cancellation or suspension product, and about the nature of coverage for debt suspension products. Because creditors must obtain the consumer's affirmative request for the product as a part of the disclosure requirements, the Board expects the disclosures required under § 226.4(d) will be provided at the time the product is offered to the consumer.

In June 2007, the Board proposed § 226.6(b)(3) to require creditors to provide the disclosures required under § 226.4(d) to exclude voluntary credit insurance or debt cancellation or debt suspension coverage from the finance charge. One commenter asked the Board to clarify that the disclosures are required to be provided only to those consumers that purchase the product and not to all consumers to whom the product was made available.

Section 226.6(b)(5)(i) (proposed as § 226.6(b)(3)) is adopted as proposed, with technical revisions for clarity in response to commenters' concerns. Comment 6(b)(5)(i)-1 is added to provide that creditors comply with § 226.6(b)(5)(i) if they provide disclosures required to exclude the cost of voluntary credit insurance or debt cancellation or debt suspension coverage from the finance charge in accordance with § 226.4(d). For example, if the § 226.4(d) disclosures are given at application, creditors need not repeat those disclosures when providing other disclosures required to be given at account opening.

6(b)(5)(ii) Security Interests

Regulatory text regarding the disclosure of security interests (currently at § 226.6(c) and proposed at § 226.6(c)(1)) is retained without change. Comments to § 226.6(b)(5)(ii) (currently at § 226.6(c) and proposed as § 226.6(c)(1)) are revised for clarity, without any substantive change.

6(b)(5)(iii) Statement of Billing Rights

Creditors offering open-end plans must provide information to consumers at account opening about consumers' billing rights under TILA, in the form prescribed by the Board. 15 U.S.C. 1637(a)(7). This requirement is implemented in the Board's Model Form G-3. In June 2007, the Board revised Model Form G-3 to improve its readability, proposed as Model Form G-3(A). The proposed revisions were not based on consumer testing, although design techniques and changes in terminology were used to facilitate improved consumer understanding of TILA's billing rights. Under the June 2007 Proposal, creditors offering HELOCs subject to § 226.5b could continue to use current Model Form G-3 or G-3(A), at the creditor's option.

Model Form G-3 is retained and Model Form G-3(A) is adopted, with some revisions. As discussed in the section-by-section analysis to §§ 226.12(b) and 226.13(b). the Board clarified that creditors may choose to permit a consumer, at the consumer's option, to communicate with the creditor electronically when notifying the creditor about possible unauthorized transactions or other billing disputes. The use of electronic communication in these circumstances applies to all open-end credit plans; thus, additional text that provides instructions for a consumer, at the consumer's option, to communicate with the creditor electronically has been added to Model Forms G-3 and G-3(A). In addition, technical changes have also been made to Model Form G-3(A) for clarity without intended substantive change, in response to comments received.

Technical revisions. The final rule adopts several technical revisions, as proposed in the June 2007 Proposal. The section is retitled "Account-opening disclosures" from the current title "Initial disclosures" to reflect more accurately the timing of the disclosures, as proposed. In today's marketplace, there are few open-end products for which consumers receive the disclosures required under § 226.6 as their "initial" Truth in Lending disclosure. See §§ 226.5a and 226.5b. The substance of footnotes 11 and 12 is moved to the regulation; the substance of footnote 13 is moved to the commentary. (See redesignation table below.)

In other technical revisions, as proposed, comments 6-1 and 6-2 are deleted. The substance of comment 6-1, which requires consistent terminology, is discussed more generally in § 226.5(a)(2). Comment 6-2 addresses certain open-end plans involving more than one creditor, and is deleted as obsolete. See section-by-section analysis to § 226.5a(f).

Section 226.7 Periodic Statement

TILA Section 127(b), implemented in § 226.7, identifies information about an open-end account that must be disclosed when a creditor is required to provide periodic statements. 15 U.S.C. 1637(b). For a discussion about periodic statement disclosure rules and format requirements, see the section-by-section analysis to § 226.7(a) for HELOCs subject to § 226.5b, and § 226.7(b) for open-end (not home-secured) plans.

7(a) Rules Affecting Home-equity Plans

Periodic statement disclosure and format requirements for HELOCs subject to § 226.5b were unaffected by the June 2007 Proposal, consistent with the Board's plan to review Regulation Z's disclosure rules for home-secured credit in a future rulemaking. To facilitate compliance, the substantively unrevised requirements applicable only to HELOCs are grouped together in § 226.7(a). (See redesignation table below.)

For HELOCs, creditors are required to comply with the disclosure requirements under § 226.7(a)(1) through (a)(10). Except for the addition of an exception that HELOC creditors may utilize at their option (further discussed below), these rules and accompanying commentary are substantively unchanged from current § 226.7(a) through (k) and the June 2007 Proposal. As proposed, § 226.7(a) also provides that at their option, creditors offering HELOCs may comply with the requirements of § 226.7(b). The Board understands that some creditors may use a single processing system to generate periodic statements for all open-end products they offer, including HELOCs. These creditors would have the option to generate statements according to a single set of rules.

In technical revisions, the substance of footnotes referenced in current § 226.7(d) is moved to § 226.7(a)(4) and comment 7(a)(4)-6, as proposed.

7(a)(4) Periodic Rates

TILA Section 127(b)(5) and current § 226.7(d) require creditors to disclose all periodic rates that may be used to compute the finance charge, and an APR that corresponds to the periodic rate multiplied by the number of periods in a year.

15 U.S.C. 1637(b)(5); § 226.14(b). Currently, comment 7(d)-1 interprets the requirement to disclose all periodic rates that "may be used" to mean "whether or not [the rate] is applied during the billing cycle." In June 2007, the Board proposed for open-end (not home-secured) plans a limited exception to TILA Section 127(b)(5) regarding promotional rates that were offered but not actually applied, to effectuate the purposes of TILA to require disclosures that are meaningful and to facilitate compliance.

For the reasons discussed in the section-by-section analysis to § 226.7(b)(4)(ii), under the June 2007 Proposal, creditors would have been required to disclose promotional rates only if the rate actually applied during the billing period. The Board noted that interpreting TILA to require the disclosure of all promotional rates would be operationally burdensome for creditors and result in information overload for consumers. The proposed exception did not apply to HELOCs covered by § 226.5b, and the Board requested comment on whether the class of transactions under the proposed exceptions should apply more broadly to include HELOCs subject to § 226.5b, and if so, why.

Commenters generally supported the proposal under § 226.7(b)(4). Although few commenters addressed the issue of whether the exception should also apply to HELOCs subject to § 226.5b, these commenters favored extending the exception to HELOCs because concerns about information overload on consumers and operational burdens on creditors apply equally in the context of HELOC disclosures. The Board is adopting the exception as it applies to open-end (not home-secured) plans as proposed, with minor changes to the description of the time period to which the promotional rate applies. For the reasons stated above and in the section-by-section analysis to § 226.7(b)(4), the Board also extends the exception to HELOCs subject to § 226.5b. Section 226.7(a)(4) and comment 7(a)(4)-1 are revised accordingly. Extending this exception to HELOCs does not require creditors offering HELOCs to revise any forms or procedures. Therefore, no additional burden is associated with revising the rules governing HELOC disclosures. Comment 7(a)(4)-5, which provides guidance when the corresponding APR and effective APR are the same, is revised to be consistent with a creditor's option, rather than a requirement, to disclose an effective APR, as discussed below.

7(a)(7) Annual Percentage Rate

The June 2007 Proposal included two alternative approaches to address concerns about the effective APR. The section-by-section analysis to § 226.7(b) discusses in detail the proposed approaches and the reasons for the Board's determination to adopt the proposed approach that eliminates the requirement to disclose the effective APR. Thus, under this approach, the effective APR is optional for creditors offering HELOCs. Section 226.7(a) expressly provides, however, that a HELOC creditor must provide disclosures of fee and interest in accordance with § 226.7(b)(6) if the creditor chooses not to disclose an effective APR. Comment 7(a)(7)-1 is revised to provide that creditors stating an annualized rate on periodic statements in addition to the corresponding APR required by § 226.7(a)(4) must calculate that additional rate in accordance with § 226.14(c), to avoid the disclosure of rates that may be calculated in different ways.

Currently and under the June 2007 Proposal, HELOC creditors disclosing the effective APR must label it as "annual percentage rate." The final rule adds comment 7(a)(7)-2 to provide HELOC creditors with additional guidance in labeling the APR as calculated under § 226.14(c) and the periodic rate expressed as an annualized rate. HELOC creditors that choose to disclose an effective APR may continue to label the figure as "annual percentage rate," and label the periodic rate expressed as an annualized rate as the "corresponding APR," "nominal APR," or a similar term, as is currently the practice. Comment 7(a)(7)-2 further provides that it is permissible to label the APR calculated under § 226.14(c) as the "effective APR" or a similar term. For those creditors, the periodic rate expressed as an annualized rate could be labeled "annual percentage rate," consistent with the requirement under § 226.7(b)(4). If the two rates are different values, creditors must label the rates differently to comply with the regulation's standard to provide clear disclosures.

7(b) Rules Affecting Open-end (not Home-secured) Plans

The June 2007 Proposal contained a number of significant revisions to periodic statement disclosures for open-end (not home-secured) plans, grouped together in proposed § 226.7(b). The Board proposed for comment two alternative approaches to disclose the effective APR: The first approach attempted to improve consumer understanding of this rate and reduce creditor uncertainty about its computation. The second approach eliminated the requirement altogether. In addition, the Board proposed to add new paragraphs § 226.7(b)(11) and (b)(12) to implement disclosures regarding late-payment fees and the effects of making minimum payments in Section 1305(a) and 1301(a) of the Bankruptcy Act. TILA Section 127(b)(11) and (12); 15 U.S.C. 1637(b)(11) and (12).

Effective annual percentage rate.

Background on effective APR. TILA Section 127(b)(6) requires disclosure of an APR calculated as the quotient of the total finance charge for the period to which the charge relates divided by the amount on which the finance charge is based, multiplied by the number of periods in the year. 15 U.S.C. 1637(b)(6). This rate has come to be known as the "historical APR" or "effective APR." TILA Section 127(b)(6) exempts a creditor from disclosing an effective APR when the total finance charge does not exceed 50 cents for a monthly or longer billing cycle, or the pro rata share of 50 cents for a shorter cycle. In such a case, TILA Section 127(b)(5) requires the creditor to disclose only the periodic rate and the annualized rate that corresponds to the periodic rate (the "corresponding APR"). 15 U.S.C. 1637(b)(5). When the finance charge exceeds 50 cents, the act requires creditors to disclose the periodic rate but not the corresponding APR. Since 1970, however, Regulation Z has required disclosure of the corresponding APR in all cases. See current § 226.7(d). Current § 226.7(g) implements TILA Section 127(b)(6)'s requirement to disclose an effective APR.

The effective APR and corresponding APR for any given plan feature are the same when the finance charge in a period arises only from application of the periodic rate to the applicable balance (the balance calculated according to the creditor's chosen method, such as average daily balance method). When the two APRs are the same, Regulation Z requires that the APR be stated just once. The effective and corresponding APRs diverge when the finance charge in a period arises (at least in part) from a charge not determined by application of a periodic rate and the total finance charge exceeds 50 cents. When they diverge, Regulation Z currently requires that both be stated.

The statutory requirement of an effective APR is intended to provide the consumer with an annual rate that reflects the total finance charge, including both the finance charge due to application of a periodic rate (interest) and finance charges that take the form of fees. This rate, like other APRs required by TILA, presumably was intended to provide consumers information about the cost of credit that would help consumers compare credit costs and make informed credit decisions and, more broadly, strengthen competition in the market for consumer credit. 15 U.S.C. 1601(a). There is, however, a longstanding controversy about the extent to which the requirement to disclose an effective APR advances TILA's purposes or, as some argue, undermines them.

As discussed in greater detail in the Board's June 2007 Proposal, industry and consumer groups disagree as to whether the effective APR conveys meaningful information. Creditors argue that the cost of a transaction is rarely, if ever, as high as the effective APR makes it appear, and that this tendency of the rate to exaggerate the cost of credit makes this APR misleading. Consumer groups contend that the information the rate provides about the cost of credit, even if limited, is meaningful. The effective APR for a specific transaction or set of transactions in a given cycle may provide the consumer a rough indication that the cost of repeating such transactions is high in some sense or, at least, higher than the corresponding APR alone conveys. Consumer advocates and industry representatives also disagree as to whether the effective APR promotes credit shopping. Industry and consumer group representatives find some common ground in their observations that consumers do not understand the effective APR well.

Industry representatives also claim that the effective APR imposes direct costs on creditors that consumers pay indirectly. They represent that the effective APR raises compliance costs when they introduce new services, including costs of: (1) conducting legal analysis of Regulation Z to determine whether the fee for the new service is a finance charge and must be included in the effective APR; (2) reprogramming software if the fee must be included; and (3) responding to telephone inquiries from confused customers and accommodating them (e.g., with fee waivers or rebates).

Consumer research conducted for the Board prior to the June 2007 Proposal. As discussed in the June 2007 Proposal, the Board undertook research through a consultant on consumer awareness and understanding of the effective APR, and on whether changes to the presentation of the disclosure could increase awareness and understanding. The consultant used one-on-one cognitive interviews with consumers; consumers were provided mock disclosures of periodic statements that included effective APRs and asked questions about the disclosure designed to elicit their understanding of the rate. In the first round the statements were copied from examples in the market. For subsequent testing rounds, the language and design of the statements were modified to better convey how the effective APR differs from the corresponding APR. Several different approaches and many variations on those approaches were tested.

In most of the rounds, a minority of participants correctly explained that the effective APR for cash advances was higher than the corresponding APR for cash advances because a cash advance fee had been imposed. A smaller minority correctly explained that the effective APR for purchases was the same as the corresponding APR for purchases because no transaction fee had been imposed on purchases. A majority offered incorrect explanations or did not offer any explanation. Results changed at the final testing site, however, when a majority of participants evidenced an understanding that the effective APR for cash advances would be elevated for the statement period when a cash advance fee was imposed during that period, that the effective APR would not be as elevated for periods where a cash advance balance remained outstanding but no fee had been imposed, and that the effective APR for purchases was the same as the corresponding APR for purchases because no transaction fee had been imposed on purchases.

The form in the final round of testing prior to the June 2007 Proposal labeled the rate “Fee-Inclusive APR” and placed it in a table separate from the corresponding APR. The “Fee-Inclusive APR” table included the amount of interest and the amount of transaction fees. An adjacent sentence stated that the “Fee-Inclusive APR” represented the cost of transaction fees as well as interest. Similar approaches had been tried in some of the earlier rounds, except that the effective APR had been labeled “Effective APR.”

<u>The Board’s proposed two alternative approaches</u>. After considering the concerns and issues raised by industry and consumer groups about the effective APR, as well as the results of the consumer testing, the Board proposed in June 2007 two alternative approaches for addressing the effective APR. The first approach attempted to improve consumer understanding of this rate and reduce creditor uncertainty about its computation. The second approach proposed to eliminate the requirement to disclose the effective APR.

1. <u>First alternative proposal</u>. Under the first alternative, the Board proposed to impose uniform terminology and formatting on disclosure of the effective APR and the fees included in its computation. <u>See</u> proposed § 226.7(b)(6)(iv) and (b)(7)(i). This proposal was based largely on a form developed through several rounds of one-on-one interviews with consumers. The Board also proposed under this alternative to revise § 226.14, which governs computation of the effective APR, in an effort to increase certainty about which fees the rate must include.

Under proposed § 226.7(b)(7)(i) and Sample G-18(B), creditors would have disclosed an effective APR for each feature, such as purchases and cash advances, in a table with the heading “Fee-Inclusive APR.” Creditors would also have indicated that the Fee-Inclusive APRs are “APRs that you paid this period when transactions or fixed fees are taken into account as well as interest.” A composite effective APR for two or more features would no longer have been permitted, as it is more difficult to explain to consumers. In addition to the effective APR(s) for each feature, the table would have included, by feature, the total of interest, labeled as “interest charges,” and the total of the fees included in the effective APR, labeled as “transaction and fixed charges.” To facilitate understanding, proposed § 226.7(b)(6)(iii) would have required creditors to label the specific fees used to calculate the effective APR either as “transaction” or “fixed” fees, depending on whether the fee relates to a specific transaction. Such fees would also have been disclosed in the list of transactions. If the only finance charges in a billing cycle are interest charges, the corresponding and effective APRs are identical. In those cases, creditors would have disclosed only the corresponding APRs and would not have been required to label fees as “transaction” or “fixed” fees since there would be no fees that are finance charges in such cases. These requirements would have been illustrated in forms under G-18 in Appendix G to part 226, and creditors would have been required to use the model form or a substantially similar form.

The proposal also sought to simplify computation of the effective APR, both to increase consumer understanding of the disclosure and facilitate creditor compliance.

Proposed § 226.14(e) would have included a specific and exclusive list of finance charges that would be included in calculating the effective APR.[18]

2. Second alternative proposal. Under the second alternative proposal, disclosure of the effective APR would no longer have been required. The Board proposed this approach 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. 15 U.S.C. 1601(a), 1604(a). Section 105(f) authorizes the Board to exempt any class of transactions (with an exception not relevant here) 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. 15 U.S.C. 1604(f)(1).

Under the second alternative proposal, disclosure of an effective APR would have been optional for creditors offering HELOCs, as discussed above in the section-by-section analysis to § 226.7(a)(7). For creditors offering open-end (not home-secured) plans, the regulation would have included no effective APR provision, and § 226.7(b)(7) would have been reserved.

Comments on the proposal. Many industry commenters supported the Board's second alternative proposal to eliminate the requirement to disclose the effective APR. Commenters supporting this alternative generally echoed the reasons given by the Board for this alternative in the June 2007 Proposal. For example, they contended that the

---

[18] Under the statute, the numerator of the quotient used to determine the historical APR is the total finance charge. See TILA Section 107(a)(2), 15 U.S.C. 1606(a)(2). The Board has authority to make exceptions and adjustments to this calculation method to serve TILA's purposes and facilitate compliance. See TILA Section 105(a), 15 U.S.C. 1604(a). The Board has used this authority before to exclude certain kinds of finance charges from the effective APR. See § 226.14(c)(2) and (c)(3).

effective APR cannot be used for shopping purposes because it is backward-looking and only purports to represent the cost of credit for a particular cycle; the effective APR confuses and misleads consumers; and the effective APR requirement imposes compliance costs and risks on creditors (for example, cost of legal analysis to determine whether new fees must be included in the effective APR, litigation risk, and costs of responding to inquiries from confused consumers).

Another argument commenters made in support of eliminating the effective APR was that the disclosure would be unnecessary, in light of the Board's proposal for disclosure of interest and fees totaled by period and year to date (see the section-by-section analysis to § 226.7(b)(6)). Some commenters also indicated that retaining the effective APR, in combination with the proposal to include all transaction fees in the finance charge, might result in a creditor violating restrictions on interest rates. Some commenters contended that the Board's proposal to rename the effective APR the "Fee-Inclusive APR" would not solve the problems of consumer misunderstanding and might in fact exacerbate such problems, although one industry commenter stated that if the Board decided to retain the effective APR requirement (which this commenter did not favor), the term "Fee-Inclusive APR" might represent an improvement.

Industry commenters also expressed concern about the Board's proposal to specify precisely the fees that are to be included in the effective APR calculation (in proposed § 226.14(e), as discussed above). One commenter said that if the effective APR requirement were to be retained, the Board would need to better clarify in § 226.14(e) which fees must be included. Another commenter stated that the proposed approach would not solve the problem of creditor uncertainty about which fees are to be included in the effective APR, because new types of fees will arise and create further uncertainty.

Other commenters, including consumer groups and government agencies, supported the Board's first alternative proposal to retain the effective APR requirement. Commenters supporting this alternative believe that consumers need the effective APR in order to be able to properly evaluate and compare costs of card programs; commenters also contended that if the effective APR were eliminated, creditors could impose additional fees that would escape effective disclosure. Many of these commenters urged not only that the effective APR requirement should be retained, but in addition that all fees, or at least more fees than under the current regulation (for example, late-payment fees and over-the-limit fees) should be included in its calculation.

Some commenters noted that even if the effective APR were retained, if the proposed approach (in proposed § 226.14(e)) of specifying the fees to be included in the effective APR were followed, creditors could introduce new fees that might qualify as finance charges, but might not be included in the effective APR. One commenter supporting retention suggested that the Board try further consumer testing of an improved disclosure format for the effective APR, but that if the testing showed that consumers still did not understand the effective APR, then it should be eliminated.

Consumer group commenters also expressed concern about the proposal to require disclosure of separate effective APRs for each feature on a credit card account. Commenters stated that such an approach would understate the true cost of credit, and would "dilute" the effect of multiple fees, because the fees would be shared among several different APRs. One creditor commenter also expressed concern about this proposal, stating that it would increase programming costs.

Additional consumer research. In March 2008, and again after the May 2008 Proposal, the Board conducted further consumer research using one-on-one interviews in the same manner as in the consumer research prior to the June 2007 Proposal, discussed above. Three rounds of testing were conducted. A majority of participants in all rounds did not offer a correct explanation of the effective APR; instead, they offered a variety of incorrect explanations, including that the effective APR represented: the interest rate paid on fee amounts; the interest rate if the consumer paid late (the penalty rate); the APR after the introductory period ends; or the year-to-date interest charges expressed as a percentage. Two different labels were used for the effective APR in the statements shown to participants: the “Fee-Inclusive APR” and the “APR including Interest and Fees”. The label that was used did not have a noticeable effect on participant comprehension.

In addition, in September 2008 the Board conducted additional consumer research using quantitative methods for the purpose of validating the qualitative research (one-on-one interviews) conducted previously. The quantitative consumer research involved surveys of 1,022 consumers at shopping malls in seven locations around the country. Two research questions were investigated; the first was designed to determine what percentage of consumers understand the significance of the effective APR. The interviewer pointed out the effective APR disclosure for a month in which a cash advance occurred, triggering a transaction fee and thus making the effective APR higher than the nominal APR (interest rate). The interviewer then asked what the effective APR would be in the next month, in which the cash advance balance was not paid off but no new cash advances occurred. A very small percentage of respondents gave the correct answer (that the effective APR would be the same as the nominal APR). Some consumers stated that the effective APR would be the same in the next month as in the current month, others indicated that they did not know, and the remainder gave other incorrect answers.

The second research question was designed to determine whether the disclosure of the effective APR adversely affects consumers' ability to correctly identify the current nominal APR on cash advances. Some consumers were shown a periodic statement disclosing an effective APR, while other consumers were shown a statement without an effective APR disclosure. Consumers were then asked to identify the nominal APR on cash advances. A greater percentage of consumers who were shown a statement without an effective APR than of those shown a statement with an effective APR correctly identified the rate on cash advances. This finding was statistically significant, as discussed in the December 2008 Macro Report on Quantitative Testing. Some of the consumers who did not correctly identify the rate on cash advances instead identified the effective APR as that rate.

The quantitative consumer research conducted by the Board validated the results of the qualitative testing conducted both before and after the June 2007 proposal; it indicates that most consumers do not understand the effective APR, and that for some consumers the effective APR is confusing and detracts from the effectiveness of other disclosures.

Final rule. After considering the comments on the proposed alternatives and the results of the consumer testing, the Board has determined that it is appropriate to eliminate the requirement to disclose an effective APR. The Board takes this action pursuant to its exception and exemption authorities under TILA Section 105.

Section 105(f) directs the Board to make an exemption determination in light of specific factors. 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.

The Board has considered each of these factors carefully, and based on that review, has concluded that it has satisfied the criteria for the exemption determination. Consumer testing conducted prior to the June 2007 Proposal, in March 2008, and after the May 2008 Proposal indicates that consumers find the current disclosure of an APR that combines rates and fees to be confusing. The June 2007 Proposal would have required disclosure of the nominal interest rate and fees in a manner that is more readily understandable and comparable across institutions. The Board believes that this approach can better inform consumers and further the goals of consumer protection and the informed use of credit for all types of open-end credit.

The Board also considered whether there were potentially competing considerations that would suggest retention of the requirement to disclose an effective

APR. First, the Board considered the extent to which "sticker shock" from the effective APR benefits consumers, even if the disclosure does not enable consumers to meaningfully compare costs from month to month or for different products. A second consideration is whether the effective APR may be a hedge against fee-intensive pricing by creditors, and if so, the extent to which it promotes transparency. On balance, however, the Board believes that the benefits of eliminating the requirement to disclose the effective APR outweigh these considerations.

The consumer testing conducted for the Board supports this determination. With the exception of one round of testing conducted prior to the June 2007 Proposal, the overall results of the testing demonstrated that most consumers do not correctly understand the effective APR. Some consumers in the testing offered no explanation of the difference between the corresponding and effective APR, and others appeared to have an incorrect understanding. The results were similar in the consumer testing conducted in March 2008 and in the qualitative and quantitative testing conducted after the May 2008 proposal; in all rounds of the testing, a majority of participants did not offer a correct explanation of the effective APR.

Even if some consumers have some understanding of the effective APR, the Board believes sound reasons support eliminating the requirement for its disclosure. Disclosure of the effective APR on periodic statements does not significantly assist consumers in credit shopping, because the effective APR disclosed on a statement on one credit card account cannot be compared to the nominal APR disclosed on a solicitation or application for another credit card account. In addition, even within the same account, the effective APR for a given cycle is unlikely to accurately indicate the cost of credit in a future cycle, because if any of several factors (such as the timing of transactions and payments and the amount carried over from the prior cycle) is different in the future cycle, the effective APR will be different even if the amounts of the transaction and the fee are the same in both cycles. As to contentions that the effective APR for a particular billing cycle provides the consumer a rough indication that the cost of repeating transactions triggering transaction fees is high in some sense, the Board believes the requirements adopted in the final rule to disclose interest and fee totals for the cycle and year-to-date will serve the same purpose. In addition, the interest and fee total disclosure requirements should address concerns that elimination of the effective APR would remove disincentives for creditors to introduce new fees.

The Board is adopting its second alternative proposal under which disclosure of an effective APR is not required. Under the second alternative proposal, § 226.7(b)(7) would have been reserved. In the final rule, proposed § 226.7(b)(14) (change-in-terms and increased penalty rate summary) is renumbered as § 226.7(b)(7). In addition, Sample G-18(B), as proposed in June 2007 as part of the first alternative proposal, is not adopted.

<u>Format requirements for periodic statements</u>. TILA and Regulation Z currently contain few formatting requirements for periodic statement disclosures. The Board proposed several proximity requirements in June 2007, based on consumer testing that showed targeted proximity requirements on periodic statements tended to improve the effectiveness of disclosures for consumers. Under the June 2007 Proposal, interest and fees imposed as part of the plan during the statement period would have been disclosed in a simpler manner and in a consistent location. Transactions would have been grouped by type, and fee and interest charge totals would have been required to be located with the

transactions. If an advance notice of changed rates or terms is provided on or with a periodic statement, the June 2007 Proposal would have required a summary of the change beginning on the front of the first page of the periodic statement. The proposal would have linked by proximity the payment due date with the late payment fee and penalty rate that could be triggered by an untimely payment. The minimum payment amount also would have been linked by proximity with the new warning required by the Bankruptcy Act about the effects of making only minimum payments on the account. Grouping these disclosures together was intended to enhance consumers' informed use of credit.

Model clauses were proposed to illustrate the revisions, to facilitate compliance. The Board published for the first time proposed forms illustrating front sides of a periodic statement, as a compliance aid. The Board published Forms G-18(G) and G-18(H) to illustrate how a periodic statement might be designed to comply with the requirements of § 226.7. Proposed Forms G-18(G) and G-18(H) would have contained some additional disclosures that are not required by Regulation Z. The forms also would have presented information in some additional formats that are not required by Regulation Z.

Some consumer groups applauded the Board's prescriptive approach for periodic statement disclosures, to give effect to the Board's findings about presenting information in a manner that makes it easier for consumers to understand. A federal banking agency noted that standardized periodic statement disclosures may reduce consumer confusion that may result from variations among creditors.

Most industry commenters strongly opposed the Board's approach as being overly prescriptive and costly to implement. They strongly urged the Board to permit additional flexibility, or simply to retain the current requirement to provide "clear and conspicuous" disclosures. For example, these commenters asked the Board to eliminate any requirement that dictated the order or proximity of disclosures, along with any requirement that creditors' disclosures be substantially similar to model forms or samples. Although the Board's testing suggested certain formatting may be helpful to consumers, many commenters believe other formats might be as helpful. They stated that not all consumers place the same value on a certain piece of information, and creditors should be free to tailor periodic statements to the needs of their customers. Further, although participants in the Board's consumer testing may have indicated they preferred one format over another, commenters believe consumers are not confused by other formats, and the cost to reformat paper-based and electronic statements is not justified by the possible benefits. For example, commenters said the proposed requirements will require lengthier periodic statements, which is an additional ongoing expense independent of the significant one-time cost to redesign statements.

The final rule retains many of the formatting changes the Board proposed. In response to further consumer testing results and comments, however, the Board is providing flexibility to creditors where the changes proposed by the Board have not demonstrated consumer benefit sufficient to justify the expense to creditors of reformatting the periodic statement. For example, while the Board is adopting the proposal to group interest and fees, the Board is not adopting the requirement to group transactions (including credits) by transaction type. See the section-by-section analysis to § 226.7(b)(2), (b)(3), and (b)(6) below. Furthermore, if an advance notice of a change in rates or terms is provided on or with a periodic statement, the final rule requires that a summary of the change appear on the front of the periodic statement, but unlike the proposal, the summary is not required to begin on the front of the first page of the statement. See the section-by-section analysis to § 226.7(b)(7). Moreover, proximity requirements for certain information in the periodic statement have been retained, but the information does not need to be presented substantially similar to the Board's model forms. See the section-by-section analysis to § 226.7(b)(13).

Deferred interest plans. Current comment 7-3 provides guidance on various periodic statement disclosures for deferred-payment transactions, such as when a consumer may avoid interest charges if a purchase balance is paid in full by a certain date. The substance of comment 7-3, revised to conform to other proposed revisions in § 226.7(b), was proposed in June 2007 as comment 7(b)-1, which applies to open-end (not home-secured) plans. The comment permits, but does not require, creditors to disclose during the promotional period information about accruing interest, balances, interest rates, and the date in a future cycle when the balance must be paid in full to avoid interest.

Some industry commenters asked the Board to provide additional guidance about how and where this optional information may be disclosed if the Board adopts proposed formatting requirements for periodic statements. Some consumer commenters urged the Board to require creditors to disclose on each periodic statement the date when any promotional offer ends.

Comment 7(b)-1 is adopted as proposed, with technical revisions for clarity without any intended substantive change. For example, the transactions described in the comment are now referred to as "deferred interest" rather than "deferred-payment." The comment also has been revised to note that it does not apply to card issuers that are subject to 12 CFR § 227.24 or similar law which does not permit the assessment of deferred interest.

The Board believes the formatting requirements for periodic statements do not interfere with creditors' ability to provide information about deferred interest transactions or other promotions. Comment 7(b)-1, retained as proposed, clarifies that creditors are permitted, but not required, to disclose on each periodic statement the date in a future cycle when the balance on the deferred interest transaction must be paid in full to avoid interest charges. Similarly, subject to the requirement to provide clear and conspicuous disclosures, creditors may, but are not required to, disclose when promotional offers end. The final rule does not require creditors to disclose on each periodic statement the date when any promotional offer ends. The Board believes that many creditors currently provide such information prior to the end of the promotional period.

7(b)(2) Identification of Transactions

Under the June 2007 Proposal, § 226.7(b)(2) would have required creditors to identify transactions in accordance with rules set forth in § 226.8. This provision implements TILA Section 127(b)(2), currently at § 226.7(b). The section-by-section analysis to § 226.8 discusses the Board's proposal to revise and significantly simplify the rules for identifying transactions, which the Board adopts as proposed.

Under the June 2007 Proposal, the Board introduced a format requirement to group transactions by type such as purchases and cash advances, based on consumer testing conducted for the Board. In consumer testing conducted prior to the June 2007 Proposal, participants in the Board's consumer testing found such groupings helpful. Moreover, participants noticed fees and interest charges more readily when transactions were grouped together, the fees imposed for the statement period were not interspersed among the transactions, and the interest and fees were disclosed in proximity to the transactions. Proposed Sample G-18(A) would have illustrated the proposal.

Most industry commenters opposed the proposed requirement to group transactions by type. Overall, commenters opposing this aspect of the proposal believe the cost to implement the change exceeds the benefit consumers might receive. Some commenters reported that their customers or consumer focus groups preferred chronological listings. Similarly, some commenters believe consumer understanding is enhanced by a chronological listing that permits fees related to a transaction, such as foreign transaction fees, to appear immediately below the transaction. Other commenters were concerned that under the proposal, creditors would no longer be able to disclose transactions grouped by authorized user, or by other sub-accounts such as for promotions.

In quantitative consumer testing conducted in the fall of 2008, the Board tested consumers' ability to identify specific transactions and fees on periodic statements that grouped transactions by transaction type versus those that listed transactions in chronological order. After they were shown either a grouped periodic statement or a chronological periodic statement, consumer testing participants were asked to identify the dollar amount of the first cash advance in the statement period. In order to test the effect of grouping fees, participants also were asked to identify the number of fees charged during the statement period. While testing evidence showed that the grouped periodic statement performed better among participants with respect to both questions, the improved performance of the grouped periodic statement was more significant with regard to consumers' ability to identify fees.

Based on these testing results and comments the Board received on the proposal to require transactions to be grouped by transaction type on periodic statements, the final rule requires creditors to group fees and interest together into a separate category but permits flexibility in how transactions may be listed. The Board believes that it is especially important for consumers to be able to identify fees and interest in order to assess the overall cost of credit. As further discussed below in the section-by-section analysis to § 226.7(b)(6), because testing evidence suggests that consumers can more easily find fees when they are grouped together under a separate heading rather than when they are combined with a consumer's transactions in a chronological list, the Board is adopting the proposal that would require the grouping of fees and interest on the statement.

With respect to grouping of transactions, such as purchases and cash advances, the Board believes that the modest improvement in consumers' ability to identify specific transactions in a grouped periodic statement may not justify the high cost to many creditors of reformatting periodic statements and coding transactions in order to group transactions by type. Furthermore, providing flexibility in how transactions may be presented would allow creditors to disclose transactions grouped by authorized user or by other sub-accounts, which consumers may find useful. In addition, in consumer testing conducted for the Board prior to the fall of 2008, most consumers indicated that they already review the transactions on their periodic statements. The Board expects that consumers will continue to review their transactions, and that consumers generally are aware of the transactions in which they have engaged during the billing period.

Accordingly, the Board has withdrawn the requirement to group transactions by type in proposed § 226.7(b)(2). Comment 7(b)(2)-1 has been revised from the proposal to permit, but not require, creditors to group transactions by type. Therefore, creditors may list transactions chronologically, group transactions by type, or organize transactions in any other way that would be clear and conspicuous to consumers. However, consistent with § 226.7(b)(6), all fees and interest must be grouped together under a separate heading and may not be interspersed with transactions.

7(b)(3) Credits

Creditors are required to disclose any credits to the account during the billing cycle. Creditors typically disclose credits among other transactions. The Board did not propose substantive changes to the disclosure requirements for credits in June 2007. However, consistent with the format requirements proposed in § 226.7(b)(2), the June 2007 Proposal would have required credits and payments to be grouped together. Proposed Sample G-18(A) would have illustrated the proposal.

Few commenters directly addressed issues related to disclosing credits on periodic statements, although many industry commenters opposed format requirements to group transactions (thus, credits) by type rather than in a chronological listing. In response to a request for guidance on the issue, comment 7(b)(3)-1 is modified from the proposal to clarify that 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.

As discussed in the section-by-section analysis to § 226.7(b)(2) above, the Board is not requiring creditors to group transactions by type. For the reasons discussed in that section and in the section-by-section analysis to § 226.7(b)(6) below, the Board is only requiring creditors to group fees and interest into a separate category, while credits, like transactions, may be presented in any manner that is clear and conspicuous to consumers.

Combined deposit account and credit account statements. Currently, comment 7(c)-2 permits creditors to commingle credits related to extensions of credit and credits related to non-credit accounts, such as for a deposit account. In June 2007, the Board solicited comment on the need for alternatives to the proposed format requirements to segregate transactions and credits, such as when a depository institution provides on a single periodic statement account activity for a consumer's checking account and an overdraft line of credit.

As discussed above in the section-by-section analysis to § 226.7(b)(2) above, the Board is not requiring creditors to segregate transactions and credits. Therefore, formatting alternatives for combined deposit account and credit account statements are no longer necessary. Comment 7(b)(3)-3, as renumbered in the June 2007 Proposal, is revised for clarity and is adopted as proposed.

7(b)(4) Periodic Rates

Periodic rates. TILA Section 127(b)(5) and current § 226.7(d) require creditors to disclose all periodic rates that may be used to compute the finance charge, and an APR that corresponds to the periodic rate multiplied by the number of periods in a year. 15 U.S.C. 1637(b)(5); § 226.14(b). In the June 2007 Proposal, the Board proposed to eliminate, for open-end (not home-secured) plans, the requirement to disclose periodic rates on periodic statements.

Most industry commenters supported the proposal, believing that periodic rates are not important to consumers. Some consumer groups opposed eliminating the periodic rate as a disclosure requirement, stating that it is easier for consumers to check the calculation of their interest charges when the rate appears on the statement. One industry commenter asked the Board to clarify that the rule would not prohibit creditors from providing, at their option, the periodic rate close to the APR and balance to which the rates relate.

The final rule eliminates the requirement to disclose periodic rates on periodic statements, as proposed, pursuant to the Board's 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. 15 U.S.C. 1601(a), 1604(a). Section 105(f) authorizes the Board to exempt any class of transactions (with an exception not relevant here) 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.
15 U.S.C. 1604(f)(1). Section 105(f) directs the Board to make this determination in light of specific factors. 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.

The Board considered each of these factors carefully, and based on that review and the comments received, determined that the exemption is appropriate. In consumer testing conducted for the Board prior to the June 2007 Proposal, consumers indicated they do not use periodic rates to verify interest charges. Consistent with the Board's June 2007 Proposal not to allow periodic rates to be disclosed in the tabular summary on or with credit card applications and disclosures, requiring periodic rates to be disclosed on periodic statements may detract from more important information on the statement, and contribute to information overload. Eliminating periodic rates from the periodic statement has the potential to better inform consumers and further the goals of consumer protection and the informed use of credit for open-end (not home-secured) credit.

The Board notes that under the final rule, creditors may continue to disclose the periodic rate, so long as the additional information is presented in a way that is consistent with creditors' duty to provide required disclosures clearly and conspicuously. <u>See</u> comment app. G-10.

<u>Labeling APRs</u>. Currently creditors are provided with considerable flexibility in identifying the APR that corresponds to the periodic rate. Current comment 7(d)-4 permits labels such as "corresponding annual percentage rate," "nominal annual percentage rate," or "corresponding nominal annual percentage rate." The June 2007 Proposal would have required creditors offering open-end (not home-secured) plans to label the APR disclosed under proposed § 226.7(b)(4) as "annual percentage rate." The

proposal was intended to promote uniformity and to distinguish between this "interest only" APR and the effective APR that includes interest and fees, as proposed to be enhanced under one alternative in the June 2007 Proposal.

Commenters generally supported the proposal, and the labeling requirement is adopted as proposed. Forms G-18(F) and G-18(G) illustrate periodic statements that disclose an APR but no periodic rates.

Rates that "may be used." Currently, comment 7(d)-1 interprets the requirement to disclose all periodic rates that "may be used" to mean "whether or not [the rate] is applied during the cycle." For example, rates on cash advances must be disclosed on all periodic statements, even for billing periods with no cash advance activity or cash advance balances. The regulation and commentary do not clearly state whether promotional rates, such as those offered for using checks accessing credit card accounts, that "may be used" should be disclosed under current § 226.7(d) regardless of whether they are imposed during the period. See current comment 7(d)-2. The June 2007 Proposal included a limited exception to TILA Section 127(b)(5) to effectuate the purposes of TILA to require disclosures that are meaningful and to facilitate compliance.

Under § 226.7(b)(4)(ii) of the June 2007 Proposal, creditors would have been required to disclose promotional rates only if the rate actually applied during the billing period. For example, a card issuer may impose a 22 percent APR for cash advances but offer for a limited time a 1.99 percent promotional APR for advances obtained through the use of a check accessing a credit card account. Creditors are currently required to disclose, in this example, the 22 percent cash advance APR on periodic statements whether or not the consumer obtains a cash advance during the previous statement period.

The proposal clarified that creditors are not required to disclose the 1.99 percent promotional APR unless the consumer used the check during the statement period. In the June 2007 Proposal, the Board noted its belief that interpreting TILA to require the disclosure of all promotional rates would be operationally burdensome for creditors and result in information overload for consumers. The proposed exception did not apply to HELOCs covered by § 226.5b.

Industry and consumer group commenters generally supported the proposal that requires promotional rates to be disclosed only if the rate actually applied during the billing period. Some consumer groups urged the Board to go further and prohibit creditors from disclosing a promotional rate that has not actually been applied, to avoid possible consumer confusion over a multiplicity of rates. For the reasons stated in the June 2007 Proposal and discussed above, the Board is adopting § 226.7(b)(4)(ii) as proposed, with minor changes to the description of the rate and time period, consistent with § 226.16(g). See also section-by-section analysis to § 226.7(a)(4), which discusses extending the exception to HELOCs subject to § 226.5b.

Combining interest and other charges. Currently, creditors must disclose finance charges attributable to periodic rates. These costs are typically interest charges but may include other costs such as premiums for required credit insurance. If applied to the same balance, creditors may disclose each rate, or a combined rate. See current comment 7(d)-3. As discussed below, consumer testing for the Board conducted prior to the June 2007 Proposal indicated that participants appeared to understand credit costs in terms of "interest" and "fees," and the June 2007 Proposal would have required disclosures to distinguish between interest and fees. To the extent consumers associate periodic rates with “interest,” it seems unhelpful to consumers’ understanding to permit creditors to include periodic rate charges other than interest in the dollar cost disclosed. Thus, in the June 2007 Proposal guidance permitting periodic rates attributable to interest and other finance charges to be combined would have been eliminated for open-end (not home-secured) plans.

Few comments were received on this aspect of the proposal. Some consumer groups strongly opposed the proposal if the Board determined to eliminate the effective APR, as proposed under one alternative in the June 2007 Proposal. They believe that because the required credit insurance premium is calculated as a percentage of the outstanding balance, creditors could understate the percentage consumers must pay for carrying a balance, which would conceal the true cost of credit.

The final rule provides that creditors offering open-end (not home-secured) plans that impose finance charges attributable to periodic rates (other than interest) must disclose the amount in dollars, as a fee, as proposed. <u>See</u> section-by-section analysis to § 226.7(b)(6) below. Many fees associated with credit card accounts or other open-end plans are a percentage of the transaction or balance, such as balance transfer or cash advance fees. The Board believes that disclosing fees such as for credit insurance premiums as a separate dollar amount rather than as part of a percentage provides consistency and, based on the Board’s consumer testing, may be more helpful to many consumers.

In addition, a new comment 7(b)(4)-4 (proposed in June 2007 as comment 7(b)(4)-7) is added to provide guidance to creditors when a fee is imposed, remains unpaid, and interest accrues on the unpaid balance. The comment, adopted as proposed, provides that creditors disclosing fees in accordance with the format requirements of § 226.7(b)(6) need not separately disclose which periodic rate applies to the unpaid fee balance.

In technical revisions, the substance of footnotes referenced in § 226.7(d) is moved to the regulation and comment 7(b)(4)-5, as proposed.

7(b)(5) Balance on which Finance Charge is Computed

Creditors must disclose the amount of the balance to which a periodic rate was applied and an explanation of how the balance was determined. The Board provides model clauses creditors may use to explain common balance computation methods. 15 U.S.C. 1637(b)(7); current § 226.7(e); and Model Clauses G-1. The staff commentary to current § 226.7(e) interprets how creditors may comply with TILA in disclosing the "balance," which typically changes in amount throughout the cycle, on periodic statements.

Amount of balance. The June 2007 Proposal did not change how creditors are required to disclose the amount of the balance on which finance charges are computed. Proposed comment 7(b)(5)-4 would have permitted creditors, at their option, not to include an explanation of how the finance charge may be verified for creditors that use a daily balance method. Currently, creditors that use a daily balance method are permitted to disclose an average daily balance for the period, provided they explain that the amount of the finance charge can be verified by multiplying the average daily balance by the number of days in the statement period, and then applying the periodic rate. The Board proposed to retain the rule permitting creditors to disclose an average daily balance but would have eliminated the requirement to provide the explanation. Consumer testing conducted for the Board prior to the June 2007 Proposal suggested that the explanation may not be used by consumers as an aid to calculate their interest charges. Participants suggested that if they attempted without satisfaction to calculate balances and verify interest charges based on information on the periodic statement, they would call the creditor for assistance. Thus, the final rule adopts comment 7(b)(5)-4, as proposed, which permits creditors, at their option, not to include an explanation of how the finance charge may be verified for creditors that use a daily balance method.

The June 2007 Proposal would have required creditors to refer to the balance as "balances subject to interest rate," to complement proposed revisions intended to further consumers' understanding of interest charges, as distinguished from fees. The final rule adopts the required description as proposed. <u>See</u> section-by-section analysis to § 226.7(b)(6). Forms G-18(F) and 18(G) (proposed as Forms G-18(G) and G-18(H)) illustrate this format requirement.

<u>Explanation of balance computation method</u>. The June 2007 Proposal would have contained an alternative to providing an explanation of how the balance was determined. Under proposed § 226.7(b)(5), a creditor that uses a balance computation method identified in § 226.5a(g) would have two options. The creditor could: (1) provide an explanation, as the rule currently requires, or (2) identify the name of the balance computation method and provide a toll-free telephone number where consumers may obtain more information from the creditor about how the balance is computed and resulting interest charges are determined. If the creditor uses a balance computation method that is not identified in § 226.5a(g), the creditor would have been required to

provide a brief explanation of the method. The Board's proposal was guided by the following factors.

Calculating balances on open-end plans can be complex, and requires an understanding of how creditors allocate payments, assess fees, and record transactions as they occur during the cycle. Currently, neither TILA nor Regulation Z requires creditors to disclose on periodic statements all the information necessary to compute a balance, and requiring that level of detail appears not to be warranted. Although the Board's model clauses are intended to assist creditors in explaining common methods, consumers continue to find these explanations lengthy and complex. As stated earlier, consumer testing conducted prior to the June 2007 Proposal indicated that consumers call the creditor for assistance when they attempt without success to calculate balances and verify interest charges.

Providing the name of the balance computation method (or a brief explanation, if the name is not identified in § 226.5a(g)), along with a reference to where additional information may be obtained provides important information in a simplified way, and in a manner consistent with how consumers obtain further balance computation information.

Some consumer groups urged the Board to continue to require creditors to disclose the balance computation method on the periodic statement. They believe that the information is important for consumers that check creditors' interest calculations. Consumers, a federal banking agency and a member of Congress were among those who suggested banning a computation method commonly called "two-cycle." As an alternative, the agency suggested requiring a cautionary disclosure on periodic statement about the two-cycle balance computation method for those creditors that use the method.

Industry commenters generally favored the proposal, although one commenter would eliminate identifying the name of the balance computation method. Some commenters urged the Board to add "daily balance" method to § 226.5a(g), to enable creditors that use that balance computation method to take advantage of the alternative disclosure.

Some consumer groups further urged the Board to require creditors, when responding to a consumer who has called the creditor's toll-free number established pursuant to the proposed rules, to offer to mail consumers a document that provides a complete set of rules for calculating the balances and applying the periodic rate, and to post this information on creditors' Web sites. An industry commenter asked the Board to permit a creditor, in lieu of a reference to a toll-free telephone number, to reference the Board's Web site address that will be provided with the application and account-opening summary tables, or the creditor's Web site address, because a Web site can better provide accurate, clear, and consistent information about balance computation methods.

The Board is adopting §226.7(b)(5), as proposed for the reasons stated above. <u>See</u> <u>also</u> § 226.5a(g), which is revised to include the daily balance method as a common balance computation method. The Board is not requiring creditors also to refer to the creditor's Web site for an explanation of the balance computation method, or to mail written explanations upon consumers' request, to ease compliance. Consumers who do not understand the written or Web-based explanation will likely call the creditor in any event. However, a creditor could choose to disclose a reference to its Web site or provide a written explanation to consumers, at the creditor's option. Current comment 7(e)-6, which refers creditors to guidance in comment 6(a)(3)-1 about disclosing balance computation methods is deleted as unnecessary, as proposed. Elsewhere in today's **Federal Register**, the Board is adopting a rule that prohibits the two-cycle balance computation method as unfair for consumer credit card accounts. Therefore any cautionary disclosure is largely unnecessary.

7(b)(6) Charges Imposed

As discussed in the section-by-section analysis to § 226.6, the Board proposed in June 2007 to reform cost disclosure rules for open-end (not home-secured) plans, in part, to ensure that all charges assessed as part of an open-end (not home-secured) plan are disclosed before they are imposed and to simplify the rules for creditors to identify such charges. Consistent with the proposed revisions at account opening, the proposed revisions to cost disclosures on periodic statements were intended to simplify how creditors identify the dollar amount of charges imposed during the statement period.

Consumer testing conducted for the Board prior to the June 2007 Proposal indicated that most participants reviewing mock periodic statements could not correctly explain the term "finance charge." The revisions proposed in June 2007 were intended to conform labels of charges more closely to common understanding, "interest" and "fees." Format requirements were intended to help ensure that consumers notice charges imposed during the statement period.

Two alternatives were proposed: One addressed interest and fees in the context of an effective APR disclosure, the second assumed no effective APR is required to be disclosed.

Charges imposed as part of the plan. Proposed § 226.7(b)(6) would have required creditors to disclose the amount of any charge imposed as part of an open-end (not home-secured) plan, as stated in § 226.6(b)(3) (proposed as § 226.6(b)(1)). Guidance on which charges are deemed to be imposed as part of the plan is in § 226.6(b)(3) and accompanying commentary. Although coverage of charges was broader under the proposed standard of "charges imposed as part of the plan" than under current standards for finance charges and other charges, the Board stated its understanding that creditors have been disclosing on the statement all charges debited to the account regardless of whether they are now defined as "finance charges," "other charges," or charges that do not fall into either category. Accordingly, the Board did not expect the proposed change to affect significantly the disclosure of charges on the periodic statement.

<u>Interest charges and fees</u>. For creditors complying with the new cost disclosure requirements proposed in June 2007, the current requirement in § 226.7(f) to label finance charges as such would have been eliminated. <u>See</u> current § 226.7(f). Testing of this term with consumers conducted prior to the June 2007 Proposal found that it did not help them to understand charges. Instead, charges imposed as part of an open-end (not home-secured) plan would have been disclosed under the labels of "interest charges" or "fees." Consumer testing also supplied evidence that consumers may generally understand interest as the cost of borrowing money over time and view other costs—regardless of their characterization under TILA and Regulation Z—as fees (other than interest). The Board's June 2007 Proposal was consistent with this evidence.

TILA Section 127(b)(4) requires creditors to disclose on periodic statements the amount of any finance charge added to the account during the period, itemized to show amounts due to the application of periodic rates and the amount imposed as a fixed or minimum charge. 15 U.S.C. 1637(b)(4). This requirement is currently implemented in

§ 226.7(f), and creditors are given considerable flexibility regarding totaling or subtotaling finance charges attributable to periodic rates and other fees. See current § 226.7(f) and comments 7(f)-1, -2, and -3. To improve uniformity and promote the informed use of credit, § 226.7(b)(6)(ii) of the June 2007 Proposal would have required creditors to itemize finance charges attributable to interest, by type of transaction, labeled as such, and would have required creditors to disclose, for the statement period, a total interest charge, labeled as such. Although creditors are not currently required to itemize interest charges by transaction type, creditors often do so. For example, creditors may separately disclose the dollar interest costs associated with cash advance and purchase balances. Based on consumer testing conducted prior to the June 2007 Proposal, the Board stated its belief that consumers' ability to make informed decisions about the future use of their open-end plans—primarily credit card accounts—may be promoted by a simply-labeled breakdown of the current interest cost of carrying a purchase or cash advance balance. The breakdown enables consumers to better understand the cost for using each type of transaction, and uniformity among periodic statements allows consumers to compare one account with other open-end plans the consumer may have.

Because of the Board believes that consumers benefit when interest charges are itemized by transaction type, which many creditors do currently, the Board is adopting § 226.6(b)(6)(ii) as generally proposed, with one clarification that all interest charges be grouped together. As a result, all interest charges on an account, whether they are attributable to different authorized users or sub-accounts, must be disclosed together.

Under the June 2007 Proposal, finance charges attributable to periodic rates other than interest charges, such as required credit insurance premiums, would have been required to be identified as fees and would not have been permitted to be combined with interest costs. See proposed comment 7(b)(4)-3. The Board did not receive comment on this provision, and the comment is adopted as proposed.

Current § 226.7(h) requires the disclosure of “other charges” parallel to the requirement in TILA Section 127(a)(5) and current § 226.6(b) to disclose such charges at account opening. 15 U.S.C. 1637(a)(5). Consistent with current rules to disclose “other charges,” proposed § 226.7(b)(6)(iii) required that other costs be identified consistent with the feature or type, and itemized. The proposal differed from current requirements in the following respect: fees were required to be grouped together and a total of all fees for the statement period were required. Currently, creditors typically include fees among other transactions identified under § 226.7(b). In consumer testing conducted prior to the June 2007 Proposal, consumers were able to more accurately and easily determine the total cost of non-interest charges when fees were grouped together and a total of fees was given than when fees were interspersed among the transactions without a total. (Proposed § 226.7(b)(6)(iii) also would have required that certain fees included in the computation of the effective APR pursuant to § 226.14 must be labeled either as “transaction fees” or “fixed fees,” under one proposed approach. This proposed requirement is discussed in further detail in the general discussion on the effective APR in the section-by-section analysis to § 226.7(b).)

To highlight the overall cost of the credit account to consumers, under the June 2007 Proposal, creditors would have been required to disclose the total amount of interest charges and fees for the statement period and calendar year to date. Comment 7(b)(6)-3 would have provided guidance on how creditors may disclose the year-to-date totals at the end of a calendar year. This aspect of the proposal was based on consumer testing that indicated that participants noticed year-to-date cost figures and would find the numbers helpful in making future financial decisions. The proposal was intended to provide consumers with information about the cumulative cost of their credit plans over a significant period of time. This requirement is discussed further below.

