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# Rules and Regulations

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

## SMALL BUSINESS ADMINISTRATION

### 13 CFR Part 123

**RIN 3245–AF97**

## Disaster Home Loans: FEMA Interaction

**AGENCY:** U.S. Small Business Administration.

**ACTION:** Direct final rule.

**SUMMARY:** SBA is amending its disaster assistance regulations to reflect changes to the Small Business Act (Act) made by the Food, Conservation, and Energy Act of 2008, which require SBA to promulgate regulations in consultation with the Administrator of the Federal Emergency Management Agency (FEMA) to ensure that each application for disaster assistance is processed by SBA or another appropriate agency in a prompt manner. This direct final rule clarifies SBA's process of timely coordination with FEMA and other agencies for delivering Federal disaster assistance to homeowners and renters who have sustained property damage as a result of a disaster declared by the President.

**DATES:** *Effective Date:* This rule is effective April 8, 2010 without further action, unless significant adverse comment is received on or before March 24, 2010. If significant adverse comment is received, SBA will publish a timely withdrawal of the rule in the **Federal Register.**

**ADDRESSES:** You may submit comments, identified by RIN 3245–AF97, by any of the following methods: (1) *Federal Rulemaking Portal: http://www.regulations.gov*, following the specific instructions for submitting comments; (2) FAX (202) 481–2226; or *E-mail: James.Rivera@sba.gov;* or (3) *Mail/Hand Delivery/Courier:* James E. Rivera, Associate Administrator for Disaster Assistance, 409 3rd Street, SW., Washington, DC 20416.

**FOR FURTHER INFORMATION CONTACT:** Roger B. Garland, Office of Disaster Assistance, 202–205–6734 or *Roger.Garland@sba.gov.*

**SUPPLEMENTARY INFORMATION:** SBA makes disaster assistance loans to homeowners, renters, and businesses adversely affected by a disaster event. SBA works closely with FEMA and other Federal, State, and local agencies in the delivery of disaster assistance to victims. Under a Presidential disaster declaration, FEMA serves as the coordinating agency for all Federal agencies providing disaster assistance, including SBA. Most disaster victims register through FEMA for Federal disaster assistance. Upon registration, FEMA may provide home repair grant assistance to homeowners, within certain limits. FEMA then refers victims to SBA to be considered for disaster loan assistance for home repair and personal property loss. If SBA is unable to approve a loan, a homeowner or renter is referred by SBA to FEMA's Federal Assistance to Individuals and Households Program (IHP) to be considered for further grant assistance. Additionally, if disaster assistance is available from State/local or other agencies (*e.g.*, American Red Cross), SBA may refer the disaster victim to the appropriate agency.

The Food, Conservation, and Energy Act of 2008, Public Law 110–246 (the Farm Act), enacted on June 18, 2008, requires SBA to ensure that its disaster assistance programs are coordinated, to the maximum extent practicable, with FEMA's disaster assistance programs. This statute also requires SBA to establish regulations, in consultation with FEMA, to ensure that each application for disaster assistance is submitted as quickly as practicable to SBA or directed to the appropriate agency under the circumstances. SBA has consulted with FEMA and is publishing this direct final rule to codify the process for timely coordination with FEMA and other agencies, and to clarify for the public the initial phases of obtaining disaster assistance.

### Section-by-Section Analysis

In order to reflect the provisions of the Farm Act, SBA is adding new section 123.108 to its regulations to reflect that when the President makes a disaster declaration, an applicant for disaster loan assistance for homeowners or renters may be eligible for FEMA IHP grant assistance. The new section specifies that, after registering with FEMA, the applicant may be referred to SBA for home loan assistance. If SBA declines the application, or if the damage amount exceeds the maximum SBA loan amount, SBA may refer the applicant to FEMA or another appropriate agency for possible grant assistance. This new section, which describes existing procedures, makes clear that any such referral will be made on a timely basis.

### Consideration of Comments

SBA believes that this rule is routine and non-controversial since it simply implements the statute, and SBA anticipates no significant adverse comments to the rulemaking. If SBA receives any adverse comments, it will publish a timely withdrawal of this direct final rule.

### Compliance With Executive Orders 12866, 12988, 13132 and the Regulatory Flexibility Act (5 U.S.C. 601–612), and the Paperwork Reduction Act (44 U.S.C. Ch. 35)

*Executive Order 12866*

The Office of Management and Budget (OMB) has determined that this rule does not constitute a significant regulatory action under Executive Order 12866.

*Executive Order 12988*

This action meets applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden. The action does not have retroactive or preemptive effect.

*Executive Order 13132*

The final rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or the distribution of power and responsibilities among the various levels of government, because the rule does not alter the current relationship between federal, state, and local disaster authorities. Therefore, for the purposes of Executive Order 13132, Federalism, SBA determines that this final rule has

no federalism implications warranting preparation of a federalism assessment.

*Paperwork Reduction Act*

SBA has determined that this final rule does not impose additional reporting or recordkeeping requirements under the Paperwork Reduction Act, 44 U.S.C., Chapter 35.

*Regulatory Flexibility Act*

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601, requires administrative agencies to consider the effect of their actions on small entities, including small businesses. Pursuant to the RFA, when an agency issues a rule, the agency must prepare an analysis to determine whether the impact of the rule will have a significant economic impact on a substantial number of small entities. However, the RFA requires analysis of a rule only where notice and comment rulemaking are required. Rules are exempt from Administrative Procedure Act (APA) notice and comment requirements and therefore from the RFA requirements when the agency for good cause finds (and incorporates the finding and brief statement of reasons in the rules issued) that notice and public procedure thereon is impracticable, unnecessary, or contrary to the public interest. In this case it would be impracticable given the emergency nature of the recent legislation authorizing the new requirements.

**List of Subjects in 13 CFR Part 123**

Disaster assistance, Reporting and recordkeeping requirements.

■ For the reasons set forth in the preamble, the Small Business Administration amends 13 CFR part 123 as follows:

## PART 123—-DISASTER LOAN PROGRAM

■ 1. The authority citation for part 123 continues to read as follows:

**Authority:** 15 U.S.C. 634(b)(6), 636(b), 636 (c); 657i, Pub. L. 102–395, 106 Stat. 1828; Pub. L. 103–75, 107 Stat. 739; Pub. L. 106–50, 113 Stat. 245; Pub. L. 110–246, 112 Stat. 1651.