Format requirements. In consumer testing conducted for the Board prior to the June 2007 Proposal, consumers consistently reviewed transactions identified on their periodic statements and noticed fees and interest charges, itemized and totaled, when they were grouped together with the transactions on the statement. Some creditors also disclose these costs in account summaries or in a progression of figures associated with disclosing finance charges attributable to periodic rates. The June 2007 Proposal did not affect creditors' flexibility to provide this information in such summaries. See Proposed Forms G-18(G) and G-18(H), which would have illustrated, but not required, such summaries. However, the Board stated in the June 2007 Proposal its belief that TILA's purpose to promote the informed use of credit would be furthered significantly if consumers are uniformly provided, in a location they routinely review, basic cost information—interest and fees—that enables consumers to compare costs among their open-end plans. The Board proposed that charges required to be disclosed under § 226.7(b)(6)(i) would be grouped together with the transactions identified under § 226.7(b)(2), substantially similar to Sample G-18(A) in Appendix G to part 226. Proposed § 226.7(b)(6)(iii) would have required non-interest fees to be itemized and grouped together, and a total of fees to be disclosed for the statement period and calendar year to date. Interest charges would have been required to be itemized by type of transaction, grouped together, and a total of interest charges disclosed for the statement period and year to date. Proposed Sample G-18(A) in Appendix G to part 226 would have illustrated the proposal.

Labeling costs imposed as part of the plan as fees or interest. Commenters generally supported the Board's approach to label costs as either "fees" or "interest charge" rather than "finance charge" as aligning more closely with consumers' understanding.

For the reasons stated above, the requirement in § 226.7(b)(6) to label costs imposed as part of the plan as either fees or interest charge is adopted as proposed. Because the Board is adopting the alternative to eliminate the requirement to disclose an effective APR, the proposed requirement to label fees as "transaction" or "fixed" fees as a part of the proposed alternative to improve consumers' understanding of the effective APR is not included in the final rule.

Grouping fees together, identified by feature or type, and itemized. Some consumer groups supported the proposal to group fees together, and to identify and itemize them by feature or type. They believe that segregating and highlighting fees is likely to make consumers more aware of fees, and in turn, to assist consumers in avoiding them.

Most industry commenters opposed this aspect of the proposal, as overly prescriptive. As discussed in the section-by-section analysis to § 226.7(b)(2) regarding the requirement to group transactions together, many commenters believe the proposal would hinder rather than help consumer understanding if transaction-related fees are disclosed in a separate location from the transaction itself. They assert that consumers prefer a chronological listing of debits and credits to the account, and even if consumers prefer groupings, chronological listings are not confusing and consumer preference does not justify the cost to the industry to redesign periodic statements.

Other industry commenters stated that currently they separately display account activity in a variety of ways, such as by user, feature, or promotion. They believe consumers find these distinctions to be helpful in managing their accounts, and urged the Board to allow creditors to continue to display information in this manner.

As discussed in the section-by-section analysis to § 226.7(b)(2) above, in the fall of 2008, the Board tested consumers' ability to identify specific transactions and fees on periodic statements where transactions were grouped by transaction type and on periodic statements that listed transactions in chronological order. Testing evidence showed that the grouped periodic statement performed better among participants with respect to identifying specific transactions and fees, though the improved performance of the grouped periodic statement was more significant with regard to the identification of fees.

Moreover, consumers' ability to match a transaction fee to the transaction giving rise to the fee was also tested. Among participants who correctly identified the transaction to which they were asked to find the corresponding fee, a larger percentage of consumers who saw a statement on which account activity was arranged chronologically were able to match the fee to the transaction than when the statement was grouped. However, out of the participants who were able to identify the transaction to which they were asked to find the corresponding fee, the percentage of participants able to find the corresponding fee was very high for both types of listings.

The Board believes that the ability to identify all fees is important for consumers to assess their cost of credit. As discussed above, since the vast majority of consumers do not appear to comprehend the effective APR, the Board believes highlighting fees and interest for consumers will more effectively inform consumers of their costs of credit. Because consumer testing results indicate that grouping fees together helped consumers find them more easily, the Board is adopting the proposal under § 226.7(b)(6)(iii) to require creditors to group fees together. All fees assessed on the account must be grouped together under one heading even if fees may be attributable to different users of the account or to different sub-accounts.

<u>Cost totals for the statement period and year to date</u>. Consumer group commenters supported the proposal to disclose cost totals for the statement period, as well as a year-to-date total. One commenter urged the Board to disclose total fees and interest charged for the cycle, regardless of the Board's decision regarding the effective APR. The commenter also stated that year-to-date totals in dollars provide consumers with the overall cost of the credit on an annualized basis.

In general, industry commenters opposed the requirement for year-to-date totals as unnecessary and costly to implement. Some trade associations urged the Board to discuss with data processors potential costs to implement the year-to-date totals, and to provide sufficient implementation time if the requirement is adopted. Suggested alternatives to the proposal included providing the information on the first or last statement of the year, at the end of the year to consumers who request it, or to provide access to year-to-date information on-line.

The Board believes that providing consumers with the total of interest and fee costs, expressed in dollars, for the statement period and year to date is a significant enhancement to consumers' ability to understand the overall cost of credit for the account, and has adopted the requirement as proposed. The Board's testing indicates consumers notice and understand credit costs expressed in dollars. Aggregated cost information enables consumers to evaluate how the use of an account may impact the amount of interest and fees charged over the year and thus promotes the informed use of credit. Discussions with processors indicated that programming costs to capture year-to-date information are not material.

Comment 7(b)(6)-3 has been added to provide additional flexibility to creditors in providing year-to-date totals, in response to a commenter's request. Under the revised comment, creditors sending monthly statements may comply with the requirement to provide a year-to date total using a January 1 through December 31 time period, or the period representing 12 monthly cycles beginning in November and ending in December of the following year or beginning in December and ending in January of the following year. This guidance also applies when creditors send quarterly statements.

Some commenters asked the Board to provide guidance on creditors' duty to reflect refunded fees or interest in year-to-date totals. Comment 7(b)(6)-5 has been added to reflect that 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, to ease compliance. Such adjustments should not affect the total fees or interest charges imposed for the current statement period.

<u>7(b)(7) Change-in-terms and Increased Penalty Rate Summary for Open-end (not Home-secured) Plans</u>

A major goal of the Board's review of Regulation Z's open-end credit rules is to address consumers' surprise at increased rates (and/or fees). In the June 2007 Proposal, the Board sought to address the issue in § 226.9(c)(2) and (g) to give more time before new rates and changes to significant costs become effective. The Board and other federal banking agencies further proposed in May 2008, subject to certain exceptions, a prohibition on increasing the APR applicable to balances outstanding at the end of the fourteenth day after a notice disclosing the change in the APR is provided to the consumer.

As part of the June 2007 Proposal, the Board also proposed new § 226.7(b)(14), which would have required a summary of key changes to precede transactions when a change-in-terms notice or a notice of a rate increase due to delinquency or default or as a penalty is provided on or with a periodic statement. Samples G-20 and G-21 in Appendix G to part 226 illustrated the proposed format requirement under § 226.7(b)(14) and the level of detail required for the notice under § 226.9(c)(2)(iii) and (g)(3). Proposed Sample Forms G-18(G) and G-18(H) would have illustrated the placement of these notices on a periodic statement. The summary would have been required to be displayed in a table, in no less than 10-point font. <u>See</u> § 226.9(c)(2)(iii)(B) and (g)(3)(ii), § 226.5(a)(3). The proposed format rule was intended to enable consumers to notice more easily changes in their account terms. Increasing the time period to act is ineffective if consumers do not see the change-in-terms notice. In consumer testing conducted prior to the June 2007 Proposal, consumers who participated in testing conducted for the Board consistently set aside change-in-terms notices in inserts that accompanied periodic statements. Research conducted for the Board indicated that consumers do look at the front side of periodic statements and do look at transactions.

Consumer groups supported the proposed format requirements, as being more readable and pertinent than current change-in-term notices provided with periodic statements. Industry commenters opposed the proposal for a number of reasons. Many commenters stated that creditors use pre-printed forms and have limited space to place non-recurring messages on the front of the statement. These commenters asserted that the proposed requirement to place a change-in-term notice or a penalty rate increase notice preceding the transactions would be costly to implement. Some commenters asked the Board to permit creditors to refer consumers to an insert where the change-in-term or penalty increase could be described, if the requirement for a summary table was adopted. Others asked for more flexibility, such as by requiring the disclosures to precede transactions, without a further requirement to provide disclosures in a form substantially similar to proposed Forms G-18(G) and G-18(H), and Samples G-20 and G-21. One commenter urged the Board to require that the summary table be printed in a font size that is consistent with TILA's general "clear and conspicuous" standard, rather than require a 10-point font. Others noted that proposed Forms G-18(G) and G-18(H) were designed in a portrait format, with the summary table directly above the transactions, and asked that the Board clarify whether creditors could provide the table in a landscape format, with the summary table to the right or left of the transactions. One commenter asked the Board to provide guidance in the event both a change-in-terms notice and a penalty rate increase notice are included in a periodic statement. One commenter suggested the effect of the proposal will be to drive creditors to use separate mailings, to reduce redesign costs.

As discussed in more detail in the section-by-section analysis to § 226.9(c) and 226.9(g), the final rule requires that a creditor include on the front of the periodic statement a tabular summary of changes to certain key terms, when a change-in-terms notice or notice of the imposition of a penalty rate is included with the periodic statement. However, consistent with the results of the consumer testing conducted on behalf of the Board, this tabular summary is not required to appear on the front of the first page of the statement prior to the list of transactions, but rather may appear anywhere on the front of the periodic statement. Conforming changes have been made to § 226.7(b)(7) in the final rule. The summary table on the model forms continues to be disclosed on the front of the first page of the periodic statement; however, this is not required under the final rule. See Forms G-18(F) and G-18(G) (proposed as Forms G-18(G) and G-18(H)). In a technical change, proposed § 226.7(b)(14) has been renumbered as § 226.7(b)(7) in the final rule.

7(b)(9) Address for Notice of Billing Errors

Consumers who allege billing errors must do so in writing. 15 U.S.C. 1666; § 226.13(b). Creditors must provide on or with periodic statements an address for this purpose. See current § 226.7(k). Currently, comment 7(k)-2 provides that creditors may also provide a telephone number along with the mailing address as long as the creditor makes clear a telephone call to the creditor will not preserve consumers' billing error rights. In many cases, an inquiry or question can be resolved in a phone conversation, without requiring the consumer and creditor to engage in a formal error resolution procedure.

In June 2007, the Board proposed to update comment 7(k)-2, renumbered as comment 7(b)(9)-2, to address notification by e-mail or via a Web site. The proposed comment would have provided that 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 via a 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. See also comment 13(b)-2, which addresses circumstances under which electronic notices are deemed to satisfy the written billing error requirement. Commenters generally supported the proposal. Some consumer groups urged the Board to discourage creditors' policies not to accept electronic delivery of dispute notices, and that if a creditor accepts electronic dispute notices, the creditor should be required to accept these electronic submissions as preserving billing rights. The final rule adopts comment 7(b)(9)-2, as proposed. The rule provides consumers with flexibility to attempt to resolve inquiries or questions about billing statements informally, while advising them that if the matter is not resolved in a telephone call or via e-mail, the consumer must submit a written inquiry to preserve billing error rights.

7(b)(10) Closing Date of Billing Cycle; New Balance

Creditors must disclose the closing date of the billing cycle and the account balance outstanding on that date. As a part of the June 2007 Proposal to implement TILA amendments in the Bankruptcy Act regarding late payments and the effect of making minimum payments, the Board proposed to require creditors to group together, as applicable, disclosures of related information about due dates and payment amounts, including the new balance. The comments received on these proposed formatting requirements are discussed in the section-by-section analysis to § 226.7(b)(11) and (b)(13) below.

Some consumer commenters urged the Board to require credit card issuers to disclose the amount required to pay off the account in full (the “payoff balance”) on each periodic statement and pursuant to a consumer’s request by telephone or through the issuer’s Web site. The Board’s final rule does not contain such a requirement. At the time the payoff balance would be disclosed, the issuer may not be aware of some transactions that are still being processed and that have not yet been posted to the account. In addition, finance charges can continue to accrue after the payoff balance is disclosed. If a consumer relies on the disclosure to submit a payment for that amount, the account still may not be paid off in full.

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

TILA Section 127(b)(12), added by Section 1305(a) of the Bankruptcy Act, requires creditors that charge a late-payment fee to disclose on the periodic statement (1) the payment due date or, if different, the earliest date on which the late-payment fee may be charged, and (2) the amount of the late-payment fee. 15 U.S.C. 1637(b)(12). The June 2007 Proposal would have implemented those requirements in § 226.7(b)(11) by requiring creditors to disclose the payment due date on the front side of the first page of the periodic statement and, closely proximate to the due date, any cut-off time if the time is before 5 p.m. Further, the amount of any late-payment fee and any penalty APR that could be triggered by a late payment would have been required to be in close proximity to the due date.

Home-equity plans. The Board stated in the June 2007 Proposal its intent to implement the late payment disclosure for HELOCs as a part of its review of rules affecting home-secured credit. Creditors offering HELOCs may comply with § 226.7(b)(11), at their option.

Charge card issuers. TILA Section 127(b)(12) applies to "creditors." TILA's definition of "creditor" includes card issuers and other persons that offer consumer open-end credit. 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 new disclosure requirement in TILA Section 127(b)(12) is not among those specifically enumerated.

The Board proposed in June 2007 that the late payment disclosure requirements contained in the Bankruptcy Act and to be implemented in new § 226.7(b)(11) would not apply to charge card issuers because the new requirement is not specifically enumerated to apply to charge card issuers. The Board noted 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.

One industry commenter that offers a charge card account with a revolving feature supported the proposal. The commenter further asked the Board to clarify how card issuers with such products may comply with the late payment disclosure requirement.

Creditors are required to provide the disclosures set forth in § 226.7 as applicable. Section § 226.7(b)(11)(ii) has been revised to make clear the exemption is for periodic statements provided solely for charge card accounts; periodic statements provided for accounts with charge card and revolving features must comply with the late fee disclosure provision as to the revolving feature. Comment app. G-9 has been added to provide that creditors offering card accounts with a charge card feature and a revolving feature may revise the late payment (and minimum payment) disclosure to make clear the feature to which the disclosures apply. For creditors subject to § 226.7(b)(11), the late payment disclosure is not required to be made on a statement where no payment is due (and no late payment could be triggered), because the disclosure would not apply.

<u>Payment due date</u>. Under the June 2007 Proposal, creditors must 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. This rule is adopted, as proposed.

<u>Courtesy periods</u>. In the June 2007 Proposal, the Board interpreted the due date to be a date that is required by the legal obligation. This would not encompass informal "courtesy periods" that are not part of the legal obligation and 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. Proposed comment 7(b)(11)-1

would have provided that creditors need not disclose informal “courtesy periods” not part of the legal obligation.

Commenters generally supported this aspect of the proposal, which is adopted as proposed.

Laws affecting assessment of late fees. Under the Bankruptcy Act, creditors 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. The Board was concerned, however, that such a disclosure would not provide a meaningful benefit to consumers in the form of useful information or protection and would result in consumer confusion. 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. 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 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 those reasons, under the June 2007 Proposal, creditors would have been required to disclose the due date under the terms of the legal obligation, and not a later date, such as when creditors are required by state or other law to delay imposing a late-payment fee for a specified period when a payment is received after the due date. Consumers' rights under state laws to avoid the imposition of late-payment fees during a specified period following a due date were unaffected by the proposal; that is, in the above example, the creditor 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.

Commenters supported the Board's interpretation, and for the reasons stated above, the proposal is adopted. In response to a request for guidance, the substance of the above discussion regarding the due date disclosure when state or other laws affect the assessment of a late-payment fee is added in a new comment 7(b)(11)-2.

Cut-off time for making payments. As discussed in the section-by-section analysis to § 226.10(b) to the June 2007 Proposal, creditors would have been required to disclose any cut-off time for receiving payments closely proximate to each reference of the due date, if the cut-off time is before 5 p.m. on the due date. If cut-off times prior to 5 p.m. differ depending on the method of payment (such as by check or via the Internet), the proposal would have required creditors to state the earliest time without specifying the method to which it applies, to avoid information overload. Cut-off hours of 5 p.m. or later could continue to be disclosed under the existing rule (including on the reverse side of periodic statements).

Comments were divided on the proposed cut-off hour disclosure for periodic statements. Industry representatives that have a cut-off hour earlier than 5 p.m. for an infrequently used payment means expressed concern about consumer confusion if the more commonly used payment method is later than 5 p.m. Consumer groups urged the

Board also to adopt a “postmark” date on which consumers could rely to demonstrate their payment was mailed sufficiently in advance for the payment to be timely received, or to eliminate cut-off hours altogether. Both consumer groups and industry representatives asked the Board to clarify by which time zone the cut-off hour should be measured.

As discussed in the section-by-section analysis to § 226.10(b) to the May 2008 Proposal, the Board proposed that to comply with the requirement in § 226.10 to provide reasonable payment instructions, a creditor’s cut-off hour for receiving payments <u>by mail</u> can be no earlier than 5 p.m. in the location where the creditor has designated the payment to be sent. The Board requested comment on whether there would continue to be a need for creditors to disclose cut-off hours before 5 p.m. for payments made by telephone or electronically.

Consumer groups suggested the Board should require a cut-off hour no earlier than 5 p.m. for all methods of payment. They stated that different cut-off hours are confusing for consumers. Moreover, they argue that consumers have no control over the time electronic payments are posted. They suggested having a uniform cut-off hour would not require creditors to process and post payments on the same day or to change processing systems; such a rule would merely prohibit the creditor from imposing a late fee.

Industry commenters generally opposed a requirement to disclose any cut-off hour for receiving payments made other than by mail closely proximate to each reference of the due date. They stated that such a disclosure is unnecessary because creditors disclose cut-off times with other payment channels, such as the telephone or Internet. If a cut-off hour were to be required on the front side of periodic statements, one trade association suggested permitting a reference to cut-off hours on the back of the statement, to avoid cluttering the statement with information that, in their view, would not be helpful to many consumers in any event. Others suggested moving the timing and location of cut-off hour disclosures to account-opening, below the account-opening box, or disclosing the cut-off time for each payment channel on the periodic statement. One service provider suggested as an alternative to a cut-off hour disclosure, a substantive rule requiring a one-day period following the due date before the payment could be considered late.

In the two rounds of testing following the May 2008 Proposal, the Board conducted additional testing on cut-off hour disclosures for receiving payments other than by mail. Consumers were shown mock periodic statements which disclosed near the due date a 2 p.m. cut-off time for electronic payments and a reference to the back of the statement for cut-off times for other payment methods. The disclosure on the back of the statement stated that mailed payments must be received by 5 p.m. on the due date. When asked what time a mailed payment would be due, about two-thirds of the participants incorrectly named 2 p.m., the cut-off hour identified for electronic payments. Although the mock statement referred the reader to the back of the statement for more information about cut-off hours, only one participant in each round was able to locate the information. Most other participants understood that cut-off hours may differ for various payment channels, but they were unable to locate more specific information on the statement.

Based on the comments received and on the Board's consumer testing, the Board is not adopting an additional requirement to disclose any cut-off hour for receiving payments made other than by mail closely proximate to each reference of the due date. Testing showed that abbreviated disclosures were not effective. The Board believes that fully explaining each cut-off hour is too cumbersome for the front of the first side of the periodic statement. Creditors currently disclose relevant cut-off hours when consumers use the Internet or telephone to make a payment, and the Board expects creditors will continue to do so. See section-by-section analysis to § 226.10 regarding substantive rules regarding cut-off hours, generally.

Fee or rate triggered by multiple events. Some industry commenters asked for guidance on complying with the late payment disclosure if a late fee or penalty rate is triggered after multiple events, such as two late payments in six months. Comment 7(b)(11)-3 has been added to provide that in such cases, the creditor 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.

Amount of late payment fee; penalty APR. Creditors must disclose the amount of the late-payment fee and the payment-due date on periodic statements, under TILA amendments contained in the Bankruptcy Act. The purpose of the new late payment disclosure requirement is to ensure consumers know the consequences of paying late. To fulfill that purpose, the June 2007 Proposal would have required that the amount of the late-payment fee be disclosed in close proximity to the due date. If the amount of the late-payment fee is based on outstanding balances, the proposal would have required the creditor to disclose the highest fee in the range.

In addition, the Board proposed to require creditors to disclose any increased rate that may apply if consumers' payments are received after the due date. The proposal was intended to address the Board's concern about a potential increase in APRs as a consequence of paying late. If, under the terms of the account agreement, a late payment could result in the loss of a promotional rate, the imposition of a penalty rate, or both, the proposal would have required the creditor to disclose the highest rate that could apply, to avoid information overload. The June 2007 Proposal would have required creditors to disclose the increased APR closely proximate to the fee and due date to fulfill Congress's intent to warn consumers about the effects of paying late. See proposed § 226.7(b)(13).

Some consumer groups and a member of Congress generally supported the Board's proposal to require creditors to disclose any penalty rate, as well as a late payment fee, that could be imposed if a consumer makes an untimely payment. One trade association and a number of industry commenters noted that under the proposal, consumers are warned about the consequences of paying late on or with the application or solicitation for a credit or charge card and at account-opening, and thus repeating disclosures each month was unnecessary. As an alternative, the trade association suggested requiring an annual reminder about triggers for penalty pricing or a preprinted statement on the back of the periodic statement. Some industry commenters opposed the proposal as overly burdensome.

The Board continues to believe that the late-payment warning should include a disclosure of any penalty rate that may apply if the consumer makes a late payment. For some consumers, the increase in rate associated with a late payment may be more costly than the imposition of a fee. Disclosing only the fee to these consumers would not inform them of one of the primary costs of making late payment. Accordingly, the Board believes that disclosure of both the penalty rate and fee should be required. For the reasons stated above, the proposal is adopted.

Scope of penalties disclosed. Some consumer groups urged the Board also to require disclosure of the earliest date after which a creditor could impose "any negative consequence," as a catch-all to address new fees and terms that are not specifically addressed in the proposal. The Board is concerned that a requirement to disclose the amount of "any other negative consequence" is overly broad and unclear and would increase creditors' risk of litigation and thus is not included in the final rule.

Many consumers, consumer groups, and others also urged the Board to ban "excessive" late fees and penalty rates. Elsewhere in today's **Federal Register**, the Board is adopting a rule that prohibits institutions from increasing the APR on outstanding balances, with some exceptions. The Board is also adopting a rule that requires institutions to provide consumers with a reasonable amount of time to make their payments, which should help consumers avoid late fees and penalty rates resulting from late payment. No action is taken under this rulemaking that affects the amount of fees or rates creditors may impose.

Range of fees and rates. An industry commenter asked for more flexibility in disclosing late-payment fees and penalty rates that could be imposed under the account terms but could vary, for example, based on the outstanding balance. In other cases, the creditor may have the contractual right to impose a specified penalty rate but may choose to impose a lower rate based on the consumer's overall behavior. The commenter suggested permitting creditors to disclose the range of fees or rates, or "up to" the maximum late-payment fee or rate that may be imposed on the account. In the commenter's view, this approach would provide more accurate disclosures and provide consumers with a better understanding of the possible outcome of a late payment. Modified from the proposal, § 226.7(b)(11)(i)(B) provides that if a range of late-payment fees or penalty rates could be imposed on the 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 has been added to illustrate the requirement. The final rule also permits creditors to disclose a range of fees or rates. This approach recognizes the space constraints on periodic statements about which industry commenters express concern, but gives creditors more flexibility in disclosing possible late-payment fees and penalty rates.

Some creditors are subject to state law limitations on the amount of late-payment fees or interest rates that may be assessed. Currently, where disclosures are required but the amount is determined by state law, such creditors typically disclose a matrix disclosing which rates and fees are applicable to residents of various states. Under the June 2007 Proposal, creditors would have been required to disclose the late-payment fee applicable to the consumer's account. To ease burden, one commenter urged the Board to permit these creditors to disclose the highest late-payment fee (or penalty rate) that could apply in any state. The Board is mindful of compliance costs associated with customizing the disclosure to reflect disclosure requirements of various states; however, the Board believes the purposes of TILA would not be served if a consumer received a late-payment fee disclosure for an amount that exceeded, perhaps substantially, the amount the consumer could be assessed under the terms of the legal obligation of the account. For that reason, § 226.7(b)(11)(i)(B) provides that ranges or the highest fee must be those applicable to the consumer's account. Accordingly, a creditor may state a range only if all fee amounts in that range would be permitted to be imposed on the consumer's account under applicable state law, for example if the state law permits a range of late fees that vary depending on the outstanding account balance.

Penalty rate in effect. Industry commenters asked the Board to clarify the penalty rate disclosure requirements when a consumer's untimely payment has already triggered the penalty APR. Comment 7(b)(11)-5 is added to provide that if the highest penalty rate 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 rate 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 rate has been increased due to previous late payments, if applicable.

7(b)(12) Minimum Payment

The Bankruptcy Act amends TILA Section 127(b) 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 must include: (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.

Under the Bankruptcy Act, depository institutions may establish and maintain their own toll-free telephone numbers or use a third party. In order to standardize the information provided to consumers through the toll-free telephone numbers, the Bankruptcy Act directs 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 is directed to create the table by assuming a significant number of different APRs, account balances, and minimum payment amounts; instructional guidance must be provided on how the information contained in the table should be used to respond to consumers' requests. The Board is also required to establish and maintain, for two years, a toll-free telephone number for use by customers of creditors that are depository institutions having assets of $250 million or less.[19] The Federal Trade Commission (FTC) must maintain a toll-free telephone number for creditors that are subject to the FTC's authority to enforce TILA and Regulation Z as to the card issuer.
15 U.S.C. 1637(b)(11)(A)-(C).[20]

The Bankruptcy Act provides that creditors, the Board and the FTC may use a toll-free telephone number that connects consumers to an automated device through which they can obtain repayment information by providing information using a touch-tone telephone or similar device. The Bankruptcy Act also provides that consumers who are unable to use the automated device must have the opportunity to speak with an

---

[19] The Board expects to activate its toll-free telephone number for use by small depository institutions by April 1, 2009, even though institutions are not required to include a telephone number on periodic statements issued before the rule's mandatory compliance date. The Board will subsequently issue a press release announcing the toll-free number and its activation date.

[20] The FTC also expects to activate its toll-free telephone number for use by entities under its jurisdiction by April 1, 2009, even though these entities are not required to include a telephone number on periodic statements issued before the rule's mandatory compliance date. The FTC also expects to subsequently issue a press release announcing the toll-free number and the exact date on which it will be activated.

individual from whom the repayment information may be obtained. Creditors, the Board and the FTC may not use the toll-free telephone number to provide consumers with repayment information other than the repayment information set forth in the "table" issued by the Board. 15 U.S.C. 1637(b)(11)(F)-(H).

Alternatively, 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. A creditor that does so need not 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 about the effects of making only the minimum payment as "the minimum payment disclosures."

Proposal to limit the minimum payment disclosure requirements to credit card accounts. Under the Bankruptcy Act, the minimum payment disclosure requirements apply to all open-end accounts (such as credit card accounts, HELOCs, and general purpose credit lines). The Act expressly states that these disclosure requirements do not apply, however, to any "charge card" account, the primary aspect of which is to require payment of charges in full each month.

In the June 2007 Proposal, the Board proposed to exempt open-end credit plans other than credit card accounts from the minimum payment disclosure requirements. This would have exempted, for example, HELOCs (including open-end reverse mortgages), overdraft lines of credit and other general purpose personal lines of credit. In response to the June 2007 Proposal, industry commenters generally supported exempting open-end credit plans other than credit card accounts from the minimum payment disclosure requirements. Several consumer group commenters urged the Board to require the minimum payment disclosures for HELOCs, as well as credit card accounts.

The final rule limits the minimum payment disclosures to credit card accounts, as proposed 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 Congressional debate on the minimum payment disclosures indicates that the principal concern of Congress was that consumers may not be fully aware of the length of time it takes to pay off their credit card accounts if only minimum monthly payments are made. For example, Senator Grassley, a primary sponsor of the Bankruptcy Act, in discussing the minimum payment disclosures, stated:

> [The Bankruptcy Act] contains significant new disclosures for consumers, mandating that credit card companies provide key information about how much [consumers] owe and how long it will take to pay off their credit card debts by only making the minimum payment. That is very important consumer education for every one of us.
>
> Consumers will also be given a toll-free number to call where they can get information about how long it will take to pay off their own credit card balances if they only pay the minimum payment. This will educate consumers and improve consumers' understanding of what their financial situation is.

Remarks of Senator Grassley (2005), Congressional Record (daily edition), vol. 151, March 1, p. S 1856.

With respect to HELOCs, the Board understands that most HELOCs have a fixed repayment period. Thus, for those HELOCs, consumers could learn from the current disclosures the length of the draw period and the repayment period. See current § 226.6(e)(2). The minimum payment disclosures would not appear to provide additional information to consumers that is not already disclosed to them. The cost of providing this information a second time, including the costs to reprogram periodic statement systems and to establish and maintain a toll-free telephone number, appears not to be justified by the limited benefit to consumers. Thus, the final rule exempts HELOCs from the minimum payment disclosure requirements as not necessary to effectuate the purposes of TILA, using the Board's TILA Section 105(a) authority.

As proposed, the final rule also exempts overdraft lines of credit and other general purpose credit lines from the minimum payment disclosure requirements for several reasons. First, these lines of credit are not in wide use. The 2004 Survey of Consumer Finances data indicates that few families--1.6 percent--had a balance on lines of credit other than a home-equity line or credit card at the time of the interview. (In terms of comparison, 74.9 percent of families had a credit card, and 58 percent of these families had a credit card balance at the time of the interview.)[21] Second, these lines of credit typically are neither promoted, nor used, as long-term credit options of the kind for which the minimum payment disclosures are intended. Third, the Board is concerned that the operational costs of requiring creditors to comply with the minimum payment disclosure

[21] Brian Bucks, et al., Recent Changes in U.S. Family Finances: Evidence from the 2001 and 2004 Survey of Consumer Finances, Federal Reserve Bulletin (March 2006).

requirements with respect to 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 is using its TILA Section 105(a) authority to exempt overdraft lines of credit and other general purpose credit lines from the minimum payment disclosure requirements, because in this context the Board believes the minimum payment disclosures are not necessary to effectuate the purposes of TILA.

7(b)(12)(i) General Disclosure Requirements

In response to the June 2007 Proposal, several commenters suggested revisions to the structure of the regulatory text in § 226.7(b)(12) to make the regulatory text in this section easier to read and understand. In the final rule, § 226.7(b)(12) is restructured to accomplish these goals. The final rule in § 226.7(b)(12)(i) clarifies that issuers can choose one of three ways to comply with the minimum payment disclosure requirements: (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 as described in Appendix M1 to part 226; (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 as described in Appendix M2 to part 226; or (3) provide on the periodic statement the actual repayment disclosure as described in Appendix M2 to part 226.

7(b)(12)(ii) Generic Repayment Example and Establishment of a Toll-free Telephone Number

The final rule in § 226.7(b)(12)(ii) sets forth requirements that credit card issuers must follow if they choose to comply with the minimum payment disclosure provisions by providing 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. Under the Bankruptcy Act, the hypothetical example that creditors must disclose on periodic statements varies depending on the creditor's minimum payment requirement. Generally, creditors that require minimum payments equal to 4 percent or less of the account balance must disclose on each statement that it takes 88 months to pay off a $1000 balance at an interest rate of 17 percent if the consumer makes a "typical" 2 percent minimum monthly payment. Creditors that require minimum payments exceeding 4 percent of the account balance must disclose that it takes 24 months to pay off a balance of $300 at an interest rate of 17 percent if the consumer makes a "typical" 5 percent minimum monthly payment (but a creditor may opt instead to disclose the statutory example for 2 percent minimum payments). The 5 percent minimum payment example must be disclosed by creditors for which the FTC has the authority under TILA to enforce the act and this regulation. Creditors also have the option to substitute an example based on an APR that is greater than 17 percent. The Bankruptcy Act authorizes the Board to periodically adjust the APR used in the hypothetical example and to recalculate the repayment period accordingly.
15 U.S.C. 1637(b)(11)(A)-(E).

<u>Wording of the examples</u>. The Bankruptcy Act sets forth specific language for issuers to use in disclosing the applicable hypothetical example on the periodic statement. In the June 2007 Proposal, the Board proposed to modify the statutory language to

facilitate consumers' use and understanding of the disclosures, pursuant to its authority under TILA Section 105(a) to make adjustments that are necessary to effectuate the purposes of TILA. 15 U.S.C. 1604(a). First, the Board proposed to require that issuers disclose the payoff periods in the hypothetical examples in years, rounding fractional years to the nearest whole year, rather than in months as provided in the statute. Thus, issuers would have disclosed that it would take over 7 years to pay off the $1,000 hypothetical balance, and about 2 years for the $300 hypothetical balance. The Board believes that the modification of the examples will further TILA's purpose to assure a meaningful disclosure of credit terms. 15 U.S.C. 1601(a). The final rule adopts the examples as proposed. The Board believes that disclosing the payoff period in years allows consumers to better comprehend the repayment period without having to convert it themselves from months to years. Participants in the consumer testing conducted for the Board reviewed disclosures with the estimated payoff period in years, and they indicated they understood the length of time it would take to repay the balance if only minimum payments were made.

Second, the statute requires that issuers disclose in the examples the minimum payment formula used to calculate the payoff period. In the $1,000 example above, the statute would require issuers to indicate that a "typical" 2 percent minimum monthly payment was used to calculate the repayment period. In the $300 example above, the statute would require issuers to indicate that a 5 percent minimum monthly payment was used to calculate the repayment period. In June 2007, the Board proposed to eliminate the specific minimum payment formulas from the examples. The references to the 2 percent minimum payment in the $1,000 example, and a 5 percent minimum payment in the $300 example, are incomplete descriptions of the minimum payment requirement. In the $1,000 example, the minimum payment formula used to calculate the repayment period is the greater of 2 percent of the outstanding balance, or $20. In the $300 example, the minimum payment formula used to calculate the repayment period is the greater of 5 percent of the outstanding balance, or $15. In fact, in each example, the hypothetical consumer always pays the absolute minimum ($20 or $15, depending on the example).

In response to the June 2007 Proposal, several consumer group commenters suggested that the Board include in the example the statutory reference to the "typical" minimum payment formula (either 2 percent or 5 percent as described above), because without this reference, the example implies that minimum payment formulas do not vary from creditor to creditor.

Like the proposal, the final rule does not include in the examples a reference to the minimum payment formula used to calculate the repayment period given in the examples. The Board believes that including the entire minimum payment formula, including the floor amount, in the disclosure could make the example too complicated. Also, the Board did not revise the disclosures to indicate that the repayment period in the $1,000 balance was calculated based on a $20 payment, and the repayment period in the $300 balance was calculated based on a $15 payment. The Board believes that revising the statutory requirement in this way would change the disclosure to focus consumers on the effects of making a fixed payment each month as opposed to the effects of making minimum payments. Moreover, disclosing the minimum payment formula is not necessary for consumers to understand the essential point of the examples – that it can take a significant amount of time to pay off a balance if only minimum payments are made. In testing conducted for the Board, the $1,000 balance example was tested without including the 2 percent minimum payment disclosure required by the statute. Consumers appeared to understand the purpose of the disclosure—that it would take a significant amount of time to repay a $1,000 balance if only minimum payments were made. For these reasons, the final rule requires the hypothetical examples without specifying the minimum payment formulas used to calculate repayment periods in the examples. The Board believes that the modification of the examples will further TILA's purpose to assure a meaningful disclosure of credit terms. 15 U.S.C. 1601(a).

In response to the June 2007 Proposal, one industry commenter suggested that if an issuer already includes on the first page of the periodic statement a toll-free customer service telephone number, the Board should permit the issuer to reference that telephone number within the minimum payment disclosure, rather than having to repeat that number again in the minimum payment disclosure. The final rule requires issuers to state the toll-free telephone number in the minimum payment disclosure itself, even if the same toll-free telephone number is listed in other places on the first page of the periodic statement. The Board believes that listing the toll-free telephone number in the minimum payment disclosure itself makes the disclosure easier for consumers to use.

The final regulatory language for the examples is set forth in new § 226.7(b)(12)(ii). As proposed in June 2007, in addition to the revisions mentioned above, the final rule also adopts several stylistic revisions to the statutory language, based on plain language principles, in an attempt to make the language of the examples more understandable to consumers. Furthermore, the language has been revised to reflect comments from the Board's consultation with the other federal banking agencies, the NCUA, and the FTC, pursuant to Section 1309 of the Bankruptcy Act, as discussed immediately below.

Clear and conspicuous disclosure of examples. The Bankruptcy Act requires the Board, in consultation with the other federal banking agencies, the NCUA, and the FTC, to provide guidance on clear and conspicuous disclosure of the examples the Board is requiring under § 226.7(b)(12)(ii)(A)(1), (b)(12)(ii)(A)(2), and (b)(12)(ii)(B) to ensure that they are reasonably understandable and designed to call attention to the nature and significance of the information in the notice. 15 U.S.C. 1637 note (Regulations). In the June 2007 Proposal, the Board set forth exact wording for creditors to use for the examples based on language provided in the Bankruptcy Act, as discussed immediately above. The Board also proposed that the headings for the notice be in bold text and that the notice be placed closely proximate to the minimum payment due on the periodic statement, as discussed below in the supplementary information to § 226.7(b)(13).

The other federal banking agencies, the NCUA, and the FTC generally agreed with the Board's approach. These agencies, however, suggested that the heading be changed from "Notice about Minimum Payments" to "Minimum Payment Warning," consistent with the heading provided in the Bankruptcy Act. The agencies the Board consulted were concerned that without the term "warning" in the heading, the Board's proposed heading would not sufficiently call attention to the nature and significance of the information contained in the notice. The Board agrees with the agencies, and the final rule adopts the "Minimum Payment Warning" heading.

One of the agencies the Board consulted also suggested that the wording in the examples be modified to refer to the example balance amount a second time in order to clarify to which balance the time period to repay refers. Thus, in the example under § 226.7(b)(12)(ii)(A)(1), the agency suggested that the phrase "of $1,000" be added to the end of the sentence in the notice that states, "For example, if you had a balance of $1,000 at an interest rate of 17% and always paid only the minimum required, it would take over 7 years to repay this balance." The agency suggested similar amendments to the examples under § 226.7(b)(12)(ii)(A)(2) and (b)(12)(ii)(B). The Board believes that including a second reference to the example balance in the notice would be redundant and would unnecessarily extend the length of the notice. Therefore, the Board declines to amend the notice to add the second reference.

Adjustments to the APR used in the examples. The Bankruptcy Act specifically authorizes the Board to periodically adjust the APR used in the hypothetical example and to recalculate the repayment period accordingly. In the June 2007 Proposal, the Board proposed not to adjust the APR used in the hypothetical examples. The final rule adopts this approach. The Board recognizes that the examples are intended to provide consumers with an indication that it can take a long time to pay off a balance if only minimum payments are made. Revising the APR used in the example to reflect the average APR paid by consumers would not significantly improve the disclosure, because for many consumers an average APR would not be the APR that applies to the consumer's account. Moreover, consumers will be able to obtain a more tailored disclosure of a repayment period based on the APR applicable to their accounts by calling the toll-free telephone number provided as part of the minimum payment disclosure.

Small depository institutions. Under the Bankruptcy Act, the Board is required to establish and maintain, for two years, a toll-free telephone number for use by customers of creditors that are depository institutions having assets of $250 million or less. The FTC must maintain a toll-free telephone number for creditors that are subject to the FTC's authority to enforce TILA and Regulation Z as to the card issuer. 15 U.S.C. 1637(b)(11)(F). Like the proposal, the final rule defines "small depository institution issuers" as card issuers that are depository institutions (as defined by section 3 of the Federal Deposit Insurance Act), including federal credit unions or state-chartered credit unions (as defined in section 101 of the Federal Credit Union Act), with total assets not exceeding $250 million. The final rule clarifies the determination whether an institution's assets exceed $250 million should be made as of December 31, 2009. 15 U.S.C. 1637(b)(11)(F)(ii). Generally, small depository institution issuers may disclose the Board's toll-free telephone number on their periodic statements. Nonetheless, some card issuers may fall within the definition of "small depository institution issuers" and be subject to the FTC's enforcement authority, such as small state-chartered credit unions. New comment 7(b)(12)(ii)(A)(3)-1 clarifies that those card issuers must disclose the FTC's toll-free telephone number on their periodic statements.

Web site address. In response to the June 2007 Proposal, one industry commenter suggested that the Board provide the option to include in the minimum payment disclosure a Web site address (in addition to the toll-free telephone number) where consumers may obtain the generic repayment estimates or actual repayment disclosures, as applicable. New comment 7(b)(12)-4 is added to allow issuers at their option to include a reference to a Web site address (in addition to the toll-free telephone number) where its customers may obtain generic repayment estimates or actual repayment disclosures as applicable, so long as the information provided on the Web site complies with § 226.7(b)(12), and Appendix M1 or M2 to part 226, as applicable. The Web site link disclosed must take consumers directly to the Web page where generic repayment estimates or actual repayment disclosures may be obtained. The Board believes that some consumers may find it more convenient to obtain the repayment estimate through a Web site rather than calling a toll-free telephone number.

New § 226.7(b)(12)(ii)(A)(3) sets forth the disclosure that small depository institution issuers must provide on their periodic statements if the issuers use the Board's toll-free telephone number. New § 226.7(b)(12)(ii)(B) sets forth the disclosure that card issuers subject to the FTC's enforcement authority must provide on their periodic statements. These disclosure statements include two toll-free telephone numbers: one that is accessible to hearing-impaired consumers and one that is accessible to other consumers. In addition, the disclosures include a reference to the Board's Web site, or the FTC's Web site as appropriate, where generic repayment estimates may be obtained.

Toll-free telephone numbers. Under Section 1301(a) of the Bankruptcy Act, depository institutions generally must establish and maintain their own toll-free telephone numbers or use a third party to disclose the repayment estimates based on the "table" issued by the Board. 15 U.S.C. 1637(b)(11)(F)(i). At the issuer's option, the issuer may disclose the actual repayment disclosure through the toll-free telephone number.

The Bankruptcy Act also provides that creditors, the Board and the FTC may use a toll-free telephone number that connects consumers to an automated device through which they can obtain repayment information by providing information using a touch-tone telephone or similar device, but consumers who are unable to use the automated device must have the opportunity to speak with an individual from whom the repayment information may be obtained. Unless the issuer is providing an actual repayment disclosure, the issuer may not provide through the toll-free telephone number a repayment estimate other than estimates based on the "table" issued by the Board. 15 U.S.C. 1637(b)(11)(F). These same provisions apply to the FTC's and the Board's toll-free telephone numbers as well.

In the June 2007 Proposal, the Board proposed to add new § 226.7(b)(12)(iv) and accompanying commentary to implement the above statutory provisions related to the toll-free telephone numbers. In addition, proposed comment 7(b)(12)(iv)-3 would have provided that once a consumer has indicated that he or she is requesting the generic repayment estimate or the actual repayment disclosure, as applicable, card issuers may not provide advertisements or marketing information to the consumer prior to providing the repayment information required or permitted by Appendix M1 or M2 to part 226, as applicable.

The final rule moves these provisions to § 226.7(b)(12)(ii) and comments 7(b)(12)-1, 2 and 5, with several revisions. In addition, comment 7(b)(12)-3 is added to clarify that an issuer may provide as part of the minimum payment disclosure a toll-free telephone number that is designed to handle customer service calls generally, so long as the option to select to receive the generic repayment estimate or actual repayment disclosure, as applicable, through that toll-free telephone number is prominently disclosed to the consumer. For automated systems, the option to select to receive the generic repayment estimate or actual repayment disclosure is prominently disclosed 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 an estimate of how long it will take you to repay your balance if you make only the minimum payment each month." If the automated system permits callers to select the language in which the call is conducted and in which information is provided, the Board has amended comment 7(b)(12)-3 to state that the menu to select the language may precede the menu with the option to receive the repayment disclosure.

In addition, proposed comment 7(b)(12)(iv)-3 dealing with advertisements and marketing information has been moved to comment 7(b)(12)-5. This comment is revised to specify that once a consumer has indicated that he or she is requesting the generic repayment estimate or the actual repayment disclosure, as applicable, card issuers may not provide advertisements or marketing information (except for providing the name of the issuer) to the consumer prior to providing the repayment information required or permitted by Appendix M1 or M2 to part 226, as applicable. Furthermore, new comment 7(b)(12)-5 clarifies that educational materials that do not solicit business are not considered advertisements or marketing materials for purposes of § 226.7(b)(12). Also, comment 7(b)(12)-5 contains examples of how the prohibition on providing advertisements and marketing information applies in two contexts. In particular, comment 7(b)(12)-5 provides an example where the issuer is using a toll-free telephone number that is designed to handle customer service calls generally and the option to select to receive the generic repayment estimate or actual repayment disclosure is given as one of the options in the first menu of options given to the consumer. Comment 7(b)(12)-5 clarifies in that context that once the consumer selects the option to receive the generic repayment estimate or the actual repayment disclosure, the 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 or permitted by Appendix M1 or M2 to part 226, as applicable. In addition, if an issuer discloses a link to a Web site as part of the minimum payment disclosure on the periodic statement, the issuer may not provide advertisements or marketing materials (except for providing the name of the issuer) on the Web page accessed by the link, including pop-up marketing materials or banner marketing materials, prior to providing the information required or permitted by Appendix M1 or M2 to part 226, as applicable.

In response to the June 2007 Proposal, several consumer groups suggested that the Board prohibit issuers from providing advertisements or marketing materials even after the repayment information has been given, if the issuer is providing generic repayment estimates through the toll-free telephone number. Nonetheless, if the issuer is providing actual repayment disclosures through the toll-free telephone number, these commenters suggested that the Board allow the issuer to provide advertisements or marketing materials after the repayment information is given, to encourage creditors to provide actual repayment disclosures instead of generic repayment estimates. The final rule does not adopt this approach. The Board believes that allowing advertisements or marketing materials after the repayment information is given is appropriate regardless of whether the repayment information provided are generic repayment estimates or actual repayment disclosures, because consumers could end the telephone call (or exit the Web page) if they were not interested in listening to or reviewing the advertisements or marketing materials given.

7(b)(12)(iii) Actual Repayment Disclosure Through Toll-free Telephone Number

Under the Bankruptcy Act, a creditor may use a toll-free telephone number to provide consumers with 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. Creditors that choose to give the actual number via the telephone number need not include a hypothetical example on their periodic statements. Instead, they must disclose on periodic statements a warning statement that making the minimum payment will increase the interest the consumer pays and the time it takes to repay the consumer's balance, along with a toll-free telephone number that consumers may use to obtain the actual repayment disclosure. 15 U.S.C. 1637(b)(11)(I) and (K). In the June 2007 Proposal, the Board proposed to implement this statutory provision in new § 226.7(b)(12)(ii)(A). The final rule moves this provision to § 226.7(b)(12)(iii), with one revision described below.

Wording of disclosure on periodic statement. Under the Bankruptcy Act, if a creditor chooses to provide the actual repayment disclosure through the toll-free telephone number, the statute provides specific language that issuers must disclose on the periodic statement. In particular, this statutory language reads: "Making only the minimum payment will increase the interest you pay and the time it takes to repay your balance. For more information, call this toll-free number: ____." In the June 2007 Proposal, the Board proposed that issuers use this statutory disclosure language. See proposed § 226.7(b)(12)(ii)(A). In response to the June 2007 Proposal, several consumer groups suggested that the Board revise the disclosure language to communicate more clearly to consumers the type of information that consumers will receive through the toll-free telephone number. The final rule in § 226.7(b)(12)(iii) revises the disclosure language to read: "For an estimate of how long it will take to repay your balance making only minimum payments, call this toll-free telephone number: __________." The Board adopts this change to the disclosure language pursuant to its 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 believes that this change will further TILA's purpose of assuring a meaningful disclosure of credit terms. 15 U.S.C. 1601(a).

7(b)(12)(iv) Actual Repayment Disclosure on the Periodic Statement

In the June 2007 Proposal, the Board proposed to provide that if card issuers provide the actual repayment disclosure on the periodic statement, they need not disclose the warning, the hypothetical example or a toll-free telephone number on the periodic statement, nor need they maintain a toll-free telephone number to provide the actual repayment disclosure. See proposed § 226.7(b)(12)(ii)(B). In the supplementary information to the June 2007 Proposal, the Board strongly encouraged card issuers to provide the actual repayment disclosure on periodic statements, and solicited comments on whether the Board could take other steps to provide incentives to card issuers to use this approach.

In response to the June 2007 Proposal, several consumer group commenters suggested that the Board should require issuers to disclose the actual repayment disclosure on the periodic statement in all cases. Industry commenters generally supported the option to provide the actual repayment disclosure on the periodic statement.

As proposed in June 2007, the final rule in new § 226.7(b)(12)(iv) provides that an issuer may comply with the minimum payment requirements by providing the actual repayment disclosure on the periodic statement. Consistent with the statutory requirements, the Board is not requiring that issuers provide the actual repayment disclosure on the periodic statement.

The Board is adopting an exemption from the requirement to provide on periodic statements a warning about the effects of making minimum payments, a hypothetical example, and a toll-free telephone number consumers may call to obtain repayment periods, and to maintain a toll-free telephone number for responding to consumers' requests, if the card issuer instead provides the actual repayment disclosure on the periodic statement.

The Board adopts this approach 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 uniformed use of credit. 15 U.S.C. 1601(a), 1604(a). Section 105(f) authorizes the Board to exempt any class of transactions (with an exception not relevant here) 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. 15 U.S.C. 1604(f)(1). Section 105(f) directs the Board to make this determination in light of specific factors. 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. The Board has considered each of these factors carefully, and based on that review, believes it is appropriate to provide this exemption for card issuers that provide the actual repayment disclosure on the periodic statement.

As discussed in the supplementary information to the June 2007 Proposal, the Board believes that certain cardholders would find the actual repayment disclosures more helpful than the generic repayment estimates, as suggested by a recent study conducted by the GAO on minimum payments. For this study, the GAO interviewed 112 consumers and collected data on whether these consumers preferred to receive on the periodic statement (1) customized minimum payment disclosures that are based on the consumers' actual account terms (such as the actual repayment disclosure), (2) generic disclosures such as the warning statement and the hypothetical example required by the Bankruptcy Act; or (3) no disclosure.[22] According to the GAO's report, in the interviews with the 112 consumers, most consumers who typically carry credit card balances (revolvers) found customized disclosures very useful and would prefer to receive them in their billing statements. Specifically, 57 percent of the revolvers preferred the customized

---

[22] United States Government Accountability Office, Customized Minimum Payment Disclosures Would Provide More Information to Consumers, but Impact Could Vary, 06-434 (April 2006). (The GAO indicated that the sample of 112 consumers was not designed to be statistically representative of all cardholders, and thus the results cannot be generalized to the population of all U.S. cardholders.)

disclosures, 30 percent preferred the generic disclosures, and 14 percent preferred no disclosure. In addition, 68 percent of the revolvers found the customized disclosure extremely useful or very useful, 9 percent found the disclosure moderately useful, and 23 percent found the disclosure slightly useful or not useful. According to the GAO, the consumers that expressed a preference for the customized disclosures preferred them because such disclosures: would be specific to their accounts; would change based on their transactions; and would provide more information than generic disclosures. GAO Report on Minimum Payments, pages 25, 27.

In addition, the Board believes that disclosing the actual repayment disclosure on the periodic statement would simplify the process for consumers and creditors. Consumers would not need to take the extra step to call the toll-free telephone number to receive the actual repayment disclosure, but instead would have that disclosure each month on their periodic statements. Card issuers (other than issuers that may use the Board or the FTC toll-free telephone number) would not have the operational burden of establishing a toll-free telephone number to receive requests for the actual repayment disclosure and the operational burden of linking the toll-free telephone number to consumer account data in order to calculate the actual repayment disclosure. Thus, the final rule has the potential to better inform consumers and further the goals of consumer protection and the informed use of credit for credit card accounts.

7(b)(12)(v) Exemptions

As explained above, the final rule requires the minimum payment disclosures only for credit card accounts. See § 226.7(b)(12)(i). Thus, creditors would not need to provide the minimum payment disclosures for HELOCs (including open-end reverse mortgages), overdraft lines of credit or other general purpose personal lines of credit. For the same reasons as discussed above, the final rule exempts these products even if they can be accessed by a credit card device as discussed in the June 2007 Proposal, 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). Specifically, new § 226.7(b)(12)(v) would exempt the following types of credit card accounts: (1) HELOCs that are subject to § 226.5b, even if the HELOC is accessible by credit cards; (2) overdraft lines of credit tied to asset accounts accessed by check-guarantee cards or by debit cards; and (3) lines of credit accessed by check-guarantee cards or by debit cards that can be used only at automated teller machines. See new § 226.7(b)(12)(v)(A)-(C). The final rule also exempts charge cards from the minimum payment disclosure requirements, to implement TILA Section 127(b)(11)(I). 15 U.S.C. 1637(b)(11)(I); see new § 226.7(b)(12)(v)(D).

Exemption for credit card accounts with a fixed repayment period. In the June 2007 Proposal, the Board proposed to exempt credit card accounts 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. See proposed § 226.7(b)(12)(iii)(E).

In response to the June 2007 Proposal, several consumer group commenters urged the Board not to provide an exemption for credit with a defined fixed repayment period. These commenters believed that the Board should develop a special warning for these types of loans, indicating that paying more than the required minimum payment will result in paying off the loan earlier than the date of final payment and will save the consumer interest charges. Industry commenters generally supported the exemption for credit card accounts with a specific repayment period.

The final rule in § 226.7(b)(12)(v)(E) adopts the exemption for credit card accounts with a specific repayment period as proposed, with several technical edits, 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 minimum payment disclosure does not appear to provide additional information to consumers that they do not already have in their account agreements. In addition, as discussed below, this exemption will typically be used with respect to 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. In these cases, consumers will likely be aware of the fixed period of time to repay because it has been specifically negotiated with the card issuer.