■ 2. Amend Subpart B by adding at the end new § 123.108 to read as follows:

### § 123.108 How do the SBA disaster loan program and the FEMA grant programs interact?

After a Presidential disaster declaration is made, you may be eligible for disaster assistance, including grant assistance, from the Federal Emergency Management Agency's (FEMA) Federal Assistance to Individuals and Households Program (IHP). After you register with FEMA for disaster assistance, FEMA will consider you for IHP assistance, which includes housing assistance grants to repair or replace your damaged primary residence and temporary housing assistance (including rental assistance) to assist you temporarily with a place to live, and assistance with personal property, medical, dental and funeral expenses. FEMA may also refer you to SBA to apply for loan assistance to help repair or rebuild your home and/or to replace personal property destroyed during the disaster. If SBA is unable to approve your loan application, or if you have damage in excess of the SBA loan amount, SBA may refer you, on a timely basis, to FEMA for IHP grant consideration to assist with your unmet personal property and transportation needs. If you are approved for the SBA disaster loan and you have received grant assistance that duplicates the damage covered by the SBA loan, such grant assistance must be deducted from your loan eligibility as described in section 123.101(c) of the regulations. All grant decisions are made by FEMA. Additionally, if additional disaster assistance is available from state, local or other agencies, SBA may refer you to the appropriate agency for consideration.

Dated: February 16, 2010.

**Karen G. Mills,**

*Administrator.*

[FR Doc. 2010–3395 Filed 2–19–10; 8:45 am]

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## DEPARTMENT OF COMMERCE

## Census Bureau

## 15 CFR Part 30

**[Docket Number: 090422707–91445–02]**

**RIN 0607–AA48**

## Foreign Trade Regulations (FTR): Eliminate the Social Security Number (SSN) as an Identification Number in the Automated Export System (AES)

**AGENCY:** Bureau of the Census, Commerce Department.

**ACTION:** Final rule.

**SUMMARY:** The U.S. Census Bureau (Census Bureau) issues this final rule amending the Foreign Trade Regulations (FTR) to eliminate the requirement to report a Social Security Number (SSN) as an identification number when registering to file and filing electronic export information in the Automated Export System (AES) or AES*Direct.* If the U.S. Principal Party in Interest (USPPI) or the U.S. authorized agent residing in or having an office in the United States does not have an Employer Identification Number (EIN), the USPPI or the U.S. authorized agent must obtain an EIN through the Web site of the Internal Revenue Service (IRS). Former SSN filers who want to use a Dun & Bradstreet Number (DUNS) rather than an EIN for identification purposes, must first obtain an EIN from the IRS, and apply to Dun & Bradstreet for a DUNS. This final rule is being implemented to ensure that a USPPI's or authorized agent's SSN is protected in accordance with the Privacy Act of 1974 (Privacy Act), title 5, United States Code (U.S.C.), section 552a. On August 5, 2009, this final rule was published as an interim final rule; the Census Bureau is finalizing this rule without change.

**DATES:** *Effective Date:* This rule is effective March 24, 2010.

**FOR FURTHER INFORMATION CONTACT:** William G. Bostic, Jr., Assistant Director for Economic Programs, United States Census Bureau, 4600 Silver Hill Road, Room 8K108, Washington, DC 20233–6700; by phone at (301) 763–8842; by fax at (301) 763–6638; or by e-mail: *william.g.bostic.jr@census.gov.*

**SUPPLEMENTARY INFORMATION:**

### Background

The Census Bureau is responsible for collecting, compiling, and publishing export and import trade statistics for the United States under the provisions of title 13, U.S.C. Chapter 9, section 301(a). On June 2, 2008, the Census Bureau issued a final rule to amend the FTR to implement provisions in the Foreign Relations Authorization Act (Pub. L. 107–228, § 1404(a)–(c), 116 Stat. 1454 (2002)). Specifically, the amended FTR required mandatory filing of export information through the AES or AES*Direct* for all shipments where a Shipper's Export Declaration (SED) is required. The USPPI or U.S. authorized agent residing or having an office in the United States was required to enter an EIN, SSN or DUNS when reporting export transactions in the AES or AES*Direct.* Though the effective date of this final rule was July 2, 2008, the Census Bureau announced that it would delay implementation until September 30, 2008, to allow all affected entities sufficient time to come into compliance with the final rule.

Pursuant to the requirements of the Privacy Act and guidance from the Office of Management and Budget (OMB), on August 5, 2009, the Census Bureau published in the **Federal**

**Register** an interim final rule with request for comments. The interim final rule amended the FTR to eliminate the requirement to report an SSN as an identification number when registering to file and when filing electronic export information in the AES or AES*Direct.*

Upon implementation of this final rule, the AES will no longer provide the option for using the SSN as an identification number. All USPPI and U.S. authorized agents who currently report an SSN when filing in the AES, because they do not have or use an EIN or DUNS, must provide an EIN or DUNS for identification purposes. EINs are available to both businesses and individuals free of charge, and can be obtained by registering with the IRS at *http://www.irs.gov* or by calling (800) 829–4933 and following the instructions. A DUNS is available only to business entities with EINs and is available for a fee at Dun and Bradstreet's Web site at *http://www.dnb.com/us/.*

**Summary of Comments and Responses**

The Census Bureau received 50 comments on the interim final rule published in the **Federal Register** on August 5, 2009. 74 FR 38914. A summary of the comments and the Census Bureau's responses are provided below.

The major concerns were as follows:

1. *Clarify the procedure for obtaining an EIN.* Several commenters requested clarification on the procedure of how to obtain an EIN for the purpose of filing the EEI. To obtain an EIN, a business or individual must submit an application to the IRS, at the contact information listed above, via the Internet, phone, fax, or mail. There are no fees associated with obtaining an EIN, and the procedure to obtain an EIN takes approximately 15 minutes when applying online or by phone.

2. *Clarify the procedure for obtaining an EIN on behalf of another individual.* One commenter requested clarification on the proper use of the SS–4 form when obtaining an EIN. Individuals may prepare the SS–4 form when applying for an EIN via mail, fax, or authorize a third party to prepare the form on their behalf. If a third party is completing the SS–4 form by mail or fax, the individual for whom the EIN is being obtained will complete the section "Third Party Designee." If a third party is completing the SS–4 form online, the individual will need to print the SS–4 form, complete the "Third Party Designee" section and retain for future reference. Completion of the "Third Party Designee" section is not required for individuals who are applying for an EIN on their own behalf.

3. *Clarify whether an individual can obtain an EIN if they are not opening a business.* Several commenters questioned whether they would be providing the IRS with false information when applying for an EIN under the Sole Proprietor category if they are not starting a business. In addition, one of these commenters requested clarification on the tax ramifications of applying for an EIN. For purposes of registering or filing in the AES, a resident of the United States must use its EIN. While it is not specifically stated on the IRS Web site, an EIN can be obtained for government reporting purposes when a person does not own a business. A U.S. company must use its EIN when registering in the AES, and must use either its EIN or DUNS when filing. Use of the EIN in the AES is strictly for identification purposes, and information entered into the AES is not disclosed to the IRS.

4. *Clarify the filing requirement for an individual who rarely exports.* Several commenters questioned whether the frequency of their shipments warranted the effort required to obtain an EIN. Regardless of shipping frequency, any person (natural or legal) shipping goods to a foreign country that requires filing of the EEI via the AES will need to obtain an EIN from the IRS.

5. *Clarify whether a passport, driver's license, or customs assigned number can be used in place of the SSN.* Several commenters questioned why a passport, driver's license, or customs assigned number cannot be used in lieu of the EIN for U.S. residents. In addition, several of these commenters suggested that the Census Bureau amend the interim final rule to make SSNs or passport numbers optional when filing the EEI.

Passports have expiration dates and the numbers are subject to change if the passports are not renewed timely. Allowing the use of a passport number in the AES makes it difficult for the U.S. Customs and Border Protection (CBP) to enforce control laws by introducing a variable that is subject to change, thereby making it more difficult to track and analyze historical shipping patterns. In addition, obtaining a U.S. passport requires the payment of fees, and generally takes two to six weeks. Moreover, passports are used for the specific purpose of exiting and returning to the United States as a U.S. citizen. The Census Bureau elected to replace the SSN with an EIN because the EIN can be obtained at the IRS Web site free of charge within 15 minutes. The EIN does not have an expiration date, so it can be used indefinitely. In addition, a person can serve as a third party designee and apply for an EIN on behalf of an individual.

A driver's license number, like the SSN, is considered highly sensitive Personally Identifiable Information (PII) that can directly be used to identify an individual. The EIN is not as sensitive a form of PII as either a driver's license or SSN. Moreover, because of varying license formats among the states and the need to accommodate changes when persons move to different states, the use of drivers' licenses would introduce more operational complexity than EINs.

The USPPIs shall report an EIN or the DUNS in the USPPI identification field. The DUNS may only be reported for businesses. If a foreign entity is the USPPI for filing purposes, it shall report a DUNS, border crossing number, passport number, or any number assigned by the CBP. Thus, for the reasons stated above, the Census Bureau does not adopt this suggestion.

6. *Amend the Interim Final Rule to postpone the implementation date.* Several commenters requested a further delay in the implementation date of the interim final rule because of concerns that there would be delays in the export process by having to obtain an EIN. In addition, several of these commenters requested that the Census Bureau conduct an impact analysis on exporters. Based on information available from IRS's Web site, the approximately four months between the publication of this interim final rule on August 5, 2009, and the implementation date of December 3, 2009, was more than enough time to obtain an EIN; thus, no AES filer should experience any delays in exporting as a result of the implementation of this final rule. In addition, the Census Bureau has not received any information since December 3, 2009, suggesting that exporters are experiencing (or have experienced) delays in the export process due to the interim rule. Findings from an impact analysis show that on a monthly basis, an average of 3.8 percent of filers using the SSN are affected. For the foregoing reasons, the Census Bureau does not adopt the suggestion that it delay implementation of this final rule.

7. *Clarify the procedure for updating AES account information if a filer was originally registered with an SSN.* Several commenters raised the concern that reregistering in the AES after obtaining an EIN would result in the loss of current AES account information. However, if they are currently registered under an SSN, AES*Direct* filers can complete the

Automated Transition Form to migrate their account information, currently stored under the SSN account, to a new EIN account. As of October 20, 2009, the Automated Transition Form has been available on the AES*Direct* Web site. Those who file directly into the AES must contact their CBP representative to have their account manually transitioned.

8. *Clarify whether a company or individual can use its EIN as the USPPI identification number when filing on behalf of the USPPI.* Several commenters wanted to know if a company or individual could use its EIN as the USPPI identification number when filing on behalf of the USPPI. A company that is filing in the AES on behalf of an individual cannot use its EIN. When filing the EEI on behalf of a USPPI, the EIN of that USPPI must be used as the identification number. The filer's EIN cannot be used as the USPPI identification number. The use of another company or individual's EIN is prohibited.

9. *Clarify the use of an EIN for shipments to the U.S. Armed Services.* Several commenters wanted to know if an EIN would be required for shipments to the U.S. Armed Services. Filing an AES record is not required for shipments to the U.S. Armed Services for their exclusive use, whether the shipments are made commercially or through government channels, including shipments to armed services exchange systems per title 15, CFR, Part 30, FTR, section 30.39. This exemption does not apply to articles on the United States Munitions List that are controlled by the International Traffic in Arms Regulations, or to shipments that are not consigned to the U.S. Armed Services, regardless of whether they may be for its ultimate and exclusive use. If an export falls under this exemption, you are not required to obtain an EIN because filing an AES record is not required.

10. *Clarify the use of an EIN for shipments to employees of government agencies.* Several commenters wanted to know if government agencies or employees of these agencies were required to obtain an EIN for shipping purposes. Filing an AES record is not required for the following shipments: office furniture, office equipment, and office supplies shipped to and for the exclusive use of U.S. government offices, or household goods and personal property shipped to and for the exclusive and personal use of U.S. government employees. These shipments are exempt from filing the EEI per title 15, CFR, Part 30, FTR, section 30.40. If an export falls under this exemption, you are not required to obtain an EIN because filing an AES record is not required.

**Regulatory Changes**

To ensure the confidentiality of the USPPI's and the U.S. authorized agent's personal information, and to comply with the Privacy Act and OMB guidance, the Census Bureau is amending relevant sections of the FTR to specify the requirements for the reporting of an EIN, or DUNS in place of a SSN for identification purposes in the AES.

The Census Bureau is amending the following sections of the FTR:

- Section 30.1(c) definition for Party ID type is revised to eliminate the SSN.
- Sections 30.3(a) and 30.3(e) are revised to eliminate the requirement of reporting the SSN in the AES.
- Sections 30.6(a) and 30.6(b) are revised to eliminate the SSN as an option for the USPPI and U.S. authorized agent identification number.

The U.S. Department of State and U.S. Department of Homeland Security concur with the provisions contained in this Final Rule.

**Rulemaking Requirements**

*Administrative Procedure Act*

The Census Bureau finds good cause pursuant to 5 U.S.C. 553(b)(B) to waive prior notice and opportunity for public comment, as public comment is impracticable and contrary to the public interest of maintaining the security of personal information. To ensure the confidentiality of the USPPI and the U.S. authorized agent's personal information, and to comply with the Privacy Act, the Census Bureau is amending appropriate sections of the FTR to eliminate the reporting of the SSN by USPPIs and U.S. authorized agents. If this rule were delayed to allow for notice and opportunity for public comment, USPPIs and U.S. authorized agents would continue to be required to submit their SSN to the Census Bureau if they do not have an EIN or DUNS. Therefore, in order to maintain the security of personal information, and to comply with the Privacy Act, the Census Bureau has determined that it will make this rule effective on March 24, 2010.

*Regulatory Flexibility Act*

Because notice and opportunity for comment are not required pursuant to 5 U.S.C. 553, or any other law, the analytical requirements of the Regulatory Flexibility Act are inapplicable. Therefore, a final regulatory flexibility analysis is not required and one has not been prepared.