In order for this proposed exemption to apply, a fixed repayment period must be specified in the account agreement. As discussed above, 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. This exemption would not apply where the credit card may have a fixed repayment period for one credit feature, but an indefinite repayment period on another feature. For example, 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. Comment 7(b)(12)(v)-1 makes clear that the exemption relating to a fixed repayment period for the entire account does not apply to the above situation, because the retail card account as a whole does not have a fixed repayment period, although the exemption under § 226.7(b)(12)(v)(F) might apply as discussed below.

Exemption where balance has fixed repayment period.

In the June 2007 Proposal, the Board proposed to exempt 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. See proposed § 226.7(b)(12)(iii)(G). This exemption was meant to cover the retail cards described above in those cases 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. The final rule in § 226.7(b)(12)(v)(F) adopts this exemption as proposed, with one technical edit, 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). See also comment 7(b)(12)(v)-2. The minimum payment disclosures would not appear to provide additional information to consumers in this context because consumers would be able to determine from their account agreements how long it would take to repay the balance. In addition, these fixed repayment features are often promoted in advertisements by retail card issuers, so consumers will typically be aware of the fixed repayment period when using these features.

Exemption where cardholders have paid their accounts in full for two consecutive billing cycles.

In the June 2007 Proposal, the Board proposed to provide that card issuers are not required to include the minimum payment disclosure in the periodic statement for a particular billing cycle if a consumer has paid the entire balance in full in that billing cycle and the previous billing cycle. See proposed § 226.7(b)(12)(iii)(F).

In response to the June 2007 Proposal, several consumer groups suggested that the Board not adopt this exemption and not provide any exemption based on consumers' payment habits. Several industry commenters suggested that the Board broaden this exemption. Some industry commenters suggested that issuers should only be required to comply with minimum payment disclosure requirements for a particular billing cycle if the consumer has made minimum payments for the past three consecutive billing cycles. Other industry commenters suggested that issuers should only by required to comply with the minimum payment disclosure requirements for a particular billing cycle if the consumer has made at least three minimum payments in the past 12 months. Another industry commenter suggested that there should be an exemption for any consumer who has paid his or her account in full during the past 12 months, or has promotional balances that equal 50 percent or more of his or her total account balance.

The final rule adopts in § 226.7(b)(12)(v)(G) the exemption as proposed, with one technical edit, 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 final rule exempts card issuers from the requirement to provide the minimum payment disclosures in 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 disclosures, and compliance burdens on issuers in providing the disclosures. Consumers who might benefit from the disclosures will receive them. Consumers who carry a balance each month will always receive the disclosure, and consumers who pay in full each month will not. Consumers who sometimes pay their bill in full and sometimes do not will receive the minimum payment 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 will begin receiving the minimum payment disclosures after not paying in full one billing cycle, when the disclosures would appear to be useful to the consumer. In addition, creditors 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, creditors already currently capture payment history for consumers for two consecutive months (or cycles).

The Board notes that card issuers are not required to use this exemption. A card issuer may provide the minimum payment disclosures to all of its cardholders, even to those cardholders that fall within this exemption. If issuers choose to provide voluntarily the minimum payment disclosures to those cardholders that fall within this exemption, the Board encourages issuers to follow the disclosures rules set forth in § 226.7(b)(12), the accompanying commentary, and Appendices M1-M3 to part 226 (as appropriate) for those cardholders.

<u>Exemption where minimum payment would pay off the entire balance for a particular billing cycle.</u>

In response to the June 2007 Proposal, several commenters requested that the Board add an exemption where issuers would not be required to comply with the minimum payment 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 minimum payment disclosure requirements for that particular billing cycle. The final rule contains this exemption in new § 226.7(b)(12)(v)(H), 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).

<u>Other exemptions</u>. In response to the June 2007 Proposal, several commenters suggested other exemptions to the minimum payment requirements, as discussed below. For the reasons discussed below, the final rule does not include these exemptions.

1. Exemption for discontinued credit card products. In response to the June 2007 Proposal, one industry commenter asked the Board to provide an exemption for discontinued products for which no new accounts are being opened, and for which existing accounts are closed to new transactions. The commenter indicated that the number of accounts that are discontinued are usually very small and the computer systems used to produce the statements for the closed accounts are being phased out. The Board does not believe that this exception is warranted. Issuers will need to make changes to their periodic statement systems as a result of changes to other periodic statement requirements in this final rule and issuers could make changes to the periodic statement system to incorporate the minimum payment disclosure on the periodic statement at the same time they make other changes required by the final rule.

2. Exemption for credit card accounts purchased within the last 18 months. In response to the June 2007 Proposal, several commenters urged the Board to provide an exemption for accounts purchased by a credit card issuer. With respect to these purchased accounts, one commenter urged the Board to exempt issuers from providing the minimum payment disclosures during a transitional period (up to 18 months) while the purchasing issuer converts the new accounts to its statement system. In this situation, the commenters indicated that the purchase of credit card accounts is often followed by a change-in-terms notice, which may include a change in the minimum payment formula. If this occurs, disclosing one estimated repayment period immediately after the account is purchased and then disclosing a different repayment period for the same balance after the change in terms becomes effective would be confusing to many consumers. The Board does not believe that such an exemption is warranted. A consumer may be alerted that

his or her minimum payment has changed, either through reading the change-in-terms notice, or seeing different minimum payment amounts disclosed on his or her periodic statement. Thus, consumers may be aware that their minimum payment has changed, and as a result, may not be confused about receiving a different repayment period for the same or similar balance.

3. Promotional plans. One industry commenter suggested that the Board exempt any account where there is a balance in a promotional credit plan, such as a deferred interest plan, until expiration of the promotional plan. Another industry commenter suggested that the Board not require an issuer to provide the minimum payment disclosures to any consumer that has promotional balances that equal 50 percent or more of his or her total account balance. The final rule does not include these exemptions for promotional plans. Not all consumers will necessarily pay off the promotional balances by the end of the promotional periods. Thus, the Board believes that some consumers that have taken advantage of promotional plans may still find the minimum payment disclosures useful.

4. General purpose lines of credit. One commenter suggested that the final rule include an exemption for general purpose lines of credit. This commenter indicated that general purpose lines can be accessed by check or credit union share draft, by personal request at a branch, or via telephone or Internet. The Board notes that § 226.7(b)(12)(i) makes clear that the minimum payment disclosure requirements only apply to credit card accounts. Thus, to the extent that a general purpose line of credit is not accessed by a credit card, it is not subject to the requirements in § 226.7(b)(12).

7(b)(13) Format Requirements

Under the June 2007 Proposal, creditors would have been required to group together disclosures regarding when a payment is due (due date and cut-off time if before 5 p.m.), how much is owed (minimum payment and ending balance), the potential costs for paying late (late-payment fee, and penalty APR if triggered by a late payment), and the potential costs for making only minimum payments. Proposed Samples G-18(E) and G-18(F) in Appendix G to part 226 would have illustrated the proposed requirements. The proposed format requirements were intended to fulfill Congress's intent to have the new late payment and minimum payment disclosures enhance consumer understanding of the consequences of paying late or making only minimum payments, and were based on consumer testing conducted for the Board that indicated improved understanding when related information is grouped together.

Consumer group commenters, a member of Congress and one trade association supported the format requirements, as being helpful to consumers.

Industry commenters generally opposed the requirements as being overly prescriptive. They urged the Board to permit additional flexibility, or instead to retain the current requirement to provide "clear and conspicuous" disclosures. They asked the Board to require a "closely proximate" standard that would allow additional flexibility in how creditors design their statements, and to eliminate any requirement that creditors' disclosures be substantially similar to model forms or samples. They stated that there is no evidence that under the current "clear and conspicuous" standard consumers are unable to locate or understand the due date, balances, and minimum payment amount.

Some industry commenters opposed the requirement to place the late payment disclosures on the front of the first page. Some commenters asserted that locating that disclosure on the top of the first page places a disproportionate emphasis on the disclosure.

The Board tested the formatting of information regarding payments in two rounds of consumer testing conducted after May 2008. Participants were presented with two different versions of the periodic statement, in which the information was grouped, but the formatting was varied. These changes had no noticeable impact on how easily participants could locate the warning regarding the potential costs for paying late and the potential costs for making only minimum payments.

The Board also tested different formats for the grouped information in the quantitative testing conducted in September and October 2008. Participants were shown versions of the periodic statement in which the information was grouped, but formatted in three different ways. In order to assess whether formatting had an impact on consumers' ability to locate these disclosures, the Board's testing consultant focused on whether the format in which payment information was provided impacted consumer awareness of the late payment warning. Participants were asked whether there was any information on the statement about what would happen if they made a late payment. Participants who noticed the late payment warning were then asked a series of questions about what would happen if they made a late payment. Consistent with the prior rounds of consumer testing, the results of the quantitative testing demonstrated that the formatting of the grouped payment information does not have a statistically significant impact on consumers' ability to locate or understand the late payment warning.

Because the Board's consumer testing demonstrated that formatting of the information about payments does not have an impact on consumer awareness of these disclosures if the information is grouped together, § 226.7(b)(13) as adopted does not require that disclosures regarding when a payment is due, how much is owed, the potential costs for paying late, and the potential costs for making only minimum payments be "substantially similar" to Sample G-18(D) or G-18(E) (proposed as Samples G-18(E) and G-18(F)). The final rule does require, however, that these terms be grouped together, in close proximity, consistent with the proposal. For the reasons discussed in the supplementary information to § 226.7(b)(11), the final rule does not require a disclosure of the cut-off time on the front of the periodic statement, and the reference to a cut-off time disclosure that was included in proposed § 226.7(b)(13) has been deleted.

In response to a request for guidance, comment app. G-10 is added to clarify that although the payment disclosures appear in the upper right-hand corner of Forms G-18(F) and G-18(G) (proposed as Forms G-18(G) and G-18(H)), the disclosures may be located elsewhere, as long as they appear on the front side of the first page.

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. Industry commenters asked for guidance on how to comply with format requirements requiring disclosures to appear on the "front of the first page" for these combined statements. Comment 7(b)(13)-1 is added to clarify that 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 deemed to be the page on which credit transactions first appear. For example, assume a combined statement where credit transactions begin on the third page and deposit account information appears on pages one and two. For purposes of providing disclosures on the front of the first page of the periodic statement under Regulation Z, this comment clarifies that page three is deemed to be the first page of the periodic statement.

Technical revisions. A number of technical revisions are made for clarity, as proposed. For the reasons set forth in the section-by-section analysis to § 226.6(b)(2)(v), the Board is updating references to "free-ride period" as "grace period" in the regulation and commentary, without any intended substantive change. Current comment 7-2, which addresses open-end plans involving more than one creditor, is deleted as obsolete and unnecessary.

Section 226.8 Identifying Transactions on Periodic Statements

TILA Section 127(b)(2) requires creditors to identify on periodic statements credit extensions that occurred during a billing cycle. 15 U.S.C. 1637(b)(2). The statute calls for the Board to implement requirements that are sufficient to identify the transaction or to relate the credit extension to sales vouchers or similar instruments previously furnished. The rules for identifying transactions are implemented in § 226.8, and vary depending on whether: (1) the sales receipt or similar credit document is included with the periodic statement, (2) the transaction is sale credit (purchases) or nonsale credit (cash advances, for example), and (3) the creditor and seller are the "same or related." TILA's billing error protections include consumers' requests for additional clarification about transactions listed on a periodic statement. 15 U.S.C. 1666(b)(2); § 226.13(a)(6).

"Descriptive billing" statements. In June 2007, the Board proposed revisions to the rules for identifying sales transactions when the sales receipt or similar document is not provided with the periodic statement (so called "descriptive billing"), which is typical today. The proposed revisions reflect current business practices and consumer experience, and were intended to ease compliance. Currently, creditors that use descriptive billing are required to include on periodic statements an amount and date as a means to identify transactions. As an additional means to identify transactions, current rules contain description requirements that differ depending on whether the seller and creditor are "same or related." For example, a retail department store with its own credit plan (seller and creditor are same or related) sufficiently identifies purchases on periodic statements by providing the department such as "jewelry" or "sporting goods"; item-by-item descriptions are not required. Periodic statements provided by issuers of general purpose credit cards, where the seller and creditor are not the same or related, identify transactions by the seller's name and location.

The June 2007 Proposal would have permitted all creditors to identify sales transactions (in addition to the amount and date) by the seller's name and location. Thus, creditors and sellers that are the same or related could, at their option, identify transactions by a brief identification of goods or services, which they are currently required to do in all cases, or they could provide the seller's name and location for each transaction. Guidance on the level of detail required to describe amounts, dates, the identification of goods, or the seller's name and location would have remained unchanged under the proposal.

Commenters addressing this aspect of the June 2007 Proposal generally supported the proposed revisions. For the reasons stated below, the final rule provides additional flexibility to creditors that use descriptive billing to identify transactions on periodic statements.

The Board's revisions are guided by several factors. The standard set forth by TILA for identifying transactions on periodic statements is quite broad. 15 U.S.C. 1637(b)(2). Whether a general description such as "sporting goods" or the store name and location would be more helpful to a consumer can depend on the situation. Many retailers permit consumers to purchase in a single transaction items from a number of departments; in that case, the seller's name and location may be as helpful as the description of a single department from which several dissimilar items were purchased. Also, the seller's name and location has become the more common means of identifying transactions, as the use of general purpose cards increases and the number of store-only cards decreases. Thus, retailers that commonly accept general purpose credit cards but also offer a credit card account or other open-end plan for use only at their store would not be required to maintain separate systems that enable different descriptions to be provided, depending on the type of card used. Moreover, consumers are likely to carefully review transactions on periodic statements and inquire about transactions they do not recognize, such as when a retailer is identified by its parent company on sales slips which the consumer may not have noticed at the time of the transaction. Moreover, consumers are protected under TILA with the ability to assert a billing error to seek clarification about transactions listed on periodic statements, and are not required to pay the disputed amount while the card issuer obtains the necessary clarification. Maintaining rules that require more standardization and detail would be costly, and likely without significant corresponding consumer benefit. Thus, the revisions are intended to provide flexibility for card issuers without reducing consumer protection.

The Board notes, however, that some retailers offering their own open-end credit plans tie their inventory control systems to their systems for generating sales receipts and periodic statements. In these cases, purchases listed on periodic statements may be described item by item, for example, to indicate brand names such as “XYZ Sweater.” This item-by-item description, while not required under current or revised rules, remains permissible.

To implement the approach described above, § 226.8 is revised, as proposed, as follows. Section 226.8(a)(1) sets forth the rule providing flexibility in identifying sales transactions, as discussed above. Section 226.8(a)(2) contains the existing rules for identifying transactions when sales receipts or similar documents accompany the periodic statement. Section 226.8(b) is revised for clarity. A new § 226.8(c) is added to set forth rules now contained in footnotes 16 and 19; and, without references to “same or related” parties, footnotes 17 and 20. The substance of footnote 18, based on a statutory exception where the creditor and seller are the same person, is deleted as unnecessary. The title of the section is revised for clarity.

The commentary to § 226.8 is reorganized and consolidated but is not substantively changed, as proposed. Comments 8-1, 8(a)-1, and 8(a)(2)-4 are deleted as duplicative. Similarly, comments 8-6 through 8-8, which provide creditors with flexibility in describing certain specific classes of transactions regardless of whether they are “related” or “nonrelated” sellers or creditors, are deleted as unnecessary. Revised § 226.8(a)(1)(ii) and comments 8(a)-3 and 8(a)-7, which provide guidance for identifying mail or telephone transactions, are updated to refer to Internet transactions.

Examples of sale credit. Proposed comment 8(a)-1 republished an existing example of sales credit–a funds transfer service (such as a telegram) from an intermediary– and proposed a new example–expedited payment service from a creditor. One commenter addressed the proposed comment, suggesting that the entire comment be deleted. The commenter asserted creditors should have the flexibility to post a funds transfer service as a cash advance but that the comment forces creditors to post the transaction as a purchase, and, similarly, creditors should have discretion in how to post fees for creditors' services.

The requirements of § 226.8 are limited to how creditors must identify transactions on periodic statements and do not impact how creditors may otherwise characterize transactions, such as for purposes of pricing. The Board believes a consumer's purchase of a funds transfer service from a third party is properly characterized as sales credit for purposes of identifying transactions on a card issuer's periodic statement. Consumers are likely to recognize the name of the funds transfer merchant, as would be the typical case where the card issuer and funds transfer merchant are not the same or related. Thus, the example is retained although a more current illustration (wire transfer) replaces the existing illustration (telegram).

Additional guidance is added to comment 8(a)-1 regarding permissible identification of creditors' services that are purchased by the consumer and are "costs imposed as part of the plan," in response to the commenter's concerns. The comment provides that for the purchase of such services (for example, a fee to expedite a payment), card issuers and creditors comply with the requirements for identifying transactions under § 226.8 by disclosing the fees in accordance with the requirements of § 226.7(b)(6)(iii).

The example of voluntary credit insurance premiums as "sale credit" is deleted, because such premiums are costs imposed as part of the plan under § 226.6(b)(3)(i)(F). To ease compliance, the comment further provides that for 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)(iii). This flexibility is intended to avoid technical compliance violations.

Aggregating small dollar purchases. One commenter urged the Board to permit card issuers to aggregate, for billing purposes, small dollar purchases at the same merchant. Aggregating such purchases, in the view of the commenter, could enhance consumers' ability to track small dollar spending at particular merchants in a more meaningful way.

The Board believes further study is desirable to consider the potential ramifications of permitting card issuers to aggregate small dollar transactions on periodic statements. Furthermore, consistent rules should be considered under Regulation E (Electronic Fund Transfer). 12 CFR part 205. Thus, the final revisions do not include rules permitting aggregation of small dollar purchases.

Receipts accompany statements. Rules for identifying transactions where receipts accompany the periodic statement were not affected by the June 2007 Proposal, and are retained. Comments 8-4 and 8(a)(2)-3, which provide guidance when copies of credit or sales slips accompany the statement, are deleted, as proposed. The Board believes this practice is no longer common, and to the extent sales or similar credit documents accompany billing statements, additional guidance seems unnecessary.

Section 226.9 Subsequent Disclosure Requirements

Section 226.9 currently sets forth a number of disclosure requirements that apply after an account is opened, including a requirement to provide billing rights statements annually, a requirement to provide at least 15 days' advance notice whenever a term required to be disclosed in the account-opening disclosures is changed, and a requirement to provide finance charge disclosures whenever credit devices or features are added on terms different from those previously disclosed.

9(a) Furnishing Statement of Billing Rights

Section 226.9(a) requires creditors to mail or deliver a billing error rights statement annually, either to all consumers or to each consumer entitled to receive a periodic statement. See 15 U.S.C. 1637(a)(7). Alternatively, creditors may provide a shorter billing rights statement on each periodic statement. Regulation Z contains model forms creditors may use to satisfy the notice requirements under § 226.9(a). See Model Forms G-3 and G-4.

The June 2007 Proposal would have revised both the regulation and commentary under § 226.9(a) to conform to other changes elsewhere in the proposal, but otherwise would have left the provision unchanged substantively. In addition, the Board proposed new Model Forms G-3(A) (long form billing rights notice) and G-4(A) (short form alternative billing rights notice) in the June 2007 Proposal to improve the readability of the current notices. For HELOCs subject to the requirements of § 226.5b, the June 2007 Proposal would have given creditors the option of using the current Model Forms G-3 and G-4, or the revised forms.

One industry commenter opposed the proposed changes in Model Forms G-3(A) and G-4(A), largely due to the increased compliance burden from having separate forms for HELOCs and for other open-end plans. This commenter further noted that the Board did not conduct consumer research on the readability of the proposed notices. Another industry commenter opposed the revised language in Model Forms G-3(A) and G-4(A) regarding the merchant claim and defenses under § 226.12(c), stating that mere dissatisfaction with the good or service would not be enough to trigger the consumer's rights. Consumer groups generally supported the revised forms, but urged the Board to add additional language in the short form billing rights notice (Model Form G-4(A)) to note that a consumer need not pay any interest if the error is resolved in the consumer's favor, consistent with language in the long-form notice (Model Form G-3(A)). Consumer groups also suggested that the Board add optional language in the event a creditor allows a cardholder to provide billing error notices electronically.

The final rule retains Model Forms G-3(A) and G-4(A), largely as proposed. To address concerns about potential compliance burdens from using multiple forms, the final rule permits creditors to use Model Forms G-3(A) and G-4(A) in all cases to comply with their disclosure obligations for all open-end products. Thus, for open-end (not home-secured) plans, creditors may use Model Forms G-3(A) and G-4(A). For HELOCs subject to the requirements of § 226.5b, creditors may use the revised forms, or continue to use Model Forms G-3 and G-4. In addition, while the new model forms were not tested with individual consumers, the forms were reviewed by the Board's testing consultant which enabled the Board to draw upon the consultant's experience, both from the insights obtained through the testing of other notices in connection with this rulemaking, as well as from working with plain language disclosures in other contexts.

To address consumer group concerns, language has been added to Model Form G-

4(A) (the short form alternative billing rights notice for open-end (not home-secured) plans) to inform the consumer that he or she need not pay any interest if the error is resolved in the consumer's favor, consistent with identical language used in the long form (Model Form G-3(A)). In addition, each of the model forms has been revised to include optional language a creditor may use if it permits a cardholder to provide billing error notices electronically. As discussed below in the section-by-section analysis to § 226.13, if a creditor indicates that it will accept notices submitted electronically, it must treat notices received in such manner as preserving billing error rights. See § 226.13(b); comment 13(b)-2, discussed below. Lastly, both Model Forms G-3(A) and G-4(A) have been revised in the final rule to clarify that for merchant claims (see § 226.12(c)), the consumer must first attempt in good faith to correct the problem with the merchant before asserting the claim with the issuer.

9(b) Disclosures for Supplemental Credit Access Devices and Additional Features

Section 226.9(b) currently requires certain disclosures when a creditor adds a credit device or feature to an existing open-end plan. When a creditor adds a credit feature or delivers a credit device to the consumer within 30 days of mailing or delivering the account-opening disclosures under current § 226.6(a), and the device or feature is subject to the same finance charge terms previously disclosed, the creditor is not required to provide additional disclosures. If the credit feature or credit device is added more than 30 days after mailing or delivering the account-opening disclosures, and is subject to the same finance charge terms previously disclosed in the account-opening agreement, the creditor must disclose that the feature or device is for use in obtaining credit under the terms previously disclosed. However, if the added credit device or feature has finance charge terms that differ from the disclosures previously given under § 226.6(a), then the disclosures required by § 226.6(a) that are applicable to the added feature or device must be given before the consumer uses the new feature or device.

In June 2007, the Board proposed to retain the current rules set forth in §§ 226.9(b)(1) and (b)(2) for all credit devices and credit features except checks that access a credit card account. With respect to checks that access a credit card account, the Board proposed to create a new § 226.9(b)(3) that would require certain information to be disclosed each time checks that access a credit card account are mailed to a consumer, for checks mailed more than 30 days following the delivery of the account-opening disclosures.

The June 2007 Proposal would have required the following key terms to be disclosed on the front of the page containing the checks: (1) any discounted initial rate, and when that rate will expire, if applicable; (2) the type of rate that will apply to the checks after expiration of any discounted initial rate (such as whether the purchase or cash advance rate applies) and the applicable APR; (3) any transaction fees applicable to the checks; and (4) whether a grace period applies to the checks, and if one does not apply, that interest will be charged immediately. The disclosures would have been required to be accurate as of the time the disclosures are given. The June 2007 Proposal provided that a variable APR is accurate if it was in effect within 30 days of when the disclosures are given. Proposed § 226.9(b)(3) would have required that these key terms be disclosed in a tabular format substantially similar to Sample G-19 in Appendix G to part 226. The Board solicited comment on the operational burden associated with customizing the checks to disclose the actual APR, and on alternatives, such as whether providing a reference to the type of rate that will apply, accompanied by a toll-free telephone number that a consumer could call to receive additional information, would provide sufficient benefit to consumers while limiting the burden on creditors.

In the May 2008 Proposal, the Board proposed to add to the summary table in § 226.9(b)(3) another disclosure that would have required additional information regarding the expiration date of any offer of a discounted initial rate. The additional disclosure was set forth in proposed § 226.9(b)(3)(i)(C), pursuant to the Board's authority under TILA Section 105(a). 15 U.S.C. 1604(a). Specifically, the disclosure would have been required to include any date by which the consumer must use the checks in order to receive the discounted initial rate. Furthermore, if the creditor will honor the checks if they are used after the disclosed date but will apply to the advance a rate other than the discounted rate, proposed § 226.9(b)(3)(i)(C) would have required the creditor to disclose that fact and the type of rate that will apply under those circumstances. The Board also proposed to revise proposed § 226.9(b)(3)(i)(E) (proposed in June 2007 as § 226.9(b)(3)(i)(D)) regarding disclosure of any grace period applicable to the checks and to add a new comment 9(b)(3)(i)(E)-1 which set forth language that creditors could have used to describe in the tabular disclosure any grace period (or lack of a grace period) offered on check transactions.

APRs. The Board received several comments on the proposal to require disclosure of the actual APR or APRs applicable to the checks. Several industry commenters noted that there would be operational burdens associated with disclosing the actual rate applicable to the checks that access a credit card account. These commenters encouraged the Board to consider alternatives, such as providing a reference to the type of rate that will apply or providing a toll-free number that consumers can use to get customized information. One issuer noted that all cardholders do not receive the same rate and/or fees even if they receive checks at the same time and stated that convenience check printing would have to be done in batches, raising the production costs. Another issuer noted that it has only one rate that applies to all features (purchases, cash advances, and balance transfers) under a given pricing plan, so its cardholders were unlikely to be confused about the rate that will apply after the expiration of a promotional rate. That commenter stated that redisclosing the rate applicable to the account on the page containing the checks would require customization by pricing plan. One issuer commented that the burden of customizing checks would fall disproportionately on smaller issuers because they would not be able to obtain efficiencies of scale if customization were required. Finally, one commenter also stated that, in addition to being operationally burdensome, the disclosure of the actual "go-to" rate could be confusing for consumers, because it may be inaccurate by the time any promotional offer expires.

Consumer groups, a trade association for community banks, and a credit union trade association supported the disclosure of the actual rate applicable to the checks. These commenters stated that it is important that consumers be aware of the costs associated with using checks that access a credit card account and that consumers should not have to use a toll-free number to receive the information. One commenter pointed out that the testing conducted on behalf of the Board indicated that consumers generally did not notice or pay attention to a cross reference contained in the convenience check disclosure.

The final rule requires that the tabular disclosure accompanying checks that access a credit card account include a disclosure of the actual rate or rates applicable to the checks, consistent with the June 2007 Proposal. The Board believes that disclosing the actual rate that will apply to checks once any promotional rate expires is a crucial piece of information necessary to assist consumers in deciding whether, and in what manner, to use the checks. While the actual post-promotional rate disclosed at the time the checks are sent to a consumer may be inaccurate by the time the promotional offer expires, due, for example, to fluctuations in the index used to determine a variable rate, the Board notes that this is not materially different from the situation where a post-promotional rate is disclosed in the disclosures provided to a consumer with an application or solicitation under § 226.5a or with the account-opening disclosures given pursuant to § 226.6. In either case, the exact post-promotional rate may differ from the rate disclosed by the time it becomes applicable to the consumer's account; however, the Board believes that disclosure of the actual post-promotional rate in effect at the time that the checks are sent to the consumer is an important piece of information for the consumer to use in making an informed decision about whether to use the checks.

The requirement to disclose the actual rate applicable to the checks also is consistent with the policy considerations underlying TILA Section 127(c)(6)(A), as added by Section 1303(a) of the Bankruptcy Act. 15 U.S.C. 1637(c)(6)(A). As discussed in the supplementary information to § 226.16(g), TILA Section 127(c)(6)(A) requires in connection with credit card direct mail applications and solicitations or accompanying promotional materials that a creditor disclose the time period in which the introductory period will end and the APR that will apply after the end of the introductory period. The requirements in TILA Section 127(c)(6)(A) do not apply to checks that access a credit card account because such checks are generally provided in connection with an existing account, not in connection with an application or solicitation for a new credit card account. However, the Board believes, consistent with the intent of TILA Section 127(c)(6)(A), that requiring creditors to disclose with access checks the actual rate that will apply upon expiration of any promotional rate will ensure that consumers to whom an initial discounted rate is being promoted also receive, with the materials promoting the initial discounted rate, a disclosure of the actual rate that will apply after that promotional rate expires.

Testing conducted on behalf of the Board also suggests that a disclosure of the actual rate, rather than a toll-free telephone number, will help to enhance consumer understanding of the rate that will apply when the promotional rate expires. Consumer testing conducted after the June 2007 Proposal supports the notion that consumers tend to look for a rate rather than a narrative disclosure when identifying the APR applicable to the checks. In March 2008, the form of access check disclosures tested contained a disclosure of the actual APR that would apply upon expiration of the promotional rate. All of the participants who noticed the disclosures[23] in the March 2008 interviews successfully identified the rate that would apply after the promotional rate expired. In July and August 2008, however, participants were presented with disclosures on the front of the page containing the checks that did not disclose the actual APR, but rather stated the type of rate that would apply (the cash advance rate) and a toll-free number that the consumer could call to learn the current APR. Almost all of the participants in the July

[23] As discussed below, in the March 2008 testing, some consumers did not notice the disclosures that accompanied the checks that access a credit card account when they were included on an insert with the periodic statement and not on the front of the page containing the checks.

and August 2008 testing were able to identify either the type of rate that would apply or the toll-free number. However, several consumers in the July and August 2008 testing who looked for a rate rather than a narrative disclosure mistakenly identified the fee for use of the checks, which was presented as a numerical rate, as the rate that would apply after expiration of the promotional rate. In addition, several participants who were presented with forms that did not provide an actual rate commented that this information could be obtained only by calling the creditor.

Finally, the Board also has reduced the operational burden associated with printing the disclosure of the actual rate applicable to the checks by adopting a 60-day accuracy requirement for the disclosure of a variable rate rather than the 30-day accuracy requirement that was proposed in June 2007. The June 2007 Proposal would have provided in § 226.9(b)(3)(ii) that a variable APR disclosed pursuant to § 226.9(b)(3) is accurate if it was in effect within 30 days of when the disclosures are given. Several commenters stated that mailed convenience checks should be subject to the same 60-day accuracy requirement that applies to other mailed offers as contemplated in § 226.5a(b)(1)(ii) for direct mail applications and solicitations. The commenters stated that card issuers may have trouble complying with the 30-day requirement, because the APR applicable to transactions in a given billing cycle sometimes is not determined until the end of a billing cycle, for example, if an issuer defines its index as of the last day of the cycle. Consequently, for those issuers, if the checks are printed several days before the checks are mailed, the APR obtained from the issuer’s system may not be one in effect within 30 days of the mail date for some subset of that issuer’s customers. The final rule in § 226.9(b)(3)(ii) incorporates the 60-day accuracy provisions requested by these commenters. The Board believes that it is appropriate to have the same timing provision for convenience checks as for direct mail credit card applications and solicitations, and that a 60-day period will effectively balance consumer benefit against the burden on issuers.

One commenter noted that the proposed wording in § 226.9(b)(3)(ii) that refers to when the account-opening disclosures “are given” creates confusion in the context of mailed disclosures, because it is unclear when a mailed disclosure is “given” even though it may be known when it is mailed. Sections 226.9(b)(3)(i) and (ii) of the final rule refer to when the account-opening disclosures “are mailed or delivered.” The Board believes that this will provide useful clarification to issuers, and is consistent with the existing provision for other supplemental credit access devices, which is retained in the final rule as § 226.9(b)(1).

Location and format. Many industry commenters on the June 2007 Proposal urged the Board to provide flexibility regarding the required location of the tabular disclosure for checks that access a credit card account. Several commenters asked the Board to relax the location requirement for the § 226.9(b)(3) disclosures. One commenter stated that a creditor should be permitted to provide the table on the first page of a multiple-page advertising offer, even if the checks are printed on the second page. Another commenter stated that creditors should be permitted to provide a cross reference to the disclosures when the checks are included with a periodic statement. Finally, another commenter asked that the location requirements be relaxed for single checks inserted as standalone inserts in mailings. Several commenters opposed prescriptive location requirements more generally and advocated that the Board adopt only a clear and conspicuous standard, as opposed to the more specific standard proposed, for location of the tabular disclosures.

Proposed § 226.9(b)(3) stated that the disclosures were required on the front of the page containing the checks. Consumer testing conducted on behalf of the Board prior to the issuance of the June 2007 Proposal showed that consumers were more aware of the information included in the tabular disclosure when it was located on the front of the page containing the checks rather than on the back. In addition, approximately half of the participants in a round of testing conducted in March 2008 failed to notice the tabular disclosure when it was included as an insert with the periodic statement rather than on the page containing the checks. With several clarifications discussed below for multiple-page check offers, the final rule retains the location requirement as proposed because testing has shown that consumers are more likely to notice and pay attention to the disclosures when they are located on the front of the page containing the checks.

Several commenters asked the Board to clarify how the location requirement would apply in situations where checks are printed on multiple pages rather than a single page. For example, one commenter asked the Board to clarify that redundant disclosures are not required when the offer contains checks on multiple pages. A second commenter asked the Board to provide flexibility for checks printed in a mini-book or accordion-fold multi-panel booklet containing checks. New comment 9(b)(3)(i)-1 is adopted to clarify that for an offer with checks on multiple pages, the tabular disclosure need only be provided on the front of the first page containing checks. Similarly, for a mini-book or accordion-fold multi-panel booklet, comment 9(b)(3)(i)-1 clarifies that the tabular disclosures need only be provided on the front of the mini-book or accordion-fold booklet. The proposed requirement that disclosures be provided on the front of the page containing the checks was intended to draw a consumer's attention to the disclosures. The Board believes that the clarifications for multiple-page offers and mini-books included in the commentary will achieve the goal of attracting consumer attention while mitigating burden on creditors that would be associated with providing the disclosures on each page containing checks.

One commenter requested clarification that the tabular disclosure could be printed on the solicitation letter if the checks were on the same page as the letter, separated only by perforations. Comment 9(b)(3)(i)-1 provides the requested clarification.

Another commenter stated that a creditor should be permitted to disclose the required terms within the same table with respect to multiple APRs applying to different checks within the same offer. Such a situation would arise, for example, where a consumer receives a single offer that gives the consumer a choice between checks with a higher APR for a longer promotional period or a lower APR for a shorter promotional period. The Board believes that § 226.9(b)(3) as proposed would have permitted a single tabular disclosure of multiple APRs applicable to checks within the same offer, provided that the disclosure is provided on the front of the page containing the checks; therefore, such a single disclosure as described by the commenter also is permitted by the final rule. The Board believes that no additional clarification is necessary in the regulation or the commentary.

Use-by date. As discussed above, the May 2008 Proposal included a new § 226.9(b)(3)(i)(C), which would have required additional disclosures regarding the date by which the consumer must use the checks in order to receive any discounted initial rate

offered on the checks. This requirement is adopted as proposed, renumbered as § 226.9(b)(3)(i)(A)(3) in the final rule, as discussed below. Both industry and consumer commenters generally supported this proposal, and several large issuers indicated that they already provide a disclosure of a date by which access checks must be used.
In addition, consumer testing conducted on behalf of the Board suggests that consumers who see the disclosure tend to understand the use-by date, while consumers who do not see the disclosure are unaware that there may be a use-by date. More than half of the participants in consumer testing conducted after the May 2008 Proposal noticed the use-by date disclosure and understood from the disclosure that if they used the check after the "use-by" date the introductory rate would not apply. Most participants that did not see the use-by date disclosure assumed that no use-by date existed, and they could use the check, and obtain the discounted initial rate, until the end of the promotional period. The results of this testing suggest that consumers are not generally aware from their own experience that the offer of a promotional rate for access checks might be subject to a use-by date.

One industry commenter stated that its checks often are offered through a seasonal program, and that checks are pre-printed with a disclosure that the checks are "good for only 90 days" rather than with a disclosure of a date certain by which the checks must be used to qualify for a promotional rate. The commenter indicated that the proposed changes could increase the costs associated with check printing. New § 226.9(b)(3)(i)(A)(3), consistent with the proposal, requires however that the creditor disclose the date on which the offer of the discounted initial rate expires. A consumer may have no way of knowing on exactly what date the checks were mailed and the Board believes, therefore, that a general statement such as “good for only 90 days” is not sufficient to inform a consumer of when the promotional rate offer expires. A creditor would still be free to specify a number of days for which the promotional rate will be in effect (e.g., 90 days from the date of use) rather than a particular calendar date on which the promotional rate will end.

Grace period disclosure. In the May 2008 Proposal, the Board proposed to revise proposed § 226.9(b)(3)(i)(E) (proposed in June 2007 as § 226.9(b)(3)(i)(D)) and to add a new comment 9(b)(3)(i)(E)-1 which set forth language that creditors could have used to describe in the tabular disclosure any grace period (or lack of grace period) offered on check transactions, consistent with the grace period disclosures proposed under § 226.5a. For the reasons discussed in the supplementary information to § 226.5a(b)(5), § 226.9(b)(3)(i)(D) and comment 9(b)(3)(i)(D)-1 (proposed as § 226.9(b)(3)(i)(E) and comment 9(b)(3)(i)(E)-1) are adopted as proposed. New comment app. G-11 is added to provide guidance on the headings that must be used 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.

Terminology. In June 2007, the Board proposed in new § 226.9(b)(3)(i)(A) to require creditors to use the term “introductory” or “intro” in immediate proximity to the listing of any discounted initial rate in the access check disclosures. The May 2008 Proposal would have deleted this requirement, consistent with changes to terminology in proposed § 226.16(e)(2), and would have revised Sample G-19 accordingly. Consistent with the May 2008 Proposal, the final rule does not require creditors to use the term "introductory" or "intro" in access check disclosures, and Sample G-19 is adopted as proposed. See § 226.16(g)(2) and (g)(3) (proposed as § 226.16(e)(2) and (e)(3)).

Additional disclosures. One commenter asked that the Board include an additional disclosure in the table describing the payment allocation applicable to the checks. As noted in the supplementary information to the proposal published in May 2008 and in the supplementary information to the final rule issued by the Board and other federal banking agencies published elsewhere in today's **Federal Register**, the Board and other agencies originally sought to address payment allocation issues by developing disclosures explaining payment allocation and the impact of payment allocation on accounts with multiple balances at different APRs. However, despite extensive consumer testing conducted for the Board, a significant percentage of consumers still did not comprehend how payment allocation can affect the amount of interest assessed. As a result, the Board and other agencies are addressing payment allocation through a substantive rule, and no disclosure regarding payment allocation has been added to the tabular disclosure provided with checks that access a credit card account.

One consumer group commenter suggested that the Board require creditors to disclose on each check that accesses a credit card account the following statement: "The use of this check will trigger immediate interest and fees." The final rule does not require this disclosure on the checks. The Board believes that the final rule already addresses fees and the possible lack of a grace period by means of the disclosures under § 226.9(b)(3)(i)(C) and (b)(3)(i)(D). In consumer testing conducted for the Board, most consumers saw these disclosures presented on the front of the page containing the checks and understood them.

A federal banking agency stated that the Board should require a disclosure with checks that access a credit card account that certain substantive protections that apply to credit cards do not apply to the checks. The final rule does not require such a disclosure. As discussed above with regard to § 226.2(a)(15), the Board believes that existing provisions under state UCC law governing checks, coupled with the billing error provisions under § 226.13, provide consumers with sufficient protections from the unauthorized use of access checks. Thus, the Board has declined to extend TILA's protections for credit cards to such checks. Similarly, the Board believes that a disclosure that certain substantive protections applicable to credit cards do not apply to the checks is not necessary and may contribute to "information overload."

Exceptions. Some commenters asked the Board to require the tabular disclosure only if the checks were not specifically requested by the customer. These commenters indicated that customers may, and do, request checks, and that these checks may be supplied through third-party check printers that do not have access to the information required to be included in the new § 226.9(b)(3) tabular disclosure. The final rule, as proposed, requires that the tabular disclosure accompany the checks that access a credit card account, even if those checks were specifically requested by the consumer. The Board believes that consumer requests for access checks are uncommon for most credit card accounts. The Board believes that regardless of whether a consumer requests the checks that access a credit card account, the consumer should receive disclosures of the costs of using the checks, to better enable the consumer to make an informed decision regarding usage of the checks. Furthermore, it is the Board's understanding that any third-party processor must already receive from the issuer some personalized information, such as the consumer's name and address or a special routing number to link the checks to the consumer's account, that is used in the preparation and printing of the checks. The Board anticipates that creditors can build on their existing processes for providing personalized information to a third party processor in order to comply with the requirement to disclose account-specific information about rates and fees with the checks.

Other industry commenters requested exceptions to the disclosure requirements when checks are sent within a certain period of time after full disclosures are provided, such as full disclosures sent upon automatic card renewal, or when checks accompanied by the required disclosures were sent previously within a given time frame. The Board has not included either of these exceptions in the final rule. The Board believes that the tabular disclosures accompanying the checks are important to enable consumers to make informed decisions regarding check usage. For example, a consumer may receive a set of checks in the mail and may discard them because, at that time, he or she has no intention of using the checks. If that consumer receives a second set of checks, even a short time later, the consumer should receive a disclosure of the terms applicable to the second set of checks, which he or she may have interest in using, without having to retain and refer back to the disclosure accompanying the first set of checks. The Board believes that consumers generally will benefit from receiving the required disclosures each time they receive checks that access a credit card account, but has retained, for consistency with existing language in § 226.9(b)(1), an exception for checks provided during the first 30 days after the account-opening disclosures are mailed or delivered to that consumer.

In the June 2007 Proposal, the Board sought comment as to whether there are other credit devices or additional features that creditors add to consumers' accounts to which this proposed rule should apply. The Board received no comments advocating that the new § 226.9(b)(3) disclosures be required for products other than checks that access a credit card account. Accordingly, the final rule is limited to access checks.

Technical amendments. The Board also made several technical revisions to § 226.9(b) in the final rule. First, § 226.9(b)(3) has been reorganized for clarity without substantive change. Second, § 226.9(b)(3)(i)(A) has been amended to clarify that the term “promotional rate” has the meaning set forth in § 226.16(g). Finally, the Board also proposed in the June 2007 Proposal several technical revisions to improve the clarity of § 226.9(b) and the associated commentary. The Board received no comments on these technical revisions, and they are included in the final rule.

9(c) Change in Terms

The June 2007 Proposal included several revisions to the regulation and commentary designed to improve consumers’ awareness about changes in their account terms or increased rates due to delinquency or default or as a penalty. The proposed revisions generally would have applied when a creditor changes terms that must be disclosed in the account-opening summary table under proposed § 226.6(b)(4), or increases a rate due to delinquency or default or as a penalty. First, the Board proposed to give consumers earlier notice of a change in terms, or for increased rates due to delinquency or default or as a penalty. Second, the Board proposed to expand the circumstances under which consumers receive advance notice of changed terms, or increased rates due to delinquency, or for default or as a penalty. Third, the Board proposed to introduce format requirements to make the disclosures about changes in terms or for increased rates due to delinquency, default or as a penalty more effective.

Timing. Currently, § 226.9(c)(1) provides that whenever any term required to be disclosed under § 226.6 is changed or the required minimum payment is increased, a written notice must be mailed or delivered to the consumer at least 15 days before that change becomes effective. Proposed § 226.9(c)(2)(i) would have extended the notice period from 15 days to 45 days.

In response to the June 2007 Proposal, individual consumers and consumer group commenters were generally supportive of the extension of the notice period for a change in terms to 45 days. These commenters agreed with the Board's observation that an extended notice period would give consumers the opportunity to transfer or pay off their balances, in order to potentially avoid or mitigate the cost associated with the change in terms. Some consumer and consumer group commenters urged the Board to consider extending the notice period even further, to as many as 90 or 180 days.

A federal banking agency that commented on the June 2007 Proposal supported the proposed 45-day change-in-terms notice period. This commenter suggested, however, that the notice requirement should be supplemented with a consumer right to opt out of certain changes, including changes that are made unilaterally by the creditor or changes in the consumer's rate under a universal default clause.

A number of industry commenters indicated that 45 days is too long and would not provide financial institutions with the ability to respond promptly to changes in market conditions. Some commenters suggested that the increased period of advanced notice would undermine the effectiveness of risk-based pricing and would lead to higher pricing at the outset to hedge for the risk associated with more risky borrowers. Some industry commenters stated that a 45-day advance notice requirement would, in practice, result in many consumers receiving 60 to 90 days advance notice, particularly when a change-in-terms notice is included with a periodic statement that is sent out on a monthly cycle. Some industry commenters stated that the notice period should remain at 15 days, while others advocated a 30-day or one billing cycle notice period. These commenters indicated that 15 or 30 days is ample time for consumers to act to transfer or pay off balances in advance of the effective date of any changed term. Finally, some commenters stated that a 45-day requirement might create an incentive for issuers to send change-in-terms notices separately from the periodic statement, which these commenters believe consumers are less likely to read.

Consistent with the proposal, the final rule requires 45 days' advance notice for changes to terms required to be disclosed pursuant to § 226.9(c)(2)(i). The Board believes that the shorter notice periods suggested by some commenters, such as 30 days or one billing cycle, would not provide consumers with sufficient time to shop for and possibly obtain alternative financing. The 45-day advance notice requirement refers to when the change-in-terms notice must be sent, but as discussed in the June 2007 Proposal it may take several days for the consumer to receive the notice. As a result, the Board believes that the 45-day advance notice requirement will give consumers, in most cases, at least one calendar month after receiving a change-in-terms notice to seek alternative financing or otherwise to mitigate the impact of an unexpected change in terms.

As discussed above, some commenters raised concerns about whether creditors would be able to respond promptly to changes in market conditions in light of the proposed 45-day notice period. Notwithstanding the 45-day advance notice requirement, the Board believes that creditors still have the ability to respond appropriately to changes in market conditions. First, a creditor may choose to offer products with variable rates, which vary with the market in accordance with a designated index. If the annual percentage rate applicable to a consumer's account changes due to fluctuations in an index value as set forth in the consumer's credit agreement, such changes can take effect immediately without any notice required under § 226.9(c)(2). If a creditor chooses to offer a product with a rate that does not vary in accordance with an index, that creditor will be required to wait 30 days longer than the current rule requiring 15 days' notice before imposing a new, increased rate to a consumer's account.

The Board has declined to adopt a longer period, such as 90 or 180 days, as suggested by some commenters. The Board believes that such an extended advance notice period would inappropriately restrict creditors' ability to respond to market or other conditions and is not necessary for consumers to have a reasonable opportunity to seek alternative financing. The intent of extending the advance notice period to 45 days is for consumers to have time to avoid costly surprises; the Board believes that a consumer having at least one calendar month to seek alternate financing appropriately balances burden on creditors against benefit to consumers. In addition, the Board notes that final rules issued by the Board and other federal banking agencies published elsewhere in today's **Federal Register** provide additional substantive protections for consumers regarding rate increases.

The Board is aware that operational issues associated with including change-in-terms notices with periodic statements may lead to certain consumers receiving more than 45 days' notice. As noted above, some industry commenters specifically indicated that a 45 day notice requirement could in practice result in consumers receiving 60 or 90 days' notice, if the notice is included with the periodic statement. While the Board encourages creditors to include change-in-terms notices with periodic statements, § 226.9(c) also permits change-in-terms notices to be sent in a separate mailing. A creditor that does not wish to wait a longer period before changing terms on a consumer's account could send the change-in-terms notice separately from the statement to avoid delays in changes in terms in excess of the 45 day period.

As discussed in the supplementary information to § 226.9(g), the Board has adopted examples in comment 9(g)-1.ii to illustrate the interaction between the requirements of the final rules issued by the Board and other federal banking agencies published elsewhere in today's **Federal Register** and the subsequent disclosure requirements under Regulation Z. Some of those examples also provide guidance to an issuer providing a notice pursuant to § 226.9(c)(2)(i); the Board also has adopted a new comment 9(c)(2)(i)-6 which cross-references those examples.

As discussed in the June 2007 Proposal, the 45-day notice period was only proposed for those changes in terms that affect charges required to be disclosed as a part of the account-opening table under proposed § 226.6(b)(4) or for increases in the required minimum periodic payment. A different disclosure requirement would have applied 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)(1) but is not required to be disclosed as part of the account-opening summary table under proposed § 226.6(b)(4). Under those circumstances, the proposal would have required 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.

Consumer groups expressed concern that allowing any oral notice may provide insufficient information or time for a consumer’s consideration and that even written notice with no advance disclosure would be insufficient. The comments also suggested that the proposed disclosure regime, which limits the 45-day advance written notice of a change in terms to a specific, finite list of terms, presents the possibility that card issuers could generate new fees or terms not in the list that will not be subject to the advance notice requirement.

Consistent with the proposal, and as discussed in the supplementary information for § 226.5, the final rule permits notice of the amount of a charge that is not required to be disclosed under § 226.6(b)(1) and (b)(2) (proposed as § 226.6(b)(4)) to be given orally or in writing at a relevant time 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. As discussed above, the Board intends to continue monitoring credit card products for the introduction of new types of fees and costs on those accounts. If new costs are introduced that Board believes are fees of which consumers should be aware when the account is opened, the Board would likely add such fees to the specified costs in § 226.6(b)(2). The Board notes that a change-in-terms notice would be required, however, in connection with a change in any fee of a type that must be disclosed in the account-opening table.

Changes in type of applicable rate. The final rule includes new comments 9(c)(2)(iv)-3 and 9(c)(2)(iv)-4 to clarify that if a creditor changes a rate applicable to a consumer's account from a non-variable rate to a variable rate, or from a variable rate to a non-variable rate, a change-in-terms notice is required under § 226.9(c), even if the current rate at the time of the change is higher than the new rate at the time of the change. The Board believes that this clarification is appropriate to clarify the relationship between comments 9(c)(2)(iii)(A)-3 and 9(c)(2)(iii)(A)-4 and § 226.9(c)(2)(iv), which were proposed in June 2007 and have been adopted in the final rule. Comments 9(c)(2)(iii)(A)-3 and 9(c)(2)(iii)(A)-4 set forth guidance as to how a creditor should disclose a change from one type of rate to another type of rate. Section 226.9(c)(2)(iv) states, in part, consistent with the current rule, that a notice is not required when a change involves the reduction of any component of a finance or other charge. The Board recognizes that changing from one type of rate (e.g., variable or non-variable) to another type of rate might result in a temporary reduction in a finance charge. For example, a creditor might change the rate from a variable rate that is currently 16.99% to a non-variable rate of 15%. However, over time as the value of the index used to determine the variable rate fluctuates, the new rate may in some cases ultimately be higher than the value of the rate that applied prior to the change. In the example above, this could occur if the value of the index used to compute the variable rate effective before the change decreases by two percentage points, so that the variable rate that would have been calculated using the formula effective before the change in terms is 14.99%.

The Board notes that an issuer that is subject to final rules issued by the Board and other federal banking agencies published elsewhere in today's **Federal Register** may only change rates as permitted pursuant to those rules. For example, those rules limit, in some circumstances, a card issuer's ability to change a rate applicable to a consumer's credit card account from a non-variable rate to a variable rate.

Changes in late-payment fees and over-the-limit fees. Creditors currently are not required to provide notice of changes to late-payment fees and over-the-limit fees, pursuant to current § 226.9(c)(2). The June 2007 Proposal would have required 45 days' advance notice for changes involving late-payment fees or over-the-limit fees, other than a reduction in the amount of the charges, which is consistent with the inclusion of late-payment fees and over-the-limit fees in the tabular disclosure provided at account-opening under proposed § 226.6(b)(4) for open-end (not home-secured) plans. The proposed amendment would have required that 45 days' advance notice be given only when a card issuer changes the amount of a late-payment fee or over-the-limit fee that it can impose, not when such a fee is actually applied to a consumer's account.

Several commenters asked the Board to reduce or eliminate the advance notice requirement for prospective changes to fees, such as late-payment fees or over-the-limit fees, and for other changes in terms that do not affect an existing balance (such as a change in interest rates that will apply only prospectively to new transactions). These commenters indicated that transaction-based fees, which are based on account usage, and the assessment of additional interest charges or fees based on changes in terms that do not affect an existing balance, are in the control of the consumer and should not be afforded a lengthy prior notice period. Notwithstanding these comments, the final rule requires 45 days' advance notice of a change in terms, even if that change is a prospective change to fees, or otherwise does not affect an existing balance. The Board believes that a consumer still may want to seek an alternative form of financing in anticipation of a change in terms, even if that change only affects fees or does not affect existing balances. Accordingly, the final rule is designed to give a consumer enough notice so that the consumer has the opportunity to avoid incurring additional interest charges or fees as a result of that change in terms. For example, an increase in the annual fee applicable to a consumer's account does not affect existing balances; however, a consumer may wish to transfer his or her balance to a different card in order to avoid incurring an increased annual fee on his or her account.

Changes initially disclosed. The final rule contains several revisions to comment 9(c)(2)-1, which was modeled after current comment 9(c)-1 and was included in the June 2007 Proposal. The comment sets forth guidance on when change-in-terms notices are not required if a change has been initially disclosed. Proposed comment 9(c)(2)-1, consistent with current comment 9(c)-1, included examples of terms deemed to be initially disclosed. Among these examples were a rate increase that occurs when an employee has been under a preferential rate agreement and terminates employment or an increase that occurs when the consumer has been under an agreement to maintain a certain balance in a savings account in order to keep a particular rate and the account balance falls below the specified minimum. The final rule deletes these two examples from the comment.

The Board believes that an increase in rate due to the termination of a consumer's employment with a particular company or due to the consumer's account balance falling below a certain level is a type of rate increase as a penalty that must be disclosed in advance under § 226.9(g), even if the circumstances under which the change may occur are set forth in the account agreement. Accordingly, the Board believes that retaining these examples in comment 9(c)(2)-1 could be inconsistent with the rules for penalty rate increases set forth in § 226.9(g). A creditor may, by contract, designate many types of consumer behavior, or changes in a consumer's circumstances, as events upon the occurrence of which the consumer's rate may increase as a penalty. Some of these events, such as the termination of an employment contract, may not be typically considered events of delinquency or default; nonetheless, in each case the creditor reserves the contractual right to increase the rate applicable to the consumer's account, and that rate increase is triggered by certain actions by, or changes in the circumstances of, the consumer. The Board believes that the changes to comment 9(c)(2)-1 are consistent with the requirements of § 226.9(g) As a result, and for the reasons stated in the section-by-section analysis to § 226.9(g) below, the final rule provides that a consumer must receive advance notice prior to the imposition of such rate increases so that a consumer may seek alternative financing or otherwise respond to the change.