*Executive Orders*

This rule has been determined to be not significant for purposes of Executive Order 12866. It has been determined that this rule does not contain policies with Federalism implications as that term is defined under Executive Order 13132.

*Paperwork Reduction Act*

The collection of information required in this final rule has been approved by the OMB under the Paperwork Reduction Act (PRA), title 44, U.S.C. Chapter 35. This rule amends a collection of information subject to the requirements of the PRA, which has been approved under OMB control number 0607–0152. The reporting and recordkeeping burden for this requirement is estimated at three total burden minutes per AES filing. Notwithstanding any other provision of law, no person is required to respond to, nor shall a person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a current, valid OMB control number.

**List of Subjects in 15 CFR Part 30**

Economic statistics, Exports, Foreign trade, Reporting and recordkeeping requirements.

■ Accordingly, as discussed above, the interim final rule amending Title 15 Code of Federal Regulations Part 30, which published at 74 FR 38914 on August 5, 2009, is adopted as a final rule without change.

Dated: February 16, 2010.

**Robert M. Groves,**

*Director, Bureau of the Census.*

[FR Doc. 2010–3365 Filed 2–19–10; 8:45 am]

BILLING CODE 3510–07–P

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## DEPARTMENT OF COMMERCE

## Bureau of Industry and Security

## 15 CFR Part 774

**[Docket No. 0907241163–91434–01]**

**RIN 0694–AE67**

## Amendments to the Select Agents Controls in Export Control Classification Number (ECCN) 1C360 on the Commerce Control List (CCL); Correction to ECCN 1E998

**AGENCY:** Bureau of Industry and Security, Commerce.

**ACTION:** Final rule.

**SUMMARY:** The Bureau of Industry and Security (BIS) is publishing this final

rule to amend the Export Administration Regulations (EAR) by revising the controls on certain select agents identified in Export Control Classification Number (ECCN) 1C360 on the Commerce Control List (CCL) to reflect changes that the Animal Plant and Health Inspection Service (APHIS), U.S. Department of Agriculture, recently made to the Plant Protection and Quarantine Programs (PPQ) list of select agents and toxins. The changes made by APHIS were part of a biennial review and republication of the select agents and toxins lists separately maintained by APHIS and the Centers for Disease Control and Prevention (CDC), U.S. Department of Health and Human Services (HHS). Both agencies maintain controls on the "possession, use, and transfer within the United States" of certain select agents and toxins, including human and zoonotic pathogens, animal pathogens, and plant pathogens. BIS maintains controls on "exports" of the select agents and toxins regulated by CDC and APHIS. CDC and APHIS simultaneously published the revisions to their lists of select agents and toxins on October 16, 2008. These changes became effective on November 17, 2008. BIS determined that the only changes that required amendments to the EAR were the changes to the PPQ list of select agents and toxins maintained by APHIS.

This rule also amends ECCN 1E998 on the CCL to remove controls on technology for the "development" or "production" of materials controlled by ECCN 1C995. This technology was inadvertently included in ECCN 1E998 by a final rule published by BIS in September 2006 and was made subject to the anti-terrorism (AT) license requirements described therein. Effective with the publication of this final rule, this technology is once again classified as EAR99.

**DATES:** This rule is effective February 22, 2010. Although there is no formal comment period, public comments on this regulation are welcome on a continuing basis.

**ADDRESSES:** You may submit comments, identified by RIN 0694–AE67, by any of the following methods:

- *E-mail: publiccomments@bis.doc.gov.* Include "RIN 0694–AE67" in the subject line of the message.
- *Fax:* (202) 482–3355. Please alert the Regulatory Policy Division, by calling (202) 482–2440, if you are faxing comments.
- *Mail or Hand Delivery/Courier:* Willard Fisher, U.S. Department of Commerce, Bureau of Industry and Security, Regulatory Policy Division, 14th Street & Pennsylvania Avenue, NW., Room 2705, Washington, DC 20230, ATTN: RIN 0694–AE67.

Send comments regarding this collection of information, including suggestions for reducing the burden, to Jasmeet Seehra, Office of Management and Budget (OMB), by e-mail to *Jasmeet_K._Seehra@omb.eop.gov,* or by fax to (202) 395–7285; and to the Regulatory Policy Division, Bureau of Industry and Security, Department of Commerce, 14th Street & Pennsylvania Avenue, NW., Room 2705, Washington, DC 20230. Comments on this collection of information should be submitted separately from comments on the final rule (*i.e.,* RIN 0694–AE67)—all comments on the latter should be submitted by one of the three methods outlined above.

**FOR FURTHER INFORMATION CONTACT:** Kimberly Orr, Export Policy Analyst, Chemical and Biological Controls Division, Office of Nonproliferation and Treaty Compliance, Bureau of Industry and Security, Telephone: (202) 482–4201.

**SUPPLEMENTARY INFORMATION:**

## Background

The Bureau of Industry and Security (BIS) is amending the Export Administration Regulations (EAR) to update the controls on certain select agents identified in Export Control Classification Number (ECCN) 1C360 on the Commerce Control List (CCL) (Supplement No. 1 to Part 774 of the EAR) to reflect changes that the Animal Plant and Health Inspection Service (APHIS), U.S. Department of Agriculture, recently made to the Plant Protection and Quarantine Programs (PPQ) list of select agents and toxins in 7 CFR 331.3(b). The changes published by APHIS were part of a biennial review and republication of select agents and toxins lists that are separately maintained by APHIS and the Centers for Disease Control and Prevention (CDC), U.S. Department of Health and Human Services (HHS). Both of these U.S. Government agencies maintain controls on the "possession, use, and transfer within the United States" of certain select agents and toxins (including human and zoonotic pathogens, animal pathogens, and plant pathogens),[1] while BIS controls "exports" of these select agents and toxins.

[1] For select agents and toxins regulated by APHIS, see 7 CFR 331.3(b), 9 CFR 121.3(b), and 9 CFR 121.4(b). For select agents and toxins regulated by CDC, see 42 CFR 73.3(b) and 42 CFR 73.4(b).

The revisions to the lists of select agents and toxins maintained by CDC and APHIS were published, simultaneously, on October 16, 2008 (at 73 FR 61363 and 73 FR 61325, respectively), and became effective on November 17, 2008. Certain changes involving the PPQ list of select agents and toxins maintained by APHIS at 7 CFR 331.3(b) were determined by BIS to require amendments to ECCN 1C360, which controls select agents regulated by CDC and APHIS that are not controlled under ECCN 1C351, 1C352, or 1C354 on the CCL. Therefore, BIS is publishing this final rule to amend ECCN 1C360 to make the following changes consistent with the PPQ list: (1) Remove "Candidatus Liberobacter africanus" and "Candidatus Liberobacter asiaticus," (2) add "Phoma glyciniocola (formerly Pyrenochaeta glycines)" and "Rathayibacter toxicus," and (3) clarify that "Peronosclerospora philippinensis" is also known as "Peronosclerospora sacchari."

This rule also makes a correction to ECCN 1E998 that is unrelated to the select agent changes described above. Specifically, this rule amends ECCN 1E998 to remove controls on technology for the "development" or "production" of materials controlled by ECCN 1C995. This technology was inadvertently included in ECCN 1E998 by a final rule published by BIS on September 7, 2006 (71 FR 52956), and was made subject to the anti-terrorism (AT) license requirements described therein. The September 2006 rule's stated purpose for adding this technology to ECCN 1E998 was to maintain AT controls on certain "development" and "production" technology previously controlled under ECCN 1E001. However, "development" and "production" technology for materials controlled by ECCN 1C995 was not controlled under ECCN 1E001 at the time the September 2006 rule was published or, in fact, at any other time. Instead, this technology was classified as EAR99 and should have remained so. Therefore, effective with the publication of this final rule, this technology is once again classified as EAR99.

Although the Export Administration Act expired on August 20, 2001, the President, through Executive Order 13222 of August 17, 2001, 3 CFR, 2001 Comp., p. 783 (2002), as extended by the Notice of August 13, 2009, 74 FR 41325 (August 14, 2009), has continued the Export Administration Regulations in effect under the International Emergency Economic Powers Act.

## Saving Clause

Shipments of items removed from eligibility for export or reexport under a

license exception or without a license (i.e., under the designator "NLR") as a result of this regulatory action that were on dock for loading, on lighter, laden aboard an exporting carrier, or en route aboard a carrier to a port of export, on March 24, 2010, pursuant to actual orders for export or reexport to a foreign destination, may proceed to that destination under the previously applicable license exception or without a license (NLR) so long as they are exported or reexported before *April 8, 2010.* Any such items not actually exported or reexported before midnight, on *April 8, 2010,* require a license in accordance with this regulation.

"Deemed" exports of "technology" and "source code" removed from eligibility for export under a license exception or without a license (under the designator "NLR") as a result of this regulatory action may continue to be made under the previously available license exception or without a license (NLR) before April 8, 2010. Beginning at midnight on April 8, 2010, such "technology" and "source code" may no longer be released, without a license, to a foreign national subject to the "deemed" export controls in the EAR when a license would be required to the home country of the foreign national in accordance with this regulation.

**Rulemaking Requirements**

1. This rule has been determined to be significant for purposes of Executive Order 12866.

2. Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (PRA), unless that collection of information displays a currently valid Office of Management and Budget (OMB) Control Number. This rule contains a collection of information subject to the requirements of the PRA. This collection has been approved by OMB under Control Number 0694–0088 (Multi-Purpose Application), which carries a burden hour estimate of 58 minutes to prepare and submit form BIS–748. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to Jasmeet Seehra, Office of Management and Budget (OMB), and to the Regulatory Policy Division, Bureau of Industry and Security, Department of Commerce, as indicated in the **ADDRESSES** section of this rule.

3. This rule does not contain policies with Federalism implications as that term is defined in Executive Order 13132.

4. The provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, the opportunity for public participation, and a delay in effective date, are inapplicable because this regulation involves a military and foreign affairs function of the United States (Sec. 5 U.S.C. 553(a)(1)). Further, no other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this final rule. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule under 5 U.S.C. 553 or by any other law, the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are not applicable.

Therefore, this regulation is issued in final form. Although there is no formal comment period, public comments on this regulation are welcome on a continuing basis.

**List of Subjects in 15 CFR Part 774**

Exports, Foreign trade, Reporting and recordkeeping requirements.

■ Accordingly, Part 774 of the Export Administration Regulations (15 CFR Parts 730–774) is amended as follows:

## PART 774—[AMENDED]

■ 1. The authority citation for 15 CFR Part 774 continues to read as follows:

**Authority:** 50 U.S.C. app. 2401 et seq.; 50 U.S.C. 1701 et seq.; 10 U.S.C. 7420; 10 U.S.C. 7430(e); 22 U.S.C. 287c, 22 U.S.C. 3201 et seq., 22 U.S.C. 6004; 30 U.S.C. 185(s), 185(u); 42 U.S.C. 2139a; 42 U.S.C. 6212; 43 U.S.C. 1354; 46 U.S.C. app. 466c; 50 U.S.C. app. 5; 22 U.S.C. 7201 et seq.; 22 U.S.C. 7210; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 13, 2009, 74 FR 41325 (August 14, 2009).

■ 2. In Supplement No. 1 to Part 774 (the Commerce Control List), Category 1—Materials, Chemicals, "Microorganisms" & "Toxins," ECCN 1C360 is amended by revising paragraph (c) under "*Items*" in the List of Items Controlled to read as follows:

**Supplement No. 1 to Part 774—The Commerce Control List**

* * * * *

1C360 Select agents not controlled under ECCN 1C351, 1C352, or 1C354.

* * * * *

**List of Items Controlled**

Unit: * * *

Related Controls: * * *

Related Definitions: * * *

Items:

* * * * *

c. Plant pathogens, as follows:

c.1. Bacteria, as follows:

c.1.a. Rathayibacter toxicus;

c.1.b. Xylella fastidiosa pv. citrus variegated chlorosis (CVC);

c.2. Fungi, as follows:

c.2.a. Peronosclerospora philippinensis (a.k.a. Peronosclerospora sacchari);

c.2.b. Sclerophthora rayssiae var. zeae;

c.2.c. Synchytrium endobioticum;

c.2.d. Phoma glycinicola (formerly Pyrenochaeta glycines).

* * * * *

■ 3. In Supplement No. 1 to Part 774 (the Commerce Control List), Category 1—Materials, Chemicals, "Microorganisms" & "Toxins," ECCN 1E998 is amended by revising the ECCN heading to read as follows:

1E998 "Technology" for the "development" or "production" of processing equipment controlled by 1B999, and materials controlled by 1C996, 1C997, 1C998, or 1C999.

* * * * *

Dated: February 16, 2010.

**Matthew S. Borman,**

*Deputy Assistant Secretary for Export Administration.*

[FR Doc. 2010–3389 Filed 2–19–10; 8:45 am]

BILLING CODE 3510–33–P

## CONSUMER PRODUCT SAFETY COMMISSION

## 16 CFR Part 1130

## Requirements for Consumer Registration of Durable Infant or Toddler Products; Correction

**AGENCY:** Consumer Product Safety Commission.

**ACTION:** Final rule; correction.

**SUMMARY:** The Consumer Product Safety Commission ("Commission") is correcting a final rule that appeared in the **Federal Register** of December 29, 2009 (74 FR 68668). The document issued a final rule under section 104(d) of the Consumer Product Safety Improvement Act of 2008 ("CPSIA") requiring manufacturers of durable infant or toddler products to establish and maintain a system for consumers to register their products with the manufacturer.