In addition, as noted below in the section-by-section analysis to § 226.9(g), one commenter on the proposal asked for clarification regarding the difference between a consumer's "default or delinquency" and a "penalty." The Board believes that the revisions to proposed comment 9(c)(2)-1 will help to eliminate ambiguity as to when a rate is increased as a "penalty."

<u>Format and content</u>. Section 226.9 currently contains no restrictions or requirements for how change-in-terms notices are presented or formatted. For open-end (not home-secured) plans, the Board's June 2007 Proposal would have required that creditors provide a summary table of a limited number of key terms on the front of the first page of the change-in-terms notice, or segregated on a separate sheet of paper.

Creditors would have been required to utilize the same headings as in the account-opening tables in proposed model forms contained in Appendix G to part 226. If the change-in-terms notice were included with a periodic statement, the summary table would have been required to appear on the front of the first page of the periodic statement, preceding the list of transactions for the period. Based on consumer testing conducted for the Board prior to the June 2007 Proposal, when a summary of key terms was included on change-in-terms notices tested, consumers tended to read the notice and appeared to understand better what key terms were being changed than when a summary was not included.

The June 2007 Proposal would have required that creditors provide specific information in the change-in-terms notice, namely (1) a statement that changes are being made to the account; (2) 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; (3) the date the changes described in the summary table will become effective; (4) if applicable, an indication that the consumer may find additional information about the summarized changes, and other changes to the account, in the notice; and (5) 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 does not apply to the consumer's account until the consumer's account balances are no longer subject to the penalty rate. The June 2007 Proposal specified that this information must be placed directly above the summary of key changes described above. The minimum font size requirements in proposed comment 5(a)(1)-3 also would have applied to any tabular disclosure required to be given pursuant to proposed § 226.9(c)(2)(iii)(B).

In May 2008, the Board proposed to add an additional disclosure requirement to the summary table described above. For consistency with the substantive restrictions regarding the application of increased APRs to preexisting balances proposed by the Board and other federal banking agencies in May 2008, the Board would have required the change-in-terms notice to disclose the balances to which the increased rate will be applied. If the rate increase will not apply to all balances, the creditor would have been required to identify the balances to which the current rate will continue to apply.

In response to the June 2007 Proposal, consumers and consumer groups suggested a number of new formatting requirements, as well as additional content for the summary box. For example, some consumers requested that changes in terms be specifically highlighted, such as by printing the original contract term in black and the new term in red. Other consumers requested that change-in-terms notices always include a complete, updated account agreement. Some comments focused on the mode of delivery of the notice, with one commenter requesting that change-in-terms notices always be mailed as a first-class letter and others urging that notices of changes in terms should be delivered both by regular mail and electronic mail. The Board has not incorporated any of these formatting suggestions as requirements in the final rule. The Board believes that some of these suggestions, such as sending a complete, updated account agreement with each change in terms or highlighting the changed term in a different color than the original text, would impose operational burdens and/or significant costs on creditors that would not be outweighed by a benefit to consumers. Consumer testing conducted on behalf of the Board has indicated that including a summary table either on the first page of the periodic statement or the first page of the change-in-terms notice (if the notice is sent separately from the statement) is an effective way to enhance consumer attention regarding, and comprehension of, change-in-terms notices, which is the approach proposed by the Board and adopted in the final rule.

Several consumers who commented on the June 2007 Proposal said that the change-in-terms notice should state the reasons for the change in terms and should state what, if anything, the consumer can do to reverse the increase to the penalty rate and have the standard rate reinstated. For several reasons, the final rule does not include a requirement that a change in terms notice state the reasons for the change. In some circumstances, the reasons may have nothing to do with consumer behavior, and there may be no mechanism for the consumer to reverse the increase. For example, if a creditor raises interest rates generally due to a change in market conditions, such action is independent of the consumer's behavior on the account and the consumer can only mitigate the cost of the increase by reducing use of the card, transferring a balance, or paying off the balance. Under these circumstances, the Board believes the burden for issuers to customize the notice to refer to the reason for the increase may exceed the potential benefit of such a disclosure to consumers. In addition, if the increase in rate is due to the imposition of a penalty rate, the consumer will receive a disclosure indicating that the penalty rate has been triggered, and the circumstances, if any, under which the delinquency or default rate or penalty rate will cease to apply to the consumer's account, as discussed below with regard to § 226.9(g).

Consumer group commenters on the May 2008 Proposal stated that a change-in-terms notice given in connection with a rate increase should be required to state the current rate so that consumers will have an indication of the magnitude of the change in terms. The final rule does not require a creditor to disclose the current rate. The main purpose of the change-in-terms notice is to inform consumers of the new rates that will apply to their accounts. If several rates are being changed and are being disclosed in a single change-in-terms notice, the Board is concerned that disclosure of each of the current rates in the change-in-terms notice could contribute to information overload.

Finally, several consumer commenters urged that issuers be required to disclose the effect or magnitude of a change in terms in dollar terms. The Board has not included this disclosure in the final rule, because it would be difficult and likely misleading to try to estimate in advance how a changed term will affect the cost of credit for any individual consumer. For some types of changes in terms, such as a change in a transaction fee or penalty fee, whether or not the fee will be assessed with respect to a particular consumer's account depends to some extent on that consumer's behavior on the account. For example, if the change in terms being disclosed is an increase in the late fee, it will never be assessed if a consumer does not make a late payment. However, for a consumer who makes multiple late payments, the fee could be assessed multiple times. Therefore, it is difficult to predict in advance the dollar cost of the change for any given consumer. Similarly, the dollar cost of an increased interest rate depends on the extent to which the consumer engages in transactions to which that increased interest rate applies, as well as whether the consumer is able to take advantage of a grace period and avoid interest on those transactions.

In response to the June 2007 Proposal, many industry commenters asked for more flexibility in the formatting requirements for the summary table regarding a change in terms. Some commenters stated that an issuer should be able to include a clear and conspicuous change-in-terms notice on or with a periodic statement without a requirement to summarize it in a box on the front of the statement. Other commenters asked the Board to allow issuers to include with the periodic statement a separate change-in-terms notice as a statement stuffer or insert, rather than including the tabular disclosure on the front of the first page of the statement. These commenters stated that the requirement to include a tabular disclosure on the front of the first page of a periodic statement would substantially increase the cost of providing change-in-terms notices. Other commenters stated that if the final rule contained an alert on the front of the statement, it should at most be a simplified cross reference stating that the statement includes important information regarding a change in terms and referring the consumer to the end of the statement. One commenter asked that the strict front-of-the-first page location requirement be replaced by a more general requirement that the change-in-terms disclosure appear before the transaction details. Finally, one credit union asked that the Board permit institutions to provide the tabular disclosure of changed terms on a newsletter mailed with the periodic statement.

One credit union trade association that commented on the May 2008 Proposal stated that it supported the tabular requirement for disclosure of changes in terms. This commenter noted that while the requirement would impose a burden on credit unions, a consumer’s need for clarity outweighs this inconvenience or expense.

The final rule requires that the tabular summary appear on the front of the periodic statement, consistent with the proposal. Consumer testing conducted on behalf of the Board suggests that consumers tend to set aside change-in-terms notices when they are presented as a separate pamphlet inserted in the periodic statement. In addition, testing prior to the June 2007 Proposal also revealed that consumers are more likely to correctly identify the changes to their account if the changes in terms are summarized in a tabular format. Quantitative consumer testing conducted in the fall of 2008 demonstrated that disclosing a change in terms in a tabular summary on the statement led to a small improvement in the percentage of consumers who were able to correctly identify the new rate that would apply to the account following the change, versus a disclosure on the statement indicating that changes were being made to the account and referring to a separate change-in-terms insert. The Board believes that as consumers become more familiar with the new format for the change-in-terms summary, which was new to all testing participants, they may become better able to recognize and understand the information presented. It is the Board's understanding, which was supported by observations in consumer testing prior to the June 2007 Proposal, that consumers are familiar with the tabular formatting for the disclosures given with applications and solicitations under § 226.5a and that they find this consistent formatting to be useful. Presentation of key information regarding changes in terms in a tabular format also is consistent with the Board's approach to disclosure of terms applicable to open-end (not home-secured) accounts, where important information is provided to consumers throughout the life of an account in a consistent tabular format.

The Board also believes that as consumers become more familiar generally with all new disclosures and formatting changes to the periodic statement required by the final rule, consumers will become better able to distinguish between information presented in a change-in-terms summary table and other terms regularly disclosed on each statement. The Board's consumer testing in the fall of 2008 indicated that when a change-in-terms summary disclosing a change in an APR is included on the periodic statement, it can contribute to "information overload" and, for some consumers, may make it more difficult to locate other APRs set forth on the periodic statement. However, the Board believes that this finding likely reflected the fact that consumers were unaccustomed to the periodic statement form that they saw during the testing, which may have been formatted differently and included different content than the periodic statements that testing participants currently receive. The Board believes that as consumers become more familiar with all new Regulation Z disclosures on their periodic statements, they will become less likely to mistake any new APR set forth in a change-in-terms summary for another rate applicable to their account.

The Board recognizes that there will be operational costs associated with printing the change-in-terms summary on the front of the periodic statement, but believes that the location requirements are warranted to facilitate consumer attention to, and understanding of, the disclosures. As discussed above, under the final rule the minimum font size requirements of 10-point font set forth in comment 5(a)(1)-3 also apply to any tabular disclosure given under § 226.9(c)(2)(iii)(B).

The Board has not, however, adopted the requirement that a change-in-terms summary appear on the first page of the periodic statement. Quantitative consumer testing conducted for the Board in the fall of 2008 indicated that consumers were as likely to notice a change-in-terms summary or reference if it was presented on the second page of the statement as they were to notice it on the first page. Given that many industry commenters noted that there would be substantial cost and burden associated with reformatting the statement to include the summary on the first page, and consumer testing did not show that locating the notice on the first page of the statement improved its noticeability, the Board believes that such a formatting requirement is not warranted.

One industry commenter on the June 2007 Proposal asked for clarification whether it would be permissible to move the table disclosing the changes in terms to the top right corner of the periodic statement instead of the center, as it is presented in Model Form G-18(F) (proposed as Form G-18(G)). The Board believes that this would have been permissible pursuant to the proposed rules, and that it also is permissible under the final rule, particularly given that creditors are not required to include the change-in-terms summary on the first page of the statement. Form G-18(F) as adopted in the final rule presents the change-in-terms summary on the front of the first page of the periodic statement prior to the transactions list, consistent with the proposal. However, there is no requirement that a creditor's periodic statement must be "substantially similar" to Form G-18(F), and provided that the periodic statement complies with other applicable formatting requirements, relocating the change-in-terms tabular disclosure to other locations on the front of the statement would be permissible.

One industry commenter on the June 2007 Proposal stated that the change-in-terms formatting requirements would force creditors to send statements to consumers even if there is a zero balance, when terms are changed on their accounts. The final rule, like the June 2007 Proposal, does not require a creditor to send a change-in-terms notice with the periodic statement. Therefore, for a consumer with a zero or a positive balance, it is permissible to send a standalone change-in-terms notice that meets the requirements of § 226.9(c)(2)(iii)(B)(3) rather than a periodic statement including a change-in-terms notice.

For creditors that choose to send change-in-terms notices separately from the periodic statement, consistent with the proposal the final rule requires that the change-in-terms summary appear on the front of the first page of the notice. The Board believes that locating the summary on the first page of such a standalone notice does not impose the same level of burden and cost as would formatting changes to the periodic statement. The results of the Board's quantitative consumer testing do not directly bear on the formatting of separate notices, but the Board believes based on testing conducted prior to the June 2007 Proposal that including the tabular summary on the first page of a standalone notice is important to improve consumer understanding of, and attention to, the disclosure. Participants indicated in focus groups and interviews conducted for the Board prior to June 2007 that they often do not carefully read change-in-terms notices that they receive from their bank in the mail, in part because the text is dense prose and they have difficulty identifying the information in the document that they consider important. The Board believes that including a tabular summary of key changes on the first page of a standalone notice may make consumers more likely to read the notice and to understand what terms are being changed.

Several industry commenters remarked that change-in-terms notices required pursuant to § 226.9(c) would be confusing to consumers in light of the complexity of the interaction between the requirements of § 226.9(c) and additional substantive requirements regarding rate increases proposed by the Board and other federal banking agencies in May 2008. See 73 FR 28904, May 19, 2008. One industry commenter specifically stated that proposed § 226.9(c)(2)(iii)(A)(7), which would require a change-in-terms notice to disclose the balances to which any increased rate will be applied, is a material change to the 45 day change-in-terms notice proposed in the June 2007 Proposal, and would result in a notice that is confusing to consumers. One commenter stated that the rule forces the use of disclosures that provide specific dates within billing cycles to describe when current or increased APRs apply and which account transactions and balances are affected and that it would be simpler and more understandable if transactions and balances affected by a change in rates applied for the entire billing cycle or billing statement in which they appear, rather than in reference to a specific date.

The Board acknowledges that the substantive restrictions on rate increases set forth in final rules adopted by the Board and other federal banking agencies published elsewhere in this **Federal Register** introduce additional complexity into disclosure of changes in terms, because rate increases may apply only to certain balances on a consumer's account and not to others. In two rounds of consumer testing conducted for the Board after the May 2008 Proposal, participants were shown change-in-terms notices that disclosed an impending change to the interest rate on purchases applicable to the account. These notices formatted the information in two different ways, but both forms disclosed the effective date of the change and disclosed that the rate applicable to outstanding balances as of a specified date earlier than the effective date would remain at the current rate. The notices also indicated that, if the penalty APR was currently being applied to the account, the change would not go into effect at the present time.

In the first of these two rounds, about half of participants understood that the new rate on purchases would apply only to transactions made after the specified date shown. In addition, about half of participants also understood that if the penalty rate was already applicable to the account, the new rate on purchases would not immediately apply. However, none of the participants could correctly identify the date when the changes would begin to apply.

Based on the results of this consumer testing, changes were made to the form which were tested in a subsequent round of testing. These formatting changes generally improved consumer understanding of the impending changes. In this second round, all but one participant understood that the new APR on purchases would only apply to transactions made after the date specified, and that the current APR would continue to apply to transactions made before that date. In addition, all but one participant also understood that if the penalty rate was in effect, the new APR on purchases would not immediately apply. Consumers still had the most difficulty identifying the effective date of the changes. Approximately half of participants correctly identified the effective date of the changes, while the other participants mistakenly thought that the changes would apply as of the earliest date disclosed in the notice, which was the cut-off date for determining which transactions would be impacted by the changes disclosed.

Form G-18(F) (proposed as Form G-18(G)) and Sample G-20 have accordingly been revised to reflect the formatting changes introduced in this second round of testing, because they improved consumer comprehension of the notice.

The Board also proposed in May 2008 a clarification to comment 9(c)(2)(ii)-1 (which applies to changes in fees not required to be disclosed in the summary table) to clarify that electronic notice may be provided without regard to the notice and consent requirements of the E-Sign Act when a consumer requests a service in electronic form (for example, requests the service on-line via the creditor's Web site). The Board received no comments addressing the changes to comment 9(c)(2)(ii)-1, which are adopted as proposed.

Reduction in credit limit. The June 2007 Proposal included a new § 226.9(c)(2)(v), for open-end (not home-secured) plans, providing that if a creditor decreases the credit limit on an account, advance notice of the decrease would be required to 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. Under the proposal, notice would have been required to be provided in writing or orally at least 45 days prior to imposing an over-the-limit fee or penalty rate and to state that the credit limit on the account has been or will be decreased. The June 2007 Proposal stated that this requirement would apply only when the over-the-limit fee or penalty rate is imposed solely as a result of a reduction in the credit limit; if the over-the-limit fee or penalty rate would have been charged notwithstanding the reduction in a credit limit, no advance notice would have been required. Under the June 2007 Proposal, the reduction in the credit limit could have taken effect immediately, but 45 days' notice would have been required before an over-the-limit fee or penalty rate could be applied based solely on exceeding the newly decreased credit limit.

The final rule adopts § 226.9(c)(2)(v) as proposed. One industry commenter on the June 2007 Proposal asked the Board to clarify whether an adverse action letter under Regulation B would constitute sufficient notice to the consumer, or whether the reduced credit limit appearing on the periodic statement would be sufficient notice. The new § 226.9(c)(2)(v) does not contain any format requirements for the notice informing the consumer that his or her credit limit has or will be decreased. Any written or oral notification that contains the content specified in § 226.9(c)(2)(v) would be permissible. A creditor could combine a notice required pursuant to § 226.9(c)(2)(v) with an adverse action notice under Regulation B provided that the requirements of both rules are met. Simply showing a reduced credit limit on the periodic statement, however, without a statement that the credit limit has been or will be decreased, would not meet the requirements of § 226.9(c)(2)(v).

The same commenter asked the Board to consider permitting written notice on one statement and permitting the imposition of over-the-limit fees after the next account cycle. The final rule, consistent with the proposal, continues to require 45 days advance notice. The Board believes that 45 days is the appropriate length of time, for the same reasons discussed above in connection with change-in-terms notices more generally. Sending the notice 45 days in advance gives a consumer, in most cases, at least one month to bring his or her balance under the new, reduced credit limit, either by paying down the balance or by transferring all or a portion of it to another card.

In addition, as discussed in the supplementary information to § 226.9(g)(4)(ii), the Board is adopting additional guidance to clarify how to comply with § 226.9(g) when a creditor also is providing a notice pursuant to § 226.9(c)(2)(v).

Rules affecting home-equity plans. The final rule retains in § 226.9(c)(1), without intended substantive change, the current provisions regarding the circumstances, timing, and content of change-in-terms notices for HELOCs. These provisions will be reviewed when the Board reviews the provisions of Regulation Z addressing open-end (home-secured) credit.

The Board proposed in June 2007 to make several deletions in proposed § 226.9(c)(1) and the related commentary with respect to HELOCs in order to promote consistency between § 226.9(c)(1) and the substantive restrictions imposed by § 226.5b. The Board solicited comment on whether there were any remaining references in § 226.9(c)(1) and the related commentary to changes in terms that would be impermissible for open-end (home-secured) credit pursuant to § 226.5b. The Board received no comment on the proposed deletions or on any additional references that should be deleted; accordingly, the changes to § 226.9(c)(1) are adopted as proposed.

Substantive restrictions on changes in terms. Several consumer and consumer group commenters urged the Board to adopt substantive restrictions on changes in terms in connection with credit card accounts in addition to the disclosure-related requirements described above. For example, some commenters stated that credit agreements should remain in force, without any changed terms, for the life of the credit account, until the expiration of the card, or for a fixed period such as 24 months. Other comments suggested that the Board should ban “any time, any reason” repricing or universal default clauses. Finally, other commenters advocated the creation of a federal opt-out right for certain increases in interest rates applicable to a consumer’s account. The Board has not included any such substantive restrictions in § 226.9(c) or (g) of the final rule. With regard to changes in terms, Regulation Z and TILA primarily address how and when those changes should be disclosed to consumers. The final rule issued by the Board and federal banking agencies and published elsewhere in today's **Federal Register** addresses substantive restrictions on certain types of changes in credit card terms.

Technical correction. One commenter noted that a cross reference in § 226.9(c)(2)(iii)(B)(2) referred to the wrong paragraph. That technical error has been corrected in the final rule.

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

TILA Section 127(d), which is implemented in § 226.9(e), requires card issuers that assess an annual or other periodic fee, including a fee based on activity or inactivity, on a credit card account of the type subject to § 226.5a to provide a renewal notice before the fee is imposed. 15 U.S.C. 1637(d). 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. However, 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.

Creditors are given considerable flexibility in the placement of the disclosures required under § 226.9(e). For example, the notice can be preprinted on the periodic statement, such as on the back of the statement. See § 226.9(e)(3) and comment 9(e)(3)-2. However, creditors that place any of the disclosures on the back of the periodic statement must include on the front of the statement a reference to those disclosures. See § 226.9(e)(3). In June 2007, the Board proposed a model clause that creditors could, but would not have been required to, use to comply with the delayed notice method. See comment 9(e)(3)-1. The final rule adopts this model clause as proposed.

The Board also proposed in June 2007 comment 9(e)-4, which addresses accuracy standards for disclosing rates on variable rate plans. The comment provides that 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 or may use the rate as of a specified date within the last 30 days before the disclosure is provided. The final rule adopts this comment as proposed, for the same reasons and consistent with the accuracy standard for account-opening disclosures. See section-by-section analysis to § 226.6(b)(4)(ii)(G). Other minor changes to § 226.9(e), with no intended substantive change, are adopted as proposed. For example, footnote 20a, dealing with format, is deleted as unnecessary, while comment 9(e)-2, which generally repeats the substance of footnote 20a, is retained.

Comment 9(e)(3)-1 contains guidance that 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. One example listed in the comment is the current requirement to use the words “grace period.” That guidance is revised in the final rule to conform to the Board’s new terminology requirements with respect to any grace period (or lack of grace period) in connection with disclosures required under § 226.5a.

9(f) Change in Credit Card Account Insurance Provider

Section 226.9(f) requires card issuers to provide notices if the issuer changes the provider of insurance (such as credit life insurance) for a credit card account. The June 2007 Proposal did not include any changes to § 226.9(f). A commenter suggested that the Board provide, by amending either the regulation or the commentary to § 226.9(f), that a conversion of credit insurance coverage to debt cancellation coverage or debt suspension coverage may be treated the same as a change from one credit insurance provider to another. The result would be that the card issuer would not be required to comply with § 226.4(d)(3) (in particular, the requirement that the consumer sign or initial an affirmative written request for the debt cancellation or debt suspension coverage), provided the issuer notified the consumer of the conversion following the procedures set forth in § 226.9(f). The commenter stated that credit insurance and debt cancellation coverage are essentially functionally equivalent from the consumer's perspective, and that if an affirmative written request from the consumer were required, many consumers might unintentionally lose coverage because they might neglect to sign and return the request form.

The final rule does not include any amendments to § 226.9(f) (other than minor technical changes to correct grammatical errors). The Board believes that the current rule provides better consumer protection than would be afforded under the approach suggested by the commenter, in that consumers are given an opportunity to decide whether they wish to have credit insurance converted to debt cancellation or debt suspension coverage, rather than having the conversion occur automatically unless the consumer takes affirmative action to reject it. In addition, under the new provision in § 226.4(d)(4) permitting telephone sales of credit insurance and debt cancellation or debt suspension coverage, creditors would not have to obtain an affirmative written request from the consumer for debt cancellation or suspension coverage to replace credit insurance, but could instead obtain an affirmative oral request by telephone. (See the section-by-section analysis to § 226.4(d)(4) for a discussion of the telephone sales rule with respect to credit insurance and debt cancellation or debt suspension coverage.)

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

In the June 2007 Proposal, the Board proposed that disclosures be provided prior to the imposition of penalty pricing on a consumer's account balances. With respect to open-end (not home-secured) plans, the Board proposed a new § 226.9(g)(1) to require creditors to provide 45 days' advance notice when a rate is increased due to a consumer's delinquency or default, or if a rate is increased 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. This notice would be required even if, as is currently the case, the creditor specifies the penalty rate and the specific events that may trigger the penalty rate in the account-opening disclosures.

In the supplementary information to its June 2007 Proposal, the Board expressed concern that the imposition of penalty pricing may come as a costly surprise to consumers who are not aware of, or do not understand, what behavior constitutes a "default" under their agreement. One way in which the June 2007 Proposal addressed penalty pricing was through improved disclosures regarding the conditions under which penalty pricing may be imposed. The Board proposed, in connection with the disclosures given with credit card applications and solicitations and at account opening, to enhance disclosures about penalty pricing and revise terminology to address consumer confusion regarding the meaning of “default.” In addition, in light of the fact that rates may be increased for relatively minor contractual breaches, such as a payment late by one day, the Board also proposed to require advance notice of such rate increases, which consumers otherwise may not expect. The Board proposed that the notice be provided at least 45 days before the increase takes effect.

In response to the June 2007 Proposal, some credit card issuers advocated a shorter notice period, such as 30 or 15 days. These commenters noted that, unlike other changes in terms, an increase in a consumer’s rate to the penalty rate is driven by the consumer’s failure to meet the account terms. In addition, the comments noted that a consumer will have received prior notice in the account-opening disclosures that such a rate increase could occur. Another commenter stated that the notice period prior to the imposition of a penalty rate should vary from 15 to 45 days depending on the length of grace period offered by the issuer. Commenters also stated that 45 days’ advance notice might confuse consumers, because it would come so far in advance that consumers will not be able to relate their behavior to the increase in rate, when that increase eventually takes effect.

Industry commenters, however, opposed more generally any additional prior notice before imposition of a penalty rate, when the penalty APR has already been disclosed to the consumer at account-opening and constitutes part of the consumer’s account terms. These commenters indicated that consumers will not forget about the penalty APR and the circumstances under which the penalty rate might be imposed, because they will be reminded of it each month by the new late payment warning required to be included on the periodic statement pursuant to § 226.7(b)(11). In addition, these comments noted that the penalty APR will be disclosed in the revised application and solicitation table and new account-opening table more clearly than it is currently. Other comments indicated that the proposed advance notice was effectively a price control that goes beyond TILA's main purpose of assuring meaningful disclosure of credit terms.

Some commenters suggested that a requirement to give advance notice before raising a consumer's rate to the penalty rate would cause issuers to change their pricing practices in ways that might be detrimental to consumers. First, the commenters indicated that creditors will have an incentive to remove penalty APRs from advertising, account-opening disclosures, and billing statement disclosures, because they will in effect be required to treat the imposition of penalty pricing as a change in terms anyway. Second, commenters indicated that if creditors are prevented from promptly imposing penalty pricing, they may be forced to consider other means to price for risk such as setting a higher penalty APR, reducing credit limits, charging higher fees, closing accounts, imposing tighter underwriting standards, or raising non-penalty APRs for lower-risk customers to compensate for the delay in changing rates for higher-risk customers.

Some commenters distinguished between "on us" defaults, where the consumer's act of default under the contract pertains directly to the account being repriced (e.g., a late payment on the credit card for which the interest rate is being increased) and "off us" defaults, where the consumer's act of default pertains to an account with a different creditor. These commenters noted that consumers will be well aware of the circumstances that may cause an account to be repriced based on "on us" behaviors, because, as discussed above, those triggers will be disclosed in the application and solicitation disclosures, the account-opening disclosures, and in the case of late payments as a trigger, on the periodic statement itself. The comments indicated that consumers may have different expectations between “on us” and “off us” repricing, with the latter having more potential for surprise and a sense of perceived unfairness. Industry commenters differed as to whether an act of default pertaining to a different account held by the same issuer constituted an “on us” or “off us” default.

Several commenters suggested that the Board introduce a disclosure on each periodic statement reminding the consumer of the circumstances in which penalty pricing may be applied, rather than requiring 45 days’ advance notice of a rate increase. One issuer suggested an exception for issuers with penalty APRs and triggers that meet five conditions, namely: (1) triggers are limited to actions on the specific credit card account; (2) triggers are within the consumer’s knowledge and control; (3) triggers are specifically disclosed in the application and solicitation and account-opening disclosure tables; (4) triggers are clearly and conspicuously disclosed on each periodic statement; and (5) the penalty APR is specifically disclosed, along with the index and margin used to calculate the penalty APR. This issuer stated that this exception will avoid costly surprise to consumers arising from the imposition of penalty APRs by encouraging issuers to use sharply-defined, “on us” penalty rate triggers. The commenter also indicated that the monthly disclosure would be more effective in enhancing awareness of penalty APRs and their triggers than the proposed after-the-fact penalty APR notice.

Consumers and consumer groups were supportive of the proposal’s requirement to give 45 days’ advance notice of the imposition of a penalty rate, noting that the proposal represented a substantial improvement over the current rule. Some, however, urged the Board to increase the notice period to 60 days or 90 days. The Board also received comments from individual consumers, consumer groups, another federal banking agency, and a member of Congress stating that notice alone was not sufficient to protect consumers from the expense caused by rate increases.

The final rule adopts § 226.9(g)(1) generally as proposed, although as discussed below the Board has created several exceptions to the notice requirement in § 226.9(g) to address concerns raised by commenters and to clarify the relationship between § 226.9(g) and final rules adopted by the Board and other federal banking agencies published elsewhere in today's **Federal Register**.

The final rule generally requires creditors to provide 45 days' advance notice before rate increases due to the consumer's delinquency or default or as a penalty, as proposed. Notwithstanding the fact that final rules adopted by the Board and other federal banking agencies published elsewhere in today's **Federal Register** will prohibit, in most cases, the application of penalty rates to existing balances, the Board believes that allowing creditors to apply the penalty rate, even if only to new transactions, immediately upon the consumer triggering the rate would nonetheless lead to undue surprise and insufficient time for the consumer to consider alternative options regarding use of the card.

The final rule elsewhere enhances the disclosure of the circumstances under which the penalty rate may apply in the solicitation and application table as well as at account opening. Such improved up-front disclosure of the circumstances in which penalty pricing may be imposed on a consumer's account may enable some consumers to avoid engaging in certain behavior that would give rise to penalty pricing. However, the Board believes generally that consumers will be the most likely to notice and be motivated to act if they receive a specific notice alerting them of an imminent rate increase, rather than a general disclosure stating the circumstances when a rate might increase.

In focus groups conducted for the Board prior to the June 2007 Proposal, consumers were asked to identify the terms that they looked for when shopping for a credit card or at account-opening. The terms most often identified by consumers were the interest rate on purchases, interest rate on balance transfers, credit limit, fees, and incentives or rewards such as frequent flier miles or cash back. Consumers did not frequently mention the penalty rate or penalty rate triggers. It is possible that some consumers do not find this information relevant when shopping for or opening an account because they do not anticipate that they will trigger penalty pricing. Because many consumers are looking for terms other than the penalty rate and penalty triggers, they may not recall this information later, after they have begun using the account, and may be surprised when penalty pricing is subsequently imposed.

For similar reasons, the Board also believes that a notice appearing on each monthly statement informing a consumer of the "on us" behaviors that can trigger a penalty rate would not be as effective as a more specific notice provided after a rate increase has been triggered but before it has been imposed. Consumers already will receive a notice under new § 226.7(b)(11) on the periodic statement generally informing them that they may be subject to a late fee and/or penalty rate if they make a late payment. This will alert consumers generally that making a late payment may have adverse consequences, but that Board does not believe that a general notice about the circumstances in which penalty pricing may be applied is as effective as a more specific notice that a penalty rate is in fact about to be imposed.

In addition, the Board believes that the notice required by § 226.9(g) is the most effective time to inform consumers of the circumstances under which penalty rates can be applied to their existing balances consistent with final rules adopted by the Board and other federal banking agencies published elsewhere in today's **Federal Register**. Pursuant to those rules, under limited circumstances a penalty rate can be applied to all of a consumer's balances, specifically if the consumer fails to make a required minimum periodic payment within 30 days after the due date for the payment.

As discussed elsewhere in the section-by-section analysis to § 226.5a, due to concerns about "information overload," the final rule does not require a creditor to distinguish, in the disclosures given with an application or solicitation or at account-opening, between those penalty rate triggers that apply to existing balances and more general contractual penalty triggers that may apply only to new balances. While the Board anticipates that creditors will disclose in the account agreement for contractual reasons the distinction between triggers applicable to existing balances and new balances, those disclosures will not be highlighted in a tabular format. The notice given under § 226.9(g) will, therefore, be for many consumers, the best opportunity for disclosure that penalty pricing may apply only to new balances and that, if the consumer pays late once by more than 30 days, the penalty rate may be applied to all of his or her balances.

<u>Disclosure content and format</u>. With respect to open-end (not home-secured) plans, under the Board's June 2007 Proposal, which was amended by the May 2008

Proposal for consistency with proposal by the Board and other federal banking agencies published in May 2008 (See 73 FR 28904, May 19, 2008), if a creditor is increasing the rate due to delinquency or default or as a penalty, the creditor would have been required to provide a notice with the following information: (1) a statement that the delinquency or default rate or penalty rate has been triggered, as applicable; (2) the date as of which the delinquency or default rate or penalty rate will be applied to the account, as applicable; (3) 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; and (4) a statement indicating to which balances on the account the delinquency or default rate or penalty rate will be applied, including, if applicable, the balances that would be affected if a consumer fails to make a required minimum periodic payment within 30 days from the due date for that payment; and (5) 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 required minimum periodic payment within 30 days from the due date for that payment.

If the notice regarding increases in rates due to delinquency, default or penalty pricing were included on or with a periodic statement, the June 2007 Proposal would have required the notice to be in a tabular format. Under the proposal, the notice also would have been required to appear on the front of the first page of the periodic statement, directly above the list of transactions for the period. If the notice were not included on or with a periodic statement, the information described above would have been required to be disclosed on the front of the first page of the notice. As discussed above, the minimum font size requirements of 10-point font set forth in proposed comment 5(a)(1)-3 also would have applied to any tabular disclosure given under § 226.9(g)(3).

One consumer group commenter on the May 2008 Proposal supported the requirements in proposed § 226.9(g)(3)(i)(D) and (g)(3)(i)(E), which were added for consistency with the proposal by the Board and other federal banking agencies published in May 2008 (see 73 FR 28904, May 19, 2008), to disclose the balances to which a delinquency or default rate or penalty rate would be applied and to describe, if applicable, any balances to which the current rate would continue to apply as of the effective date of the rate increase (unless the consumer's account becomes more than 30 days late). This commenter believes that disclosure does not alter the unfairness of applying penalty, delinquency, or default rates to existing balances, but that the additional information would be useful to consumers.

Commenters on the content and formatting of penalty rate notices generally raised the same or similar issues as commenters on the content and formatting of change-in-terms notices required under § 226.9(c). See section-by-section analysis to § 226.9(c) for a discussion of these comments. For the reasons described in the section-by-section analysis to § 226.9(c), the content and formatting requirements for notices of penalty rate increases in § 226.9(g)(3) are adopted generally as proposed, except that if the notice is included with a periodic statement, the summary table is required to appear on the front of the periodic statement, but not is not required to appear on the first page. In addition, a technical change has been made to § 226.9(g)(3)(i)(D) to delete a substantively duplicative requirement included in both proposed § 226.9(g)(3)(i)(D) and (E).

The final rule also contains a technical amendment to clarify that a notice given under § 226.9(g)(1) may be combined with a notice given pursuant to new § 226.9(g)(4)(ii), described below.

Form G-18(G) (proposed as Form G-18(H)) and Sample G-21 have been revised to reflect formatting changes designed to make these notices more understandable to consumers. Similar to the testing conducted for change-in-terms notices described above in the section-by-section analysis to § 226.9(c), the Board also conducted two rounds of consumer testing of notices of penalty rate increases. Consumers generally understood the key dates disclosed in these notices. Specifically, of participants who saw statements that indicated that the penalty rate would be applied to the account, all participants in both rounds of testing understood that the penalty rate would only apply to transactions made after the specified date shown. All participants also understood that if they became 30 days late on their account the penalty rate would apply to earlier transactions as well.

Sample G-21 also has been revised to conform with substantive restrictions on rate increases applicable to promotional rate balances included in final rules issued by the Board and other federal banking agencies published elsewhere in today's **Federal Register**. As proposed in May 2008, Sample G-21 would have contained a disclosure indicating that the consumer's promotional rate balances would be subject to the standard rate on the effective date of the penalty rate increase. The final rules published elsewhere in today's **Federal Register** regarding the applicability of rate increases to outstanding balances prohibit a creditor from repricing a consumer's outstanding balances from a promotional rate to a higher rate, unless the consumer's account is more than 30 days late. Accordingly, the disclosure regarding loss of a promotional rate has been deleted from final Sample G-21. The dates used in the example in Sample G-21 also have been amended for consistency with the definition of "outstanding balance" in the final rules published elsewhere in today's **Federal Register**. In addition, a technical correction also has been made to final Sample G-21 to clarify that a consumer must make a payment that is more than 30 days late in order for the penalty rate to apply to outstanding balances; as proposed, Sample G-21 referred to a payment that is 30 days late. These changes to Sample G-21 also are reflected in final Model Form G-18(G).

Examples. In order to facilitate compliance with the advance notice requirements set forth in § 226.9(g), the Board's May 2008 Proposal included a new comment 9(g)-1.ii that set forth several illustrations of how the advance notice requirement would have applied in light of the substantive rules regarding rate increases proposed by the Board and other federal banking agencies published in May 2008 (See 73 FR 28904, May 19, 2008). Several industry commenters remarked on these illustrations, particularly on proposed comment 9(g)-1.ii.D. Proposed comment 9(g)-1.ii.D indicated that an issuer would be required, in some circumstances, to give a second advance notice, after the consumer's account became more than 30 days late, 45 days prior to imposing a penalty rate to outstanding balances as permitted under the Board's and agencies' proposed substantive rule. Many of these industry commenters stated that the creditor should not be required to provide an additional 45 days' notice to the consumer if: (i) a creditor has already provided 45 days' advance notice regarding the imposition of a penalty rate that applies only to new balances; and (ii) that notice states that such rate will apply to outstanding balances if the consumer becomes more than 30 days delinquent while the increased rate is in effect. Other commenters stated that an additional 45 days' notice should not be required if the consumer has already received within the last 12 months a notice regarding the consequences of making a payment more than 30 days late. One commenter indicated that if the Board retains the requirement to send a second notice in these circumstances, comments 9(g)-1 and 9(g)-1.ii.D should be revised to clarify that if a second trigger event occurs after the initial penalty rate notice is provided, the creditor should not be required to wait until the consumer is more than 30 days delinquent to provide the second penalty APR notice.

The Board has adopted a set of revised examples in comment 9(g)-1.ii that have been modified to conform with the final rules adopted by the Board and other federal banking agencies published elsewhere in today's **Federal Register**. These examples, among other things, clarify that a creditor is not required to provide a consumer with a second notice when the creditor has already sent a notice pursuant to § 226.9(g) and during the period between when that notice is sent and the effective date of the change, the consumer pays more than 30 days late. A second notice would, however, be required if the consumer were to pay more than 30 days late, if such a subsequent default by the consumer occurred after the effective date of the first notice sent by the creditor pursuant to § 226.9(g). The Board believes that a second notice is appropriate in these circumstances because the subsequent late payment or payments may occur months or years after the first notice pursuant to § 226.9(g) has been sent. At such a later date, the consumer may not recall the events that will cause the penalty rate to be applied to his or her existing balances; because such repricing may come as a surprise to the consumer, the Board believes that the consumer should receive advance notice in order to have an opportunity to seek alternative financing or to pay off his or her balances.

In addition to amending the examples, the Board also has clarified in new § 226.9(g)(4)(iii), discussed below, that a creditor need not send a second notice pursuant to § 226.9(g) prior to increasing the rate applicable to outstanding balances, in the limited circumstances where the creditor has already sent a notice disclosing a rate increase applicable to new transactions and during the period between when that notice is sent and the effective date of the change, if the consumer pays more than 30 days late. This exception is consistent with the examples described above.

<u>Multiple triggers for penalty rate</u>. In response to the June 2007 Proposal, several industry commenters requested a limited exception to the 45-day notice requirement for increases to penalty or default rates that are clearly disclosed in the account-opening disclosures and that involve behavior by the consumer that must occur in two or more billing cycles before the default rate is triggered. Under these circumstances, these commenters suggested that issuers should be permitted to provide the required notice after the first of the multiple triggering events has occurred, rather than waiting until the final trigger event. For example, if a creditor were to impose penalty pricing but only upon two late payments, the comments suggest that the creditor should be permitted to send the notice upon the consumer’s first late payment. The creditor would then be free to impose the penalty rate immediately upon the consumer’s second late payment, provided that 45 days has elapsed since the notice was provided. The commenters suggest that, under these circumstances, the consumer will have 45 days of advance notice to avoid the second triggering event.

Some commenters also suggested that creditors should be permitted to include on each periodic statement after the first triggering event a notice informing the consumer of the circumstances under which penalty pricing will be imposed. If the consumer engages in the behavior disclosed on the periodic statement, these creditors suggested that a creditor should be permitted to impose penalty pricing immediately, without additional advance notice given to the consumer.

For penalty pricing with multiple triggering events, the final rule continues to require 45 days' notice after the occurrence of the final triggering event. The Board believes that a notice of an impending rate increase may have the most utility to a consumer immediately prior to when the rate is increased. Depending on the particular triggers used by a creditor, the period of time between the first triggering event and the final triggering event could be quite long, and a consumer may have forgotten about the notice he or she received many months earlier. For example, if a creditor imposed penalty pricing based on the consumer exceeding his or her credit limit twice in a twelve-month period, a consumer might exceed the credit limit in January, and pursuant to the exception requested by commenters, would receive a notice of the possible imposition of penalty pricing shortly thereafter. If the consumer subsequently exceeded the credit limit again in December, that consumer's account could immediately be subject to penalty pricing with no additional advance notice given specifically informing that the consumer that he or she has, in fact, triggered the penalty rate. The Board believes that many consumers may not retain or recall the specific details set forth on a notice delivered in January, when penalty pricing is eventually imposed in December, particularly because different creditors' practices can vary. In addition, a notice given in January could in many cases state only that the consumer's account may be repriced upon the occurrence of subsequent events. The Board believes that a notice that states clearly that the interest rate applicable to a consumer's account is in fact being increased is important in order to avoid costly surprise in these circumstances.

The Board also believes that a notice included on each periodic statement after the first triggering event informing the consumer of the circumstances under which penalty pricing will be imposed would not be as effective as a notice informing the consumer of a specific impending rate increase. An institution may choose to provide a statement on each periodic informing the consumer of the circumstances under which penalty pricing will be imposed, but the institution still would be required to provide a notice prior to actually imposing the penalty rate pursuant to § 226.9(g).

<u>Promotional rate increased as a penalty</u>. In response to both the June 2007 and May 2008 Proposals, a number of industry commenters advocated an exception to the 45-day advance notice requirement when the rate is being changed from a promotional rate to a higher rate, such as a standard rate, as a penalty triggered by an event such as a late payment. These commenters suggested that a standard rate is not a true penalty rate and that consumers are aware that a promotional rate is temporary in nature. The comment letters also questioned whether creditors would continue to make promotional rates available if they were required to give notice 45 days in advance of repricing a consumer's account. Commenters also noted that the proposed rules regarding rate increases issued by the Board and other federal banking agencies in May 2008 contained an exception for repricing from a promotional rate to a standard rate. <u>See</u> 73 FR 28904, May 19, 2008.

The final rule does not contain an exception to the 45-day advance notice requirement for repricing from a promotional rate to any higher rate upon an event of default by the consumer. The Board believes that the rationales discussed above for the 45-day advance notice apply equally when a consumer's account is repriced from a promotional rate to a higher rate, prior to the end of the term for which the promotional rate was offered. The loss of a promotional rate before the end of a promotional period can be a costly surprise to the consumer, and in some cases even more costly than other types of interest rate increases. A consumer may have an expectation that a zero percent or other promotional rate will apply to transactions made for a certain fixed period, for example one year, and may purchase large ticket items or transfer a significant balances to that account during the period in reliance on the promotional rate. Under these circumstances, the Board believes that the consumer should have the opportunity to seek alternative sources of financing before the account is repriced to the higher rate. This outcome is consistent with final rules issued by the Board and other federal banking agencies and published elsewhere in this **Federal Register**, which do not contain an exception for repricing from a promotional rate to a standard rate prior to the expiration of the promotional period.

There is no obligation to provide a notice under § 226.9(g) if the increase from a promotional rate to the standard rate occurs at the end of the term for which the promotional rate was offered, not based on any event of default by the consumer. One industry commenter asked for guidance as to what a creditor must do under § 226.9(g) when the promotional rate is set to expire in less than 45 days and the consumer triggers penalty pricing. Under those circumstances, the Board anticipates that a creditor would not send a notice under § 226.9(g), but rather would let the promotional rate expire under its original terms. At the end of the promotional period, the rate would revert to the standard rate and no notice need be given to the consumer because a rate increase from the promotional rate to the standard rate upon the expiration of the period set forth in the original agreement would not constitute a change in terms or penalty repricing.

Raise in rate due to violation of terms of a workout plan. Industry commenters on the June 2007 Proposal also requested an exception for the situation where a rate is increased due to a violation of the terms of a special collection plan or workout plan. Some creditors may offer payment relief or a temporary reduction in a consumer's interest rate for a consumer who is having difficulty making payments, with the understanding that the consumer will return to standard contract terms if he or she does not make timely payments. For example, a consumer might be having difficulty making payments on an account to which a penalty rate of 30 percent applies. Under the terms of a workout arrangement, a creditor might reduce the rate to 20 percent, provided that if the consumer fails to make timely minimum payments, the 30 percent rate will be reimposed. One commenter noted that workout arrangements are generally offered to consumers who are so delinquent on their accounts that other or better financing options may not be available to them. Commenters also noted that the availability of workout programs was likely to be limited or reduced if a creditor were required to give 45 days' advance notice prior to reinstating a consumer's pre-existing contract terms if that consumer fails to abide by the terms of the workout arrangement.

The final rule contains a new § 226.9(g)(4)(i), which generally provides that a creditor is not required to give advance notice pursuant to § 226.9(g)(1) if a rate applicable to a consumer's account is increased as a result of the consumer's default, delinquency, or as a penalty, in each case for failure to comply with the terms of a workout arrangement between the creditor and the consumer. The exception is only applicable if the new rate being applied to the category of transactions does not exceed the rate that applied to that category of transactions prior to commencement of the workout arrangement, or 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 arrangement. The Board believes that workout arrangements provide a clear benefit to consumers who are otherwise having difficulty making payments and that the rule should not limit the continued availability of such arrangements. A consumer who is otherwise in default on his or her account and is offered a reduced interest rate for a period of time in order to facilitate the making of payments, and who has recently been in contact with his or her creditor regarding the terms of the workout arrangement, generally should not be surprised by the revocation of the reduced rate if he or she defaults under that workout arrangement.

Decrease in credit limit. The final rule contains a new exception in § 226.9(g)(4)(ii) that clarifies the relationship between the notice requirements in §§ 226.9(c)(2)(v) and 226.9(g)(1)(ii) 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 that newly decreased limit.

As discussed above, § 226.9(c)(2)(v) requires that a creditor give advance notice of a decrease in a consumer's credit limit in writing or orally at least 45 days before an over-the-limit fee or penalty rate can be imposed solely as a result of the consumer exceeding the newly decreased credit limit. The purpose of this provision is to give the consumer an opportunity to reduce outstanding balances to below the newly-decreased credit limit before penalty fees or rates can be imposed. In addition, § 226.9(g)(1)(ii) requires a creditor to give 45 days' advance written notice prior to increasing a rate as a penalty for one or more events specified in the account agreement, including for obtaining an extension of credit that exceeds the credit limit.

Without clarification, the Board is concerned that § 226.9(c)(2)(v) and (g)(1)(ii) could be read together to require 90 days' notice prior to imposing a penalty rate for a consumer exceeding a newly-decreased credit limit (i.e., that the 45-day cure period contemplated in § 226.9(c)(2)(v) would need to elapse before a consumer could be deemed to have triggered a penalty rate, only after which point the notice under § 226.9(g)(1)(ii) could be given). It was not the Board's intent for § 226.9(c)(2)(v) to extend the notice period prior to imposing a penalty rate for a consumer's having exceeded the credit limit to 90 days, but rather only to ensure that a consumer had a reasonable opportunity to avoid penalties for exceeding a newly decreased credit limit.

In order to clarify the relationship between § 226.9(c)(2)(v) and (g)(1)(ii), the final rule contains new § 226.9(g)(4)(ii), which permits a creditor to send, at the time that the creditor decreases the consumer's credit limit, a single notice (in writing) that would satisfy both the requirements of §§ 226.9(c)(2)(v) and (g). The combined notice would be required to be sent at least 45 days in advance of imposing the penalty rate and would be required to contain the content set forth in § 226.9(c)(2)(v), as well as additional content that generally tracks the requirements in § 226.9(g)(3)(i). The content of the notice would differ from the requirements in § 226.9(g)(3)(i) in order to accurately reflect the fact that a consumer may avoid imposition of the penalty rate by reducing his or her balance below the newly decreased credit limit by the date specified in the notice.

Consistent with the intent of § 226.9(c)(2)(v), new § 226.9(g)(4)(ii) provides that a creditor is not permitted to impose the penalty rate if the consumer's balance does not exceed the newly decreased credit limit on the date set forth in the notice for the imposition of the penalty rate (which date must be at least 45 days from when the notice is sent). However, if the consumer's balance does exceed the credit limit on the date specified in the notice, the creditor would be permitted to impose the penalty rate on that date, with no additional advance notice required. For example, assume that a creditor decreased the credit limit applicable to a consumer's account and sent a notice pursuant to § 226.9(g)(4)(ii) 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).

New § 226.9(g)(4)(ii)(D) sets forth the formatting requirements for notices given pursuant to § 226.9(g)(4)(ii), which conform with the formatting requirements for notices provided under § 226.9(g)(1).

Certain rate increases applicable to outstanding balances. The final rule contains a new exception in § 226.9(g)(4)(iii) intended to clarify the relationship between the notice requirements under § 226.9(g) and rules regarding the application of rate increases to outstanding balances issued by the Board and other federal banking agencies published elsewhere in today's **Federal Register**. Under the exception, a creditor is not required, under certain conditions, to provide an additional notice pursuant to paragraph § 226.9(g) prior to increasing the rate applicable to an outstanding balance, if the creditor previously provided a notice under § 226.9(g) disclosing that the rate applicable to new transactions was going to be increased. The exception only applies if, after the § 226.9(g) notice disclosing the rate increase for new transactions is provided but prior to the effective date of the rate increase or rate increases disclosed in the notice pursuant, the consumer pays more than 30 days late. Under those circumstances, a creditor may increase the rate applicable to both new and outstanding balances on the effective date set forth in the notice that was previously provided to the consumer.

This exception is meant to conform the requirements of the rule to the examples set forth in comment 9(g)-1.ii, which clarify the interaction between the notice requirements of § 226.9(g) and rules regarding the application of rate increases to outstanding balances issued by the Board and other federal banking agencies published elsewhere in today's **Federal Register**. The Board believes that a limited exception to the notice requirements of § 226.9(g) is appropriate in these circumstances because the consumer will have received a notice disclosing the rate increase applicable to new transactions, which also will disclose the circumstances under which the rate increase will apply to outstanding balances if the consumer fails to make timely payments prior to the effective date of the change.

Terminology. One commenter commented that the use of the terms "delinquency or default rate," and "penalty rate" is confusing and not necessarily consistent with industry usage. The commenter asked for clarification regarding the meaning of "delinquency or default rate" versus "penalty rate." The Board included both terms in the proposed rules, and has retained both terms in the final rule, in order to capture any situation in which a consumer's rate is increased in response to a violation or breach by the consumer of any term set forth in the contract. The term "delinquency or default rate" has historically appeared in Regulation Z, and the Board has added "penalty rate" in recognition that there may be contractual provisions that permit an increase in the rate applicable to a consumer's account for behavior that falls short of being a delinquency or default.

Section 226.10 Prompt Crediting of Payments

Section 226.10, which implements TILA Section 164, generally requires a creditor to credit to a consumer's account a payment that conforms to the creditor's instructions (also known as a conforming payment) as of the date of receipt, except when a delay in crediting the account will not result in a finance or other charge. 15 U.S.C. 1666c; § 226.10(a). Section 226.10 also requires a creditor that accepts a non-conforming payment to credit the payment within five days of receipt. See § 226.10(b). The Board has interpreted § 226.10 to permit creditors to specify cut-off times indicating the time when a payment is due, provided that the requirements for making payments are reasonable, to allow most consumers to make conforming payments without difficulty.

See comments 10(b)-1 and -2. Pursuant to § 226.10(b) and comment 10(b)-1, if a creditor imposes a cut-off time, it must be disclosed on the periodic statement; many creditors put the cut-off time on the back of statements.

10(b) Specific Requirements for Payments

Reasonable requirements for cut-off times. In the June 2007 Proposal, the Board sought to address concerns that cut-off times may effectively result in a due date that is one day earlier in practice than the due date disclosed. The Board did not propose in June 2007 to require a minimum cut-off time. Rather, the Board proposed a disclosure-based approach, which would have created a new § 226.7(b)(11) to require that for open-end (not home-secured) plans, creditors must disclose the earliest of their cut-off times for payments in close proximity to the due date on the front page of the periodic statement, if that earliest cut-off time is before 5 p.m. on the due date. In recognition of the fact that creditors may have different cut-off times depending on the type of payment (e.g., mail, Internet, or telephone), the Board's proposal would have required that creditors disclose only the earliest cut-off time, if earlier than 5 p.m. on the due date.

Although some consumer commenters on the June 2007 Proposal supported the proposed cut-off time disclosure, other consumers and consumer groups thought that the proposed disclosure would provide only a minimal benefit to consumers. These commenters recommended that the Board consider other approaches to more effectively address cut-off times. Consumer groups recommended that the Board adopt a postmark rule, under which the timeliness of a consumer's payment would be evaluated based on the date on which the payment was postmarked. Some consumers commented that cut-off times are unfair and should be abolished, while other consumers suggested that the Board establish minimum cut-off times.

Industry commenters expressed concern that the proposed disclosure would be confusing to consumers. They noted that many creditors vary their cut-off times by payment channel and that disclosure of only the earliest cut-off hour would be inaccurate and misleading. They suggested that, if the Board were to adopt this requirement, a creditor should be permitted to identify to which payment method the cut-off time relates, disclose the cut-off hours for all payment channels, or disclose the cut-off hour for the payment method used by the consumer, if known. Industry commenters also asked that the Board relax the location requirement for the cut-off time disclosure on the periodic statement.

Both consumer groups and industry commenters urged the Board to clarify which time zone should be considered when determining if the cut-off time is prior to 5:00 p.m.

In light of comments received on the June 2007 Proposal, the Board proposed in May 2008 to address cut-off times for mailed payments by providing guidance as to the types of requirements that would be reasonable for creditors to impose for payments received by mail. In part, the Board proposed to move guidance currently contained in the commentary to the regulation. Current comment 10(b)-1 provides examples of specific payment requirements creditors may impose and comment 10(b)-2 states that payment requirements must be reasonable, in particular that it should not be difficult for most consumers to make conforming payments. The Board proposed in May 2008 to move the substance of comments 10(b)-1 and 10(b)-2 to § 226.10(b)(1) and (b)(2) of the regulation. Under the May 2008 Proposal, § 226.10(b)(1) would have stated the general rule, namely that a creditor may specify reasonable requirements that enable most consumers to make conforming payments. The Board would have expanded upon the example in current comment 10(b)-1(i)(B) in new proposed § 226.10(b)(2)(ii), which would have stated that it would not be reasonable for a creditor to set a cut-off time for payments by mail that is earlier than 5:00 p.m. at the location specified by the creditor for receipt of such payments.