**DATES:** The correction will become effective on June 28, 2010.

**FOR FURTHER INFORMATION CONTACT:** Marc Schoem, Deputy Director, Office of

Compliance and Field Operations, Consumer Product Safety Commission, 4330 East-West Highway, Bethesda, MD 20814; telephone (301) 504–7520; *mschoem@cpsc.gov.*

**SUPPLEMENTARY INFORMATION:** In FR Doc. E9–30485 appearing on page 68668 in the **Federal Register** of Tuesday, December 29, 2009, there was a discrepancy between the text describing the registration form and the figures illustrating the form. The regulatory text reversed the location of information on the bottom of the form. To address this, the following corrections are made:

**§ 1130.6 [Corrected]**

1. On page 68677, in the first and second columns, in § 1130.6, in paragraph (b)(3), "The bottom front panel shall have blocks for the consumer to provide his/her contact information as required in § 1130.7(c)." is corrected to read "The bottom back panel of the form shall have blocks for the consumer to provide his/her contact information as required in § 1130.7(c)."

2. On page 68677, in the second column, in § 1130.6, in paragraph (b)(3), "The back of the bottom portion of the form shall be pre-addressed and postage-paid with the manufacturer's name and mailing address where registration information is to be collected." is corrected to read "The front of the bottom portion of the form shall be pre-addressed and postage-paid with the manufacturer's name and mailing address where registration information is to be collected."

Dated: February 16, 2010.

**Todd Stevenson,**

*Secretary, U.S. Consumer Product Safety Commission.*

[FR Doc. 2010–3297 Filed 2–19–10; 8:45 am]

BILLING CODE 6355–01–P

## SOCIAL SECURITY ADMINISTRATION

### 20 CFR Parts 404 and 416

**[Docket No. SSA–2009–0067]**

**RIN 0960–AH08**

## Transfer of Accumulated Benefit Payments

**AGENCY:** Social Security Administration (SSA).

**ACTION:** Final rule.

**SUMMARY:** We are revising our regulations to allow a representative payee who will no longer be serving in that capacity to transfer accumulated benefit payments and interest directly to a beneficiary if we determine that it would be in the best interest of the beneficiary. This change will give us more flexibility in deciding how conserved funds should be handled in these circumstances. The change will also reduce or eliminate delays in the delivery of conserved funds to some beneficiaries.

**DATES:** This final rule will be effective March 24, 2010.

**FOR FURTHER INFORMATION CONTACT:** Richard Bresnick, Office of Regulations, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235–6401, (410) 965–1758. For information on eligibility or filing for benefits, call our national toll-free number, 1–800–772–1213 or TTY 1–800–325–0778, or visit our Internet site, Social Security Online, at *http://www.socialsecurity.gov.*

**SUPPLEMENTARY INFORMATION:**

### Electronic Version

The electronic file of this document is available on the date of publication in the **Federal Register** at *http://www.gpoaccess.gov/fr/index.html.*

### Background

Our representative payment regulations are in Subpart U of part 404 and subpart F of part 416. In certain cases, we will appoint a representative payee to receive benefit payments on behalf of a beneficiary. Generally, we appoint a representative payee if we have determined that the beneficiary is not able to manage his or her own benefits or direct the management of benefit payments in his or her interest. The payee must use the payments only for the beneficiary's use and benefit. The payee must conserve or invest for the beneficiary any funds remaining after paying for the beneficiary's current needs.

If a payee is no longer going to serve in that capacity, our regulations require the payee to return conserved funds to us or transfer them to a successor payee, as we will specify. The payee is not permitted to transfer these conserved funds to a beneficiary directly. 20 CFR 404.2060 and 416.660. The payee's inability to transfer funds directly to a beneficiary can cause difficulty for both the beneficiary and the representative payee. When we determine that a payee is no longer needed because the beneficiary has become capable of managing his or her own benefits, this two-step process delays our payment of the conserved funds to the beneficiary.

Our current regulatory process is particularly problematic for those beneficiaries who make the transition out of foster care and for their payees. These beneficiaries might need immediate access to the conserved funds to pay for rent or other necessities. Additionally, at least one State requires State agency representative payees for beneficiaries in foster care to turn over all conserved funds directly to the beneficiary when he or she transitions out of foster care.

### Explanation of Changes

We are revising §§ 404.2060 and 416.660 of our regulations to permit a payee to transfer conserved funds to a beneficiary if we so specify. The change will give us the discretion to authorize a payee-to-beneficiary transfer of conserved funds and make the representative payment process more efficient. Allowing direct transfer will conserve administrative resources and provide faster access to beneficiaries who have become capable of managing their own benefits.

### Public Comments

On October 14, 2009, we published a notice of proposed rulemaking (NPRM) in the **Federal Register** and provided a 60-day comment period. 74 FR 52706. We received one letter with comments. We carefully considered the comments in publishing this final rule.

*Comment:* The commenter is an employee of another federal agency who deals with our beneficiaries and payment centers. The commenter supports the changes and believes the changes will benefit us and our beneficiaries. The commenter further notes that "it is essential that funds still be available to the beneficiary especially in economic recession periods." The commenter asks how the changes will affect current rules on reissuing benefits if the payee misused funds, how the replaced funds will be handled during the transfer, and whether there is an order of importance in selecting the new payee.

*Response:* We appreciate the commenter's support. The changes will allow a representative payee who will no longer be serving in that capacity to transfer accumulated benefit payments and interest directly to a beneficiary if we direct the representative payee to do so. The changes will not otherwise affect our current rules on reissuing benefits if a payee misused funds, how the replaced benefits will be handled, or how we choose a payee.

### Regulatory Procedures

*Executive Order 12866*

We have consulted with the Office of Management and Budget (OMB) and determined that this final rule does not

meet the requirements for a significant regulatory action under Executive Order 12866. Thus, it was not reviewed by OMB.

*Regulatory Flexibility Act*

We certify that this final rule will not have a significant economic impact on a substantial number of small entities because it affects primarily individuals. Therefore, a regulatory flexibility analysis is not required under the Regulatory Flexibility Act, as amended.

*Paperwork Reduction Act*

This rule does not create any new, or affect any existing, collections, and therefore, does not require OMB approval under the Paperwork Reduction Act.

(Catalog of Federal Domestic Assistance Program Nos. 96.001, Social Security—Disability Insurance; 96.002, Social Security—Retirement Insurance; 96.004, Social Security—Survivors Insurance; and 96.006, Supplemental Security Income)

**List of Subjects**

*20 CFR Part 404*

Administrative practice and procedure; Blind; Disability benefits; Old-Age, Survivors, and Disability Insurance; Reporting and recordkeeping requirements; Social Security.

*20 CFR Part 416*

Administrative practice and procedure; Aged, Blind, Disability benefits, Public Assistance programs; Reporting and recordkeeping requirements; Supplemental Security Income (SSI).

Dated: February 4, 2010.