The language in current comment 10(b)-2 stating that it should not be difficult for most consumers to make conforming payments would not have been included in the regulatory text under the May 2008 Proposal. As noted in the May 2008 Proposal, the Board believes that this language is in substance duplicative of the requirement that any payment requirements be reasonable and enable most consumers to make conforming payments.

The Board did not propose a postmark rule as suggested by consumer group commenters on the June 2007 Proposal. In part, this is because the Board and other federal banking agencies proposed in May 2008 a rule that would have required a creditor to provide consumers with a reasonable time to make payments. As discussed in the May 2008 Proposal, the Board also believes that it would be difficult for consumers to retain proof of when their payments were postmarked, in order to challenge the prompt crediting of payments under such a rule. In addition, a mailed payment may not have a legible postmark date when it reaches the creditor or creditor's service provider. Finally, the Board believes there would be significant operational costs and burdens associated with capturing and recording the postmark dates for payments.

Consumer groups, one state treasurer, one federal banking agency, several industry commenters and several industry trade associations supported the proposal that it would not be reasonable to set a cut-off time for payments received by mail prior to 5 p.m. on the due date at the location specified by the creditor for the receipt of mailed payments. Several consumer groups, credit unions, and two members of Congress suggested that the Board expand the proposed rule to apply to all forms of payment, including payments made by telephone and on-line. Several consumer groups urged that the rule should be dependent on the local time of the consumer's billing address, not the local time of the issuer's payment facility. Several consumer groups suggested that the Board establish a uniform rule establishing a cut-off time of either 5 p.m. or the close of business, if it is later than 5 p.m. One of these commenters noted that a uniform, minimum 5 p.m. cut-off time would not require creditors to process and post the payments on the same day, or to change their systems, but would only require that creditors not treat payments received before 5 p.m. as late.

One industry commenter that supported the 5 p.m. rule stated that it should only apply to mailed payments. This commenter stated that a consumer who makes payments on-line, by telephone, or at a bank branch controls and is aware of the exact time a payment is made. An industry trade association noted that its support of the 5 p.m. cut-off time was conditioned on the understanding that there would be no requirement for creditors to process payments within certain time frames. This commenter indicated its understanding that the May 2008 Proposal would only prohibit assessing a late fee, or otherwise considering the payment late, if it is received on or before the due date, and would not dictate when the payment actually needed to be processed.

The majority of industry commenters opposed the proposed rule that would have provided that cut-off times prior to 5 p.m. for mailed payments are not reasonable. Many of these commenters raised operational issues with the proposed rule. One industry trade association stated that banks need sufficient time after retrieving mail to update accounts and produce accurate periodic statements. This commenter indicated that remittance processing requires time to confirm transactions and detect and remedy errors. This commenter noted that if a bank is unable to complete any necessary updates prior to generation of the consumer's statement, the payment may be subsequently revised and backdated, but the payment will not be reflected in the statement sent to the consumer, which would make the statement inaccurate. Other industry commenters noted that they use a lockbox to process payments. These commenters indicated that currently their lockbox personnel cannot open, process, and credit payments on the date received unless they are received by a time certain that may be in the morning, or at the latest, midday.

Several industry commenters stated that the proposed 5 p.m. cut-off time rule in effect would impose a requirement for all open-end creditors to adopt a 5 p.m. post office run or to do a "last mail call" at 4:59 p.m. One commenter noted that 5 p.m. is rush hour, which could lead to significant delays in delivering the payments in metropolitan areas. Several industry commenters further noted that some post offices may officially close prior to 5 p.m. but continue to process mail and insert mail into mail boxes.

One trade association for credit unions noted that some smaller credit unions may only be open several days a week and may have limited business hours, for example, a faith-based credit union chartered to serve the members of a church congregation that is only open on Sundays or weekends for several hours. This commenter indicated that for such a creditor, it should be reasonable to impose a cut-off time that is consistent with that particular institution's closing time.

One large bank and one industry trade association suggested that a deadline of 2 p.m. for mailed payments should be considered reasonable, due to operational and logistical challenges that make a 5 p.m. cut-off time too early. Several industry commenters noted that Regulation CC (Availability of Funds and Collections of Checks) permits earlier cut-offs for access to deposits of 2 p.m. or later, or 12 p.m. or later if the deposit is received at an ATM. 12 CFR § 229.19(a)(5)(ii) Several other industry commenters stated that the Board had not articulated its reasons for selecting a 5 p.m. cut-off time, and that there is no evidence that consumers expect a 5 p.m. deadline.

Other industry commenters stated that it is consistent with consumer expectations that a customer needs to provide the bank with a reasonable time to process a transaction. These commenters noted that it is especially important that open-end creditors have a reasonable time to process payments received by mail in light of the fact that such creditors are required to credit a borrower's account as of the day the payment is received, even if the creditor does not receive funds after depositing the check for one or more days.

Finally, two industry commenters expressed concern about the proposal's classification of cut-off times prior to 5 p.m. as "unreasonable." These commenters indicated that the characterization of certain cut-off times as "unreasonable" might give rise to litigation risk for creditors that used earlier cut-off times prior to this rule that were permissible under the Regulation Z requirements at that time.

In light of comments received, the Board is adopting in the final rule a modified version of proposed § 226.10(b)(2)(ii), which describes a 5 p.m. cut-off time for mailed payments as an example of a reasonable requirement for payments, but does not state that earlier cut-off times would be unreasonable in all circumstances. The Board believes that the establishment of a safe harbor for a 5 p.m. cut-off time for mailed payments, rather than declaring earlier cut-off times to be *per se* unreasonable, should help to alleviate commenters' concerns about litigation risk while helping to ensure that consumers receive a reasonable period of time to pay on the due date. The Board intends for this rule to apply only prospectively, and believes that providing a safe harbor rather than defining certain cut-off times as unreasonable reinforces the fact that the rule does not apply to past practices.

The Board notes that if a creditor adopts a 5 p.m. cut-off time for payments received by mail, neither the current rule nor the revised rule would mandate that the creditor pick up its mail at 5 p.m. on the payment due date. Section 10(a) addresses only the date as of which a creditor is required to credit a payment to a consumer's account, but does not impose any requirements as to when the creditor actually must process or post the payment. It would be permissible under the final rule for a creditor that has a 5 p.m. cut-off time on the due date for payments by mail to, for example, backdate and credit payments received in its first pick-up of the following morning as of the due date, assuming that its previous pick-up was not made at or after 5 p.m. on the due date. The Board understands that backdating of payments is relatively common and that some servicers have platforms that provide for automated backdating. A creditor that prefers not to backdate its payments for operational reasons could, however, arrange for a 5 p.m. mail pick-up.

The final rule adopts the 5 p.m. safe harbor only for mailed payments and does not address other payment channels. Payments made by other methods, such as electronic payments or payments by telephone, are however subject to the general rule that requirements for payments must be reasonable. The Board will continue to monitor cut-off times for non-mailed payments in the future in order to determine whether a safe harbor or similar guidance for such payments is necessary. The Board believes that a safe harbor for payments by mail is important because it is the payment mechanism over which consumers have the least direct control. A consumer is more aware of, and better able to control, the time at which he or she makes an electronic, telephone, or in-person payment, but is not able to control or monitor the exact time at which mail is received by a creditor.

The safe harbor, consistent with the proposal, 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 compliance with the safe harbor, and that a rule requiring a creditor to process payments differently based on the time zone at the consumer's billing address could impose significant operational burdens on creditors. The safe harbor also refers to 5 p.m., consistent with the proposal. The Board believes that many consumers expect that payments received by the creditor by 5 p.m., which corresponds to the end of a standard business day, will be credited on that day. This also is consistent with the results of consumer testing conducted prior to the June 2007 Proposal, which showed that most consumers assume payment is due by midnight or by the close of business on the due date.

Under the June 2007 Proposal, § 226.10(b) contained a cross reference to § 226.7(b)(11), regarding the disclosure of cut-off hours on periodic statements. In the May 2008 Proposal, the Board solicited comment on whether disclosure of cut-off hours near the due date for payment methods other than mail (e.g., telephone or Internet) should be retained. As discussed in the section-by-section analysis to § 226.7(b)(11), the final rule does not adopt the formatting requirements for disclosing the cut-off time on the periodic statement that were proposed in the June 2007 Proposal. A creditor must, however, continue to specify on or with the periodic statement any applicable cut-off times pursuant to § 226.10(b)(3) (formerly § 226.10(b)), as renumbered in the final rule.

<u>Receipt of electronic payments made through a creditor's Web site</u>. The Board also proposed in the June 2007 Proposal to add an example to comment 10(a)-2 that states that for payments made through a creditor's Web site, the date of receipt is the date as of which the consumer authorizes the creditor to debit that consumer's account electronically. The proposed comment would have referred to the date on which the consumer authorizes the creditor to effect the electronic payment, not the date on which the consumer gives the instruction. The consumer may give an advance instruction to make a payment and some days may elapse before the payment is actually made; accordingly, the Board's proposed comment 10(a)-2 would have referred to the date on which the creditor is authorized to debit the consumer's account. If the consumer authorized an immediate payment, but provided the instruction after a creditor's cut-off time, the relevant date would have been the following business day. For example, a

consumer may go on-line on a Sunday evening and instruct that a payment be made; however, the creditor might not transmit the request for the debit to the consumer's account until the next day, Monday. Under proposed comment 10(a)-2 the date on which the creditor was authorized to effect the electronic payment would have been deemed to be Monday, not Sunday. Proposed comment 10(b)-1.i.B would have clarified that the creditor may, as with other means of payment, specify a cut-off time for an electronic payment to be received on the due date in order to be credited on that date. As discussed in the June 2007 Proposal, the Board's proposed clarification of comment 10(a)-2 is limited to electronic payments made through the creditor's own Web site, over which the creditor has control.

Two industry commenters supported the proposed changes to comments 10(a)-2 and 10(b)-1.i.B regarding electronic payments made via the creditor's Web site. One of these commenters noted that the proposed changes were consistent with consumer expectations, and stated that it was appropriate that the changes were limited to electronic payments made at the creditor's own Web site, over which the creditor has control, rather than being expanded to include all types of electronic payments. Several individual consumers also commented that electronic payments should be credited on the day on which they are authorized. Comments 10(a)-2 and 10(b)-1.i.B are adopted as proposed.

<u>Promotion of payment via the creditor's Web site</u>. In the June 2007 Proposal, the Board proposed to update the commentary to clarify that if a creditor promotes electronic payments via its Web site, then payments made through the creditor's Web site would be considered conforming payments for purposes of § 226.10(b). Many creditors now permit consumers to make payments via their Web site. Payment on the creditor's Web

site may not be specified on or with the periodic statement as conforming payments, but it may be promoted in other ways, such as in the account-opening agreement, via e-mail, in promotional material, or on the Web site itself. As discussed in the June 2007 Proposal, the Board believes it would be reasonable for a consumer who receives materials from the creditor promoting payment on the creditor's Web site to believe that it would be a conforming payment and credited on the date of receipt. For these reasons, the Board also proposed in June 2007 to amend comment 10(b)-2 to clarify that if a creditor promotes that it accepts payments via its Web site (such as disclosing on the Web site itself or on the periodic statement that payments can be made via the Web site), such a payment is considered a conforming payment for purposes of § 226.10(b).

One industry commenter noted that there could be operational issues associated with treating payments made via the creditor's Web site as conforming, because most banks use third-party processors to process their electronic payments. This commenter stated that an issuer may not be in control of its processing system and may not be able to credit its payments on the same day they are authorized. This commenter further stated that a creditor may have one Web site that offers several different means of making payments, for example a portal solely for making credit card payments as well as a portal for making bill payments through a third-party bill payment processor, and that payments could be sent either way by the consumer. This commenter noted that there may be additional delay in processing the payment depending on which electronic payment mechanism the consumer uses.

The Board believes that consumer expectation is that a payment made via the creditor's Web site is a conforming payment, and that a creditor that promotes and accepts payment via its Web site should treat such payment as conforming. As noted above, individual consumers who commented on the June 2007 Proposal stated that electronic payments should receive same-day crediting. The Board notes that creditors may use third-party processors not just for electronic payments, but also for mailed payments that are treated as conforming. Thus, the use of a third-party processor may give rise to delays in processing payments regardless of the payment mechanism used. The Board notes that a creditor need not post a payment made via its Web site on the same day for which the consumer authorized payment, but need only credit the payment as of that date. Comment 10(b)-2 is adopted as proposed.

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

Holiday and weekend due dates. The Board's June 2007 Proposal did not address the practice of setting due dates on dates on which a creditor does not accept payments, such as weekends or holidays. A weekend or holiday due date might occur, for example, if a creditor sets its payment due date on the same day (the 25th, for example) of each month. While in most months the 25th would fall on a business day, in other months the 25th might be a weekend day or holiday, due to fluctuations in the calendar. The Board received a number of comments in response to the June 2007 Proposal from consumer groups, individual consumers, and a member of Congress criticizing weekend or holiday due dates. The comment letters expressed concern that a consumer whose due date falls on a date on which the creditor does not accept payments must pay one or several days early in order to avoid the imposition of fees or other penalties that are associated with a late payment. Comment letters from consumers indicated that, for many consumers, weekend and holiday due dates are a common occurrence. Some of these commenters suggested that the Board mandate an automatic grace period until the next business day for any such weekend or holiday due dates. Other commenters recommended that the Board prohibit weekend or holiday due dates.

In response to these comments, the Board proposed in May 2008 a new § 226.10(d) that would have required a creditor to treat a payment received by mail the next business day as timely, if the due date for the payment is a day on which the creditor does not receive or accept payment by mail, such as a day on which the U.S. Postal Service does not deliver mail. Thus, if a due date falls on a Sunday on which a creditor does not receive or accept payment by mail, the payment could not have been subjected to late payment fees or increases in the interest rate applicable to the account due to late payment if the payment were received by mail on the next day that the creditor does receive or accept payment by mail. The Board proposed this rule using its authority to regulate the prompt posting of payments under TILA Section 164, which states that "[p]ayments received from an obligor under an open end consumer credit plan by the creditor shall be posted promptly to the obligor's account as specified in regulations of the Board." 15 U.S.C. 1666c.

The proposed rule in § 226.10(d) was limited to payments made by mail. The Board noted its particular concern about payments by mail because the consumer's time to pay, as a practical matter, is the most limited for those payments, since a consumer paying by mail must account for the time that it takes the payment to reach the creditor. The Board solicited comment in the May 2008 Proposal as to whether this rule also should address payments made by other means, such as telephone payments or payments made via the Internet.

Consumer groups, several industry commenters, one industry trade group, a state treasurer, several credit union trade associations, and several state consumer protection agencies supported the Board's proposed rule regarding weekend or holiday due dates. Several industry commenters indicated that they were already in compliance with the proposed rule. Consumer groups stated that the proposed rule should be expanded to all forms of payment, including payments made electronically, by personal delivery, and by telephone.

Several other industry trade groups and industry commenters objected to the proposed rule regarding weekend or holiday due dates, stating that it would impose operational challenges and costs for banks, including additional systems processing. These commenters questioned the necessity of the proposed rule, in light of the proposal by the Board and other federal banking agencies in May 2008, which would have prohibited institutions from treating a payment as late for any purpose unless the consumer has been provided a reasonable amount of time to make payment. See 73 FR 28904, May 19, 2008. One industry commenter supported prohibiting creditors from charging a late payment fee if the due date falls on a weekend or holiday and the payment is received on the next business day, but indicated that creditors should not be required to backdate interest associated with the payment. One industry commenter that opposed the proposal stated that the Board should require a creditor to disclose in the account-opening table the dates that are considered business days for purposes of payments.

Several commenters commented on the example offered by the Board, "for example if the U.S. Postal Service does not deliver mail on that date," to describe a day on which the creditor does not receive or accept payments by mail. One industry commenter indicated that it accepts and receives mail from the U.S. Postal Service every hour, 365 days a year, and indicated that the example may be misleading in light of its actual practices. Another industry commenter commented more generally that issuers who receive and process mail on Sundays and holidays should be permitted to rely on payment due dates that fall on those days.

The final rule adopts § 226.10(d) as proposed, with one minor clarification discussed below. The Board believes that it is important for consumers to have adequate time to make payment on their accounts, and that it is reasonable for consumers to expect that their mailed payments actually can be received and processed on the due date. Consumers should not be required to account for the fact that the due date for a mailed payment in practice is in effect one day earlier than the due date disclosed due to a weekend or holiday. While the rule may impose operational burden on some issuers, the Board believes that this burden is outweighed by the benefit to consumers of having their payments posted in accordance with their expectations that payments need not be delivered prior to the due date in order to be timely. The Board also notes that several industry commenters indicated that they were already in compliance with the rule and that it would impose no additional operational burden on those institutions.

The example in proposed § 226.10(d) regarding a date on which the U.S. Postal Service does not deliver mail has been moved to a new comment 10(d)-1, to emphasize that it is an example only. A creditor that accepts and receives mail on weekends and holidays may rely on payment due dates that fall on those days.

The final rule adopts the rule regarding weekend or holiday due dates only for mailed payments and does not address other payment mechanisms. The Board will continue to monitor due dates for non-mailed payments in the future in order to determine whether a similar rule for such payments is necessary.

One commenter stated that § 226.10(d) should refer to dates on which a creditor does not "receive or process" payments rather than dates on which a creditor does not "receive or accept" payments. The creditor stated that receipt or acceptance, absent actual processing, could create the appearance of prompt crediting of payments where there is none. The final rule does not adopt this change. The rules in § 226.10 do not address when a creditor must process payments, only the date as of which a creditor must credit the payment to a consumer's account. Crediting a payment to a consumer's account as of the date of receipt does not require that the creditor actually process the payment on that date; a creditor that does not process and post the payment on the date of receipt could comply with § 226.10(a) by backdating the payment and computing all charges applicable to the consumer's account accordingly.

The Board believes that its final rule under Regulation Z regarding weekend or holiday due dates will complement the final rule issued by the Board and other federal banking agencies published elsewhere in today's **Federal Register** to require banks to provide a consumer with a reasonable amount of time to make payments.

Section 226.11 Treatment of Credit Balances; Account Termination

11(a) Credit Balances

TILA Section 165, implemented in § 226.11, sets forth specific steps that a creditor must take to return any credit balance in excess of $1 on a credit account, including refunding any remaining credit balance within seven business days after receiving a written request from the consumer or making a good faith effort to refund any credit balance that remains in the consumer's account for more than six months. 15 U.S.C. 1666d. Although the substance of these provisions remains unchanged, the final rule implements a number of amendments proposed in June 2007.

In June 2007, the Board proposed moving the provisions in § 226.11 regarding credit balances to a new paragraph (a) and renumbering the commentary accordingly. The Board also proposed adding a new paragraph (b) implementing the prohibition in Section 1306 of the Bankruptcy Act on terminating accounts under certain circumstances (further discussed below). See TILA Section 127(h); 15 U.S.C. 1637(h). Furthermore, the Board proposed amending the section title to reflect the new subject matter. Finally, the Board proposed revising the commentary to provide that a creditor may comply with § 226.11(a) by refunding any credit balance upon receipt of a consumer's oral or electronic request. See proposed comment 11(a)–1.

In response to proposed comment 11(a)-1, some consumer groups requested that creditors be required to inform consumers that, unlike compliance with a written refund request under § 226.11(a)(2), compliance with an oral or electronic refund request is not mandatory. The Board believes that this disclosure is not necessary. A creditor that requires requests for refund of a credit balance to be in writing is unlikely to accept an oral or electronic request for such a refund of a credit balance and then refuse to comply without notifying the consumer that a written request is required. Furthermore,

§ 226.11(a)(3) requires creditors to refund credit balances in excess of $1 after six months even if no request is made.

The Board is amending the credit balance provisions in § 226.11 as proposed in June 2007, with minor technical and clarifying revisions.

11(b) Account Termination

TILA Section 127(h), added by the Bankruptcy Act, prohibits creditors that offer open-end consumer credit plans from terminating an account prior to its expiration date solely because the consumer has not incurred finance charges on the account. 15 U.S.C. 1637(h). A creditor is not, however, prohibited from terminating an account for inactivity in three or more consecutive months.

In June 2007, the Board proposed to implement TILA Section 127(h) in the new § 226.11(b). The general prohibition in TILA Section 127(h) was stated in proposed § 226.11(b)(1). The proposed commentary to § 226.11(b)(1) would have clarified that the underlying credit agreement, not the credit card, determines if there is a stated expiration (maturity) date. Thus, creditors offering accounts without a stated expiration date would not be permitted to terminate those accounts solely because the consumer uses the account and does not incur a finance charge. See proposed comment 11(b)(1)-1.

Proposed § 226.11(b)(2) provided that, consistent with TILA Section 127(h), the prohibition in proposed § 226.11(b)(1) would not have prevented creditors from terminating an account that is inactive for three consecutive months. Under proposed § 226.11(b)(2), an account would have been inactive if there had been no extension of credit (such as by purchase, cash advance, or balance transfer) and if the account had no outstanding balance.

One comment on proposed comment 11(b)(1)-1 requested that the phrase "uses the account" be removed because it does not appear in TILA Section 127(h) or proposed § 226.11(b). The June 2007 Proposal included this phrase because, under proposed § 226.11(b)(2), a creditor would be permitted to terminate an account for inactivity. To clarify this point, the Board has revised comment 226.11(b)(1)-1 to reference § 226.11(b)(2) explicitly. Otherwise, § 226.11(b) is adopted as proposed in June 2007, with minor technical and clarifying revisions.

Section 226.12 Special Credit Card Provisions

Section 226.12 contains special rules applicable to credit cards and credit card accounts, including conditions under which a credit card may be issued, liability of cardholders for unauthorized use, and cardholder rights to assert merchant claims and defenses against the card issuer.

12(a) Issuance of Credit Card

TILA Section 132, which is implemented by § 226.12(a) of Regulation Z, generally prohibits creditors from issuing credit cards except in response to a request or application. Section 132 explicitly exempts from this prohibition credit cards issued as renewals of or substitutes for previously accepted credit cards. 15 U.S.C. 1642. While the June 2007 Proposal did not propose changes to the current renewal and substitution rules, the May 2008 Proposal set forth certain limitations on a card issuer's ability to issue a new card as a substitute for an accepted card for card accounts that have been inactive for a significant period of time. Specifically, a card issuer would not have been permitted to substitute a new card for a previously accepted card if the merchant base would be changed (for example, from a card that is honored by a single merchant to a general purpose card) and if the account has been inactive for a 24-month period preceding the issuance of the substitute card. See proposed comment 12(a)(2)-2.v.

Consumer groups supported the proposal but urged the Board to expand the scope of the proposed revision, to prohibit any replacement of a retail card by a general-purpose credit card if the substitution was not specifically requested by the consumer. In contrast, the majority of industry commenters commenting on the issue stated that the proposed revision would inappropriately restrict an issuer's ability to upgrade cards for consumers who want a product that provides greater merchant acceptance than their existing retail card. These commenters also generally believed that any potential concerns about cardholder security or identity theft are already adequately addressed through market practices designed to prevent fraud (such as card activation requirements) and other regulatory requirements (for example, change-in-terms notice requirements under Regulation Z and identity theft "Red Flag" requirements under the FCRA). See e.g. 12 CFR part 222. One industry commenter urged the Board to consider adding exceptions where the general-purpose credit card carries similar branding as the retail card (for example, where "Department store X retail card" is replaced with "Department store X general-purpose card"), or where the retailer goes out of business.

Industry commenters also urged the Board to extend the time period for inactivity from 24 to 36 months after which a general purpose credit card could no longer be substituted for a retail card on an unsolicited basis. These industry commenters stated that private label credit cards, particularly those used to make major purchases, tend to have long life-cycles and sporadic usage patterns. One industry commenter also noted that 36 months aligned with current card expiration and renewal time frames. Consumer groups in contrast believed that 24 months was excessive, because a consumer may no longer remember having the particular retail card, or may have moved during that time period. Instead, consumer groups urged the Board to adopt a time frame of 180 days. Alternatively, consumer groups suggested that the Board could permit substitutions only if the creditor has sent a periodic statement within the prior three-month period.

The final rule adopts the revisions to comment 12(a)(2)-2.v, as proposed. While some consumers may benefit from receiving a card that could be used at a wider number of merchants compared to their current retail card, other consumers may have only signed up for the retail card to receive a benefit unique to that retailer or group of retailers, such as an initial purchase discount, and may not want a card with greater merchant acceptance. Although consumers in some cases can elect not to activate the substitute card and to destroy the unwanted device, others may have moved in the interim period, leading to potential card fraud and identity theft concerns as the cards will be sent to an invalid address. Some consumers may not remember having opened the retail card account in the first place, leading to possible consumer confusion when the new card arrives in the mail.

Accordingly, the Board believes that the revised comment as adopted, including the 24-month period, strikes a reasonable balance between the potential benefits to consumers of using an accepted card at a wider number of merchants and consumer concerns arising from an unsolicited card being sent for an account that has been inactive for a significant period of time, particularly when the card is issued by a creditor with whom the consumer may have no prior relationship. The final comment also deletes as unnecessary the reference to situations where “the consumer has not obtained credit with the existing merchant base within 24 months prior to the issuance of the new card" because, as noted by one commenter, this concept is already incorporated into the definition of "inactive account" in the comment.

In light of the revised comment's narrow scope, the Board also believes it is unnecessary to add any exceptions to the provision as adopted. The final rule does not affect creditors' ability to send a general-purpose card to replace a retail card that has been inactive for more than 24 months if the consumer specifically requests or applies for the general-purpose card.

12(b) Liability of Cardholder for Unauthorized Use

TILA and Regulation Z provide protections to consumers against losses due to unauthorized transactions on an open-end plan. See TILA Section 133(a); 15 U.S.C. 1643, § 226.12(b); TILA Section 161(b)(1); 15 U.S.C. 1666(b)(1), § 226.13(a)(1). Significantly, under § 226.12(b), a cardholder's liability for an unauthorized use of a credit card is limited to no more than $50 for transactions that occur prior to notification of the card issuer that an unauthorized use has occurred or may occur as the result of loss, theft or otherwise. 15 U.S.C. 1643. Before a card issuer may impose liability for an unauthorized use of a credit card, it must satisfy certain conditions: (1) the card must be an accepted credit card; (2) the issuer must have provided adequate notice of the cardholder's maximum liability and of the means by which the issuer may be notified in the event of loss or theft of the card; and (3) the issuer must have provided a means to identify the cardholder on the account or the authorized user of the card. The June 2007 and May 2008 Proposals set forth a number of revisions that would have clarified the scope of § 226.12(b) and updated the regulation to address current business practices. In addition, the Board proposed to move the guidance that is currently set forth in footnotes to the regulation or commentary, as appropriate.

Scope. As proposed in the June 2007 Proposal, the definition of "unauthorized use" currently found in footnote 22 is moved to the regulation. See § 226.12(b)(1)(i). This definition provides that unauthorized use is use of a credit card by a person who lacks "actual, implied, or apparent authority" to use the credit card. In the June 2007 Proposal, the Board proposed two new commentary provisions, comments 12(b)(1)(ii)-3 and -4, to parallel existing commentary provisions under Regulation E (Electronic Fund Transfers) regarding unauthorized electronic fund transfers.

Comment 12(b)(1)(ii)-3, as proposed, would have clarified that if a cardholder furnishes a credit card to another person and that person exceeds the authority given, the cardholder is liable for that credit transaction unless the cardholder has notified the creditor (in writing, orally, or otherwise) that use of the credit card by that person is no longer authorized. See also comment 205.2(m)-2 of the Official Staff Commentary to Regulation E. Two industry commenters, one card issuer and one trade association, supported the proposed comment, stating that it provided helpful guidance on an issue that frequently arises in disputes between card issuers and cardholders. Consumer groups, however, asserted that the scope of the proposed comment should be limited to misuse by persons that a cardholder has added as an authorized user on the account.

The Board adopts the comment as proposed. The Board believes that limiting the comment to authorized users would be too narrow as it would potentially allow cardholders to avoid liability for certain transactions simply because the cardholder did not undertake the procedural steps necessary to add an authorized user. In addition, as noted by one commenter in support of the proposed comment, the cardholder is in the best position to control the persons to whom they have provided a card for use. Lastly, the Board believes that to the extent feasible, it is appropriate to have consistent rules under Regulation Z and Regulation E, particularly where the underlying statutory requirements are similar.

The June 2007 Proposal also would have added comment 12(b)(1)(ii)-4 to provide that unauthorized use includes circumstances where a person has obtained a credit card, or otherwise has initiated a credit card transaction, through robbery or fraud (for example, if the person holds the consumer at gunpoint and forces the consumer to initiate a transaction). See also comments 205.2(m)-3 and -4 of the Official Staff Commentary to Regulation E. Because "unauthorized use" under Regulation Z includes the use of a credit card by a person other than the cardholder who does not have "actual, implied, or apparent authority,"[24] some commenters agreed with the Board's observation in the supplementary information to the June 2007 Proposal that cases of robbery or fraud were likely to be adequately addressed under the existing regulation. Nonetheless, these commenters welcomed the additional guidance as it provided certainty to the issue. Consumer groups expressed concern that the proposed comment was too narrow and could leave consumers vulnerable to liability for unauthorized use in other similar circumstances, such as theft, burglary and identity theft. Consequently, these groups urged the Board to expand the scope of the proposed comment to cover additional circumstances. The Board adopts comment 12(b)(1)(ii)-4 generally as proposed, with a

[24] By contrast, "unauthorized electronic fund transfer" under Regulation E is defined as an electronic fund transfer from a consumer's account initiated by a person other than a consumer "without actual authority" to initiate the transfer and from which the consumer receives no benefit, but excludes a transfer initiated by a person who was furnished the access device by the consumer. See 12 CFR § 205.2(m).

minor revision to clarify that unauthorized use is not limited to instances of robbery or fraud.

As discussed previously under § 226.2(a)(15), the term "credit card" does not include a check that accesses a credit card account. Thus, in June 2007, the Board proposed to add comment 12(b)-4 to provide that the liability limits established in § 226.12(b) do not apply to unauthorized transactions involving the use of these checks. Consumer groups in response asserted that even if the Board declined to expand the definition of "credit card" to include access checks, it should not necessarily follow that any unauthorized transactions involving the use of these checks should be exempt from the protections afforded by § 226.12(b). In particular, consumer groups observed that this outcome would lead to the anomalous result that the consumer's use of the credit card number alone would receive the protections of § 226.12(b), but the consumer's use of an access check would not, even though in both cases, the transaction is ultimately charged to the consumer's credit card account.

The Board adopts comment 12(b)-4 as proposed, and thus does not extend application of § 226.12(b) to access checks in light of the statutory language in TILA Section 133 requiring that the unauthorized use involve the use of a credit card. Nonetheless, as noted in the June 2007 Proposal, the consumer may still assert the billing error protections under § 226.13 with respect to any unauthorized transaction using an access check. Comment 12(b)-4 in the final rule contains this clarification as proposed.

Some industry commenters urged the Board to adopt a time period within which consumers must make claims for unauthorized transactions made through use of a credit card. The Board declines to adopt such a time period. As noted in the June 2007

Proposal, in contrast to TILA Section 161 which requires consumers to assert a billing error claim within 60 days after a periodic statement reflecting the error has been sent, TILA Section 133 does not prescribe a time frame for asserting an unauthorized use claim. See 15 U.S.C. 1643.

Conditions for imposing liability. Before a card issuer may impose any liability for an unauthorized use of a credit card, § 226.12(b) requires, among other things, that the card issuer first provide a means to identify the cardholder on the account or the authorized user of the card, such as a signature, photograph, or fingerprint on the card. As proposed in the June 2007 Proposal, comment 12(b)(2)(iii)-1 would have updated the examples of the means that a card issuer may provide for identifying the cardholder on the account or the authorized user of the card to include additional biometric means of identification. See § 226.12(b)(2). No commenters opposed this proposed comment, and it is adopted as proposed.

In addition, the June 2007 Proposal would have revised comment 12(b)(2)(iii)-3 to clarify that a card issuer may not impose liability for an unauthorized use when merchandise is ordered by telephone or Internet if the person using the card without the cardholder's authority provides the credit card number by itself or with other information that appears on the card. For example, in many instances, a credit card will bear a separate 3- or 4-digit number, which is typically printed on the back of the card on the signature block or in some cases on the front of the card above the card number. Other information on the card that may be provided is the card expiration date. While the provision of such information may suggest that the person providing the number is in possession of the card, it does not enable the issuer to determine that the person providing the number is in fact the cardholder or the authorized user. Consumer groups supported this proposal, and no commenter opposed the proposed revision. Accordingly, comment 12(b)(2)(iii)-3 is adopted as proposed.

As noted above, a creditor must provide adequate notice of the consumer's maximum liability before it may impose liability for an unauthorized use of a credit card. In the June 2007 Proposal, the Board proposed Model Clause G-2(A), which can be used to explain the consumer's liability for unauthorized use. No commenters addressed the proposed model clause. The final rule revises the language of Model Clause G-2(A) to incorporate optional language that an issuer may provide in the event it allows a consumer to provide notice of the unauthorized use electronically. For HELOCs subject to § 226.5b, at the creditor's option, the creditor may use either Model Clause G-2 or G-2(A).

<u>Reasonable investigation</u>. Comment 12(b)-3 provides that a card issuer may not automatically deny an unauthorized use claim based solely on the consumer's failure or refusal to comply with a particular request. In the May 2008 Proposal, the Board proposed to amend the comment to specifically provide that the issuer may not require the cardholder to submit an affidavit or to file a police report as a condition of investigating an unauthorized use claim. The proposed addition reflected the Board's concerns that such card issuer requests could cause a chilling effect on a cardholder's ability to assert his or her right to avoid liability for an unauthorized transaction. The proposed addition also would have codified in the commentary guidance that had previously only been stated in the supplementary information accompanying prior Board

rulemakings. See 59 FR 64351, 64352, December 14, 1994; 60 FR 16771, 16774, April 3, 1995.

While a few industry commenters supported the proposal, most industry commenters asserted that card issuer requirements for affidavits or police reports served a useful purpose in deterring false or fraudulent assertions of unauthorized use. In addition, industry commenters also noted that such documentation may be necessary to help validate and appropriately resolve a dispute, as well as to convince local authorities to prosecute the person responsible for the unauthorized transaction. At a minimum, industry commenters asked the Board to permit card issuers to require cardholders to provide a signed statement regarding the unauthorized use.

Consumer groups strongly supported the proposed provision, stating that paperwork requirements and notary fees could deter consumers from filing legitimate unauthorized use claims. In addition, consumer groups noted that some consumers continue to have difficulty obtaining police reports in connection with identity theft claims, making it impossible to comply with creditor requirements for police reports. In such cases, consumer groups asserted that a creditor should not be permitted to impose liability on a victim of fraud or identity theft because of the police's reluctance to take the report.

The final rule adopts the comment, generally as proposed. As stated in prior rulemakings and in the May 2008 Proposal, the Board is concerned that certain card issuer requests could cause a chilling effect on a cardholder's ability to assert his or her right to avoid liability for an unauthorized transaction. However, the Board recognizes that in some cases, a card issuer may need to provide some form of certification indicating that the cardholder's claim is legitimate, for example, to obtain documentation from a merchant relevant to the claim or to pursue chargeback rights. Accordingly, the Board is revising the final comment to clarify that a card issuer may require the cardholder to provide a signed statement supporting the asserted claim, provided that the act of providing the signed statement would not subject the cardholder to potential criminal penalty. For example, the card issuer may include a signature line on the billing error rights form that the cardholder may send in to provide notice of the claim, so long as the signature is not accompanied by a statement that the cardholder is providing the notice under penalty of perjury (or the equivalent). See comment 12(b)-3.vi. The Board further notes that notwithstanding the prohibition on requiring an affidavit or the filing of a police report as a condition of investigating a claim of unauthorized use, if the cardholder otherwise does not provide sufficient information to allow a card issuer to investigate the matter, the card issuer may reasonably terminate the investigation as a result of the lack of information.

Business use of credit cards. Section 226.12(b)(5) generally provides that a card issuer and a business may agree to liability for unauthorized use beyond the limits established by the regulation if 10 or more credit cards are issued for use by the employees of that business. Liability on an individual cardholder, however, may only be imposed subject to the $50 limitation established by TILA and the regulation. The Board did not propose guidance on this issue in either the June 2007 or the May 2008 Proposal.

One commenter in response to the June 2007 Proposal urged the Board to clarify the meaning of the term "employee" to include temporary employees, independent contractors, and any other individuals permitted by an organization to participate in its corporate card program, in addition to traditional employees. The final rule leaves § 226.12(b)(5) unchanged. The Board notes that to the extent such persons meet the definition of "employee" under state law, they could be permissibly included in determining whether an organization meets the 10 or more employee threshold for imposing additional liability.

12(c) Right of Cardholder to Assert Claims or Defenses Against Card Issuer

Under TILA Section 170, as implemented in § 226.12(c) of Regulation Z, a cardholder may assert against the card issuer a claim or defense for defective goods or services purchased with a credit card. The claim or defense applies only as to unpaid balances for the goods or services, and if the merchant honoring the card fails to resolve the dispute. The right is further limited to disputes exceeding $50 for purchases made in the consumer's home state or within 100 miles of the cardholder's address. See 15 U.S.C. 1666i.[25] In the June 2007 Proposal, the Board proposed to update the regulation to address current business practices and move guidance currently in the footnotes to the regulation or commentary as appropriate.

In order to assert a claim under § 226.12(c), a cardholder must have used a credit card to purchase the goods or services associated with the dispute. In the June 2007 Proposal, the Board proposed to update the examples in comment 12(c)(1)-1 of circumstances that are covered by § 226.12(c) to include Internet transactions charged to the credit card account. No commenters opposed this revision, which is adopted as proposed.

---

[25] Certain merchandise disputes, such as the non-delivery of goods, may also be separately asserted as a "billing error" under § 226.13(a)(3). See comment 12(c)-1.

Comment 12(c)(1)-1 also provides examples of circumstances for which the protections under § 226.12(c) do not apply. In the June 2007 Proposal, the Board proposed to delete the reference to "paper-based debit cards" in comment 12(c)(1)-1.iv. However, the final rule retains this example of a type of transaction excluded from § 226.12(c) to address circumstances in which a debit card transaction is submitted by paper-based means, such as when a merchant takes an imprint of a debit card and submits the sales slip in paper to obtain payment.

Currently, footnote 24 and comment 12(c)(1)-1 provide that purchases effected by a debit card when used to draw upon an overdraft credit line are exempt from coverage under § 226.12(c). In the June 2007 Proposal, the Board proposed to move the substance of footnote 24 to comment 12(c)-3 and to make a technical revision to comment 12(c)(1)-1. Consumer groups opposed the substance of these provisions, asserting that any debit card transaction that accesses some form of credit should be accorded the protections under Regulation Z, whether the debit card transaction accesses a traditional overdraft line of credit covered by Regulation Z or an overdraft service covered instead by Regulation DD (Truth in Savings). In their view, the protections under Regulation Z are stronger than those provided under Regulation E (Electronic Funds Transfer), which generally governs rights and responsibilities for debit card transactions. See 12 CFR parts 230 and 205. The Board continues to believe that given potential operational difficulties in applying the merchant claims and defense provisions under § 226.12(c) to what are predominantly electronic fund transfers covered by Regulation E and the Electronic Fund Transfer Act, an exemption for such transactions from Regulation Z coverage remains appropriate. See 46 FR 20848, 20865 (Apr. 7, 1981). Accordingly, the language previously contained in footnote 24 is moved to comments 12(c)-3 and 12(c)(1)-1, as proposed.

As stated above, a disputed transaction must meet certain requirements before the consumer may assert a claim or defense under § 226.12(c), including that the cardholder first make a good faith attempt to seek resolution with the person honoring the credit card, and that the transaction has occurred in the same state as the cardholder's current designated address, or, if different, within 100 miles from that address. See § 226.12(c)(3); TILA Section 170. The Board proposed in June 2007 to redesignate these conditions to § 226.12(c)(3)(i)(A) and (c)(3)(i)(B). No comments were received on the proposed change, and it is adopted as proposed. Section 226.12(c)(3)(ii), which sets forth the provision previously contained in footnote 26 regarding the applicability of some of the conditions, is also adopted as proposed in the June 2007 Proposal.

Because many telephone and Internet transactions may involve merchants that are based far from a cardholder's residence, consumer groups urged the Board to amend the regulation to explicitly provide that telephone and Internet transactions are deemed to have been made in the consumer's home state for purposes of the 100-mile geographic limitation. The Board believes, however, that the location where a telephone or Internet transaction takes place remains a matter best left to state law. Moreover, the Board is not aware of widespread incidences in which a merchant claim asserted under § 226.12(c) has been denied due to the merchant's location. Thus, if applicable state law provides that a mail, telephone, or Internet transaction occurs at the cardholder's address, such transactions would be covered under § 226.12(c), even if the merchant is physically located more than 100 miles from the cardholder's address.

Guidance regarding how to calculate the amount of the claim or defense that may be asserted by the cardholder under § 226.12(c), formerly found in footnote 25, is moved to the commentary in comment 12(c)-4 as proposed in the June 2007 Proposal.

12(d) Offsets by Card Issuer Prohibited

TILA Section 169 prohibits card issuers from taking any action to offset a cardholder's credit card indebtedness against funds of the cardholder held on deposit with the card issuer. 15 U.S.C. 1666h. The statutory provision is implemented by § 226.12(d) of the regulation. Section 226.12(d)(2) currently provides that card issuers are permitted to "obtain or enforce a consensual security interest in the funds" held on deposit. Comment 12(d)(2)-1 provides guidance on the security interest provision. For example, the security interest must be affirmatively agreed to by the consumer, and must be disclosed as part of the account-opening disclosures under § 226.6. In addition, the comment provides that the security interest must not be "the functional equivalent of a right of offset." The comment states that 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." The comment gives some examples of how this requirement can be met, such as use of separate signature or initials to authorize the security interest, placement of the security agreement on a separate page, or reference to a specific amount or account number for the deposit account. The comment also states that 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)."

In the June 2007 Proposal, the Board requested comment on whether additional guidance was needed and, if so, the specific issues the guidance should address. Several consumer groups commented that any guidance should explicitly require strong measures to manifest a consumer's consent to grant a security interest, specifically a separate written document that must be independently signed by the consumer and that references a specific account. These commenters also suggested that issuers should be required to show that they are not routinely taking security interests in deposit accounts as the functional equivalent of an offset, for example, by either falling under a numerical threshold (only a small percentage of accounts have a security interest) or by establishing a special program for accounts with a security interest.

The Board is not aware of evidence that would suggest that creditors are routinely taking security interests in deposit accounts as the functional equivalent of offsets, and therefore believes that it is unnecessary to require measures such as numerical thresholds or special programs. However, comment 12(d)(2)-1 is amended to state that indicia of the consumer's intent to grant a security interest in a deposit account include at least one of the procedures listed in the comment (i.e., separate signature or initials to authorize the security interest, placement of the security agreement on a separate page, and reference to a specific amount of funds or to a specific account number), or a procedure that is substantially similar in evidencing the consumer's intent. As stated in the June 2007 Proposal, questions have been raised with the Board whether creditors must follow all of the procedures specified in the comment; while the Board believes it is unnecessary to require creditors to use all of these procedures to ensure the consumer's awareness of and intent to create a security interest, it is reasonable to expect creditors to follow at least one of them.

No other changes to § 226.12(d) and associated commentary were proposed, and no other comments were received. Therefore, other than the change to comment 12(d)(2)-1 discussed above, § 226.12(d) and the associated commentary remain unchanged in the final rule.

12(e) through 12(g)

Sections § 226.12(e), (f), and (g) address, respectively: the prompt notification of returns and crediting of refunds; discounts and tie-in arrangements; and guidance on the applicable regulation (Regulation Z or Regulation E) in instances involving both credit and electronic fund transfer aspects. The Board did not propose any changes to these provisions or the associated commentary, and no comments were received on them. These provisions and the associated commentary remain unchanged in the final rule.

Section 226.13 Billing Error Resolution

TILA Section 161, as implemented in § 226.13 of the regulation, sets forth error resolution procedures for billing errors, and requires a consumer to provide written notice of an error within 60 days after the first periodic statement reflecting the alleged error is sent. 15 U.S.C. 1666. The written notice triggers a creditor's duty to investigate the claim within prescribed time limits. In contrast to the consumer protections in § 226.12 of the regulation, which are limited to transactions involving the use of a credit card, the billing error procedures apply to any extension of credit that is made in connection with an open-end account.

13(a) Definition of Billing Error

Section 226.13(a) defines a "billing error" for purposes of the error resolution procedures. Under § 226.13(a)(3), the term "billing error" includes disputes about property or services that are not delivered to the consumer as agreed. See § 226.13(a)(3). As originally proposed in June 2007, comment 13(a)(3)-2 would have provided that a consumer may assert a billing error under § 226.13(a)(3) with respect to property or services obtained through any extension of credit made in connection with a consumer's use of a third-party payment service.

In some cases, a consumer might pay for merchandise purchased through an Internet site using an Internet payment service, with the funds being provided through an extension of credit from the consumer's credit card or other open-end account. For example, the consumer may purchase an item from an Internet auction site and use the payment service to fund the transaction, designating the consumer's credit card account as the funding source. As in the case of purchases made using a check that accesses a consumer's credit card account, there may not be a direct relationship between the merchant selling the merchandise and the card issuer when an Internet payment service is used. Because a consumer has billing error rights with respect to purchases made with access checks, the June 2007 Proposal would have provided that the billing error provisions would similarly apply when a consumer makes a purchase using a third-party payment intermediary funded using the same credit card account.

Consumer groups strongly supported the Board's proposal, stating that it would help to resolve a number of problems involving transactions processed by third-party intermediary payment services in which goods are not received. Industry commenters largely opposed the proposed comment, however, urging the Board to treat extensions of credit involving third-party payment intermediaries similarly to transactions in which a consumer uses an access check or credit card to obtain a cash advance, and then uses that cash to pay for a good or service. Under such circumstances, a consumer would be able to assert a billing error if the wrong amount was funded, but not if the good purchased with the funds was not delivered as agreed.

Industry commenters also stated that the proposed comment inappropriately puts the burden of investigating billing errors involving third-party payment services on the card issuer, rather than on the third-party payment intermediary itself, even though the intermediary will have more direct access to information about the transaction. Industry commenters were particularly concerned about the lack of privity between the card issuer and the end merchant because in many cases the merchant in a third-party intermediary arrangement will not have agreed to meet the requirements of participating in the credit card network. Thus, a card issuer would be unable to contact the merchant or to charge back a transaction in the event the consumer asserts a billing error, thereby exposing the issuer to considerably more risk for the transaction. In this regard, some industry commenters drew a contrast between the use of third-party payment services and the use of access checks, noting that creditors are able to control for risks for access check transactions by either pricing those transactions differently or by restricting the checks that may be issued to the cardholder.

Industry commenters also raised a number of operational considerations. For example, commenters stated that some consumers may use their credit cards to fund their third-party intermediary accounts, but then not use those funds for some time. In those circumstances, issuers would be unable to trace a disputed transaction back to the purchased good or service because the issuer would not receive any information about that subsequent transaction. Consequently, while they opposed the proposed comment in principle, a few industry commenters suggested that the proposed comment might be workable only if it were limited to circumstances in which the credit card account is used specifically for a particular purchase that can be identified (for example, where funds from the card are used contemporaneously, the amount of the purchase and "funding" are the same, and they can be traced and tracked). Another industry commenter asked for guidance on how the proposed comment would apply where the purchase of a good or service results from the commingling of funds, only a portion of which can be attributed to an extension of credit from a credit card account.

The Board continues to believe that it is appropriate to apply the billing error provisions to transactions made through a third-party intermediary using a credit card account[26] just as they would apply to purchases made with checks that access the same credit card account. However, in light of certain operational issues raised by commenters, the final rule limits the applicability of comment 13(a)(3)-2 to extensions of credit that (1) are obtained at the time the consumer purchases the good or service through the third-party payment intermediary; and (2) match the amount of the purchase transaction for the good or service including any ancillary taxes and fees (such as shipping and handling costs and/or taxes).

From the consumer's perspective, there is likely to be little difference between his or her use of a credit card to make a payment directly to the merchant on a merchant's Internet Web site or to make a payment to the merchant through a third-party

[26] Although the billing error provisions apply to extensions of credit made through open-end credit plans more generally, the Board is not aware of any circumstances in which a transaction made to fund a third-party intermediary transaction is initiated with any open-end credit plan other than a credit card.

intermediary. Indeed, in some cases, the merchant may not otherwise accept credit cards, making the use of the third-party intermediary service the consumer's most viable option of paying for the good or service. In other cases, the consumer may not want to provide his or her credit card number or other information to the merchant for security reasons. Nonetheless, the consumer may reasonably expect that transactions made using his or her credit card account would be afforded the billing error protections just as if the consumer used an access check to purchase the good or service. To the extent that such transactions may pose additional risk to the creditor due to the lack of privity between the creditor and the merchant, nothing in the rule would prohibit the creditor from pricing the transaction differently, just as access check transactions are often priced differently from other purchases made using a credit card.

As noted above, comment 13(a)(3)-2 is limited to extensions of credit that are obtained in connection with the consumer's purchase of a good or service using the third-party payment intermediary and where the purchase amount of the transaction including any ancillary taxes and fees (such as shipping and handling costs and/or taxes) matches the amount of the extension of credit. In those circumstances, the Board understands that credit card network rules generally require that specific information about the extension of credit, including the name of the merchant from whom the consumer has purchased the good or service and the purchase amount, be passed through to the creditor, which would allow the creditor to identify the particular purchase. The final rule does not extend billing error rights to extensions of credit that are made to fund an account held by a third-party payment intermediary if the consumer does not contemporaneously use those funds to purchase a good or service at that time. For example, a consumer may use his or her credit card to fund the consumer's account held at a third-party payment intermediary for $100, but then some time later purchase a good or service using some or all of the $100 in funds in that account. Under those circumstances, the creditor would not have any information about subsequent transactions made using the funds from the $100 extension of credit to enable the creditor to investigate the claim. The Board considers the $100 extension of credit in that scenario to be equivalent to a cash advance, which would allow the consumer to assert a billing error if the wrong amount is funded, but any problems with the delivery of that good or service would not be considered a billing error for purposes of § 226.13(a)(3).

The revised comment also does not cover extensions of credit that are made to fund only a portion of the purchase amount, where the consumer may use another source of funds to fund the remaining amount. For example, the consumer may make a $50 purchase using a third-party payment intermediary service, but have $20 in his or her account held by the payment intermediary. The consumer may in this case use a credit card account to cover the remaining $30 of the purchase. In this "split tender" example where the purchase is funded by a commingling of multiple payment sources, including a credit card account, the Board believes that the operational challenges in resolving any disputes arising from the purchased good or service, including how to credit the purchase amount back to the consumer, outweigh any resulting benefits to the consumer in treating any disputes regarding the delivery of the good purchased as a billing error under § 225.13(a)(3).

The Board's adoption of a final rule providing consumers error resolution rights when they use their credit card account in connection with third-party payment intermediary services in some circumstances does not preclude a future possible change to the regulation extending these rights to additional circumstances in which purchases made through a third-party payment intermediary service are funded in whole or in part using a credit card account. The Board intends to continue to study this issue, and other issues related to third-party payment intermediaries more generally, and may consider in the future whether additional protections under Regulation Z and other consumer financial services regulations are necessary with respect to consumer usage of these services.

The June 2007 Proposal also proposed a new comment 13(a)(3)-3 to clarify that prior notice to the merchant is not required before the consumer can assert a billing error that the good or service was not accepted or delivered as agreed. One industry commenter urged the Board to reconsider the proposed comment, stating that in many cases, such as in the event of non-delivery, a dispute might be more efficiently resolved if the consumer contacted the merchant first before asserting a billing error claim with the creditor. Consumer groups supported the proposed comment. In adopting the comment as proposed, the Board notes that in contrast to claims or defenses asserted under TILA Section 170 and § 226.12(c) of the regulation, which require that the cardholder first make a good faith attempt to resolve a disagreement or problem with the person honoring the credit card, the billing error provisions under TILA do not require the consumer to first notify and attempt to resolve the dispute with the person honoring the credit card before asserting a billing error directly with the creditor. See 15 U.S.C. 1666i.

13(b) Billing Error Notice

To assert a billing error, a consumer must provide a written notice of the error to the creditor no later than 60 days after the creditor transmitted the first periodic statement that reflects the alleged error. See § 226.13(b). The June 2007 Proposal would have revised comment 13(b)-1 to incorporate guidance currently in footnote 28 stating that a creditor need not comply with the requirements of § 226.13(c) through (g) if the consumer voluntarily withdraws the billing error notice. In addition, the June 2007 Proposal would have added new comment 13(b)-2 to incorporate guidance currently in footnote 29 stating that the creditor may require that the written billing error notice not be made on the payment coupon or other material accompanying the periodic statement if the creditor so states in the billing rights statement on the account-opening disclosure and annual billing rights statement. See §§ 226.6(c)(2) and 226.9(a). Proposed comment 13(b)-2 further would have provided that billing error notices submitted electronically would be deemed to satisfy the requirement that billing error notices be provided in writing, provided that the creditor has stated in its billing rights statement that it will accept notices submitted electronically, including how the consumer can submit billing error notices in this manner.

No commenters opposed the proposed revisions to the commentary under § 226.13(b), and these comments are adopted as proposed. In addition, the Board is revising Model Forms G-2, G-2(A), G-3, G-3(A), G-4 and G-4(A) to add optional language creditors can use if they elect to accept billing error notices (or notices of loss or theft of credit cards) electronically.

13(c) Time for Resolution; General Procedures

Section 226.13(c) generally requires a creditor to mail or deliver written acknowledgement to the consumer within 30 days of receiving a billing error notice, and to complete the billing error investigation procedures within two billing cycles (but no later than 90 days) after receiving a billing error notice. To ensure that creditors complete their investigations in the time period set forth under TILA, in June 2007 the Board proposed to add new comment 13(c)(2)-2 which would have provided that a creditor must complete its investigation and conclusively determine whether an error occurred within the error resolution time frames. Once this period has expired, the proposed comment further provided that the creditor may not reverse any corrections it has made related to the asserted billing error, including any previously credited amounts, even if the creditor subsequently obtains evidence indicating that the billing error did not occur as asserted.

In response to the June 2007 Proposal, consumer groups urged the Board to adopt the comment to prevent unwelcome consumer surprise when a creditor reverses an error finding months later. Industry commenters in contrast asserted that the proposed comment unreasonably prevented creditors from considering evidence that is presented after the error time frames. Industry commenters noted, moreover, that disputes today are much more numerous and complex to investigate and resolve, thus supporting the case for a longer, rather than shorter, time frame. In this regard, industry commenters urged the Board, at a minimum, to provide exceptions for instances of consumer fraud or bad faith in asserting a billing error.

Industry commenters also stated that the proposed comment would effectively nullify the statutory forfeiture penalty provision under TILA Section 161(e) which, they stated, caps the amount that may be forfeited by a creditor for failure to comply with the billing error provisions at $50. 15 U.S.C. 1666(e). In their view, TILA Section 161(e) reflects the intent of Congress to balance the need for timely investigations against potential unjust enrichment to consumers. Thus, commenters stated that if a creditor receives information about a disputed transaction after the two-billing-cycle investigation period which indicates that an error did not occur as alleged, TILA Section 161(e) would permit the creditor to reverse the credit, minus the statutory $50 penalty.

Comment 13(c)(2)-2 as adopted states that the creditor must comply with the error resolution procedures and complete its error investigation within the time period under § 226.13(c)(2). For example, if the creditor determines that an error did not occur as asserted after the error resolution time frame has expired, it generally may not reverse funds that were previously credited to the consumer's account. Similarly, if a creditor fails to comply with a billing error requirement, such as mailing or delivering a written explanation stating why an error did not occur as asserted, within the billing error period, the creditor generally must credit the consumer's account in the amount of the disputed error as well as related finance or other charges, as applicable. Like the proposal, the final comment does not reflect the statutory forfeiture provision in TILA § 161(c).

The purpose of the billing error resolution time frame set forth in TILA Section 161 is to enable consumers to have their error claims investigated and resolved promptly. In short, TILA Section 161, as implemented by § 226.13, is intended to bring finality to the billing error resolution process, and avoid the potential of undue surprise for consumers caused by the reversal of previously credited funds when a creditor fails to complete their investigation in a timely manner. Thus, the Board does not interpret the statutory forfeiture penalty under TILA Section 161(e) as being intended to override Section 161's overall protections. In this regard, the Board notes that TILA's administrative and civil liability provisions in TILA Sections 108 and 130, respectively, support this reading of Section 161. That is, if a creditor does not comply with the substantive requirements of TILA Section 161 and complete their investigation in the established time frame (i.e., two complete billing cycles), the creditor also may be subject to administrative or civil penalties. These provisions serve to facilitate finality in the billing error process by ensuring that the investigation is closed within the time period set forth in the statute.

The final comment is also revised to clarify that creditors have two complete billing cycles to investigate after receiving a consumer's notice of a billing error. Thus, if a creditor receives a billing error notice mid-cycle, it would have the remainder of that cycle plus the next two full billing cycles to resolve the error. See comment 13(c)(2)-1. Comment 13(e)-3, which cross references comment 13(c)(2)-2, is also adopted as proposed in the June 2007 Proposal.

13(d) Rules Pending Resolution

Once a consumer asserts a billing error, the creditor is prohibited under § 226.13(d) from taking certain actions with respect to the dispute in order to ensure that the consumer is not otherwise discouraged from exercising his or her billing error rights. For example, the creditor may not take action to collect any disputed amounts, including related finance or other charges, or make or threaten to make an adverse report, including reporting that the amount or account is delinquent, to any person about the consumer's credit standing arising from the consumer's failure to pay the disputed amount or related finance or other charges.

Currently, § 226.13(d) prohibits a card issuer from deducting through an automated payment plan, any part of the disputed amount or related charges from a cardholder's deposit account if the deposit account is also held by the card issuer, provided that the cardholder has provided a billing error notice at least three business days before the scheduled payment date. To reflect current payment processing practices, the Board proposed in June 2007 to extend the prohibition to all automatic deductions from any consumer deposit account where the deduction is pursuant to the consumer's enrollment in a card issuer's automatic payment plan. See proposed § 226.13(d)(1) and comment 13(d)(1)-4. The intent of the proposal was to ensure that a cardholder whose payments are automatically debited (via the card issuer's automatic payment service) from a deposit account maintained at a different financial institution would have the same protections afforded to a cardholder whose deposit account is maintained by the card issuer. For example, if the cardholder has agreed to pay a predetermined amount each month and subsequently disputes one or more transactions that appear on a statement, the card issuer must ensure that it does not debit the consumer's deposit account for any part of the amount in dispute, provided that the card issuer has received sufficient notice.

In response to the June 2007 Proposal, some industry commenters stated that the proposal reflected a reasonable balance. Other industry commenters stated that the proposal introduced operational challenges which could result in significant inconvenience for the customer and the creditor. For example, once a dispute related to a transaction is received, a creditor would have to recalculate the required payment amount to exclude the disputed charges and cause the next automatic debit of the customer's deposit account to include only that recalculated payment amount. Industry commenters stated that the process of analyzing the dispute and communicating this information to the area which manages payments could delay the receipt of the payment to the detriment of the consumer. Consumer groups supported the proposal, stating that the change would ensure that all consumers who use automatic payment plans offered by their card issuer to pay their credit card bills have a meaningful ability to invoke their billing error rights.

The revisions to § 226.13(d)(1) are adopted, as proposed. Although a few industry commenters raised certain operational issues, these concerns would also appear to apply to automatic debits from accounts held by the card issuer itself. Accordingly, the Board is not persuaded there is a need to distinguish automatic payment plans that debit a cardholder's deposit account held at the card issuer from plans that debit a cardholder's deposit account held at a different financial institution. Cardholders should not have different billing error rights as a consequence of enrolling in an automated payment plan offered by the card issuer based on where their deposit accounts are held. Section 226.13(d)(1) as revised applies whether the card issuer operates the automatic payment plan itself or outsources the service to a third-party service provider, but would not apply where the cardholder has enrolled in a third-party bill payment service that is not offered by the card issuer. Thus, for example, the revised rule does not apply where the consumer uses his or her deposit account-holding institution's bill-payment service to pay his or her credit card bill (unless the deposit account-holding institution has also issued the credit card). Comment 13(d)(1)-4 is also revised to reflect the adopted change as proposed.

Section 226.13(d)(3) is adopted as proposed in the June 2007 Proposal to incorporate the text of footnote 27 prohibiting a creditor from accelerating a consumer's debt or restricting or closing the account because the consumer has exercised billing error rights. In addition, the Board is retaining portions of comment 13-1, which it had proposed to delete, to retain the reference to the statutory forfeiture penalty under TILA Section 161(e) in the event a creditor fails to comply with any of the billing error requirements under § 226.13. Accordingly, comment 13-2, which was proposed to be redesignated as comment 13-1, is retained in place in the commentary. No comments were received on these provisions.

13(f) Procedures if different billing error or not billing error occurred

Section 226.13(f) sets forth procedures for resolving billing error claims if the creditor determines that no error or a different error occurred. A creditor must first conduct a reasonable investigation before a creditor may deny a consumer's claim or conclude that the billing error occurred differently than as asserted by the consumer. See TILA Section 161(a)(3)(B)(ii); 15 U.S.C. 1666(a)(3)(B)(ii). Footnote 31 currently provides that to resolve allegations of nondelivery of property or services, creditors must determine whether property or services were actually delivered, mailed, or sent as agreed. To resolve allegations of incorrect information on a periodic statement due to an incorrect report, creditors must determine that the information was correct.

The June 2007 Proposal proposed to delete footnote 31 as unnecessary in light of the general creditor obligation under § 226.13(f) to conduct a reasonable investigation. Consumer advocates, however, urged the Board to retain the substance of the footnote, noting that it requires issuers to take concrete steps for resolving claims of non-delivery such as obtaining delivery records or contacting merchants. Without this guidance, advocates expressed concern that issuers would conduct more perfunctory investigations, which, in their view, has been the case with respect to some creditors applying the same "reasonable investigation" standard in investigations into allegations of errors on credit reports under the FCRA. 15 U.S.C. 1681 et seq.

In light of these concerns, the Board proposed in May 2008 to add comment 13(f)-3 which would have contained the substance of footnote 31. The proposed comment also would have included guidance on conducting a reasonable investigation of a claim of an unauthorized transaction to harmonize the standards under both § 226.12(b) and § 226.13(a)(1). Specifically, the Board proposed to include applicable guidance currently provided for unauthorized transaction claims under § 226.12(b) in proposed comment 13(f)-3. See comment 12(b)-3. The proposed comment also would have paralleled proposed guidance under comment 12(b)-3 to provide that a creditor may not automatically deny a claim based solely on the consumer's failure or refusal to comply with a particular request, including a requirement that the consumer submit an affidavit or file a police report. Lastly, the proposed comment included illustrations on the procedures that may be followed in investigating different types of alleged billing errors.

Both industry and consumer group commenters generally supported the proposed comment. Consumer groups stated that retaining the text of footnote 31 in the proposed comment would help to ensure that creditors conduct substantive investigations of billing disputes, and urged the Board to provide guidance for all types of billing error disputes, including specified steps that a creditor should take to conduct a reasonable investigation. One trade association urged the Board to revise the commentary language requiring creditors to confirm that services or property were actually delivered when there is a claim of non-performance because the merchant, and not the creditor, is in the best place to make this determination. This commenter also urged the Board to provide additional guidance to outline the parameters of what constitutes a “reasonable investigation” to avoid potential disputes between issuers, consumers, and examiners.

Industry commenters opposing the proposed comment primarily raised the same concerns they had previously raised with respect to the proposed commentary revisions to § 226.12(b) which explicitly stated that a card issuer could not require a consumer to provide an affidavit or file a police report as a condition of investigating a claim of unauthorized use.

The final rule adopts comment 13(f)-3 generally as proposed, with revisions to conform to the parallel comment adopted under § 226.12(b) with respect to unauthorized use, which would prohibit a card issuer from requiring an affidavit or the filing of a police report. See comment 12(b)-2, discussed above. The Board believes that incorporating all of the prior guidance pertaining to the investigation of billing errors in a single place would facilitate compliance for creditors. In addition, as stated in the supplementary information accompanying the May 2008 Proposal, adoption of the guidance currently set forth under § 226.12(b) with respect to unauthorized transactions under § 226.13 would harmonize the standards under the two provisions. However, because what might constitute a “reasonable investigation” is necessarily a case-by-case determination, the Board declines to prescribe a specific series of steps or measures that a creditor must undertake in investigating a particular billing error claim.

13(g) Creditor’s Rights and Duties After Resolution

Section 226.13(g) specifies the creditor's rights and duties once it has determined, after a reasonable investigation under § 226.13(f), that a consumer owes all or a portion of the disputed amount and related finance or other charges. In the June 2007 Proposal, the Board proposed guidance to clarify the length of time the consumer would have to repay the amount determined still to be owed without incurring additional finance charges (i.e., the grace period) that would apply under these circumstances. Specifically, the Board proposed to revise comment 13(g)(2)-1 to provide that before a creditor may collect any amounts owed related to a disputed charge that is determined to be proper, the creditor must provide the consumer a period of time equivalent to any grace period disclosed under proposed §§ 226.6 or 226.7, as applicable, to pay the disputed amount as well as related finance or other charges (assuming that the consumer was entitled to a grace period at the time the consumer asserted the alleged error). As explained in the supplementary information to the June 2007 Proposal, this interpretation was necessary to ensure that consumers are not discouraged from asserting their statutory billing rights by putting the consumer in the same position (that is, with the same grace period) as if the consumer had not disputed the transaction in the first place. No comments were received on the proposed change, and comment 13(g)(2)-1 is adopted as proposed.

13(i) Relation to Electronic Fund Transfer Act and Regulation E

Section 226.13(i) is designed to facilitate compliance when financial institutions extend credit incident to electronic fund transfers that are subject to the Board's Regulation E, for example, when the credit card account is used to advance funds to prevent a consumer's deposit account from becoming overdrawn or to maintain a specified minimum balance in the consumer's account. See 12 CFR part 205. The provision provides that under these circumstances, the creditor should comply with the error resolution procedures of Regulation E, rather than those in Regulation Z (except that the creditor must still comply with § 226.13(d) and (g)). In the June 2007 Proposal, the Board proposed to revise the examples in comment 13(i)-2 of incidental credit that is governed solely by the error resolution procedures in Regulation E to specifically refer to overdraft protection services that are not subject to the Board's Regulation Z when there is no agreement between the creditor and the consumer to extend credit when the consumer's account is overdrawn.

No industry commenters addressed this provision. However, consumer groups asserted that the Board should reconsider its prior determination not to cover overdraft loan products under Regulation Z and remove the example entirely. The Board has determined that it remains appropriate to exclude overdraft services under Regulation Z, and instead address concerns about this product under Regulations DD and E. Consistent with this determination, the Board is adopting comment 13(i)-2 generally as proposed, with a minor revision to amend the example to refer to overdraft services, instead of overdraft protection plans.

In the June 2007 Proposal, the Board also solicited comment as to whether it should include any additional examples of incidental credit that should be addressed under the error resolution procedures of Regulation E, rather than those of Regulation Z. See comment 13(i)-2. Consumer groups opposed the addition of new examples, asserting that Regulation E provides less protection than Regulation Z with respect to error resolution. No other commenters provided any additional examples, and the provision is unchanged.

Technical revisions. In addition to moving the substance of footnotes 27 and 31 as discussed above, the Board is also adopting technical revisions which move the substance of footnotes 28-30 in the current rule to the regulation or commentary, as appropriate. (See redesignation table below.) References to "free-ride period" in the regulation and commentary are replaced with "grace period," without any intended substantive change, for the reasons set forth in the section-by-section analysis to § 226.6(b)(3).

Section 226.14 Determination of Annual Percentage Rate

As discussed in the section-by-section analysis to § 226.7 above, Regulation Z currently requires disclosure on periodic statements of both the effective APR and the corresponding APR. The regulation also requires disclosure of the corresponding APR in account-opening disclosures, change-in-terms notices, advertisements, and other documents. The computation methods for both the corresponding APR and the effective APR are implemented in § 226.14 of Regulation Z. Section 226.14 also provides tolerances for accuracy in APR disclosures.

As also discussed in the section-by-section analysis to § 226.7, the June 2007 Proposal contained two alternative approaches regarding the computation and disclosure of the effective APR. Under the first alternative, the Board proposed to retain the requirement that the effective APR be disclosed on periodic statements, with modifications to the rules for computing and disclosing the effective APR to reflect an approach tested with consumers. See proposed §§ 226.7(b)(7) and 226.14(d). For home-equity plans subject to § 226.5b, the Board proposed to allow a creditor to comply with the current rules applicable to the effective APR; thus, creditors offering home-equity plans would not be required to make changes in their periodic statement systems for such plans at this time. See proposed §§ 226.7(a)(7) and 226.14(c). Alternatively, the Board proposed that at the creditor's option, it could instead calculate and disclose an effective APR for its home-equity plans under any revised rules adopted for disclosure of the effective APR for open-end (not home-secured) credit.

The second alternative proposed by the Board was to eliminate the requirement to disclose the effective APR on the periodic statement. Under the second alternative, for a home-equity plan subject to § 226.5b, the Board proposed that a creditor would have the option to disclose the effective APR according to current rules or not to disclose an effective APR. The Board's proposed alternative versions of § 226.14 reflected these two proposed alternatives.

Under either alternative, the Board did not propose to revise substantively the current provisions in § 226.14(a) (dealing with APR tolerances) and (b) (guidance on calculating the APR for certain disclosures other than the periodic statement), but minor technical changes were proposed to reflect changes in terminology and to eliminate footnotes, moving their substance into the text of the regulation. No comments were received on these changes, and they are adopted in the final rule as proposed.

For the reasons discussed in the section-by-section analysis to § 226.7, the Board is eliminating the requirement to disclose the effective APR on periodic statements. Consistent with the proposal, for a home-equity plan subject to § 226.5b, a creditor has the option to disclose an effective APR (according to the current rules in Regulation Z for computing and disclosing the effective APR, set forth in § 226.14(c)), or not to disclose an effective APR. The option to continue to disclose the effective APR allows creditors offering home-equity plans to avoid making changes in their periodic statement systems at this time. As discussed earlier, the Board is undertaking a review of home-secured credit, including HELOCs; the rules for computing and disclosing the APR for HELOCs could be the subject of comment during the review of rules affecting HELOCs.

As stated in the June 2007 Proposal, no guidance is given for disclosing the effective APR on open-end (not home-secured) plans, since the requirement to provide the effective APR on such plans is eliminated. Proposed §§ 226.14(d) and (e), which would have set forth the revised rules for calculating an effective APR for open-end (not home-secured) credit, are withdrawn. Section 226.14(d) is retained in its current form, rather than being redesignated as § 226.14(c)(5) as proposed. Minor technical changes are made to § 226.14(c) and the accompanying commentary as proposed, including redesignation of comments to assist users in locating comments relevant to the applicable regulatory provisions.

Section 226.16 Advertising

TILA Section 143, implemented by the Board in § 226.16, governs advertisements of open-end credit plans. 15 U.S.C. 1663. The statutory provisions apply to the advertisement itself, and therefore, the statutory and regulatory requirements apply to any person advertising an open-end credit plan, whether or not such person meets the definition of creditor. See comment 2(a)(2)-2. The Board proposed several changes to the advertising rules in § 226.16 in the June 2007 Proposal. Changes were proposed in order to ensure meaningful disclosure of advertised credit terms, alleviate compliance burden for certain advertisements, and implement provisions of the Bankruptcy Act. The Board's proposals related to trigger term disclosures generally and additional disclosures for minimum monthly payment advertising, introductory rates, alternative disclosures for television and radio advertisements, and guidance on use of the word "fixed" in connection with an APR. Based in part on comments to the June 2007 Proposal, the Board proposed additional changes to the advertising rules in the May 2008 Proposal related to promotional rates (referred to as introductory rates in the June 2007 Proposal) and deferred interest offers.

Deferred interest offers. Many creditors offer deferred interest plans where consumers may avoid paying interest on purchases if the outstanding balance is paid in full by the end of the deferred interest period. If the outstanding balance is not paid in full when the deferred interest period ends, these deferred interest plans often require the consumer to pay interest that has accrued during the deferred interest period. Moreover, these plans typically also require the consumer to pay interest accrued from the date of purchase if the consumer defaults on the credit agreement. Some deferred interest plans define default under the card agreement to include failure to make a minimum payment during the deferred interest period while other plans do not. Advertisements often prominently disclose the possibility of financing the purchase of goods or services at no interest.

In May 2008, the Board proposed to use its authority under TILA Section 143(3) to add a new § 226.16(h) to address the Board's concern that the disclosures currently required under Regulation Z may not adequately inform consumers of the terms of deferred interest offers. 15 U.S.C. 1663(3). Specifically, the Board proposed to require that the deferred interest period be disclosed in immediate proximity to each statement regarding interest or payments during the deferred interest period. The Board also proposed that certain information about the terms of the deferred interest offer be disclosed in close proximity to the first statement regarding interest or payments during the deferred interest period.

The final rules adopted by the Board and other federal banking agencies published elsewhere in today's **Federal Register** do not permit issuers subject to those rules to establish deferred interest plans in which creditors can retroactively charge interest on prior transactions. Accordingly, the Board is withdrawing proposed § 226.16(h).

Clear and conspicuous standard. In June 2007, the Board proposed to implement Section 1309 of the Bankruptcy Act, which requires the Board to provide guidance on the meaning of "clear and conspicuous" as it applies to certain disclosures required by Section 1303(a) of the Bankruptcy Act. Under Section 1303(a) of the Bankruptcy Act, when an introductory rate is stated in a direct mail application or solicitation for credit cards or accompanying promotional materials, the time period in which the introductory period will end and the rate that will apply after the end of the introductory period must be stated "in a clear and conspicuous manner" in a prominent location closely proximate to the first listing of the introductory rate. The statute requires these disclosures to be "reasonably understandable and designed to call attention to the nature and significance of the information in the notice."

The Board proposed in the June 2007 Proposal that creditors clearly and conspicuously disclose when the introductory period will end and the rate that will apply after the end of the introductory period if the information is equally prominent to the first listing of the introductory rate to which it relates. The Board also proposed in comment

16-2 that if these disclosures are the same type size as the first listing of the introductory rate, they will be deemed to be equally prominent.

As discussed more fully below in the section-by-section analysis to § 226.16(g), the Board amended proposed comment 16-2 in the May 2008 Proposal to apply the standard to "promotional rates." Furthermore, in the May 2008 Proposal, the Board proposed additional requirements for deferred interest offers. As part of these requirements, the Board proposed to apply the same clear and conspicuous standard for certain disclosures related to deferred interest offers as the Board proposed to require for promotional rate advertisements.

The Board received a few comments on the June 2007 proposed comment 16-2. In addition, the Board consulted with the other federal banking agencies, the NCUA, and the FTC, consistent with Section 1309 of the Bankruptcy Act. Consumer group commenters and one of the federal banking agencies the Board consulted suggested that the safe harbor for complying with the "equally prominent" requirement be amended to require terms to have the same "highlighting." The consumer group commenters further suggested that the equal prominence safe harbor be a requirement that applied to all advertising terms and not just promotional rate information. Presumably, the commenters believed that the equal prominence standard should be applied to all requirements in § 226.16 where a term triggers some additional disclosures; that is, the additional disclosures would be required to be equally prominent to the term that triggered such disclosures.

The Board is adopting proposed comment 16-2, renumbered as comment 16-2.ii., as proposed in May 2008, except references to provisions related to deferred interest offers have been deleted due to the Board’s decision to withdraw the advertising disclosure requirements related to deferred interest plans. As discussed in the June 2007 Proposal, the Board believes that requiring equal prominence for certain information calls attention to the nature and significance of such information by ensuring that the information is at least as significant as the terms to which it relates. In the June 2007 Proposal, the Board noted that an equally prominent standard currently applies to advertisements for HELOCs under § 226.16(d)(2) with respect to certain information related to an initial APR. Consequently, the Board believes this is the appropriate standard for information related to promotional rates and deferred interest offers as well. In terms of the safe harbor, the Board believes that type size provides a bright line standard to determine whether terms are equally prominent. To require similar “highlighting” would be an ambiguous standard. Furthermore, requiring the text of the terms to be identical may be overly prescriptive and may not provide sufficient flexibility to advertisers. For example, if an advertiser presented a promotional rate in 16-point font in green text and disclosed a promotional period in 16-point font in blue text closely proximate to the rate, the terms would not be identical, but the promotional period may be equally prominent to the promotional rate.

Furthermore, comment 16-2.ii. (proposed as comment 16-2 in the May 2008 Proposal) clarifies that the equally prominent standard will apply only to written and electronic advertisements. As discussed in more detail in the section-by-section analysis to § 226.16(g)(1) below, the Board is expanding the types of advertisements to which the requirements of § 226.16(g) would apply to include non-written, non-electronic advertisements, such as telephone marketing, radio and television advertisements.

However, because equal prominence is a difficult standard to measure outside the context of written and electronic advertisements, the Board believes that the guidance on clear and conspicuous disclosures, as set forth in comment 16-2.ii. (proposed as comment 16-2 in the May 2008 Proposal), should apply solely to written and electronic advertisements. Disclosures required under §§ 226.16(g)(4) for non-written, non-electronic advertisements, while not required to meet the clear and conspicuous standard in comment 16-2.ii. (proposed as comment 16-2 in the May 2008 Proposal), are required to meet the general clear and conspicuous standard as set forth in comment 16-1.

Other Technical Changes. Comment 16-2, as adopted in the July 2008 Final HOEPA Rule, has been renumbered as comment 16-2.i. Moreover, technical changes proposed to comment 16-1 are adopted as proposed in the May 2008 Proposal. Comments 16-3 through 16-7, as adopted in the July 2008 Final HOEPA Rule, remain unchanged. 73 FR 44522, 44605, July 30, 2008.

16(b) Advertisement of Terms that Require Additional Disclosures

Under § 226.16(b), certain terms stated in an advertisement require additional disclosures. In the June 2007 Proposal, the Board proposed to move the substance currently in § 226.16(b) to § 226.16(b)(1), with some amendments, and proposed a new requirement for additional disclosures when a minimum monthly payment is stated in an advertisement.

Paragraph 16(b)(1)

Negative terms as triggering terms. Triggering terms are specific terms that, if disclosed in an advertisement, “trigger” the disclosure under § 226.16(b) (which is renumbered as § 226.16(b)(1) in the final rule for organizational purposes) of (1) any minimum, fixed, transaction, activity or similar charge that could be imposed; (2) any periodic rate that may be applied expressed as an APR; and (3) any membership or participation fee that could be imposed. The June 2007 Proposal would have made triggering terms consistent for all open-end credit advertisements by expanding § 226.16(b) to include terms stated negatively (for example, “no interest”) for advertisements of open-end (not home-secured) plans. Under TILA Section 147(a) (15 U.S.C. 1665b(a)), triggering terms for advertisements of HELOCs include both positive and negative terms while under current comment 16(b)-2, triggering terms for advertisements of open-end (not home-secured) plans only include terms that are expressed as a positive number.

The Board received few comments on the proposal. Consumer groups supported the Board’s proposal. One industry commenter opposed the proposal stating that advertisements of “no annual fee” should not trigger additional disclosures. As discussed in the June 2007 Proposal, the Board believes that including negative terms as triggering terms for open-end (not home-secured) plans is necessary in order to provide consumers with a more accurate picture of possible costs that may apply to plans that advertise negative terms, such as “no interest” or “no annual fee.” In addition, the requirement ensures similar treatment of advertisements of all open-end plans. For these reasons and pursuant to its authority under TILA Section 143(3), the Board adopts proposed comment 16(b)-1 as proposed, and renumbers the comment as comment 16(b)(1)-1. As proposed, current comment 16(b)-7 is consolidated in the new comment for organizational purposes and for clarity, without substantive change.

Membership fees. Membership and participation fees that could be imposed are among the additional information that must be disclosed if a creditor states a triggering term in an advertisement. For consistency, new comment 16(b)(1)-6 is added to provide that for open-end (not home-secured) plans, "membership fee" shall have the same meaning as in § 226.5a(b)(2).

Other changes to § 226.16(b)(1). In the June 2007 Proposal, the Board proposed certain technical amendments to § 226.16(b) and associated commentary. These changes are adopted largely as proposed in the June 2007 Proposal. Specifically, § 226.16(b) (renumbered as § 226.16(b)(1)) is revised to reflect the new cost disclosure rules for open-end (not home-secured) plans while preserving existing cost disclosure rules for HELOCs. Footnote 36d (stating that disclosures given in accordance with § 226.5a do not constitute advertising terms) is deleted as unnecessary since "advertisements" do not include notices required under federal law, including disclosures required under § 226.5a. See comment 2(a)(2)-1(ii). Guidance in current comments 16(b)-1 and 16(b)-8 has been moved to § 226.16(b)(1), with some revisions. Current comment 16(b)-6 is eliminated as duplicative of the requirements under § 226.16(g), as discussed below.

Paragraph 16(b)(2)

The Board proposed in June 2007 to require additional disclosures for advertisements that state a minimum monthly payment for an open-end credit plan that would be established to finance the purchase of goods or services. Under the Board's proposal, if a minimum monthly payment is advertised, the advertisement would be required to state, in equal prominence to the minimum payment, the time period required to pay the balance and the total dollar amount of payments assuming only minimum payments are made.

Consumer group and consumer commenters, a state regulatory association commenter, and a member of Congress were supportive of the proposal. Several industry commenters opposed the Board's proposal regarding minimum payment advertising and suggested that the Board not adopt the provision. Industry commenters indicated that the disclosure is inherently speculative because determining how long it would take a consumer to pay off the balance and the total dollar amount of payments would depend on a particular consumer's other purchases and use of the account in general as well as other external factors that may affect the account. To illustrate their point, some industry commenters gave examples of promotional programs in which a minimum payment amount advertised relates to a promotional rate that is in effect for a certain period of time (e.g., "$49 for 2 years"). If paying the minimum payment amount advertised does not fully amortize the purchase price over the period of time in which the promotional rate is in effect, the balance is then transferred to the general account and combined with other non-promotional balances. Depending on other promotional and non-promotional balances the consumer may have on the account, calculating the total of payments and time period to repay could prove difficult. Another commenter noted that any APR changes could affect the balance and hence alter the total of payments and time period to repay.

Other industry commenters offered suggestions to address these concerns with minimum payment advertising. One industry commenter suggested that a table be disclosed with sample payments and repayment periods. That commenter also suggested an alternative of providing a telephone number for consumers to call to obtain that information. A few other industry commenters suggested that the Board specify a set of assumptions that advertisers may make in providing the disclosure. One of these industry commenters also suggested that the Board provide model language to include in the advertisement to disclose these assumptions to consumers.

As the Board stated in the June 2007 Proposal, the Board believes that for advertisements stating a minimum monthly payment, requiring the advertisement to disclose the total dollar amount of payments the consumer would make and the amount of time needed to pay the balance if only the minimum payments are made will provide consumers with a clearer picture of the costs of financing the purchase of a good or service than if only the minimum monthly payment amount is advertised. While the Board acknowledges that a disclosure of the total of payments and time period to repay the purchase cannot be calculated with certainty without knowing how a particular consumer may use the account in the future or what other changes may affect the account, the Board believes the additional information would be helpful to consumers. Even if the disclosure may not reflect the actual total costs and time period to repay for a particular consumer, the disclosure provides useful information to the consumer in evaluating the offer. This will help ensure that consumers are not surprised later by the amount of time it may take to pay the debt and how much the credit could cost them over that time period by only making the payments advertised.

Therefore, the Board is adopting § 226.16(b)(2) as proposed with minor modifications, as discussed below. In response to industry concerns, the Board is also adopting comment 16(b)(2)-1 to provide a list of assumptions advertisers may make in providing these disclosures. Advertisers may assume that: (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. The Board, however, declines to adopt model language concerning these assumptions. The Board believes advertisers should have flexibility to determine if, and how, they may want to convey these assumptions to consumers. In addition, advertisers may make further assumptions in making the disclosures required by § 226.16(b)(2) beyond those specified in comment 16(b)(2)-1. If the Board were to provide model language, such assumptions may not be sufficiently captured by that language.

Industry commenters also pointed out that the minimum monthly payment advertised may not always be the same as the minimum payment amount on a consumer’s billing statement. Furthermore, a consumer group commenter stated that the word “minimum” should be deleted so that any time a payment amount is advertised, the disclosure should be provided. In response to these concerns, the Board is replacing the term “minimum monthly payment” with “periodic payment amount.” Therefore, an advertisement that states any periodic payment amount (e.g., $45 per month, $20 per week) would be required to provide the disclosures in § 226.16(b)(2). Furthermore, using the term “periodic payment amount” instead of “minimum monthly payment” disassociates the term from the concept of “minimum payment,” and makes clear that the amount advertised need not be the same amount as the minimum payment on a consumer's billing statement to trigger the disclosures.

Several industry commenters also suggested that advertisements of "no payment" for a specified period of time should be excluded from the requirements of § 226.16(b)(2). The Board agrees, assuming there is no other periodic payment amount advertised. Because advertisers would not know the periodic payment amount a consumer would pay after the "no payment" period passes (and are not otherwise suggesting a specific periodic payment amount by advertising one), they would be unable to determine the total of payments and time period to repay the obligation. To address this concern, the final rule adds comment 16(b)(2)-2 to provide that a periodic payment amount must be a positive number to trigger the disclosure requirements under § 226.16(b)(2).

16(c) Catalogs or Other Multiple-Page Advertisements; Electronic Advertisements

Technical amendments to § 226.16(c) and comments 16(c)(1)-1 and 16(c)(1)-2 were previously adopted in the November 2007 Final Electronic Disclosure Rule, and are republished as a part of this final rule. 72 FR 63462, Nov. 9, 2007; 72 FR 71058, Dec. 14, 2007.

16(d) Additional Requirements for Home-equity Plans

Revisions to the advertising rules under § 226.16(d) were adopted in the July 2008 Final HOEPA Rule, and are republished as a part of this final rule. 73 FR 44522, 44599, July 30, 2008. Technical comments to 16(d)-1 and 16(d)-8 conform citations and other descriptions to revisions being adopted today, without intended substantive change.

16(e) Alternative Disclosures—Television or Radio Advertisements

For radio and television advertisements, the June 2007 Proposal would have allowed alternative disclosures to those required by § 226.16(b) if a triggering term is stated in the advertisement. Radio and television advertisements would still have been required to disclose any APR applicable to the plan; however, instead of requiring creditors also to describe minimum or fixed payments, and annual or membership fees, an advertisement would have been able to provide a toll-free telephone number that the consumer may call to receive more information.

Industry commenters were supportive of this proposal. Consumer groups opposed the proposal arguing that consumers tend to miss cross references and that creditors may use the toll-free number to engage in “hard-sell” marketing tactics. As the Board discussed in the June 2007 Proposal, given the space and time constraints on radio and television advertisements, disclosing information such as minimum or fixed payments may go unnoticed by consumers or be difficult for them to retain and would therefore not provide a meaningful benefit to consumers. In the Board’s view, given the nature of television and radio media, an alternative means of disclosure may be more effective in many cases than requiring all the information currently required to be included in the advertisement. As noted in the June 2007 Proposal, this approach is consistent with the approach taken in the advertising rules for Regulation M. See 12 CFR § 213.7(f). Furthermore, a consumer who is interested in the credit product advertised in a radio or television advertisement would likely call for information regardless of whether additional required disclosures (minimum or fixed payments, and annual or membership fees) appear or are stated in the advertisement. Therefore “hard sell” marketing tactics could arguably be present whether or not the alternative disclosures are used and may be addressed in some cases by the FTC Telemarketing Sales Rule. 16 CFR part 310.

A similar rule to the one proposed by the Board in the June 2007 Proposal to provide alternative disclosures for television and radio advertisements was adopted in the July 2008 Final HOEPA Rule for home-equity plans as § 226.16(e). 73 FR 44522, July 30, 2008. Therefore, the Board amends § 226.16(e), as adopted under the July 2008 HOEPA Rule, to apply to all other open-end plans. Comments 16(e)-1 and 16(e)-2, as adopted in the July 2008 Final HOEPA Rule, have remained unchanged.

16(f) Misleading Terms

In order to avoid consumer confusion and the uninformed use of credit, the Board proposed § 226.16(g) in June 2007 to restrict use of the term "fixed" in advertisements to instances where the rate will not change for any reason. 15 U.S.C. 1601(a), 1604(a). Under the proposal, advertisements would have been prohibited from using the term "fixed" or any similar term to describe an APR unless that rate will remain in effect unconditionally until the expiration of any advertised time period. If no time period was advertised, then the term "fixed" or any similar term would not have been able to be used unless the rate would remain in effect unconditionally until the plan is closed.

Consumer and consumer group commenters overwhelmingly supported the Board's proposal. Industry commenters that addressed the issue opposed the Board's proposal stating that using the word "fixed" when a rate could change is not misleading if all the conditions of the APR are clearly disclosed.

The Board has found through consumer testing conducted prior to the June 2007 Proposal that consumers generally believe a "fixed" rate does not change, such as with "fixed-rate" mortgage loans. Numerous consumer commenters have also supported this finding. In the consumer testing conducted for the Board prior to the June 2007 Proposal, a significant number of participants did not appear to understand that creditors often reserve the right to increase a "fixed" rate upon the occurrence of certain events (such as when a consumer pays late or goes over the credit limit) or for other reasons. Therefore, although creditors often use the term "fixed" to describe an APR that is not tied to an index, consumers do not understand the term in this manner. For these reasons, the Board adopts the provision as proposed; however, for organizational purposes, the provision is adopted as § 226.16(f).

One retail industry commenter requested that the restriction on the term "fixed" under § 226.16(f) not apply to oral disclosures. The commenter indicated that in a retail environment, a sales associate could, in response to a consumer inquiry about whether a rate is variable, respond that a rate is "fixed," despite the retailer's efforts to train the sales associate not to use the word. The Board declines to provide an exception for oral disclosures to the restriction on the use of the term "fixed." The Board notes, however, that in the situation described by the retail industry commenter above, the sales associate's conversation with the consumer is likely not considered an "advertisement" subject to the provisions of § 226.16. Under existing comment 2(a)(2)-1.ii.A., the term "advertisement" does not include "direct personal contacts, . . . or oral or written communication relating to the negotiation of a specific transaction."

16(g) Promotional Rates

In the June 2007 Proposal, the Board proposed to implement TILA Sections 127(c)(6) and 127(c)(7), as added by Sections 1303(a) and 1304(a) of the Bankruptcy Act, respectively, in § 226.16(e) (which the Board is moving to § 226.16(g) in the final rule for organizational purposes). TILA Section 127(c)(6) requires that if a credit card issuer states an introductory rate in a direct mail credit card application, solicitation, or any of the accompanying promotional materials, the issuer must use the term "introductory" clearly and conspicuously in immediate proximity to each mention of the introductory rate. 15 U.S.C. 1637(c)(6). In addition, TILA Section 127(c)(6) requires credit card issuers to disclose, in a prominent location closely proximate to the first mention of the introductory rate, other than the listing of the rate in the table required for credit card applications and solicitations, the time period when the introductory rate expires and the rate that will apply after the introductory rate expires. TILA Section 127(c)(7) further applies these requirements to "any solicitation to open a credit card account for any person under an open-end consumer credit plan using the Internet or other interactive computer service." 15 U.S.C. 1637(c)(7). The Board proposed in the June 2007 Proposal to expand the types of disclosures to which these rules would apply. Among other things, the Board proposed to extend these requirements for the presentation of introductory rates to other written or electronic advertisements for open-end credit plans that may not accompany an application or solicitation (other than advertisements of home-equity plans subject to § 226.5b, which were addressed in the Board's July 2008 Final HOEPA Rule; see § 226.16(d)(6)).

In response to concerns from industry commenters that the Board's proposed use of the term "introductory rate" and required use of the word "introductory" or "intro" was overly broad in some cases, the Board proposed in the May 2008 Proposal to revise § 226.16(e)(2) to define "promotional" and "introductory" rates separately. Conforming revisions to § 226.16(e)(4) and to commentary provisions to § 226.16(e) were also proposed in the May 2008 Proposal. The Board adopts proposed § 226.16(e), with revisions discussed below, and renumbers this paragraph as § 226.16(g) for organizational purposes.

16(g)(1) Scope

The Bankruptcy Act amendments regarding "introductory" rates apply to direct mail credit card applications and solicitations, and accompanying promotional materials. 15 U.S.C. 1637(c)(6). The Board proposed to expand these requirements to applications or solicitations to open a credit card account, and all accompanying promotional materials, that are publicly available ("take-ones"). 15 U.S.C. 1601(a); 15 U.S.C. 1604(a); 15 U.S.C. 1637(c)(3)(A). In the June 2007 Proposal, the Board proposed to expand the requirements to electronic applications even though the Bankruptcy Act amendments applied these requirements only to electronic solicitations. 15 U.S.C. 1637(c)(7). Pursuant to its authority under TILA Section 143, the Board also proposed in the June 2007 Proposal to extend some of the introductory rate requirements in Section 1303 of the Bankruptcy Act to other written advertisements for open-end credit plans that may not accompany an application or solicitation, other than advertisements of home-equity plans subject to § 226.5b, in order to promote the informed use of credit.

Therefore, the Board proposed that the requirements under § 226.16(g) (proposed as § 226.16(e)) apply to all written or electronic advertisements.

The Board received few comments on expanding the scope of the rules regarding promotional rates in the manner proposed in the June 2007 Proposal, and the comments received supported the proposal. As discussed in the June 2007 Proposal, the Board believes consumers will benefit from these enhanced disclosures and advertisers will benefit from the consistent application of promotional rate requirements for all written and electronic open-end advertisements.

In the May 2008 Proposal, the Board solicited comment on whether all or any of the information required under § 226.16(g) (proposed as § 226.16(e)) to be provided with the disclosure of a promotional rate would be helpful in a non-written, non-electronic context, such as telephone marketing, or radio or television advertisements. The guidance originally proposed in June 2007 on complying with § 226.16(g) (proposed as § 226.16(e)) had addressed written and electronic advertisements.

Consumer group commenters urged the Board to apply the requirements under § 226.16(g) (proposed as § 226.16(e)) to non-written, non-electronic advertisements. Many industry commenters opposed expanding the requirements to non-written, non-electronic advertisements citing the space and time constraints of such media and concern that there would be information overload. Nevertheless, several industry commenters suggested that if the Board did decide to expand the requirements to non-written, non-electronic advertisements, the Board should provide flexibility in how the required disclosures may be made. Some industry commenters recommended that the alternative method of disclosure available to television and radio advertisements for disclosing triggered terms under § 226.16(b)(1), as would be permitted under § 226.16(d), should be available for promotional rate disclosures.

Current comment 16(b)-6, which the Board had proposed to delete in the June 2007 Proposal as duplicative of the requirements under § 226.16(g) (proposed as § 226.16(e)), requires advertisements that state a "discounted variable rate" to include "the initial rate (with the statement of how long it will remain in effect) and the current indexed rate (with the statement that this second rate may vary)." The requirement applies to all advertisements, regardless of media. Because current comment 16(b)-6 imposes requirements similar, though not identical, to those required in § 226.16(g) (proposed as § 226.16(e)) to non-written, non-electronic advertisements, the Board believes that the requirements of § 226.16(g) (proposed as § 226.16(e)) should also apply to such advertisements. Therefore, § 226.16(g)(1) has been amended to apply to any advertisement, and current comment 16(b)-6 has been deleted as proposed. However, as further discussed in the section-by-section analysis to comment 16-2.ii above and § 226.16(g)(4) below, the Board is providing flexibility in how the required information may be presented in a non-written, non-electronic context.

Finally, one industry commenter noted that the term "consumer credit card account," as used in § 226.16(g), is not defined. The commenter suggested that the Board either define "consumer credit card account" specifically to exclude home equity lines of credit subject to § 226.5b or replace the term with the phrase "open-end plan not subject to § 226.5b." To address this concern, the Board is clarifying in § 226.16(g)(1) that the requirements of § 226.16(g) apply to any "open-end (not home-secured) plan," as proposed in June 2007. A similar change has been made to the definition of "promotional rate" in § 226.16(g)(2). As discussed in the June 2007 Proposal, the Board did not intend to cover advertisements of open-end, home-secured plans subject to § 226.5b, but did intend to cover advertisements of all open-end plans that are not home-secured under these requirements.

16(g)(2) Definitions

In the June 2007 Proposal, the Board proposed to define the term "introductory rate" as any rate of interest applicable to an open-end plan for an introductory period if that rate is less than the advertised APR that will apply at the end of the introductory period. In addition, the Board defined an "introductory period" as "the maximum time period for which the introductory rate may be applicable." In response to the June 2007 Proposal, several industry commenters were critical of the use of these terms as applied to special rates offered to consumers with an existing account. Commenters noted that the phrase "introductory rate" commonly refers to promotional rates offered in connection with the opening of a new account only. Commenters also noted the use of the term "advertised" in the definition of "introductory rate" might imply that the APR in effect after the introductory period would have to be "advertised" before the requirements under § 226.16(e)(3) and (e)(4) in the June 2007 Proposal would apply.

Since the Board's June 2007 proposed definition for "introductory rate" would have encompassed special rates that may be offered to consumers with existing accounts, the Board proposed in May 2008 to refer to these rates more broadly as "promotional rates." The May 2008 Proposal would have defined the term "promotional rates" to include any APR applicable to one or more balances or transactions on a consumer credit card account for a specified period of time that is lower than the APR that will be in effect at the end of that period. In addition, consistent with definitions proposed by the Board and other federal banking agencies in May 2008, the proposed definition under § 226.16(g) (proposed as § 226.16(e)) also would have included any rate of interest applicable to one or more transactions on a consumer credit card account that is lower than the APR that applies to other transactions of the same type. This definition was meant to capture "life of balance" offers where a special rate is offered on a particular balance for as long as any portion of that balance exists. Comment 16(g)-2 (proposed as comment 16(e)-2) would have provided an illustrative example of a "life of balance" offer similar to a comment proposed by the Board and other federal banking agencies in May 2008. 73 FR 28904, May 19, 2008.

Furthermore, the definition proposed in May 2008 would have removed the term "advertised" from the definition, as commenters asserted this would imply that the APR in effect after the introductory period had to have been "advertised" before the requirements under § 226.16(g)(3) and (g)(4) (proposed as § 226.16(e)(3) and (e)(4)) would have applied. This was not the Board's intention. The use of the term "advertised" in the June 2007 proposed definition was intended to refer to the advertising requirements regarding variable rates and the accuracy requirements for such rates. The May 2008 Proposal would have addressed these requirements in a new comment 16(g)-1 (proposed as comment 16(e)-1).

Comment 16(e)-1, as proposed in May 2008, provided that if a variable rate will apply at the end of the promotional period, the post-promotional rate is the rate that would have applied at the time the promotional rate was advertised if the promotional rate had not been offered. In direct mail credit card applications and solicitations (and accompanying promotional materials), this rate is one that must have been in effect within 60 days before the date of mailing, as required under proposed § 226.5a(c)(2)(i) (and currently under § 226.5a(b)(1)(ii)). For variable-rate disclosures provided by electronic communication, this rate is one that was in effect within 30 days before mailing the disclosures to a consumer's electronic mail address, or within the last 30 days of making it available at another location such as a card issuer's Web site, as required under proposed § 226.5a(c)(2)(ii) (and currently under § 226.5a(b)(1)(iii)).

The Board also proposed a new definition for "introductory rate" to conform more closely to how the term is most commonly used. Section 226.16(e)(2)(ii) in the May 2008 Proposal defined "introductory rate" as a promotional rate that is offered in connection with the opening of an account. As a result of the proposal, only "introductory rates" (and not other promotional rates) would have been subject to the requirement in § 226.16(e)(3) to state the term "introductory" in immediate proximity to the rate.

Commenters were generally supportive of providing separate definitions for "promotional" rates as distinguished from "introductory" rates. Several industry commenters, however, suggested that the Board's definition for "promotional rate" may be overbroad and cause certain rates that are not traditionally categorized as "promotional rates" to be considered "promotional rates." These commenters provided similar comments to rules proposed by the Board and other federal banking agencies in May 2008, in which a similar definition was proposed for "promotional rate." Some of these commenters also suggested specific language changes to the Board's proposed definition.

Based on these comments, the Board is adopting the definition of “introductory rate” as proposed in the May 2008 Proposal, renumbered as § 226.16(g)(2)(ii), and amending the definition of “promotional rate,” which has been renumbered as § 226.16(g)(2)(i). Specifically, the Board is inserting in the definition of “promotional rate” the phrase “on such balances or transactions,” to address commenters’ concerns about the breadth of the definition by clarifying to which balances and transactions the rate that will be in effect after the end of the promotional period applies. In addition, the Board is replacing the phrase “consumer credit card account” in the definition with “open-end (not home-secured) plan” to be consistent with the scope of the requirements as set forth in § 226.16(g)(1) and as discussed in the supplementary information to § 226.16(g)(1). The Board is also adopting comment 16(e)-1, as proposed, renumbered as comment 16(g)-2.

In addition, the Board is deleting the provision in the definition of “promotional rate” that was meant to capture life-of-balance offers, as well as proposed comment 16(e)-2 from the May 2008 Proposal, which would have provided an illustrative example of a life-of-balance offer. The Board had included the provision in the May 2008 Proposal in order to be consistent with the definition of “promotional rate” in rules proposed by the Board and other federal banking agencies in May 2008. Since the advertising disclosure requirements the Board had proposed relating to promotional rates would generally not apply for life-of-balance offers, the Board had proposed in May 2008 to exempt life-of-balance offers from many of these requirements. See proposed § 226.16(e)(2)(i)(B) and (e)(4) in the May 2008 Proposal. As a result, the only requirement under the advertising rules for promotional rates to which life-of-balance offers were subject under the proposal was the requirement to state the term "introductory" within immediate proximity of the rate. The Board believes this requirement would not be especially helpful to consumers for offers where the rate would not change for the life of the balance except on default. Since the minimal benefit to consumers does not seem to warrant the burden on advertisers of distinguishing what types of offers fit the definition, the Board has decided instead to eliminate life-of-balance offers from the definition of "promotional rate" for ease of compliance.

Moreover, the Board believes that further amendments suggested by commenters to the definition of "promotional rate" are unnecessary. In particular, some industry commenters recommended adding the concept of a "standard" rate in the definition. The Board believes that inserting this concept in the definition may generate further confusion instead of providing clarity since there may not be consensus on what would be considered a "standard" rate among all issuers. Furthermore, with respect to some of the examples commenters provided to illustrate why they thought the May 2008 proposed definition was overbroad, the definition of "promotional rate" as proposed would likely not cover these examples. For example, one industry commenter stated that a standard rate could be considered a "promotional rate" when the rate that will be "in effect" is a penalty rate. Pursuant to the definition of "promotional rate," that standard rate would have to be in effect for a specified period of time before the penalty rate applies in order to be considered a "promotional rate." Typically, penalty rates are applied upon the occurrence of a specific event or action by the consumer rather than the passage of a specified time period. As a result, this type of standard rate would not have been considered a “promotional rate” under the proposal, and similarly is not a “promotional rate” under the final rule.

The Board also proposed to define “promotional period” in § 226.16(e)(2)(iii) in the May 2008 Proposal. The definition proposed in May 2008 was similar to one previously proposed for “introductory period” in the June 2007 Proposal, consistent with the definition in TILA Section 127(c)(6)(D)(ii). No comments were received on this definition, and § 226.16(e)(2)(iii) is adopted as proposed and renumbered as § 226.16(g)(2)(iii).

16(g)(3) Stating the Term “Introductory”

The Board proposed in the June 2007 Proposal to implement TILA Section 127(c)(6)(A), as added by section 1303(a) of the Bankruptcy Act, in § 226.16(e)(3) (which the Board moves to § 226.16(g)(3) for organizational purposes). TILA Section 127(c)(6)(A) requires the term “introductory” to be used in immediate proximity to each listing of the temporary APR in the application, solicitation, or promotional materials accompanying such application or solicitation. 15 U.S.C. 1637(c)(6)(A).

Requirement. As discussed above, industry commenters expressed concern about requiring use of the word “introductory” to describe special rates offered to consumers with an existing account. However, with the revised definition of “introductory rate” under § 226.16(g)(2) (proposed as § 226.16(e)(2)), as discussed above, only promotional rates offered in connection with the opening of an account would be covered under § 226.16(g)(3), which the Board believes addresses commenters’ concerns.

Some industry commenters also requested that the Board clarify that the term “introductory” be used only in relation to rates that are available exclusively to new customers. These commenters believe that advertisements that state a rate that is offered to both new and existing customers should not be required to be labeled as "introductory." Alternatively, one industry commenter suggested that the Board allow advertisers to choose whether to label a rate as "introductory" or "promotional" if an advertisement applies to both new and existing accounts. The Board notes that there is no requirement to use the term "promotional" with respect to a promotional rate stated in an advertisement. The Board believes that there are several terms that may be used to convey the concept of a promotional rate to existing customers, and flexibility should be provided to advertisers. Consistent with the requirements of TILA Section 127(c)(6)(A), however, the Board believes that as long as the rate offered in an advertisement could be considered an "introductory rate," the term "introductory" must be used. Therefore, the Board declines to amend § 226.16(g)(3) (proposed as § 226.16(e)(3)) to apply only to rates advertised exclusively to new customers or to permit advertisers to choose whether to label a rate as "introductory" if an advertisement applies to both new and existing accounts.

Abbreviation. The Board proposed in the June 2007 Proposal to allow advertisers to use the word "intro" as an alternative to the requirement to use the term "introductory." Commenters supported the Board's proposal, and the final rule adopts § 226.16(g)(3) (proposed as § 226.16(e)(3)) as proposed consistent with the Board's authority under TILA Section 105(a) to facilitate compliance with TILA, with minor technical amendments.

Immediate proximity. In the June 2007 Proposal, the Board proposed to provide a safe harbor for creditors that place the word "introductory" or "intro" within the same phrase as each listing of the introductory rate. One consumer group commenter suggested that the word “introductory” be adjacent to or immediately before or after the introductory rate. However, as discussed in the June 2007 Proposal, the Board believes that interpreting “immediate proximity” to mean adjacent to the rate may be too restrictive and would effectively ban phrases such as “introductory balance transfer rate X percent.” Therefore, the guidance in comment 16(g)-2 (proposed as comment 16(e)-2 in the June 2007 Proposal and comment 16(e)-3 in the May 2008 Proposal) is adopted as proposed, with minor technical amendments.

16(g)(4) Stating the Promotional Period and Post-Promotional Rate

The Board proposed § 226.16(e)(4) in the June 2007 Proposal to implement TILA Section 127(c)(6)(A), as added by Section 1303(a) of the Bankruptcy Act. TILA Section 127(c)(6)(A) requires that the time period in which the introductory period will end and the APR that will apply after the end of the introductory period be listed in a clear and conspicuous manner in a “prominent location closely proximate to the first listing” of the introductory APR (excluding disclosures in the application and solicitation table). 15 U.S.C. 1637(c)(6)(A).

Prominent location closely proximate. In the June 2007 Proposal, the Board proposed that placing the time period in which the promotional period will end and the APR that will apply after the end of the promotional period in the same paragraph as the first listing of the promotional rate would be deemed to be in a “prominent location closely proximate” to the listing. As discussed in the June 2007 Proposal, the Board proposed a safe harbor in interpreting “prominent location closely proximate.” In addition, the Board proposed that placing this information in footnotes would not be a prominent location closely proximate to the listing.

The Board received few comments on this proposal. Consumer groups strongly opposed the Board's safe harbor. Instead, the commenters suggested that if the Board used a safe harbor approach, the safe harbor should be either "side-by-side with or immediately under or above the rate." One industry commenter suggested that it would be sufficient to disclose the promotional period and the post-promotional rate in the text of the offer.