**Michael J. Astrue,**

*Commissioner of Social Security.*

■ For the reasons set out in the preamble, we amend subpart U of part 404 and subpart F of part 416 of chapter III of title 20 Code of Federal Regulations as set forth below:

## PART 404—FEDERAL OLD-AGE, SURVIVORS AND DISABILITY INSURANCE (1950– )

### Subpart U—[Amended]

■ 1. The authority citation for subpart U of part 404 is revised to read as follows:

**Authority:** Secs. 205(a), (j), and (k), and 702(a)(5) of the Social Security Act (42 U.S.C. 405(a), (j), and (k), and 902(a)(5)).

■ 2. Amend § 404.2060 by revising the first sentence to read as follows:

**§ 404.2060 Transfer of accumulated benefit payments.**

A representative payee who has conserved or invested benefit payments shall transfer these funds and the interest earned from the invested funds to either a successor payee, to the beneficiary, or to us, as we will specify. * * *

## PART 416—SUPPLEMENTAL SECURITY INCOME FOR THE AGED, BLIND, AND DISABLED

### Subpart F—[Amended]

■ 3. The authority citation for subpart F of part 416 is revised to read as follows:

**Authority:** Secs. 702(a)(5), 1631(a)(2) and (d)(1) of the Social Security Act (42 U.S.C. 902(a)(5) and 1383(a)(2) and (d)(1)).

■ 4. Amend § 416.660 by revising the first sentence to read as follows:

**§ 416.660 Transfer of accumulated benefit payments.**

A representative payee who has conserved or invested benefit payments shall transfer these funds and the interest earned from the invested funds to either a successor payee, to the beneficiary, or to us, as we will specify. * * *

[FR Doc. 2010–3380 Filed 2–19–10; 8:45 am]

BILLING CODE 4191–02–P

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## SOCIAL SECURITY ADMINISTRATION

### 20 CFR Part 416

**[Docket No. SSA–2008–0051]**

**RIN 0960–AF97**

## Exclusion of Certain Military Pay From Deemed Income and Resources

**AGENCY:** Social Security Administration.

**ACTION:** Final rule.

**SUMMARY:** We are revising our rules to clarify that, for Supplemental Security Income (SSI) purposes, we do not consider any combat-related military pay as income when we determine whether spouses and children of members of the uniformed services are eligible for SSI. The rules also clarify that we do not consider combat-related military pay as income when we determine the spouse's or child's proper payment amount. These rules also provide that, when we determine whether spouses and children are eligible for SSI, we do not consider retroactive payments of certain military pay as resources for 9 months following receipt. These final rules protect spouses and children of members of the uniformed services from a reduction in, or loss of, benefits because their spouse or parent serves in a combat zone.

**DATES:** This final rule will be effective March 24, 2010.

**FOR FURTHER INFORMATION CONTACT:** Eric Skidmore, Social Insurance Specialist, Social Security Administration, Office of Income Security Programs, 252 Altmeyer Building, 6401 Security Boulevard, Baltimore, MD 21235–6401, (410) 597–1833. For information on eligibility or filing for benefits, call our national toll-free number, 1–800–772–1213 or TTY 1–800–325–0778, or visit our Internet site, Social Security Online, at *http://www.socialsecurity.gov.*

**SUPPLEMENTARY INFORMATION:**

**Electronic Version**

The electronic file of this document is available on the date of publication in the **Federal Register** at *http://www.gpoaccess.gov/fr/index.html.*

**Background**

The SSI program provides a minimum income level for aged, blind, and disabled persons who do not have income or resources above levels specified in the Social Security Act (the Act). The Act generally requires that when we determine a person's eligibility for, and amount of, SSI benefits, we must consider the income and resources of an ineligible spouse living in the same household and, in the case of a child under the age of 18, an ineligible parent living in the same household (and the spouse of such a parent). Section 1614(f) of the Act, 42 U.S.C. 1382c(f). We use the term "deeming" to refer to the process of considering part of an ineligible spouse's or parent's income and resources to be the person's own income and resources.

Although a member of the uniformed services on active duty is unlikely to apply or be eligible for SSI benefits, some members of the uniformed services have spouses or children who receive or may apply for SSI benefits. For purposes of deeming, the Act provides that a spouse or parent who is absent from the household solely because of a duty assignment as a member of the Armed Forces generally will be treated as if he or she were living in the household. Section 1614(f)(4) of the Act, 42 U.S.C. 1382c(f)(4). Therefore, we generally deem income and resources of the member of the uniformed services to his or her spouse or child when determining the spouse's or child's eligibility for, and amount of, SSI benefits. Because we consider the member of the uniformed services as part of the household, we do not treat his or her military pay as unearned income from a source outside of the household.

Although we generally deem income of a member of the uniformed services

to his or her spouse or child, the Act excludes from income certain kinds of pay that members of the uniformed services may receive. Section 1612(b)(20) of the Act, 42 U.S.C. 1382a(b)(20). In particular, we exclude from income special pay received pursuant to 37 U.S.C. 310. Members of the uniformed services are eligible for special pay during months in which they are subject to hostile fire or certain other dangerous conditions specified in 37 U.S.C. 310. Our current regulations implementing section 1612(b)(20) of the Act exclude "hostile fire pay" received under 37 U.S.C. 310 from income and from deeming to spouses and children. 20 CFR 416.1124(c)(19) and 416.1161(a)(23). We are replacing the term "hostile fire pay" in these sections of our rules with the term "special pay" to clarify that we exclude from income all special pay that a member of the uniformed services received pursuant to 37 U.S.C. 310.

We are also adding a new paragraph to our rules on deeming of income to spouses and children that excludes from deeming additional types of combat-related pay beyond special pay under 37 U.S.C. 310. The Act allows us to waive the deeming of income and resources to a spouse or child when we determine that deeming would be inequitable. Section 1614(f) of the Act, 42 U.S.C. 1382c(f). Effective October 1, 2002, we issued instructions under this statutory authority to exclude from a spouse's or child's deemed income any additional pay that members of the uniformed services received because they were deployed to or served in a combat zone. We determined that it would be inequitable to deem that pay as income and reduce a family member's benefits or potentially render the family member ineligible for SSI. We are now incorporating this exclusion and the definition of the term "combat zone" in our SSI rules.

We are also revising our rules on deeming of resources to spouses and children to exclude retroactive payments of certain kinds of military pay for 9 months following receipt. Congress has retroactively and permanently increased the amount of special pay under 37 U.S.C. 310 and the family separation allowance under 37 U.S.C. 427. Pursuant to section 1614(f) of the Act, we issued instructions excluding retroactive payments of the increase in special pay received after September 2002 from a spouse's or child's deemed resources for a period of 9 months following the month of receipt. Our instructions similarly excluded retroactive payments of the family separation allowance that a member of the uniformed services received as a result of deployment to or service in a combat zone. We determined that it would be inequitable to apply the usual resource deeming rules to these retroactive payments in recognition of the hardships experienced and sacrifices made by members of the uniformed services and their families. We are now revising our SSI rules to incorporate these exclusions.