As the Board reasoned in the June 2007 Proposal, Congress's use of the term "closely proximate" may be distinguished from its use of the term "immediate proximity." Therefore, the Board believes that guidance on the meaning of "prominent location closely proximate" should be more flexible than the guidance given for the meaning of "immediate proximity" in comment 16(g)-2 (proposed as comment 16(e)-2 in the June 2007 Proposal and comment 16(e)-3 in the May 2008 Proposal) discussed above. In the Board's view, "side-by-side with or immediately under or above the rate" is little different from the guidance the Board has in place for "immediate proximity." Requiring terms to be in the same paragraph, on the other hand, gives advertisers flexibility but ensures that the terms are fairly close to the promotional rate. The Board believes that concerns that paragraphs will be so long as to bury the information may be misplaced. Above all, advertisements are intended to capture consumers' interest in the advertised product or service, and long, dense paragraphs are often eschewed in the advertising context. As a result, the Board adopts the safe harbor in comment 16(g)-3 (proposed as comment 16(e)-3 in the June 2007 Proposal and comment 16(e)-4 in the May 2008 Proposal), as proposed, with minor technical amendments.

First listing. In the June 2007 Proposal, the Board provided guidance on determining which listing of a promotional rate should be considered the "first listing" other than the rate provided in the table required on or with credit card applications or solicitations. The Board proposed in June 2007 that for a multi-page mailing or application or solicitation package, the first listing is the most prominent listing on the front of the first page of the "principal promotional document" in the package. 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. This definition is consistent with the FTC's definition of the term in its regulations related to the FCRA. 16 CFR § 642.2(b). If the introductory rate does not appear in the principal promotional document but appears in another document in the package or there is no principal promotional document, then the requirements would have applied to each separate document that lists the promotional rate. In determining which listing is the "most prominent," the Board proposed a safe harbor for the listing with the largest type size.

The Board received few comments on the proposal. Consumer group commenters supported the Board's proposal but suggested that the requirements should apply to each document in a mailing regardless of whether or not the promotional rate appears on the principal promotional document. As the Board noted in the June 2007 Proposal, the Board's consumer testing efforts suggest that consumers are most likely to read the principal promotional document. The Board believes that applying the requirement to each document in a mailing/package would be overly burdensome and unnecessary if the consumer will already have seen the promotional rate in the principal promotional document. As provided in the comment, however, if the promotional rate does not appear in the principal promotional document or there is no principal promotional document, the requirements apply to the first listing of the promotional rate in each document in the package containing the promotional rate as it is not clear which document the consumer will read first in such circumstances.

One industry commenter also suggested that there may be times when a promotional rate is not listed on the front of the first page of a document. In those cases, the Board believes that the first listing should be the most prominent listing in the subsequent pages of the document. Therefore, the Board adopts comment 16(g)-4 (previously proposed as comment 16(e)-4 in the June 2007 Proposal and comment 16(e)-5 in the May 2008 Proposal), largely as proposed with modifications to account for instances when a promotional rate may not appear on the front of the first page of a principal promotional document or other document. Technical changes are also made to clarify that the comment applies solely to written or electronic advertisements.

Post-promotional rate. In the June 2007 Proposal, the Board proposed that a range of rates may be listed as the rate that will apply after the promotional period if the specific rate for which the consumer will qualify will depend on later determinations of a consumer's creditworthiness. This approach is consistent with the guidance the Board proposed for listing the APR in the table required for credit card applications and solicitations under § 226.5a(b)(1)(v). In addition, the Board solicited comment on whether advertisers alternatively should be able to list only the highest rate that may apply instead of a range of rates. For example, if there are three rates that may apply

(9.99 percent, 12.99 percent or 17.99 percent), instead of disclosing three rates (9.99 percent, 12.99 percent or 17.99 percent) or a range of rates (9.99 percent to 17.99 percent), the Board asked whether card issuers should be permitted to provide only the highest rate (up to 17.99 percent).

Most of the comments the Board received regarding the permissibility of disclosing a range of rates were focused on the proposed rule under § 226.5a(b)(1)(v) rather than the corresponding proposed provision under the advertising rules. As discussed in the section-by-section analysis to § 226.5a(b)(1)(v), the Board declines to allow creditors to list only the highest rate that may apply instead of a range of rates for all applicable rates other than the penalty rate. For the reasons set forth in the supplementary information to § 226.5a(b)(1)(v), the Board also declines to allow advertisers to list only the highest rate that may apply instead of a range of rates, and comment 16(g)-5 (proposed as comment 16(e)-5 in the June 2007 Proposal and 16(e)-6 in the May 2008 Proposal) is adopted as proposed. In addition, the Board received one industry comment suggesting that when a range is given, the advertisement must state that the rates are based on creditworthiness as required for applications and solicitations under § 226.5a(b)(1)(v). The final rule does not adopt this suggestion as the Board believes that consumers will see this statement in an application or solicitation, so it is not necessary to include it in an advertisement.

Life-of-balance offers. In May 2008, the Board proposed to exempt life-of-balance promotional offers from the requirement to state when the promotional rate will end and the APR that will apply thereafter. See proposed § 226.16(e)(2)(i)(B) and (e)(4). The Board recognized that requiring disclosure of when the promotional rate will end and the post-promotional rate that will apply after the end of the promotional period would not be appropriate for these types of offers since the rate in effect for such offers lasts as long as the balance is in existence. Since the final rule excludes life-of-balance offers from the definition of "promotional rate," as discussed in the supplementary information to § 226.16(g)(2) above, the exception is no longer necessary, and § 226.16(g)(4) (proposed as § 226.16(e)(4) in the May 2008 Proposal) has been revised, as appropriate.

Non-written, non-electronic advertisements. As discussed above in the section-by-section analysis to § 226.16(g)(1), the Board is expanding the requirements of § 226.16(g) (proposed as § 226.16(e)) to non-written, non-electronic advertisements. The Board, however, recognizes that for non-written, non-electronic advertisements, such as telephone marketing, radio and television advertisements, there are unique challenges in presenting information to consumers because of the space and time constraints of such media. Therefore, the final rule amends § 226.16(g)(4) to provide flexibility in how the required information may be presented in non-written, non-electronic advertisements. Specifically, for non-written, non-electronic advertisements, § 226.16(g)(4) does not impose any specific proximity or formatting requirements other than the general requirement that information be clear and conspicuous, as contemplated under comment 16-1.

16(g)(5) Envelope Excluded

TILA Section 127(c)(6)(B), as added by Section 1303(a) of the Bankruptcy Act, specifically excludes envelopes or other enclosures in which an application or solicitation to open a credit card account is mailed from the requirements of TILA Section 127(c)(6)(A)(ii) and (iii). 15 U.S.C. 1637(c)(6)(B). In the June 2007 Proposal, the Board set forth this provision in proposed § 226.16(e)(5). Furthermore, the Board proposed also to exclude banner advertisements and pop-up advertisements that are linked to an electronic application or solicitation.

Consumer group commenters disagreed with the Board's proposal to extend the exception to banner advertisements and pop-up advertisements that are linked to an electronic application or solicitation. As discussed in the June 2007 Proposal, the Board extended the exception because of the similarity of these approaches to envelopes or other enclosures in the direct mail context. One industry commenter agreed with the Board's proposal to exclude banner advertisements and pop-up advertisements that are linked to an electronic application or solicitation, but also suggested that the Board provide flexibility for other marketing channels where an initial summary advertisement is used to alert customers to an offer or prompt further inquiry about the details of an offer, such as transportation and terminal posters, roadside and merchant billboards or signs, and take-one application display stands. The Board declines to extend the exception in the manner suggested. Unlike envelopes and banner advertisements and pop-up advertisements that are linked to an electronic application or solicitation, these other approaches are stand-alone in nature and are not connected to an advertising piece that contains detailed information on the promotional rate. As a result, the Board adopts § 226.16(g)(5) (proposed as § 226.16(e)(5)) as proposed.

APPENDIX E Rules for Card Issuers That Bill on a Transaction-by-Transaction Basis

Appendix E to part 226 applies to card programs in which the card issuer and the seller are the same or related persons; no finance charge is imposed; cardholders are billed in full for each use of the card on a transaction-by-transaction basis; and no cumulative account is maintained reflecting transactions during a period of time such as a month. At the time the provisions now constituting Appendix E to part 226 were added to the regulation, they were intended to address card programs offered by automobile rental companies.

Appendix E to part 226 specifies the provisions of Regulation Z that apply to credit card programs covered by the appendix. For example, for the account-opening disclosures under § 226.6, the required disclosures are limited to penalty charges such as late charges, and to a disclosure of billing error rights and of any security interest. For the periodic statement disclosures under § 226.7, the required disclosures are limited to identification of transactions and an address for notifying the card issuer of billing errors. Further, since under Appendix E to part 226 card issuers do not issue periodic statements of account activity, Appendix E to part 226 provides that these disclosures may be made on the invoice or statement sent to the consumer for each transaction. In general, the disclosures that this category of card issuers need not provide are those that are clearly inapplicable, either because the disclosures relate to finance charges, are based on a system in which periodic statements are generated, or apply to three-party credit cards (such as bank-issued credit cards).

In the June 2007 Proposal, the Board proposed to revise Appendix E to part 226 by inserting material explaining what is meant by "related persons." In addition, technical changes were proposed, including numbering the paragraphs within the appendix and changing cross references to conform to the renumbering of other provisions of Regulation Z.

The Board solicited comment on whether Appendix E to part 226 should be revised to specify that the disclosures required under § 226.5a apply to card programs covered by the appendix, as well as on whether any other provisions of Regulation Z not currently specified in Appendix E to part 226 as applicable to transaction-by-transaction card issuers should be specified as being applicable. Comment was also requested on whether any provisions currently specified as being applicable should be deleted.

No comments were received on Appendix E to part 226. Therefore, the proposed changes are adopted in the final rule (with further technical changes, such as to conform cross references to other sections).

APPENDIX F Optional Annual Percentage Rate Computations for Creditors Offering Open-End Plans Subject to the Requirements of § 226.5b

Appendix F to part 226 provides guidance regarding the computation of the effective APR in situations where the finance charge imposed during a billing cycle includes a transaction charge, such as a balance transfer fee or a cash advance fee. In the June 2007 Proposal, the Board did not propose changes to Appendix F to part 226 except to move the substance of footnote 1 to Appendix F to the text of the appendix. In addition, a cross reference to proposed comment 14(d)(3)-3 would have been added to the staff commentary to Appendix F to part 226. The guidance in Appendix F to part 226 would have continued to apply to either proposed § 226.14(c)(3) (covering HELOCs) or proposed § 226.14(d)(3) (covering open-end (not home-secured) credit). As discussed above, since the Board has eliminated the requirement to disclose the effective APR, proposed § 226.14(d)(3) is not being adopted, and compliance with § 226.14(c)(3) is optional for HELOC creditors, under the final rule. The guidance in Appendix F to part

226 therefore applies to HELOC creditors that choose to calculate and disclose an effective APR under § 226.14(c)(3). The appendix is retitled to reflect more accurately its scope.

No comments were received on Appendix F to part 226. The changes to Appendix F to part 226 are adopted as proposed, except the cross references in the Appendix F commentary are revised to conform to the final changes to § 226.14.

APPENDIX G – Open-end Model Forms and Clauses; APPENDIX H – Closed-end Model Forms and Clauses

Appendices G and H to part 226 set forth model forms, model clauses and sample forms that creditors may use to comply with the requirements of Regulation Z. Appendix G to part 226 contains model forms, model clauses and sample forms applicable to open-end plans. Appendix H to part 226 contains model forms, model clauses and sample forms applicable to closed-end loans. 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. As discussed above, the Board proposed in June 2007 and May 2008 to add or revise several model and sample forms to Appendix G to part 226. The new or revised model and samples forms are discussed above in the section-by-section analysis applicable to the regulatory provisions to which the forms relate. See section-by-section analysis to §§ 226.4(d)(3), 226.5a(b), 226.6(a)(5) and (b)(7), 226.6(b)(1), (b)(2) and (b)(5), 226.7(b), 226.9(a), 226.9(b), 226.9(c), 226.9(g), and 226.12(b). In addition, the Board proposed to add a new model clause and sample form relating to debt suspension coverage in Appendix H to part 226. These forms are discussed above in the section-by-section analysis to § 226.4(d)(3).

In Appendix G to part 226, all the existing forms applicable to HELOCs have been retained without revision, with three exceptions, discussed below. These changes are permissive and do not require HELOC creditors to revise any existing form. The Board anticipates considering revisions to HELOC forms when it reviews the home-equity disclosure requirements in Regulation Z.

The Board revises or adds commentary to the model and sample forms in Appendix G to part 226, as discussed below. Furthermore, as discussed in the general discussion on the effective APR in the section-by-section analysis to § 226.7(b), the Board is not adopting proposed Sample G-18(B). Therefore, several forms and samples sequentially following proposed Sample G-18(B) have been renumbered accordingly.

Permissible changes to the model and sample forms. The commentary to Appendices G and H to part 226 currently states that creditors may make certain changes in the format and content of the model 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. See comment app. G and H-1. As discussed above, the Board has adopted format requirements with respect to certain disclosures applicable to open-end (not home-secured) plans, such as a tabular requirement for certain account-opening disclosures and certain change-in-terms disclosures. See § 226.5(a)(3). In addition, the Board is revising certain model forms to improve their readability. See G-2(A), G-3(A) and G-4(A). Thus, the Board amends comment app. G and H-1, as proposed in June 2007, to indicate that formatting changes may not be made to certain model and sample forms in Appendix G to part 226.

In a technical revision, the Board deletes comment app. G and H-1(vii) as obsolete, as proposed in June 2007. This comment allows a creditor to substitute appropriate references, such as "bank," "we" or a specific name, for "creditor" in the account-opening disclosures, but none of the model or sample forms applicable to the account-opening disclosures uses the term "creditor."

Model clauses for balance computation methods. Currently and under the June 2007 Proposal, creditors are required to explain the method used to determine the balance to which rates are applied. See current § 226.6(a) and proposed § 226.6(a)(1)(iii) and (b)(2)(i)(D). Model Clauses that explain commonly used methods, such as the average daily balance method, are at Appendix G-1 to part 226.

The Model Clauses at Appendix G-1 to part 226 were republished without change in the June 2007 Proposal. The Board requested comment on whether model clauses for methods such as the "previous balance" or "adjusted balance" method should be eliminated because they are no longer used. Few commenters addressed the issue. Those that did recommended retaining the existing clauses, and two commenters asked the Board to add a model clause explaining the daily balance method.

In May 2008, the Board proposed to add a new paragraph (f) to describe a daily balance method in Appendix G-1 to part 226. In addition, a new Appendix G-1(A) to part 226 was proposed for open-end (not home-secured) plans. The clauses in Appendix G-1(A) to part 226 refer to "interest charges" rather than "finance charges" to explain balance computation methods. The consumer testing conducted for the Board prior to the June 2007 Proposal indicated that consumers generally had a better understanding of "interest charge" than "finance charge," which is reflected in the Board's use of "interest" (rather than "finance charge") in account-opening samples and to describe costs other than fees on periodic statement samples and forms under the June 2007 Proposal. See proposed Samples G-17(B) and G-17(C), Sample G-18(A), and Forms G-18(G) and G-18(H). Comment App. G-1 was proposed to be revised in May 2008 to clarify that for HELOCs subject to § 226.5b, creditors may properly use the model clauses in either Appendix G-1 or G-1(A). The Board is adopting a new paragraph (f) to describe a daily balance method in Model Clauses G-1, a new Model Clauses G-1(A), and accompanying commentary, as proposed in May 2008.

Model clauses for notice of liability for unauthorized use and billing-error rights. Currently, Appendix G contains Model Clause G-2 which provides a model clause for the notice of liability for unauthorized use of a credit card. In June 2007, the Board proposed to revise Model Clause G-2 to improve its readability, proposed as Model Clause G-2(A) for open-end (not home-secured) plans. In addition, Appendix G currently includes Model Forms G-3 and G-4, which contain 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. Like with Model Clause G-2, the Board proposed to revise Model Forms G-3 and G-4 to improve readability, proposed as Model Form G-3(A) and G-4(A) for open-end (not home-secured) plans. The Board adopts Model Clause G-2(A) and Model Forms G-3(A) and G-4(A), as proposed, with revisions noted below. For HELOCs subject to § 226.5b, at the creditor's option, a creditor either may use the current forms (G-2, G-3, and G-4) or the revised forms (G-2(A), 3(A) and 4(A)). For open-end (not home-secured) plans, creditors may use G-2(A), 3(A) and 4(A). See comments app. G and H-2 and -3.

As stated above, Model Clause G-2 and Model Forms G-3 and G-4 are adopted without revision, except for optional language creditors may use when instructing consumers on how to contact the creditor by electronic communication, such as via the Internet. The same instructions are contained in Model Clause G-2(A) and Model Forms G-3(A) and G-4(A). Technical changes have also been made for clarity without intended substantive change, in response to comments received. See section-by-section analysis to § 226.9(a).

Model and sample forms applicable to disclosures for credit card applications and solicitations and account-opening disclosures. Currently, Appendix G contains several model forms related to the credit card application and solicitation disclosures required by § 226.5a. Current Model Form G-10(A) illustrates, in the tabular format, the disclosures required under § 226.5a for applications and solicitations for credit cards other than charge cards. Current Sample G-10(B) is a sample disclosure illustrating an account with a lower introductory rate and a penalty rate. The June 2007 Proposal would have substantially revised Model Form G-10(A) and Sample G-10(B) to reflect the proposed changes to § 226.5a, as discussed in the section-by-section analysis to § 226.5a. In addition, Sample G-10(C) would have been added to provide another example of how certain disclosures required by § 226.5a may be given. Current Model Form G-10(C) illustrating the tabular format disclosures for charge card applications and solicitations would have been moved to G-10(D) and revised. The Board proposed to add Sample G-

10(E) to provide an example of how certain disclosures in § 226.5a applicable to charge card applications and solicitations may be given.

In addition, the June 2007 Proposal would have added a model form and two sample forms to illustrate, in the tabular format, the disclosures required under § 226.6(b)(2) for account-opening disclosures. See proposed Model G-17(A) and Samples G-17(B) and G-17(C). In the May 2008 Proposal, the Board proposed to add Sample G-17(D) to illustrate, in the tabular format, the disclosures required for account-opening disclosures for open-end plans such as a line of credit or an overdraft plan.

In the June 2007 Proposal, the Board also proposed to revise the existing commentary that provides guidance to creditors on how to use Model Forms and Samples G-10(A)-(E) and G-17(A)-(C). Currently, the commentary indicates that the disclosures required by § 226.5a may be arranged horizontally (where headings are at the top of the page) or vertically (where headings run down the page, as is shown in the Model Forms G-10(A), G-10(D) and G-17(A)) and need not be highlighted aside from being included in the table. The Board proposed to delete this guidance and instead require that the table for credit card application and solicitation disclosures and account-opening disclosures be presented in the format shown in proposed Model Forms G-10(A), G-10(D) and G-17(A), where a vertical format is used. In addition, the Board proposed to delete the provision that disclosures in the tables need not be highlighted aside from being included in the table, as inconsistent with the proposed requirement that creditors must include certain rates and fees in the tables in bold text. See proposed §§ 226.5a(a)(2)(iv) and 226.6(b)(1)(i).

In response to the June 2007 Proposal, several industry commenters requested that the Board continue to allow the horizontal format (where headings are at the top of the page) to allow issuers flexibility in how to design the format of the table. The final rule requires that the table for credit card application and solicitation disclosures and account-opening disclosures be presented in the format shown in proposed Model Forms G-10(A), G-10(D) and G-17(A), where a vertical format is used. The Board continues to believe that horizontal formats would be difficult for consumers to read, given the information that is required to be disclosed in the table.

In addition, Model Form G-10(A), applicable to credit card applications and solicitations, currently uses the heading "Minimum Finance Charge" for disclosing a minimum finance charge under § 226.5a(b)(3). In the June 2007 Proposal, the Board proposed to amend Model Form G-10(A) to provide two alternative headings ("Minimum Interest Charge" and "Minimum Charge") for disclosing a minimum finance charge under § 226.5a(b)(3). The same two headings were proposed for Model Form G-17(A), the model form for the account-opening table. In the consumer testing conducted for the Board prior to the June 2007 Proposal, many participants did not understand the term "finance charge" in this context. The term "interest" was more familiar to many participants. Under the June 2007 Proposal, if a creditor imposes a minimum finance 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 would have been required to disclose this charge under the heading "Minimum Interest Charge." The final rule adopts this guidance as proposed. Under the final rules, other minimum and fixed finance charges are required to be disclosed under the heading "Minimum Charge."

Also, under the June 2007 Proposal, Model Forms G-10(A), G-10(D) and G-17(A) would have contained 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)(4)(iii)(A). The Board proposed to provide guidance on when a creditor would have been required to use each heading. Under the proposal, if the only fee for issuance or availability of credit disclosed under § 226.5a(b)(2) or § 226.6(b)(4)(iii)(A) is an annual fee, a creditor would have been required to use the heading "Annual Fee" 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)(4)(iii)(A) other than, or in addition to, an annual fee, the creditor would have been required to use the heading "Set-up and Maintenance Fees" to disclose fees for issuance or availability of credit, including the annual fee. The final rule adopts this guidance as proposed, although the reference to the account-opening disclosure requirement has been renumbered as § 226.6(b)(2)(ii).

In the June 2007 Proposal, the Board also proposed to revise the commentary to provide details about proposed Sample Forms G-10(B), G-10(C), G-17(B) and G-17(C) for credit card application and solicitation disclosures and account-opening disclosures. (The guidance also would apply to Sample Form G-17(D), proposed in May 2008 for open-end (not home-secured) plans not accessed by credit cards.) For example, the proposed commentary indicated that Samples G-10(B), G-10(C), G-17(B) and G-17(C) were designed to be printed on an 8x14 inch sheet of paper. In addition, the following formatting techniques were used in presenting the information in the table to ensure that the information was readable:

1. A readable font style and font size (10-point Arial font style, except for the purchase APR which is shown in 16-point type).

2. Sufficient spacing between lines of the text. That is, words were not compressed to appear smaller than 10-point type.

3. 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 three components: (a) the applicable balance transfer rate, (b) a cross reference to the balance transfer fee, and (c) a notice about payment allocation. The samples show these three 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 form discloses two components: (a) the late-payment fee, and (b) 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 table.

4. Standard spacing between words and characters.

5. 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.

6. Sufficient contrast between the text and the background. Black text was used on white paper.

The proposed guidance stated that 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 size), the Board encouraged issuers to consider these techniques when disclosing information in the table, to ensure that the information is presented in a readable format.

In response to the June 2007 Proposal, several industry commenters suggested that the Board explicitly state that the table is not required to be presented on a particular size of paper, such as an 8 ½ x 14 inch legal-size paper. In addition, one industry commenter suggested that the Board explicitly allow the table to appear on more than one page as long as the information appears consecutively without any other information interspersed and if it takes more than one page, that there is a reference to where the remainder of the table can be found.

In quantitative consumer testing conducted for the Board in the fall of 2008, some participants were shown forms of the table required pursuant to § 226.5a on which all required content was presented on one side of a single page; other participants were shown a form in which the table appeared on two pages, specifically where a portion of the row for penalty fees was disclosed on a second page. The testing showed that participants were less able to locate a fee when it was disclosed on the second page than when it was disclosed on the first page. Based on this testing result, the Board considered whether to require creditors to disclose the table on 8 ½ x 14 inch paper if the table would not fit in its entirety on one side of a sheet of 8 ½ x 11 inch paper. However, the Board is not requiring use of 8 ½ x 14 inch paper. The Board recognizes that even if the use of 8 ½ x 14 inch paper were mandatory for tables that will not fit on one side of one sheet of 8 ½ by 11 inch paper, it would still not guarantee that the table would always fit on one side of one sheet of paper. However, the Board encourages creditors, when possible, to present all information in the table on one side of one sheet of paper.

Comment app. G-5.v has been revised to expressly state that if the disclosures required under §§ 226.5a and 226.6 are 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." to indicate that the table continues onto an additional page or pages. The comment further states that 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, in response to the June 2007 Proposal, several industry commenters suggested that the Board allow issuers to disclose the APRs for purchases, cash advances and balance transfers in the same row in the table, if the issuer charges the same APR for each of these types of transactions. Under the proposed rule, issuers would be required to disclose the APR for purchases, cash advances, and balance transfers in three separate rows, even if the APRs for all three of these types of transactions were the same.

In quantitative testing conducted for the Board after May 2008, the effectiveness of combining rows where the APR for two types of transactions are the same was tested. Some participants were shown tables in which the APRs for cash advances and balance transfers were shown in separate rows. Other participants were shown tables in which the APR for both cash advances and balance transfers, which was the same, was disclosed in one row. In each case, participants were then asked to identify the APR for balance transfers. The testing results suggest that there was no statistically significant difference in the ability of participants to identify the APR for balance transfers whether there were separate rows for the APRs for cash advances and balance transfers or one row reflecting the APR for both cash advances and balance transfers. Based on these results, the Board is providing flexibility by permitting issuers to disclose the APRs for purchases, cash advances, and/or balance transfers in the same row in the table, if the issuer charges the same APR for such transactions. The Board has amended final comment app. G-5.ii accordingly.

Also, in response to the June 2007 Proposal, several commenters had suggestions on how transaction and penalty fees should be disclosed in the table. One commenter urged the Board to allow issuers to disclose fees of the same amount on the same row, without a carriage return after each fee. (Proposed Sample Forms G-10(B) and (C) showed the fees listed separately on their own lines.) In addition, proposed Sample Forms G-10(B) and (C) and Sample Forms G-17(B) and (C) (and Sample Form G-17(D) proposed in May 2008) use the headings “Transaction Fees” and “Penalty Fees.” One commenter urged the Board to delete these headings as unnecessary.

As discussed above, based on testing conducted for the Board after May 2008, the Board is permitting issuers to disclose the APRs for purchases, cash advances, and/or balance transfers in the same row in the table if the issuer charges the same APR for such transactions. The effect of combining fee rows was also tested in quantitative testing conducted in fall 2008. Some participants were shown tables in which two penalty fees, the returned payment fee and the over-the-limit fee, were disclosed in separate rows. Other participants were shown tables in which these two fees were combined in a single row. The testing indicated that combining rows did not make it more difficult for consumers to locate fees. For the same reasons, the Board is also amending final comment app. G-5.ii to permit issuers to disclose fees of the same amount on the same row, if the fees are in the same category of fees (e.g., if both fees are transaction fees or both fees are penalty fees). Therefore, transaction fees of the same amount may be combined in the same row. Similarly, penalty fees of the same amount may be combined in the same row. The Board is, however, preserving separate headings for "Transaction Fees" and "Penalty Fees" as the Board believes it is important to distinguish these separate categories for consumers. Thus, if the amount of a transaction fee is the same as the amount of a penalty fee, the fees must still be disclosed separately under separate headings.

The final Sample Forms G-10(B) and (C) and Sample Forms G-17(B)-(D) continue to use the headings "Transaction Fees" and "Penalty Fees." The Board believes that these headings are useful to consumers in understanding the types of fees that may be charged on the account. In addition, to describe a grace period (or the lack of a grace period), as applicable, the heading "How to Avoid Paying Interest for Purchases" or "Paying Interest" must be used for Sample Forms G-10(B) and (C). The headings "How to Avoid Paying Interest" or "Paying Interest" must be used for Sample Forms G-17(B)–(D). See §§ 226.5a(b)(5) and 226.6(b)(2)(v).

In response to the June 2007 Proposal, one industry commenter suggested that the Board explicitly state that the use of color, shading and similar graphic techniques are permitted with respect to the table. Comment app. G-5.vii adds guidance to clarify that the use of color, shading and similar graphic techniques are permitted with respect to the table, so long as the table remains substantially similar to the model and sample forms in Appendix G to part 226.

In addition, one commenter noted that that the proposed model and sample forms in Appendix G-10 to part 226 segregated the fee disclosures from the interest rate and interest charge disclosures using two separate tables. This commenter suggested that the Board clarify that using separate tables for the fee disclosures and the interest and interest charges disclosure is required. The Board believes that in order for a table to be substantially similar to the applicable table in Appendix G to part 226, a table for credit card application and solicitation disclosures and account-opening disclosures must contain separate tables for the fee disclosures and the interest and interest charge disclosures, and therefore, additional clarification is not needed.

Model and sample forms for periodic statements. In June 2007, the Board proposed to add several model forms for periodic statement disclosures that creditors may use to comply with the requirements in proposed § 226.7(b) applicable to open-end (not home-secured) plans. As discussed above in the section-by-section analysis of § 226.7(a), for HELOCs subject to § 226.5b, at the creditor's option, a creditor either may comply with the current rules applicable to periodic statement disclosures in § 226.7(a) or comply with the new rules applicable to periodic statement disclosures in § 226.7(b). Comment app. G-8 is added, as proposed, to provide that for HELOCs subject to § 226.5b, if a creditor chooses to comply with the new periodic statement requirements in § 226.7(b), the creditor may use Samples G-18(A)-(F) to comply with the requirements in § 226.7(b).

New comment app. G-9 is added in response to requests for guidance relating to the late payment and minimum payment disclosures. Samples G-18(D) and G-18(E) (proposed as Samples G-18(E) and G-18(F)) illustrate how creditors may comply with proximity requirements for payment information. The comment clarifies that creditors offering card accounts with a charge card feature and a revolving feature may change the disclosure to make clear the feature to which the disclosures apply.

New comment app. G-10 is added to the final rule in response to commenters' requests, to provide guidance on creditors' use of Sample Forms G-18(F) and G-18(G) (proposed as Forms G-18(G) and G-18(H)). The comment clarifies that creditors are not required to print periodic statements on an 8 x 14 inch sheet of paper, although the samples were designed to be printed on that size paper. The comment clarifies that although the payment information disclosures appear in the upper right-hand corner on Sample Forms G-18(F) and G-18(G), the disclosures may be located elsewhere, as long as they appear on the front of the first page of the periodic statement.

The comment also clarifies that the sample forms are published as a compliance aid, and that some information and some formats are not required by the regulation. For example, certain information such as the summary of account activity is not a required disclosure, although some information presented in the summary is required (e.g., the previous balance and new balance). The comment also provides that subject to the general requirement to provide disclosures in a clear and conspicuous manner, additional information may appear on the periodic statement.

Model and sample form relating to debt suspension coverage. As discussed above in the section-by-section analysis for § 226.4(d)(3), the Board proposed in June 2007 to add a disclosure for debt suspension programs, to be provided as applicable, that the obligation to pay loan principal and interest is only suspended, and that interest will continue to accrue during the period of suspension. Model Clauses and Samples were proposed at Appendix G-16(A) and G-16(B) (for open-end credit) and Appendix H-17(A) and H-17(B) (for closed-end credit) to part 226. One commenter noted that the model language in Model Clause H-17(A) and Sample H-17(B) regarding cost of coverage is more appropriate for open-end credit. Model Clause H-17(A) and Sample H-17(B) have been revised in the final rule to include language that is appropriate for closed-end credit.

Appendix M1 – Generic Repayment Estimates

As discussed in the section-by-section analysis to § 226.7(b)(12), Section 1301(a) of the Bankruptcy Act requires 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 requires 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 June 2007 Proposal, the Board proposed that instead of issuing a table, it would issue 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. The final rule adopts this approach. The Board expects that this guidance will be more useful than a table, because the guidance will facilitate the use of automated systems to provide the required disclosures, although the guidance also can be used to generate a table.

Under Section 1301(a) of the Bankruptcy Act, 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. 15 U.S.C. 1637(b)(11)(I)-(K). In the June 2007 Proposal, the Board proposed new Appendix M2 to part 226 to provide guidance to issuers on how to calculate the actual repayment disclosure.

<u>Calculating generic repayment estimates</u>. Proposed Appendix M1 would have provided guidance on how to calculate the generic repayment estimates. Under the June 2007 Proposal, the Board would have allowed credit card issuers and the FTC to use a "consumer input" system to collect information from the consumer to calculate the generic repayment estimate. The Board also would have used a "consumer input" system for its toll-free telephone number. For example, certain information is needed to calculate the generic repayment estimate, such as the outstanding balance on the account and the APR applicable to the account. The Board's proposed rule would have allowed issuers and the FTC to prompt the consumer to input this information so that the generic repayment estimate could be calculated. The final rule adopts this "consumer input" system approach. Although issuers may have the ability to program their systems to obtain consumers' account information from their account management systems, the Board is not requiring issuers to do so. Allowing issuers to use a "consumer input" system in calculating the generic repayment estimate preserves the distinction contemplated in the statute between estimates based on the Board table and actual repayment disclosures.

In proposed Appendix M1 to part 226, the Board set forth guidance for credit card issuers and the FTC in determining the minimum payment formula, the APR, and the outstanding balance to use in calculating the generic repayment estimates. With respect to other terms that could impact the calculation of the generic repayment estimate, the Board proposed to set forth assumptions about these terms that issuers and the FTC must use.

1. Minimum payment formula. In the June 2007 Proposal, the Board proposed to require a credit card issuer to use the minimum payment formula that applies to most of the issuer's accounts. The Board proposed different rules for general purpose credit cards and retail credit cards in selecting the "most common" minimum payment formula. The Board proposed to define retail credit cards as credit cards that are issued by a retailer for use only in transactions with the retailer or a group of retailers that are related by common ownership or control, or a credit card where a retailer arranges for a creditor to offer open-end credit under a plan that allows the consumer to use the credit only in transactions with the retailer or a group of retailers that are related by common ownership or control. General purpose credit cards would have been defined as credit cards that are not retail credit cards.

Under the June 2007 Proposal, when calculating the generic repayment estimate for general purpose credit cards, a card issuer would have been required to use the minimum payment formula that applies to most of its general purpose consumer credit card accounts. The issuer would have been required to use this "most common" formula to calculate the generic repayment estimate for all of its general purpose consumer credit card accounts, regardless of whether this formula applies to a particular account.

Proposed Appendix M1 to part 226 would have contained additional guidance to issuers of general purpose credit cards in complying with the “most common” formula approach.

In addition, under the June 2007 Proposal, when calculating the generic repayment estimate for retail credit cards, a credit card issuer would have been required to use the minimum payment formula that most commonly applies to its retail consumer credit card accounts. If an issuer offers credit card accounts on behalf of more than one retailer, credit card issuers would have been required to group credit card accounts relating to each retailer separately and determine the minimum formula that is most common to each retailer. For example, if Issuer A issues separate cards for Retailer A and Retailer B, which are under common ownership or control, the proposal would have required Issuer A to determine the most common formula separately for each retailer (A and B). Under the proposal, the issuer would have been required to use the “most common” formula for each retailer to calculate the generic repayment estimate for the retail credit card accounts related to each retailer, regardless of whether this formula applies to a particular account. Proposed Appendix M1 to part 226 would have provided additional guidance to issuers of retail credit cards on how to comply with the “most common” formula approach. The Board solicited comment on whether Issuer A in the example above should be permitted to determine a single “most common” formula for all retailers under common ownership or control, and if so, what the standard of affiliation should be.

In response to the June 2007 Proposal, several consumer group commenters suggested that the Board should require credit card issuers to use the minimum payment formula(s) that applies specifically to a consumer’s account to calculate the generic repayment estimate, instead of allowing issuer to use the "most common" minimum payment formula that apply to the issuer's accounts. They suggested that issuers could be required to disclose a code on the periodic statement that represents the minimum payment formula(s) used, and the consumer could be asked to enter that code when requesting the generic repayment estimate. In addition, some industry commenters suggested that the Board not require issuers to use the "most common" minimum payment formula, but instead allow issuers to use the same minimum payment assumptions as used by the Board for its toll-free telephone number. In the June 2007 Proposal, the Board indicated that it would use the following minimum payment formula to calculate the generic repayment estimates for its toll-free telephone number: either 2 percent of the outstanding balance, or $20, whichever is greater. This is the same minimum payment formula used to calculate the repayment estimate for the statutory example related to the $1,000 balance that must be disclosed on periodic statements. See § 226.7(b)(12).

The final rule adopts the "most common" approach as proposed, with several revisions. The Board believes that the "most common" approach properly balances the benefit to consumers of more accurate estimates with the burden to creditors of calculating the generic repayment estimate. It appears that, at least for general purpose credit cards, issuers typically use the same or similar minimum payment formula(s) for their entire credit card portfolio. Thus, for those types of credit cards, the "most common" minimum payment formula identified by an issuer often will match the actual formula used on a consumer's account. Accordingly, the "most common" minimum payment formula approach would provide more accurate estimates to consumers than allowing all issuers to use the 2 percent or $20 minimum payment formula described above.

The Board recognizes that in some cases the "most common" minimum payment formula will not match the actual formula used on a consumer's account, for example, where a consumer has opted out of a change in the minimum payment formula, and the consumer is paying off the balance under the old minimum payment formula. The Board also recognizes that allowing card issuers to use one minimum payment formula under the "most common" formula approach to calculate the generic repayment estimate even when multiple minimum payment formulas apply to the account yields a less accurate estimate than if the issuer were required to use actual minimum payment formulas applicable to a consumer's account.

Nonetheless, the Board is not requiring credit card issuers to use the actual minimum payment formula(s) that apply to a consumer's account to calculate the generic repayment estimate. The Board does not believe that the potential benefit of more accurate estimates outweighs the burden to issuers in identifying a code for each unique minimum payment formula that might apply to a consumer's account and disclosing that code on the periodic statement. While the "code" approach may provide more accurate estimates in cases where there is only one minimum payment that applies to the account, it is not clear that use of this code would lead to more accurate generic repayment estimates when multiple minimum payment formulas apply to an account. As described below, in those cases, the issuer would still need to assume that the minimum payment formula applicable to the general revolving feature that applies to new transactions would apply to the entire balance on the account, regardless of whether this formula applies to a particular balance on that account. In addition, consumers may be unfamiliar with a new code on their periodic statements and explaining the purpose of the code would lead to a longer and more complex minimum payment disclosure on periodic statements.

In addition, in response to the June 2007 Proposal, several industry commenters requested clarification on calculating the generic repayment estimate where there are multiple features on the account and a different minimum payment formula applies to each feature. The final rule amends Appendix M1 to part 226 to clarify that if more than one minimum payment formula applies to an account, when calculating the generic repayment estimate, the issuer must use the "most common" minimum payment formula applicable to the general revolving feature that applies to new transactions and apply it to the entire balance on the account, regardless of whether this formula applies to a particular balance on that account. For example, assume for all of its accounts, a creditor uses one minimum payment formula to calculate the minimum payment amount for balances existing before January 1, 2008, and uses a different minimum payment formula to calculate the minimum payment amount for balances incurred on or after January 1, 2008. To calculate the minimum payment amount, this creditor must use the minimum payment formula applicable to balances incurred on or after January 1, 2008, and apply that formula to the entire outstanding balance even if the account has not been used for transactions on or after January 1, 2008.

Also, in response to the June 2007 Proposal, one industry commenter suggested that the Board allow a retailer to use the most common formula for all of its retail cards, instead of evaluating each program separately. Although this commenter indicated that terms of retail accounts do not differ more than the terms of general purpose credit cards, the Board understands that with respect to some "private label" programs where a card issuer offers credit cards on behalf of more than one retailer, the minimum payment formula(s) applicable to the credit card accounts can vary substantially depending on the retailer on whose behalf the cards are issued. Thus, the final rule retains the proposed requirement that if an issuer offers credit card accounts on behalf of more than one retailer, credit card issuers must group credit card accounts relating to each retailer (or affiliated group of retailers) separately and determine the minimum formula that is most common to each retailer.

In the June 2007 Proposal, the Board proposed that a card issuer must re-evaluate which minimum payment formula is most common every 12 months. The final rule clarifies that at the issuer's option, the issuer may re-evaluate which minimum payment formula is most common more often than every 12 months.

The final rule also clarifies that in choosing which formula is the "most common," an issuer may ignore differences among the formulas related to whether past due amounts or over-the-limit amounts are included in the formula for calculating the minimum payment. As described below, the final rule allows issuers to assume that the consumer's account is not past due and the account balance is not over the credit limit. The final rule also clarifies that a creditor may, when considering all of its consumer purpose credit card accounts for purposes of identifying the "most common" minimum payment formula, use a statistical sample of its consumer credit card accounts developed and validated using accepted statistical principles and methodology.

As discussed in the section-by-section analysis to § 226.7(b)(12), the Board is required to establish and maintain, for two years, a toll-free telephone number for use by customers of depository institutions having assets of $250 million or less to obtain generic repayment estimates. In the June 2007 Proposal, the Board proposed to use the following minimum payment formula to calculate the generic repayment estimates: either 2 percent of the outstanding balance, or $20, whichever is greater. This is the same minimum payment formula used to calculate the repayment estimate for the statutory example related to the $1,000 balance that is required to be disclosed on periodic statements. The final rule adopts this approach. The Board is using the same formula as in the statutory example because the Board is not aware of any "typical" minimum payment formula that applies to general purpose credit cards issued by smaller depository institutions. For the same reasons, the final rule states that the FTC must use the 5 percent minimum payment formula used in the $300 example in the statute to calculate the generic repayment estimates given through the FTC's toll-free telephone number, as proposed in the June 2007 Proposal.

2. Annual percentage rates. In the June 2007 Proposal, the Board proposed to require that the generic repayment estimate be calculated using a single APR, even for accounts that have multiple APRs. In selecting the single APR to be used in calculating the generic repayment estimates, the Board proposed to require credit card issuers and the FTC to use the highest APR on which the consumer has an outstanding balance. As proposed, an issuer and the FTC would have been allowed to use an automated system to prompt the consumer to enter in the highest APR on which the consumer has an outstanding balance, and calculate the generic repayment estimate based on the consumer's response. The Board would have followed the same approach in calculating the generic repayment estimates for its toll-free telephone number.

In response to the June 2007 Proposal, one industry commenter suggested that instead of issuers providing a worst case scenario estimate by using the highest APR on which a consumer has an outstanding balance, issuers should be allowed to provide two generic repayment estimates to the consumer, one estimate based on the purchase APR and another estimate based on the cash advance APR. This commenter believed that the two estimates would allow the consumer to determine which estimate best fits the composition of his or her account balance.

The final rule adopts the approach to require credit card issuers and the FTC to use the highest APR on which the consumer has an outstanding balance, as proposed. The Board does not believe that the statute contemplates that issuers be required to use their account management systems to disclose an estimate based on all of the APRs applicable to a consumer's account and the actual balances to which those rates apply. The Board believes that the complexity and effort required to accommodate multiple APRs using a "consumer-input" system would be unduly burdensome for consumers. The Board recognizes that using the highest APR on which a consumer has an outstanding balance will overestimate the repayment period when the consumer has outstanding balances at lower APRs as well. Nonetheless, allowing issuers to use the purchase APR on the account to calculate the repayment period would underestimate the repayment period, if a consumer also has balances subject to higher APRs, such as cash advance balances. The Board believes that an overestimate of the repayment period is a better approach for purposes of this disclosure than an underestimate of the repayment period because it gives consumers the worst-case estimate of how long it may take to pay off their balance. The Board believes that disclosing two estimates – one based on the purchase APR and one based on the cash advance APR – would be confusing to consumers.

3. Outstanding balance. Because consumers' outstanding account balances appear on their monthly statements, consumers can provide that amount when requesting an estimate of the repayment period. In the June 2007 Proposal, the Board proposed that when calculating the generic repayment estimate, credit card issuers and the FTC must use the outstanding balance on a consumer's account as of the closing date of the last billing cycle to calculate the generic repayment estimates. As proposed, an issuer and the FTC would have been allowed to use an automated system to prompt the consumer to enter in the outstanding balance included on the last periodic statement received, and calculate the generic repayment estimate based on the consumer's response. The Board would have followed the same approach in calculating the generic repayment estimates for its toll-free telephone number. The final rule adopts this approach with one revision. Appendix M1 allows issuers to round the outstanding balance to the nearest whole dollar to calculate the generic repayment estimate or to prompt the consumer to enter the balance rounded to the nearest whole dollar.

Other terms. In the June 2007 Proposal, the Board proposed assumptions about other terms that issuers and the FTC must use to calculate the generic repayment estimates. The final rule adopts this approach, except that issuers, at their option, are permitted to use the actual terms on the consumer's account instead of using the assumptions.

1. Balance computation method. In the June 2007 Proposal, the Board proposed to use the average daily balance method for purposes of calculating the generic

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. As a result, the Board proposed to assume that all months are the same length – i.e., 30.41667 days. In addition, in the absence of data on when consumers typically make their payments each month, the Board proposed to assume that payments are credited on the last day of the month.

In response to the June 2007 Proposal, several consumer group commenters suggested that issuers not be allowed to use the average daily balance method, if the issuer uses a less favorable method such as two-cycle average daily balance. The final rule retains the rule that issuers may assume that the average daily balance calculation method applies, regardless of whether it matches consumers' actual account terms. As discussed below, because the Board is assuming that no grace period exists and the consumer will be "revolving" or carrying a balance each month, there is no difference between the interest charges calculated, and thus, the repayment period calculated, if the average daily balance method is used compared to the two-cycle average daily balance method. The Board also notes that in final rules issued by the Board and other federal banking agencies published elsewhere in today's **Federal Register**, most credit card issuers could not use the two-cycle average daily balance method.

In addition, one commenter suggested in response to the June 2007 Proposal that the Board permit issuers to use uniform months of 30 days rather than require the use of 30.41667 days. This commenter indicated that some systems do not easily recognize fractions of days. The final rule amends Appendix M1 to specify that an issuer or the

FTC may assume a monthly or daily periodic rate applies to the account. If a daily periodic rate is used, the issuer or the FTC 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. Both sets of assumptions about the length of the year and months would yield the same repayment estimates.

2. Grace period. In the June 2007 Proposal, the Board proposed to assume that no grace period exists. The final rule adopts this approach, as proposed. 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 consumer calls to obtain the estimate, and that no grace period applies. This assumption about the grace period is also consistent with the final rule to exempt issuers from providing the minimum payment disclosures to consumers that have paid their balances in full for two consecutive months.

3. Residual interest. When the consumer’s account balance at the end of a billing cycle is less than the required minimum payment, the statutory examples 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. In the June 2007 Proposal, the Board proposed to make these same assumptions with respect to the calculation of the generic repayment estimates. The final rule adopts this approach, as proposed. These assumptions are necessary to have a finite solution to the repayment period calculation. Without these assumptions, the repayment period could be infinite.

4. Minimum payments are made each month. In response to the June 2007 Proposal, one commenter suggested that the Board clarify how debt cancellation, debt suspension and skip payment features should be handled. In those cases, a consumer may not be required to make a minimum payment on the account in a particular month. The final rule amends Appendix M1 to part 226 to provide that issuers or the FTC may 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.

5. APR will not change. In response to the June 2007 Proposal, one commenter suggested that issuers be able to assume that the APR on the account will not change. The final rule amends Appendix M1 to part 226 to provide that issuers or the FTC may assume that the APR on the account will not change, through either the operation of a variable rate or the change to a rate. For example, if a penalty APR currently applies to a consumer's account, an issuer or the FTC may 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.

6. Account not past due and the account balance does not exceed the credit limit. The final rule allows issuers or the FTC to assume that the consumer's account is not past due and the account balance is not over the credit limit.

7. Rounding assumed payments, current balance and interest charges to the nearest cent. The final rule allows issuers or the FTC, when calculating the generic repayment estimate, to round to the nearest cent the assumed payments, current balance and interest charges for each month, as shown in Appendix M3 to part 226.

Other technical edits have been made to the assumptions to conform them to the assumptions used in Appendix M2 to part 226 to calculate the actual repayment disclosure.

<u>Tolerances</u>. In response to the June 2007 Proposal, several commenters were concerned about liability for alleged incorrect estimates. Some commenters were concerned about state unfair or deceptive practices laws, under which an issuer might be sued for providing the generic repayment estimate or the actual repayment disclosure, if the actual time to repay a specific debt was different from the generic repayment estimate or actual repayment disclosure provided pursuant to TILA. Other issuers asked the Board to provide an express tolerance for error of at least two months (prior to rounding) in all of the proposed calculations. This commenter indicated that this error tolerance is needed because a variation as small as a penny can change amortization calculations and repayment period disclosures materially, when estimates are rounded to the nearest year. 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 rounding rule. 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 rounding rule. The final rule amends Appendix M1 to part 226 to provide that a generic repayment estimate shall be considered accurate if it is not more than 2 months above or below the generic repayment estimate determined in accordance with the guidance in Appendix M1 to part 226, prior to rounding. Thus, in the example above, an issuer or the

FTC would be in compliance with the guidance in Appendix M1 to part 226 by disclosing 3 years, instead of 2 years, because the issuer's or FTC's estimate is within the 2 months' tolerance, prior to rounding. In addition, the final rule also provides that even if an issuer's or FTC's estimate is more than 2 months above or below the generic repayment estimate calculated using the guidance in this appendix, so long as the issuer or FTC discloses the correct number of years to the consumer based on the rounding rule set forth in paragraph (b)(1)(i), the issuer or the FTC would be in compliance with the guidance in Appendix M1 to part 226. For example, assume the generic repayment estimate calculated using the guidance in Appendix M1 to part 226 is 32 months (2 years, 8 months), and the generic repayment estimate calculated by the issuer or the FTC is 38 months (3 years, 2 months). Under the rounding rule set forth in paragraph (b)(1)(i), both of these estimates would be rounded and disclosed to the consumer as 3 years. Thus, if the issuer or the FTC disclosed 3 years to the consumer, the issuer or the FTC would be in compliance with the guidance in Appendix M1 to part 226 even through the generic repayment estimate calculated by the issuer or the FTC is outside the 2 months' tolerance amount.

The Board also recognizes that both the generic repayment estimates and the actual repayment disclosures, as calculated in Appendices M1 and M2 to part 226 respectively, 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 the generic repayment estimates or actual repayment disclosures calculated according to guidance provided in Appendices M1 and M2 to part 226 respectively, as required by TILA.

Disclosing the generic repayment estimates to consumers. In the June 2007 Proposal, the Board proposed in Appendix M1 to part 226 to provide guidance regarding how the generic repayment estimate must be disclosed to consumers. As proposed, credit card issuers and the FTC would have been required to provide certain specified disclosures to consumers in responding to a request through a toll-free telephone number for generic repayment estimates. In addition, issuers and the FTC would be permitted to provide certain other information to consumers, so long as that permitted information is disclosed after the required information. The Board proposed to follow the same approach in disclosing the generic repayment estimates through its toll-free telephone number.

1. Required disclosures. Under the June 2007 Proposal, credit card issuers and the FTC would have been required to provide the following information when responding to a request for generic repayment estimates through a toll-free telephone number: (1) the generic repayment estimate; (2) the beginning balance on which the generic repayment estimate is calculated; (3) the APR on which the generic repayment estimate is calculated; (4) the assumptions that only minimum payments are made and no other amounts are added to the balance; and (5) the fact that the repayment period is an estimate, and the actual time it make take to pay off the balance if only making minimum payment will differ based on the consumer's account terms and future account activity.

The final rule adopts this approach, as proposed, with two revisions. The final rule amends Appendix M1 to provide that at the issuer's or FTC's option, the issuer or the FTC may also disclose as part of the required disclosures a description of the minimum payment formula(s) or the minimum payment amounts used to calculate the generic repayment estimate, including a disclosure of the dollar amount of the minimum payment calculated for the first month. In addition, at an issuer's or FTC's option, the issuer or FTC also may disclose as part of the required disclosures the total amount of interest that a consumer would pay if the consumer makes minimum payments for the length of time disclosed in the generic repayment estimate.

Under the June 2007 Proposal, Appendix M1 to part 226 would have provided that if the generic repayment estimate calculated above is less than 2 years, credit card issuers and the FTC must disclose the estimate in months. Otherwise, the estimate must be disclosed in years. The estimate would have been rounded down to the nearest whole year if the estimate contains a fractional year less than 0.5, and rounded up to the nearest whole year if the estimate contains a fractional year equal to or greater than 0.5. In response to the June 2007 Proposal, one commenter suggested that the Board always require that the generic repayment estimate be disclosed in years, even for repayment periods that are less than 2 years. This commenter indicated that the different rules for disclosing the generic repayment estimate depending on whether the estimate is less than 2 years or not would add unnecessarily to regulatory burden and cause confusion. The final rule retains the rule to disclose the generic repayment estimate in months if the estimate is less than 2 years, and in years if the estimate is 2 years or more. The Board believes that this approach provides more useful information to consumers, and does not impose significant regulatory burden on issuers.

In the June 2007 Proposal, the Board proposed a model clause in Appendix M1 that credit card issuers and the FTC would be allowed to use to comply with the above disclosure requirements. The final rule adopts this model clause, with several stylistic changes. This model clause includes a brief statement identifying the repayment period as an estimate rather than including a list of assumptions used to calculate the estimate, because the Board believes the brief statement is more helpful to consumers. The many assumptions that are necessary to calculate a repayment period are complex and unlikely to be meaningful or useful to most consumers. Nonetheless, the final rule allows issuers and the FTC to disclose through the toll-free telephone number the assumptions used to calculate the generic repayment estimates, so long as this information is disclosed after the required information described above. The Board will follow the same approach in disclosing the generic repayment estimates through its toll-free telephone number.

2. <u>Zero or negative amortization</u>. Zero or negative 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 zero or negative amortization. But some creditors may use a minimum payment formula that allows zero or negative amortization (such as by requiring a payment of 2 percent of the outstanding balance, regardless of the finance charges or fees incurred). If zero or negative amortization occurs when calculating the repayment estimate, the Board proposed in June 2007 to require issuers and the FTC to disclose to the consumer that based on the assumptions used to calculate the repayment estimate, the consumer will not pay off the balance by making only the minimum payment. The final rule adopts this approach as proposed with several technical modifications. The Board will follow the same approach in disclosing through its toll-free telephone number that zero or negative amortization is occurring.

If issuers use a minimum payment formula that allows for zero or negative amortization, the Board believes that consumers should be told that zero or negative amortization is occurring. The Board recognizes that in some cases because of the assumptions used to calculate the generic repayment estimate, the estimate may indicate that zero or negative amortization is occurring, when in fact, if the estimate was based on the consumer's actual account terms, zero or negative amortization would not occur. The Board strongly encourages issuers to use the actual repayment disclosure provided in Appendix M2 to part 226 in these instances to avoid giving inaccurate information to consumers.

In the June 2007 Proposal, Appendix M1 to part 226would have contained model language that issuers and the FTC may use to disclose to consumers that zero or negative amortization is occurring. In response to the June 2007 Proposal, several consumer group commenters suggested that the Board require issuers to use the model language to describe that zero or negative amortization is occurring. The final rule retains this language (with stylistic changes) as a model clause that issuers may use. Because the model language provides a safe harbor from liability, the Board expects that most issuers will use this model language to describe that zero or negative amortization is occurring.

3. Permitted disclosures. The June 2007 Proposal provided that credit card issuers and the FTC would be allowed to provide the following information when responding to a request for the generic repayment estimate through a toll-free telephone number, so long as this permitted information is given after the required disclosures: (1) a description of the assumptions used to calculate the generic repayment estimate; (2) an estimate of the length of time it would take to repay the outstanding balance if an

additional amount was paid each month in addition to the minimum payment amount, allowing the consumer to select the additional amount; (3) an estimate of the length of time it would take to repay the outstanding balance if the consumer made a fixed payment amount each month, allowing the consumer to select the amount of the fixed payment; (4) the monthly payment amount that would be required to pay off the outstanding balance within a specific number of months or years, allowing the consumer to select the payoff period; (5) a reference to Web sites that contain minimum payment calculators; and (6) the total amount of interest that a consumer may pay if he or she makes minimum payments for the length of time disclosed in the generic repayment estimate. As proposed, the Board would have followed the same approach in disclosing permitted information through its toll-free telephone number.

The final rule retains these permissible disclosures, with two revisions. As discussed above, the final rule permits issuers to provide as part of the required disclosures the total amount of interest that a consumer may pay if he or she makes minimum payments for the length of time disclosed in the generic repayment estimate. In addition, the final rule adds to the list of permissible disclosures that issuers may disclose the total amount of interest that a consumer would pay under optional repayment periods permitted to be disclosed – such as how much interest the consumer would pay if he or she paid a fixed payment amount each month.

In response to the June 2007 Proposal, one commenter suggested that the Board issue model forms explaining the assumptions used in calculating the generic repayment estimate. The final rule does not include model forms explaining the assumptions used in calculating the generic repayment estimates. The assumptions are not required disclosures, so the Board does not believe that model forms are needed.

<u>Appendix M2 – Actual Repayment Disclosures</u>

As indicated above, Section 1301(a) of the Bankruptcy Act allows creditors to forego using the toll-free telephone number to provide a generic repayment estimate if the creditor instead provides through the toll-free telephone number the "actual number of months" to repay the consumer's account. In the June 2007 Proposal, the Board proposed to provide in Appendix M2 to part 226 guidance to credit card issuers on how to calculate the actual repayment disclosure to encourage issuers to provide these estimates.

<u>Calculating the actual repayment disclosures</u>. In the June 2007 Proposal, the Board proposed that credit card issuers calculate the actual repayment disclosure 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 actual repayment disclosure, the Board proposed to allow issuers to make certain assumption about these terms. The final rule retains this approach, as proposed.

1. <u>Minimum payment formulas</u>. When calculating actual repayment disclosures, the Board proposed that credit card issuers generally must use the minimum payment formula(s) that apply to a cardholder's account. In response to the June 2007 Proposal, several industry commenters requested clarification on calculating and providing the actual repayment disclosure where there are multiple features on the account and a different minimum payment formula applies to each feature. The final rule amends

Appendix M2 to provide that in calculating the actual repayment disclosure, 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 actual repayment disclosure, an issuer may either disclose the longest repayment period calculated, or the repayment period calculated for each minimum payment formula. 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 Appendix M2 for the general revolving feature is 5 years, while the repayment period calculated for the special purchase feature is 3 years. This issuer may either disclose 5 years as the repayment period for the entire balance to the consumer, or disclose 5 years as the repayment period for the balance in the general revolving feature and 3 years as the repayment period for the balance in the special purchase feature.

In addition, in the June 2007 Proposal, the Board proposed to allow issuers to disregard promotional terms that may be applicable to a consumer's account when calculating the actual repayment disclosure. The term "promotional terms" was defined in the proposal as "terms of a cardholder's account that will expire in a fixed period of time, as set forth by the card issuer." The Board noted that allowing issuers to disregard promotional terms on accounts where the promotional 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.

In response to the June 2007 Proposal, one industry commenter requested that the Board expand this definition of "promotional terms" to include any offer that involves a special payment arrangement or an APR that is below the contractual payment or APR. They noted that the proposed definition of "promotional terms" would not cover "life of balance" promotions, where an APR is offered on a balance (e.g., balance transfers at account opening) that is lower than the rate that would otherwise apply to those types of balances and that lower APR will apply to that balance until the balance is paid in full. The final rule retains the definition of "promotional terms" as proposed. The Board believes that issuers should not be allowed to disregard "life of balance" promotions, because that rate will not expire after a limited amount of time, but will apply until the balance is paid in full.

2. Annual percentage rates. Generally, when calculating actual repayment disclosures, the June 2007 Proposal would have required 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. For the reasons discussed above, the Board proposed to allow issuers to disregard promotional APRs that may apply to a consumer's account. Specifically, if any promotional terms related to APRs apply to a cardholder's account, such as introductory rates or deferred interest plans, credit card issuers would have been allowed to assume the promotional terms do not apply, and to use the APRs that would apply without regard to the promotional terms. The final rule adopts this approach, as proposed.

3. Outstanding balance. When calculating the actual repayment disclosures, the Board proposed 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 have been required to take into account any transactions consumers may have made since the last billing cycle. The final rule adopts this approach. This rule makes it easier for issuers to place the estimate on the periodic statement, because the outstanding balance used to calculate the actual repayment disclosure would be the same as the outstanding balance shown on the periodic statement. The final rule revises Appendix M2 to part 226 to allow issuers to round the outstanding balance to the nearest whole dollar to calculate the actual repayment disclosure.

4. Other terms. As discussed above, the Board proposed in the June 2007 Proposal that issuers calculate the actual repayment disclosures 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 actual repayment disclosures, the Board proposed to allow issuers to make certain assumptions about these terms. For example, the Board would have allowed issuers to make the same assumptions about balance computation method, grace period, and residual interest as are allowed for the generic repayment estimates. In addition, the Board proposed to allow issuers to assume that payments are allocated to lower APR balances before higher APR balances when multiple APRs apply to an account.

The final rule retains this approach, as proposed, with several revisions. As described above with respect to generic repayment estimates, the final rule adds several assumptions related to minimum payments being made each month, APRs not changing on the account, the length of each month, and the account not being past due or account balances not exceeding the credit limit. The Board would still allow issuers to assume that payments are allocated to lower APR balances before higher APR balances when multiple APRs apply to an account. Under final rules issued by the Board and other federal banking agencies published elsewhere in today's **Federal Register**, most issuers are permitted to allocated minimum payment amounts as they choose; however, most 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 making the repayment estimate.

Consistent with the guidance in Appendix M1 to part 226 for generic repayment estimates, the final rule also would amend Appendix M2 to part 226 to provide that an actual repayment disclosure shall be considered accurate if it is not more than 2 months above or below the actual repayment disclosure determined in accordance with the guidance in Appendix M2 to part 226, prior to rounding.

<u>Disclosing the actual repayment disclosures to consumers through the toll-free telephone number or on the periodic statement</u>. In the June 2007 Proposal, the Board proposed in Appendix M2 to part 226 to provide guidance regarding how the actual repayment disclosure must be disclosed to consumers if a toll-free telephone number is used or if the actual repayment disclosure is placed on the periodic statement. The Board proposed similar rules with respect to disclosing the actual repayment disclosures as were proposed with respect to the generic repayment estimate. Specifically, the Board proposed to require credit card issuers to disclose certain information when providing the actual repayment disclosure, and permits the issuers to disclose other related information, so long as that permitted information is disclosed after the required information. <u>See</u>

proposed Appendix M2 to part 226. No comments were received on this aspect of the proposal. The final rule adopts this approach, as proposed.

Appendix M3 – Sample Calculations of Generic Repayment Estimates and Actual Repayment Disclosures In the June 2007 Proposal, the Board proposed Appendix M3 to part 226 to provide sample calculations for the generic repayment estimate and the actual repayment disclosures discussed in Appendices M1 and M2 to part 226. The final rule adopts these sample calculations with several technical modifications.

Conforming Citations and Descriptions

The final rule includes a number of technical changes to various commentary provisions that were not the subject of the Board's review of open-end (not home-secured) plans. These changes conform citations and other descriptions to revisions being adopted today, without intended substantive changes, as identified below.

Subpart B. Comments 5b(a)(1)-1; 5b(f)(3)(vi)-4.

Subpart D. Comment 26(a)-1; Comment 27-1; Comment 28(a)-6; Comment 30-8.

In § 226.30, footnote 50 and accompanying comment 30-13, providing for a transitional compliance rule that has now expired, are deleted as obsolete rather than retained with a conformed citation.

VII. Mandatory Compliance Date

Under TILA Section 105(d), regulatory amendments that require disclosures that differ from the previous requirements are to have an effective date of that October 1 which follows by at least six months the date of promulgation. 15 U.S.C. 1604(d). However, the Board may, at its discretion, lengthen the implementation period for creditors to adjust their forms to accommodate new requirements, or shorten the period where the Board finds that such action is necessary to prevent unfair or deceptive disclosure practices.

In the June 2007 Proposal, the Board requested comment on an appropriate implementation period that would provide creditors sufficient time to implement any revisions that may be adopted. In response to the June 2007 and May 2008 Proposals, industry commenters representing creditors, card issuers, and service providers, suggested implementation periods ranging from at least 12 months to at least 24 months. These commenters stated that the size and complexity of the Board's June 2007 and May 2008 Regulation Z Proposals if adopted, present a significant implementation task. They noted that creditors and service providers affected by the final rule must analyze all aspects of the rule, develop compliance programs, and revise written policies and procedures. They also identified the need to make systems changes to design new forms and to develop, test and implement new software programs, which may require coordination among third-party data processors and creditors' compliance or technical staff. One commenter reported that a vendor reported it would need almost a year to implement changes after the client delivered the business requirements to the vendor. Industry commenters also noted that employees' tasks to implement the new rules would be in addition to employees' ongoing duties to provide day-to-day service to customers. Thus, in industry commenters' views, a significant period of time is necessary to implement the required changes in an orderly manner.

A few commenters suggested staggered mandatory compliance dates. For example, one commenter suggested an 18-month implementation period for application and solicitation disclosures, account-opening disclosures and agreements, and billing error notices; with a 24-month period for periodic statement disclosures, including change-in-terms notices that are provided with statements. Most others requested a single implementation date.

Many industry commenters stated that they contemplated implementing the final rule in stages, and asked the Board to provide a safe harbor for compliance with the regulation's requirement to use consistent terminology if some disclosures are modified earlier than others. For example, a creditor may revise some disclosures to use the term "interest charges" as required by the final rule while other disclosures that comply with existing rules continue to use the term "finance charges" because they have not yet been revised.

Commenters representing credit unions, while opposing the Board's June 2007 Proposal to amend the definition of open-end credit, requested that the Board delay the mandatory compliance date for rules affecting the definition of open-end credit until the Board completes its review of rules affecting closed-end disclosures, so systems would be revised only once.

The Board adopts a mandatory compliance date of July 1, 2010. The mandatory compliance date for this final rule is consistent with the mandatory compliance date for the final rules addressing credit card practices adopted by the Board and other federal banking agencies published elsewhere in today's **Federal Register**. This date affords creditors and others affected by this final rule approximately 18 months to implement the required changes. In adopting this mandatory compliance date, the Board is cognizant that due to the breadth of changes required a significant period of time is needed to implement both this final rule and the other final rules adopted by the Board and other federal banking agencies. In addition, the Board believes that a single implementation date provides greater flexibility to creditors and others affected by the final rules to determine the most efficient way to implement the required changes, rather than adopting staggered compliance dates that determine the stages in which the changes must be instituted.

Prospective application of new rules. The final rule is prospective in application. The following paragraphs set forth additional guidance and examples as to how a creditor must comply with the final rule on the effective date.

Tabular summaries that accompany applications or solicitations. Credit and charge card applications provided or made available to consumers on or after July 1, 2010 must comply with the final rule, including format and terminology requirements. For example, if a direct-mail application or solicitation is mailed to a consumer on June 30, 2010, it is not required to comply with the new requirements, even if the consumer does not receive it until July 7, 2010. If a direct-mail application or solicitation is mailed to consumers on or after July 1, 2010, however, it must comply with the final rule. If a card issuer makes an application or solicitation available to the general public, such as “take-one” applications, any new applications or solicitations issued by the creditor on or after July 1, 2010 must comply with the new rule. However, if a card issuer issues an application or solicitation by making it available to the public prior to July 1, 2010, for example by restocking an in-store display of “take-one” applications on June 15, 2010, those applications need not comply with the new rule, even if a consumer may pick up one of the applications from the display after July 1, 2010. Any “take-one” applications that the card issuer uses to restock the display on or after July 1, 2010, however, must comply with the final rule.

Account-opening disclosures. Account-opening disclosures furnished on or after July 1, 2010 must comply with the final rule, including format and terminology requirements. The relevant date for purposes of this requirement is the date on which the disclosures are furnished, not when the consumer applies for the account. For example, if a consumer applies for an account on June 30, 2010, but the account-opening disclosures are not mailed until July 2, 2010, those disclosures must comply with the final rule. In addition, if the disclosures are furnished by mail, the relevant date is the day on which the disclosures were sent, not the date on which the consumer receives the disclosures. Thus, if a creditor mails the account-opening disclosures on June 30, 2010, even if the consumer receives those disclosures on July 7, 2010, the disclosures are not required to comply with the final rule.

Periodic statements. Periodic statements mailed or delivered on or after July 1, 2010 must comply with the final rule. For example, if a creditor mails a periodic statement to the consumer on June 30, 2010, that statement is not required to comply with the final rule, even if the consumer does not receive the statement until July 7, 2010.

For periodic statements mailed on or after July 1, 2010, fees and interest charges must be disclosed for the statement period and year-to-date. For the year-to-date figure, creditors comply with the final rule by aggregating fees and interest charges beginning with the first periodic statement mailed on or after July 1, 2010. The first statement mailed on or after July 1, 2010 need not disclose aggregated fees and interest charges from prior cycles in the year. At the creditor's option, however, the year-to-date figure may reflect amounts computed in accordance with comment 7(b)(6)-3 for prior cycles in the year.

The Board recognizes that a creditor may wish to comply with certain provisions of the final rule for periodic statements that are mailed prior to July 1, 2010. A creditor may phase in disclosures required on the periodic statement under the final rule that are not currently required prior to July 1, 2010. A creditor also may generally omit from the periodic statement any disclosures that are not required under the final rule prior to July 1, 2010. However, a creditor must continue to disclose an effective APR unless and until that creditor provides disclosures of fees and interest that comply with § 226.7(b)(6) of the final rule. Similarly, as provided in § 226.7(a), in connection with a HELOC, a creditor must continue to disclose an effective APR unless and until that creditor provides fee and interest disclosures under § 226.7(b)(6).

<u>Checks that access a credit card account</u>. A creditor must comply with the disclosure requirements of § 226.9(b)(3) of the final rule for checks that access a credit account that are provided on or after July 1, 2010. Thus, for example, if a creditor mails access checks to a consumer on June 30, 2010, these checks are not required to comply with new § 226.9(b)(3), even if the consumer receives them on July 7, 2010.

<u>Change-in-terms notices and notices of application of a penalty rate</u>. A creditor must provide change-in-terms notices or penalty rate notices in accordance with the requirements of § 226.9(c) or (g) of the final rule, as applicable, for any changes in terms or increases in rates that will first take effect on or after July 1, 2010. For example, if a card issuer increases the interest rate applicable to purchases (other than due to the consumer's default or delinquency or as a penalty) effective as of June 30, 2010, the card

issuer may comply with current § 226.9(c)(1) and mail or deliver a change-in-terms notice to the consumer 15 days in advance, on or before June 15, 2010. If, however, a card issuer increases the interest rate applicable to purchases (other than due to the consumer's default or delinquency or as a penalty) effective as of July 1, 2010, the creditor must comply with § 226.9(c)(2) of the final rule and mail or deliver notice of the change at least 45 days in advance, on or before May 17, 2010. Similarly, if a creditor increases the interest rate applicable to a consumer's account to a penalty APR and the change is effective prior to June 30, 2010, the creditor is not required to comply with § 226.9(g) of the final rule. If, however, a creditor increases the interest rate applicable to a consumer's account to a penalty APR, with the new rate becoming effective on July 1, 2010, the creditor must comply with § 226.9(g) of the final rule and provide 45 days' advance notice of the change, on or before May 17, 2010. A creditor must comply with § 226.9(g) of the final rule for any increase to a penalty APR taking effect on or after July 1, 2010, even if the event triggering that change occurs prior to July 1, 2010.

In addition, a card issuer increasing an interest rate on or after July 1, 2010 may do so only to the extent permitted by final rules issued by the Board and other federal banking agencies addressing credit card practices published elsewhere in today's **Federal Register**.

<u>Advertising rules</u>. Advertisements occurring on or after July 1, 2010, such as an advertisement broadcast on the radio or published in a newspaper on July 1, 2010 or later, must comply with the new final rule, including rules regarding the use of the word "fixed." Similarly, an advertisement mailed on or after July 1, 2010 must comply with

the final rule. Thus, an advertisement mailed on June 30, 2010 is not required to comply with the final rule even if that advertisement is received by the consumer on July 7, 2010.

Additional rules. The final rule contains additional new rules, such as revisions to certain definitions, that differ from current interpretations and are prospective. For example, creditors may rely on current interpretations on the definition of "finance charge" in § 226.4 regarding the treatment of fees for cash advances obtained from automatic teller machines (ATMs) until July 1, 2010. On or after that date, however, such fees must be treated as a finance charge. For example, for account-opening disclosures provided on or after July 1, 2010, a creditor will need to disclose fees to obtain cash advances at ATMs in accordance with the requirements § 226.6 of the final rule for disclosing finance charges. In addition, a HELOC creditor that chooses to continue to disclose an effective APR on the periodic statement will need to treat fees for obtaining cash advances at ATMs as finance charges for purposes of computing the effective APR on or after July 1, 2010. Similarly, foreign transaction fees must be treated as a finance charge on or after July 1, 2010.

Definition of open-end credit. As discussed in the section-by-section analysis to § 226.2(a)(20), all creditors must provide closed-end or open-end disclosures, as appropriate in light of revised § 226.2(a)(20) and the associated commentary, as of the mandatory compliance date of this final rule.

Implementation in stages. As noted above, commenters indicated creditors will likely implement the final rule in stages. As a result, some disclosures may contain existing terminology required currently under Regulation Z while other disclosures may contain new terminology required in this final rule. For example, the final rule requires creditors to use the term “penalty rate” when referring to a rate that can be increased due to a consumer’s delinquency or default or as a penalty. In addition, creditors are required under the final rule to use a phrase other than the term “grace period” in describing whether a grace period is offered for purchases or other transactions. The final rule also requires in some circumstances that a creditor use a term other than “finance charge,” such as “interest charge.” As discussed in the section-by-section analysis to § 226.5(a)(2), during the implementation period, terminology need not be consistent across all disclosures. For example, if a creditor uses terminology required by the final rule in the disclosures given with applications or solicitations, that creditor may continue to use existing terminology in the disclosures it provides at account-opening or on periodic statements until July 1, 2010. Similarly, a creditor may use one of the new terms or phrases required by the final rule in a certain disclosure but is not required to use other terminology required by the final rule in that disclosure prior to the mandatory compliance date. For example, the creditor may use new terminology to describe the grace period, consistent with the final rule, in the disclosures it provides at account-opening, but may continue to use other terminology currently permitted under the rules to describe a penalty rate in the same account-opening disclosure. By the mandatory compliance date of this rule, however, all disclosures must have consistent terminology.

VIII. Final Regulatory Flexibility Act Analysis

In accordance with Section 3(a) of the Regulatory Flexibility Act (5 U.S.C. §§ 601-612) (RFA), the Board is publishing a final regulatory flexibility analysis for the proposed amendments to Regulation Z. The RFA requires an agency either to provide a final regulatory flexibility analysis with a final rule or certify that the final rule will not have a significant economic impact on a substantial number of small entities. An entity is considered "small" if it has $175 million or less in assets for banks and other depository institutions.[27]

The Board stated in the June 2007 and May 2008 Proposals its belief that the proposals would have a significant economic impact on a substantial number of small entities. Based on comments received, the Board's own analysis, and for the reasons stated below, the Board believes that the final rule will have a significant economic impact on a substantial number of small entities.

1. Statement of need for, and objectives of, the final rule. The purpose of the Truth in Lending Act is to promote the informed use of consumer credit by providing for disclosures about its terms and cost. In this regard, the goal of this final rule is to improve the effectiveness of the disclosures that creditors provide to consumers at application and throughout the life of an open-end account through amendments to Regulation Z. Accordingly, the final rule changes format, timing, and content requirements for the five main types of disclosures governed by Regulation Z: (1) credit and charge card application and solicitation disclosures; (2) account-opening disclosures; (3) periodic statement disclosures; (4) subsequent notices such as change-in-terms notices; and (5) advertising provisions.

The following sections of the **Supplementary Information** above describe in detail the reasons, objectives, and legal basis for each component of the final rule:

---

[27] U.S. Small Business Administration, Table of Small Business Size Standards Matched to North American Industry Classification System Codes, available at http://www.sba.gov/idc/groups/public/documents/sba_homepage/serv_sstd_tablepdf.pdf.

- A high-level summary of the major changes adopted in this final rule is in **II. Summary of Major Changes**, and a more detailed discussion is in V**. Discussion of Major Revisions** and **VI. Section-by-Section Analysis**.

- The Board's major sources of rulemaking authority pursuant to TILA are summarized in **IV. The Board's Rulemaking Authority**. More detailed information regarding the source of rulemaking authority for each change, as well as the rulemaking authority for certain changes mandated by the Bankruptcy Act, are discussed in **VI. Section-by-Section Analysis**.

2. Summary of issues raised by comments in response to the initial regulatory flexibility analysis. In accordance with section 3(a) of the RFA, 5 U.S.C § 603(a), the Board published in each of the June 2007 and May 2008 Proposals an initial regulatory flexibility analysis (IRFA) in connection with the proposals, and acknowledged that the projected reporting, recordkeeping, and other compliance requirements of the proposed rule would have a significant economic impact on a substantial number of small entities. In addition, the Board recognized that the precise compliance costs would be difficult to ascertain because they would depend on a number of unknown factors, including, among other things, the specifications of the current systems used by small entities to prepare and provide disclosures and/or advertisements and to administer and maintain accounts, the complexity of the terms of credit products that they offer, and the range of such product offerings. The Board sought information and comment on any costs, compliance requirements, or changes in operating procedures arising from the application of the proposed rules to small entities. The Board recognizes that businesses often pass

compliance costs on to consumers and that a less costly rule could benefit both small business and consumers.

The Board reviewed comments submitted by various entities in order to ascertain the economic impact of the proposals on small entities. Many industry commenters expressed general concern about the compliance burden of the proposed amendments on all creditors offering open-end (not home-secured) plans, including small entities. They expressed concerns that the proposals, if adopted, would be costly to implement, would not provide sufficient flexibility, and could result in creditors offering fewer products, or less credit or higher-priced credit to consumers. Many of the issues raised by commenters do not apply uniquely to small entities and are addressed in **VI. Section-by-Section Analysis** regarding specific provisions. Comments that expressed specific concerns about the effect of the proposals on small entities are discussed below.

Commenters representing credit unions and credit union trade associations specifically addressed the Board's request for comment on the number of small entities that might be affected. As discussed in **VI. Section-by-Section Analysis**, many credit union commenters focused their commenters on proposed changes to the definition of open-end credit in § 226.2(a)(20). One commenter contended that the proposal would negatively and adversely affect the viability of small credit unions. This commenter cited data for year-end 2001 to 2006 from the National Credit Union Administration that the number of federally-insured credit unions decreased from 9,688 to 8,326, and stated that anecdotal evidence suggests that regulatory burden and compliance costs contribute significantly to the decision to merge or cease operations. This commenter urged the Board to withdraw all aspects of the June 2007 Proposal not mandated by the Bankruptcy

Act. Another commenter that provides insurance and related financial services to credit unions reported that based on internal records, over 1900 credit unions with assets under $50 million and that offer multifeatured plans would incur an average cost of $100,000 per credit union to switch to closed-end disclosures if clarifications in the June 2007 Proposal related to the definition of open-end credit were adopted as proposed. The commenter noted that those conversion costs were in addition to costs associated with conforming the credit unions open-end disclosures to the final rule.

One industry trade group also specifically addressed the costs to small entities of requiring the changes in the periodic statement disclosures for open-end (not home-secured) credit that is not a credit card, such as an overdraft line of credit. According to the trade group, the costs and complications of amending the periodic statements for non-credit card open-end products would discourage small and midsize banks from offering these products. Another bank commenter noted that the costs associated with the periodic statement changes would be substantial and therefore more difficult for smaller institutions to absorb.

3. Description of small entities affected by the final rule. The final rule affects all creditors that offer open-end (not home-secured) credit plans. In addition, the final rule affects persons advertising open-end (not home-secured) credit, whether or not they are creditors. The Board acknowledged in its IRFA the total number of small entities likely to be affected by the proposal is unknown, because the open-end credit provisions of TILA and Regulation Z have broad applicability to individuals and businesses that extend even small amounts of consumer credit. See § 226.1(c)(1).[28] Based on June 30,

[28] Regulation Z generally 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

2008 call report data, there are approximately 709 banks, 3,397 insured credit unions, and 27 thrift institutions with credit card assets (or securitizations), and total assets of $175 million or less. The number of small non-depository institutions that are subject to Regulation Z's open-end credit provisions cannot be determined from information in call reports, but recent congressional testimony by an industry trade group indicated that 200 retailers, 40 oil companies, and 40 third-party private label credit card issuers of various sizes also issue credit cards.[29] There is no comprehensive listing of small consumer finance companies that may be affected by the proposed rules or of small merchants that offer their own credit plans for the purchase of goods or services. Furthermore, it is unknown how many of these small entities offer open-end credit plans as opposed to closed-end credit products, which would not be affected by the final rule.

4. Reporting, recordkeeping and compliance requirements. The compliance requirements of this final rule are described above in **VI. Section-by-Section Analysis**.

The effect of the revisions to Regulation Z on small entities is unknown. Small entities are required to, among other things, conform their open-end credit disclosures, including those in credit card applications or solicitations, account opening materials, periodic statements, change-in-terms notices, and advertisements to the revised rules. The Board has sought to reduce the burden on small entities, where possible, by adopting model forms that can be used to ease compliance with the final rules. Small entities also are required to update their systems to comply with new rules regarding reasonable cut-

---

is done regularly; (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." § 226.1(c)(1).

[29] Testimony of Edward L. Yingling for the American Bankers' Association before the Subcommittee on Financial Institutions and Consumer Credit, Financial Services Committee, United States House of Representatives, April 26, 2007, fn. 1, p 3.

off times for payments and weekend or holiday payment due dates.

In the May 2008 Proposal, the Board noted that the precise costs to small entities of updating their systems 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 requested information and comment on the effects of the proposed rules on small entities and received few comments regarding the cost impact on small entities specifically. These comments are discussed above in the "Summary of issues raised by comments in response to the initial regulatory flexibility analysis" section.

5. Steps taken to minimize the economic impact on small entities. As previously noted, the June 2007 and May 2008 Proposals implement the Board's mandate to prescribe regulations that carry out the purposes of TILA. In addition, portions of the June 2007 Proposal implement certain provisions of the Bankruptcy Act that require new disclosures on periodic statements, on credit card applications and solicitations, and in advertisements. The Board seeks in this final rule to balance the benefits to consumers arising out of more effective TILA disclosures against the additional burdens on creditors and other entities subject to TILA. To that end, and as discussed above in **VI. Section-by-Section Analysis**, consumer testing was conducted for the Board in order to assess the effectiveness of the proposed revisions to Regulation Z. In this manner, the Board has sought to avoid imposing additional regulatory requirements without evidence that these proposed revisions may be beneficial to consumer understanding of open-end credit

products.

The steps the Board has taken to minimize the economic impact and compliance burden on small entities, including the factual, policy, and legal reasons for selecting the alternatives adopted and why each one of the other significant alternatives was not accepted, are described above in **VI. Section-by-Section Analysis**. The final rule's modifications from the proposed rule that minimize economic impact on small entities are summarized below.

In response to the results of consumer testing, the Board's final rule provides a number of modifications designed to increase flexibility and thus reduce costs to creditors. Under the final rule, for the summary tables accompanying applications or solicitations and the summary tables provided at account opening, creditors will be permitted to combine rows for different transaction types when the APR for each transaction type is the same. In addition, the final rule removes the requirement that creditors provide certain cross references in the summary tables. Both these changes allow for shorter disclosures, which in turn, could reduce the amount of paper creditors must use and the mailing costs of the disclosures.

The final rule also provides flexibility in the periodic statement disclosure by removing the requirement that the grouping of certain payment information on periodic statements be substantially similar to the model forms provided by the Board. This change provides flexibility to creditors to determine how to fit certain new periodic statement disclosure requirements under the final rule within the format of creditors' current forms instead of requiring creditors to potentially redesign their forms to be substantially similar to the Board's model forms. In addition, under the final rule, creditors are no longer required to provide the effective APR on the periodic statement.

The Board has also amended the rule on setting reasonable cut-off hours for mailed payments to be received on the due date and be considered timely. The May 2008 Proposal stated that it would not be reasonable for a creditor to set a cut-off time for payments by mail that is earlier than 5 p.m. In response to industry commenters, including a comment from a small credit union with limited hours of operation, the Board has relaxed this standard and amended the final rule to describe a 5 p.m. cut-off time for mailed payment as an example of a reasonable requirement for payments while not stating that earlier cut-off times would be unreasonable in all circumstances.

Furthermore, as proposed in June 2007 and consistent with the Bankruptcy Act, small depository institutions with assets of $250 million or less are not required to maintain their own toll-free telephone number to provide the minimum repayment estimates required under § 226.7(b)(12) for a period of two years after the effective date of the rule. The Board must establish and maintain a toll-free telephone number for use by customers of these institutions.

Also, the Board is providing an implementation period that responds to commenters' concerns about the time needed to comply with the final rule. The Board believes the effective date will decrease costs for small entities by providing them with sufficient time to come into compliance with the final rule's requirements. The implementation date is discussed above in **VII. Mandatory Compliance Date**.

The Board believes that these changes minimize the significant economic impact on small entities while still meeting the stated objectives of TILA.

6. Other federal rules. With the following exception, the Board believes no

Federal rules duplicate, overlap, or conflict with this final rule. In the June 2007 Proposal, the Board noted in the section-by-section analysis to § 226.13(i) a potential conflict between Regulation Z and Regulation E with respect to error resolution procedures when a transaction involves both an extension of credit and an electronic fund transfer. This can occur when a financial institution extends credit incident to electronic fund transfers subject to Regulation E, for example, when the credit card account is used to advance funds to prevent a consumer's deposit account from becoming overdrawn or to maintain a specified minimum balance in the consumer's account. Current § 226.13(i), which has not been amended in the final rule, resolves this conflict by stating that under these circumstances, the creditor should comply with the error resolution procedures of Regulation E, rather than those in Regulation Z (except that the creditor must still comply with §§ 226.13(d) and (g)).

In the May 2008 Regulation Z Proposal, the Board also requested comment regarding any duplication, overlap, or conflict between the proposed revisions to Regulation Z in this May 2008 Proposal and the proposal to address certain credit card practices issued by the Board, as well as other federal banking agencies, in May 2008. 73 FR 28904, May 19, 2008. Several commenters raised potential conflicts between the two proposals. As discussed above in **VI. Section-by-Section Analysis** and in the supplementary information to the final rule adopted by the Board and other federal banking agencies published elsewhere in today's **Federal Register**, the Board has addressed these comments and believes the final rule avoids any conflict, duplication, or overlap with the final rule adopted by the Board and other federal banking agencies published elsewhere in today's **Federal Register**.

IX. 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 final 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 final 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.

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 and small businesses. Since the Federal Reserve does not collect any information, no issue of confidentiality normally arises. However, in the event the Board were to retain records during the course of an examination, the information may be protected from disclosure under the exemptions set forth in (b)(4), (6), and (8) of the Freedom of Information Act (5 U.S.C. 522(b)).

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 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, state member banks and other creditors supervised by the Federal Reserve 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 mentioned in **III. The Board's Review of Open-end Credit Rules** above, two notices of proposed rulemaking were published in the Federal Register: the June 2007 Proposal, 72 FR 32948 (June 14, 2007) and the May 2008 Proposal, 73 FR 28866 (May 19, 2008). The comment period for these notices expired October 12, 2007 and

July 18, 2008, respectively. No comments specifically addressing the burden estimates in those two proposals were received. However, since publication of the May 2008 Proposal, the one-time increase and continuing total annual burden hours have been revised. The revisions include: 1) incorporating provisions of Regulation Z requirements affecting mortgage lending, published in the Federal Register on July 30, 2008 (73 FR 44522) and (2) updating the total number of Federal Reserve-regulated institutions that are deemed to be respondents for the purposes of the PRA from 1,172 to 1,138.

Based on these adjustments to the estimates published in the May 2008 Proposal, the final rule will impose a one-time increase in the total annual burden by 74,640 hours. The final rule, on a continuing basis, will impose an increase in the total annual burden by 35,120 hours due to the adjustments discussed above, as well as 1) revisions to the rules governing change-in-terms notices in this final rule, which would increase the frequency with which such notices are required and 2) inclusion of the disclosure requirement to cosigners under12 CFR § 227.14(b) (Regulation AA). The title of the Regulation Z information collection will be updated to account for these sections of Regulation AA. In total the final rule will increase the annual burden by 109,760 hours from 578,847 to 688,607 hours. This burden increase will be imposed on all Federal Reserve-regulated institutions that are deemed to be respondents for purposes of the PRA.

The other federal financial agencies are responsible for estimating and reporting to OMB the total paperwork burden for the institutions for which they have administrative enforcement authority. They may, but are not required to, use the Federal Reserve's burden estimation methodology. Using the Federal Reserve's method, the total current estimated annual burden for all financial institutions subject to Regulation Z, including Federal Reserve-supervised institutions, would be approximately 11,671,017 hours. In total the final rule will impose an increase to the estimated annual burden for all institutions subject to Regulation Z of 1,926,373 hours to 13,597,390 hours. On a continuing basis, the proposed revisions to the change-in-terms notices would increase the estimated annual frequency, thus increasing the total annual burden from 12,324,037 to 13,230,534 hours. The estimates above represent an average across all respondents and reflect variations between institutions based on their size, complexity, and practices. All covered institutions, including card issuers, retailers, and depository institutions (of which there are approximately 17,200) potentially are affected by this collection of information, and thus are respondents for purposes of the PRA.

The Board has a continuing interest in the public's opinion of our collections of information. At any time, comments regarding the burden estimate, or any other aspect of this collection of information, including suggestions for reducing the burden, may be sent to: Secretary, Board of Governors of the Federal Reserve System, 20th and C Streets, NW., Washington, DC 20551; and to the Office of Management and Budget, Paperwork Reduction Project (7100-0199), Washington, DC 20503.

X. Redesignation Table

The Board has adopted organizational revisions that are designed to make the regulation easier to use. The following table indicates the redesignations.

Current	**Redesignation**
Comment I-4	Comment I-3
Comment I-5	Comment I-4
Footnote 3	§ 226.2(a)(17)(v)
Comment 2(a)(20)-6	Comment 2(a)(20)-7
Footnote 4	Comment 3-1

Current	**Redesignation**
Comment 3(a)-2	Comment 3(a)-3
Comment 3(a)-3	Comment 3(a)-4
Comment 3(a)-4	Comment 3(a)-5
Comment 3(a)-5	Comment 3(a)-6
Comment 3(a)-6	Comment 3(a)-8
Comment 3(a)-7	Comment 3(a)-9
Comment 3(a)-8	Comment 3(a)-10
Footnote 5	§ 226.4(d)(2)
Footnote 6	§ 226.4(d)(2)(i)
§ 226.4(d)(3)(i)	§ 226.4(d)(3)
§ 226.4(d)(3)(i)(A)	§ 226.4(d)(3)(i)
§ 226.4(d)(3)(i)(B)	§ 226.4(d)(3)(ii)
§ 226.4(d)(3)(i)(C)	§ 226.4(d)(3)(iv)
§ 226.4(d)(3)(ii)	Comment 4(d)(3)-3
Comment 4(a)-4	Comment 4(a)-4.i.
Footnote 7	§ 226.5(a)(1)(ii)(A)
Footnote 8	§ 226.5(a)(1)(ii)(B)
§ 226.5(a)(2)	§ 226.5(a)(2)(ii)
Footnote 9	§ 226.5(a)(2)(ii)
§ 226.5(a)(3)	§ 226.5(a)(3)(i)
§ 226.5(a)(4)	§ 226.5(a)(3)(ii)
§ 226.5(b)(1)	§ 226.5(b)(1)(i)
Footnote 10	§ 226.5(b)(2)(iii)
Comment 5(a)(1)-1	Comments 5(a)(1)-1 and 5(a)(1)-2
Comment 5(a)(1)-2	Comment 5(a)(1)-4
Comment 5(b)(1)-1	§ 226.5(b)(1)(iv); Comments 5(b)(1)(i)-1, 5(b)(1)(iv)-2, and 5(b)(1)(iv)-4
Comment 5(b)(1)-2	Comment 5(b)(1)(i)-2
Comment 5(b)(1)-3	Comment 5(b)(1)(i)-3
Comment 5(b)(1)-4	Comment 5(b)(1)(i)-4
Comment 5(b)(1)-5	Comment 5(b)(1)(i)-5
Comment 5(b)(2)(ii)-2	Comment 5(b)(1)(iii)-1
Comment 5(b)(2)(ii)-3	Comment 5(b)(1)(iii)-2
§ 226.5a(a)(2)(i) (prominent location)	§ 226.5a(a)(2)(vi)
§ 226.5a(a)(2)(iii)	§ 226.5(a)(2)(iii)
§ 226.5a(a)(2)(iv)	§ 226.5(a)(2)(i)
§ 226.5a(a)(3)	§ 226.5a(a)(5)
§ 226.5a(a)(4)	§ 226.5a(a)(3)
§ 226.5a(a)(5)	§ 226.5a(a)(4)
§ 226.5a(b)(1)(ii); Comment 5a(c)-1	§ 226.5a(2)(i); § 226.5a(e)(4)
§ 226.5a(b)(1)(iii)	§ 226.5a(2)(ii)
§ 226.5a	§ 226.5a(1)
§ 226.5a(d)(2)	§ 226.5a(d)(2)(i) and (ii)

Current	Redesignation
§ 226.5a(d)(2)(i)	§ 226.5a(d)(2)(ii)(A)
§ 226.5a(d)(2)(ii)	§ 226.5a(d)(2)(ii)(B)
§ 226.5a(e)(3)	§ 226.5a(e)(2)
§ 226.5a(e)(4)	§ 226.5a(e)(3)
Comment 5a(a)(2)-1	Comment 5a(a)-3
Comment 5a(a)(2)-2	Comment 5a(a)(2)-1
Comment 5a(a)(2)-3	Comment 5a(a)(2)-2
Comment 5a(a)(2)-4	§ 226.5a(a)(2)(ii)
Comment 5a(a)(2)-7	Comment 5a(a)(2)-4
Comments 5a(a)(3)-1; -3	§ 226.5a(a)(5)
Comment 5a(a)(3)-2	§ 226.5a(a)(5); Comment 5a(a)(5)-1
Comment 5a(a)(5)-1	Comment 5a(a)(4)-1
Comment 5a(b)(1)-2	Comment 5a(b)(1)-1
Comment 5a(b)(1)-3	§ 226.5a(d)(3)
Comment 5a(b)(1)-4	§ 226.5a(b)(1)(i); Comment 5a(b)(1)-2
Comment 5a(b)(1)-5	§ 226.5a(b)(1)(ii)
Comment 5a(b)(1)-6	§ 226.5a(b)(1)(iii)
Comment 5a(b)(1)-7	§ 226.5a(b)(1)(iv); Comment 5a(b)(1)-4
Comment 5a(c)-2	Comment 5a(c)-1
Comment 5a(e)(3)-1	Comment 5a(e)(2)-1
Comment 5a(e)(4)-1	Comment 5a(e)(3)-1
Comment 5a(e)(4)-2	Comment 5a(e)(3)-2
Comment 5a(e)(4)-3	Comment 5a(e)(3)-3
§226.6(a)	§ 226.6(a)(1); § 226.6(b)(3) and (4)
Footnote 11	§ 226.6(a)(1)(ii); § 226.6(b)(4)(i)(B)
Footnote 12	§ 226.6(a)(1)(ii); § 226.6(b)(4)(ii)
Footnote 13	Comments 6(a)(1)(iv)-1 and 6(b)(3)-3
§ 226.6(b)	§ 226.6(a)(2); § 226.6(b)(3)
§ 226.6(c)	§ 226.6(a)(4); § 226.6(b)(5)(ii)
§ 226.6(d)	§ 226.6(a)(5); § 226.6(b)(5)(iii)
§ 226.6(e)	§ 226.6(a)(3)
§ 226.6(e)(1)	§ 226.6(a)(3)(i)
§ 226.6(e)(2)	§ 226.6(a)(3)(ii)
§ 226.6(e)(3)	§ 226.6(a)(3)(iii)
§ 226.6(e)(4)	§ 226.6(a)(3)(iv)
§ 226.6(e)(5)	§ 226.6(a)(3)(v)
§ 226.6(e)(6)	§ 226.6(a)(3)(vi)
§ 226.6(e)(7)	§ 226.6(a)(3)(vii)
Comment 6(a)(1)-1	Comments 6(a)(1)(i)-1 and 6(b)(3)-1
Comment 6(a)(1)-2	Comments 6(a)(1)(i)-2 and 6(b)(3)-2
Comment 6(a)(2)-1	Comments 6(a)(1)(ii)-1 and 6(b)(4)(i)(B)-1
Comment 6(a)(2)-2	Comments 6(a)(1)(ii)-2 and 6(b)(4)(ii)-1
Comment 6(a)(2)-3	Comment 6(a)(1)(ii)-3
Comment 6(a)(2)-4	Comment 6(a)(1)(ii)-4

Current	**Redesignation**
Comment 6(a)(2)-5	Comment 6(a)(1)(ii)-5
Comment 6(a)(2)-6	Comments 6(a)(1)(ii)-6 and 6(b)(4)(ii)-2
Comment 6(a)(2)-7	Comments 6(a)(1)(ii)-7 and 6(b)(4)(ii)-3
Comment 6(a)(2)-8	Comments 6(a)(1)(ii)-8 and 6(b)(4)(ii)-4
Comment 6(a)(2)-9	Comment 6(a)(1)(ii)-9
Comment 6(a)(2)-10	Comments 6(a)(1)(ii)-10 and 6(b)(4)(ii)-5
Comment 6(a)(2)-11	Comment 6(a)(1)(ii)-11
Comment 6(a)(3)-1	Comments 6(a)(1)(iii)-1 and 6(b)(4)(i)(D)-1
Comment 6(a)(3)-2	Comments 6(a)(1)(iii)-2 and 6(b)(4)(i)(D)-2
Comment 6(a)(4)-1	Comment 6(a)(1)(iv)-1
Comment 6(b)-1	Comment 6(a)(2)-1
Comment 6(b)-2	Comment 6(a)(2)-2
Comment 6(c)-1	Comments 6(a)(4)-1 and 6(b)(5)(ii)-1
Comment 6(c)-2	Comments 6(a)(4)-2 and 6(b)(5)(ii)-2
Comment 6(c)-3	Comments 6(a)(4)-3 and 6(b)(5)(ii)-3
Comment 6(c)-4	Comments 6(a)(4)-4 and 6(b)(5)(ii)-4
Comment 6(c)-5	Comments 6(a)(4)-5 and 6(b)(5)(ii)-5
Comment 6(d)	Comments 6(a)(5)-1 and 6(b)(5)(iii)-1
Comment 6(e)-1	Comment 6(a)(3)-1
Comment 6(e)-2	Comment 6(a)(3)-2
Comment 6(e)-3	Comment 6(a)(3)-3
Comment 6(e)-4	Comment 6(a)(3)-4
§226.7(a)	§ 226.7(a)(1); § 226.7(b)(1)
§226.7(b)	§ 226.7(a)(2); § 226.7(b)(2)
§226.7(c)	§ 226.7(a)(3); § 226.7(b)(3)
§226.7(d)	§ 226.7(a)(4); § 226.7(b)(4)
Footnote 15	§ 226.7(a)(4); § 226.7(b)(4)
§226.7(e)	§ 226.7(a)(5); § 226.7(b)(5)
§226.7(f)	§ 226.7(a)(6)(i); § 226.7(b)(6)
§226.7(g)	§ 226.7(a)(7)
§226.7(h)	§ 226.7(a)(6)(ii); § 226.7(b)(6)
§226.7(i)	§ 226.7(a)(10); § 226.7(b)(10)
§226.7(j)	§ 226.7(a)(8); § 226.7(b)(8)
§226.7(k)	§ 226.7(a)(9); § 226.7(b)(9)
Comment 7-3	Comment 7(b)-1
Comment 7(a)-1	Comments 7(a)(1)-1 and 7(b)(1)-1
Comment 7(a)-2	Comments 7(a)(1)-2 and 7(b)(1)-2
Comment 7(a)-3	Comments 7(a)(1)-3 and 7(b)(1)-3
Comment 7(b)-1	Comments 7(a)(2)-1 and 7(b)(2)-1
Comment 7(b)-2	Comments 7(a)(2)-2 and 7(b)(2)-2
Comment 7(c)-1	Comments 7(a)(3)-1 and 7(b)(3)-1
Comment 7(c)-2	Comment 7(a)(3)-2
Comment 7(c)-3	Comments 7(a)(3)-3 and 7(b)(3)-2
Comment 7(c)-4	Comments 7(a)(3)-4 and 7(b)(3)-3

Current	Redesignation
Comment 7(d)-1	Comments 7(a)(4)-1 and 7(b)(4)-1
Comment 7(d)-2	Comments 7(a)(4)-2 and 7(b)(4)-2
Comment 7(d)-3	Comments 7(a)(4)-3 and 7(b)(4)-3
Comment 7(d)-4	Comment 7(a)(4)-4
Comment 7(d)-5	Comment 7(a)(4)-5
Comment 7(d)-6	Comments 7(a)(4)-6 and 7(b)(4)-5
Comment 7(d)-7	Comment 7(b)(4)-6
Comment 7(e)-1	Comment 7(a)(5)-1
Comment 7(e)-2	Comments 7(a)(5)-2 and 7(b)(5)-1
Comment 7(e)-3	Comments 7(a)(5)-3 and 7(b)(5)-2
Comment 7(e)-4	Comments 7(a)(5)-4 and 7(b)(5)-3
Comment 7(e)-5	Comments 7(a)(5)-5 and 7(b)(5)-4
Comment 7(e)-6	Comment 7(a)(5)-6
Comment 7(e)-7	Comments 7(a)(5)-7 and 7(b)(5)-5
Comment 7(e)-8	Comments 7(a)(5)-8 and 7(b)(5)-6
Comment 7(e)-9	Comments 7(a)(5)-9 and 7(b)(5)-7
Comment 7(e)-10	Comment 7(b)(5)-8
Comments 7(f)-1	Comment 7(a)(6)(i)-1
Comment 7(f)-2	Comment 7(a)(6)(i)-2
Comment 7(f)-3	Comment 7(a)(6)(i)-3
Comment 7(f)-4	Comment 7(a)(6)(i)-4
Comment 7(f)-5	Comment 7(a)(6)(i)-5
Comment 7(f)-6	Comment 7(a)(6)(i)-6
Comment 7(f)-7	Comment 7(a)(6)(i)-7
Comment 7(f)-8	Comment 7(a)(6)(i)-8
Comment 7(g)-1	Comments 7(a)(7)-1
Comment 7(g)-2	Comments 7(a)(7)-2
Comment 7(h)-1	Comment 7(a)(6)(ii)-1
Comment 7(h)-2	Comment 7(a)(6)(ii)-2
Comment 7(h)-3	Comment 7(a)(6)(ii)-3
Comment 7(h)-4	Comment 7(a)(6)(ii)-4
Comment 7(i)-1	Comments 7(a)(10)-1 and 7(b)(10)-1
Comment 7(i)-2	Comments 7(a)(10)-2 and 7(b)(10)-2
Comment 7(i)-3	Comments 7(a)(10)-3 and 7(b)(10)-3
Comment 7(j)-1	Comments 7(a)(8)-1 and 7(b)(8)-1
Comment 7(j)-2	Comment 7(b)(8)-2
Comment 7(k)-1	Comments 7(a)(9)-1 and 7(b)(9)-1
Comment 7(k)-2	Comments 7(a)(9)-2 and 7(b)(9)-2
Footnote 16	§ 226.8(c)(1)
Footnote 17	§ 226.8(c)(2)
Footnote 19	§ 226.8(a)(1)(ii)
Comment 8-2	Comment 8(a)-1
Comment 8-3	Comment 8(b)-1
Comment 8-5	Comment 8(a)-5

Current	Redesignation
Comment 8(a)-1	Comment 8(a)-4.i.
Comment 8(a)-2	Comment 8(a)-4.ii.
Comment 8(a)-4	Comment 8(a)-2
Comment 8(a)(2)-1	Comment 8(a)-6.i. and ii.
Comment 8(a)(2)-2	Comment 8(a)-6.iii.
Comment 8(a)(2)-5	Comment 8(a)-3.iv.
Comment 8(a)(3)-1	Comment 8(a)-7
Comment 8(a)(3)-2	Comment 8(a)-8.i.
Comment 8(a)(3)-3	Comment 8(a)-8.ii.
Comment 8(a)(3)-4	Comment 8(a)-3.iv.
Comment 8(b)-1	Comment 8(b)-3
Comment 8(b)-3	Comment 8(b)-2
§226.9(c)(1)	§226.9(c)(1)(i) and §226.9(c)(2)(i)
§226.9(c)(2)	§226.9(c)(1)(ii) and §226.9(c)(2)(iv)
§226.9(c)(3)	§226.9(c)(1)(iii)
Comment 9(c)-1	Comments 9(c)(1)-1 and 9(c)(2)-1
Comment 9(c)-2	Comments 9(c)(1)-2 and 9(c)(2)-2
Comment 9(c)-3	Comments 9(c)(1)-3 and 9(c)(2)-3
Comment 9(c)(1)-1	Comment 9(c)(1)(i)-1 and 9(c)(2)(i)-1
Comment 9(c)(1)-2	Comment 9(c)(1)(i)-2 and 9(c)(2)(i)-2
Comment 9(c)(1)-3	Comment 9(c)(1)(i)-3 and 9(c)(2)(i)-3
Comment 9(c)(1)-4	Comment 9(c)(1)(i)-4 and 9(c)(2)(i)-4
Comment 9(c)(1)-5	Comment 9(c)(1)(i)-5 and 9(c)(2)(i)-5
Comment 9(c)(1)-6	Comment 9(c)(1)(i)-6
Comment 9(c)(2)-1	Comment 9(c)(1)(ii)-1 and 9(c)(2)(iv)-1
Comment 9(c)(2)-2	Comment 9(c)(1)(ii)-2 and 9(c)(2)(iv)-2
Comment 9(c)(3)-1	Comment 9(c)(1)(iii)-1
Comment 9(c)(3)-2	Comment 9(c)(1)(iii)-2
§ 226.10(b)	§ 226.10(b)(3)
Comment 10(b)-1 (specific requirements)	§ 226.10(b)(2)
§ 226.11	§ 226.11(a)
§ 226.11(a)	§ 226.11(a)(1)
§ 226.11(b)	§ 226.11(a)(2)
§ 226.11(c)	§ 226.11(a)(3)
Comment 11-1	Comment 11(a)-1
Comment 11-2	Comment 11(a)-2
Comment 11(b)-1	Comment 11(a)(2)-1
Comment 11(c)-1	Comment 11(a)(3)-1
Comment 11(c)-2	Comment 11(a)(3)-2
§ 226.12(b)(1)	§ 226.12(b)(1)(ii)
§ 226.12(c)(3)	§ 226.12(c)(3)(i)
§ 226.12(c)(3)(i)	§ 226.12(c)(3)(i)(A)
§ 226.12(c)(3)(ii)	§ 226.12(c)(3)(i)(B)
Footnote 21	Comment 12-2

Current	Redesignation
Footnote 22	§ 226.12(b)(1)(i)
Footnote 23	Comment 12(b)(2)(ii)-2
Footnote 24	Comment 12(c)-3
Footnote 25	Comment 12(c)-4
Footnote 26	§ 226.12(c)(3)(ii)
Comment 12(b)(1)-1	Comment 12(b)(1)(ii)-1
Comment 12(b)(1)-2	Comment 12(b)(1)(ii)-2
Comment 12(c)(3)(i)-1	Comment 12(c)(3)(i)(A)-1
Comment 12(c)(3)(ii)-1	Comment 12(c)(3)(i)(B)-1
Comment 12(c)(3)(ii)-2	Comment 12(c)(3)(ii)-1
Footnote 27	§ 226.13(d)(3)
Footnote 28	Comment 13(b)-1
Footnote 29	Comment 13(b)-2
Footnote 30	§ 226.13(d)(4)
Comment 13(a)-1	Comment 13(a)(1)-1
Footnote 31a	§ 226.14(a)
Footnote 32	§ 226.14(c)(2)
Footnote 33	§ 226.14(c)(2)
Comment 14(c)-2	Comment 14(c)(1)-1
Comment 14(c)-3	Comment 14(c)(2)-1
Comment 14(c)-4	Comment 14(c)(2)-2
Comment 14(c)-5	Comment 14(c)(3)-1
Comment 14(c)-6	Comment 14(c)(3)-2
Comment 14(c)-7	Comment 14(c)-2
Comment 14(c)-8	Comment 14(c)-3
Comment 14(c)-9	Comment 14(c)-4
Comment 14(c)-10	Comment 14(c)-5
§ 226.16(b)	§ 226.16(b)(1)
§ 226.16(b)(1)	§ 226.16(b)(1)(i)
§ 226.16(b)(2)	§ 226.16(b)(1)(ii)
§ 226.16(b)(3)	§ 226.16(b)(1)(iii)
Comment 16(b)-1	§ 226.16(b)(1)
Comment 16(b)-2	Comment 16(b)-1
Comment 16(b)-3	Comment 16(b)-2
Comment 16(b)-4	Comment 16(b)-3
Comment 16(b)-6	§ 226.16(g)(4)
Comment 16(b)-7	Comment 16(b)-1
Comment 16(b)-8	§ 226.16(b)(1)
Comment 16(b)-9	Comment 16(b)-4