Finally, we are revising the punctuation at the conclusion of § 416.1161(a)(25), (a)(26), and (a)(27). We are also clarifying some of the language in § 416.1202(a) and (b)(1) and reorganizing portions of § 416.1202(b)(1) to make that section easier to understand. We are making these changes solely to improve the clarity of these rules, and these changes have no substantive effect on our policies or procedures.

**Explanation of Changes**

We are amending the regulations in 20 CFR, part 416, subparts K and L, to reflect the changes discussed above. In summary, we are:

1. Revising § 416.1124(c)(19) and § 416.1161(a)(23) to replace the term "hostile fire pay" with the term "special pay." We are making this technical clarification to conform the regulatory language to the statutory language in section 1612(b)(20) of the Act.

2. Amending § 416.1160(d) to add a definition of the term "combat zone."

3. Amending § 416.1161 by adding new paragraph (a)(28) to exclude from income deemed from an ineligible spouse or parent any additional increment in pay, other than any increase in basic pay (*e.g.,* annual pay raises, promotions), if:

- The spouse or parent received the additional pay as a result of deployment to or service in a combat zone; and
- The spouse or parent was not receiving the additional pay immediately prior to deployment to or service in a combat zone.

4. Revising the punctuation at the conclusion of paragraphs (a)(25), (a)(26), and (a)(27) of § 416.1161.

5. Revising paragraphs (a) and (b)(1) of § 416.1202 to exclude from resources deemed from an ineligible spouse or parent (or spouse of a parent), for 9 months following the month of receipt, the unspent portion of any retroactive payment of:

- Special pay the ineligible spouse or parent received from one of the uniformed services pursuant to 37 U.S.C. 310; and
- Family separation allowance the ineligible spouse or parent received from one of the uniformed services pursuant to 37 U.S.C. 427 as a result of deployment to or service in a combat zone.

6. Clarifying some language in paragraphs (a) and (b)(1) of § 416.1202, and reorganizing portions of paragraph (b)(1).

**Public Comments**

In the notice of proposed rulemaking we published at 74 FR 27727 (June 11, 2009), we provided the public with a 60-day period in which to comment on the proposed changes. That comment period ended on August 10, 2009. We did not receive any comments on the proposed changes. We are changing our rules exactly as we proposed in the notice of proposed rulemaking.

**Regulatory Procedures**

*Executive Order 12866*

We have consulted with the Office of Management and Budget (OMB) and determined that these final rules meet the requirements for a significant regulatory action under Executive Order 12866, as amended. Thus, they were subject to OMB review.

*Regulatory Flexibility Act*

We certify that these final rules will not have a significant economic impact on a substantial number of small entities, because they affect only individuals. Therefore, a regulatory flexibility analysis as provided in the Regulatory Flexibility Act, as amended, is not required.

*Paperwork Reduction Act*

These final rules impose no reporting or recordkeeping requirements subject to OMB clearance.

(Catalog of Federal Domestic Assistance Program No. 96.006, Supplemental Security Income)

**List of Subjects in 20 CFR Part 416**

Administrative practice and procedure; Aged, Blind, Disability benefits; Public assistance programs; Reporting and recordkeeping requirements; Supplemental Security Income (SSI).

Dated: November 9, 2009.

**Michael J. Astrue,**

*Commissioner of Social Security.*

■ For the reasons set out in the preamble, we amend subparts K and L of part 416 of chapter III of title 20 Code of Federal Regulations as set forth below:

## PART 416—SUPPLEMENTAL SECURITY INCOME FOR THE AGED, BLIND, AND DISABLED

### Subpart K—[Amended]

■ 1. The authority citation for subpart K of part 416 continues to read as follows:

**Authority:** Secs. 702(a)(5), 1602, 1611, 1612, 1613, 1614(f), 1621, 1631, and 1633 of the Social Security Act (42 U.S.C. 902(a)(5), 1381a, 1382, 1382a, 1382b, 1382c(f), 1382j, 1383, and 1383b); sec. 211, Pub. L. 93–66, 87 Stat. 154 (42 U.S.C. 1382 note).

■ 2. Amend § 416.1124 by revising paragraph (c)(19) to read as follows:

**§ 416.1124 Unearned income we do not count.**

* * * * *

(c) * * *

(19) Special pay received from one of the uniformed services pursuant to 37 U.S.C. 310;

* * * * *

■ 3. Amend § 416.1160 by adding the definition of "Combat zone" in paragraph (d) to read as follows:

**§ 416.1160 What is deeming of income?**

* * * * *

(d) * * *

*Combat zone* means

(i) Any area the President of the United States designates by Executive Order under 26 U.S.C. 112 as an area in which Armed Forces of the United States are or have engaged in combat;

(ii) A qualified hazardous duty area (QHDA) Congress designates be treated in the same manner as an area designated by the President under 26 U.S.C. 112, provided the member of the uniformed services serving in this area is entitled to special pay under 37 U.S.C. 310; or

(iii) An area where the Secretary of Defense or his or her designated representative has certified that Armed Forces members provide direct support for military operations in an area designated by the President under 26 U.S.C. 112 or a QHDA, provided the member of the uniformed services serving in the area certified by the Secretary of Defense or his or her designated representative is entitled to special pay under 37 U.S.C. 310.

* * * * *

■ 4. Amend § 416.1161 as follows:

■ a. Amend paragraph (a)(23) by removing the words "Hostile fire pay" and adding the words "Special pay" in their place;

■ b. Remove the word "and" at the end of paragraph (a)(25);

■ c. Remove the period at the end of paragraph (a)(26) and add a semicolon in its place;

■ d. Remove the period at the end of paragraph (a)(27) and add "; and" in its place; and

■ e. Add paragraph (a)(28) to read as follows:

**§ 416.1161 Income of an ineligible spouse, ineligible parent, and essential person for deeming purposes.**

* * * * *

(a) * * *

(28) Any additional increment in pay, other than any increase in basic pay, received while serving as a member of the uniformed services, if—

(i) Your ineligible spouse or parent received the pay as a result of deployment to or service in a combat zone; and

(ii) Your ineligible spouse or parent was not receiving the additional pay immediately prior to deployment to or service in a combat zone.

* * * * *

### Subpart L—[Amended]

■ 5. The authority citation for subpart L of part 416 continues to read as follows:

**Authority:** Secs. 702(a)(5), 1602, 1611, 1612, 1613, 1614(f), 1621, 1631, and 1633 of the Social Security Act (42 U.S.C. 902(a)(5), 1381a, 1382, 1382a, 1382b, 1382c(f), 1382j, 1383, and 1383b); sec. 211, Pub. L. 93–66, 87 Stat. 154 (42 U.S.C. 1382 note).

■ 6. In § 416.1202:

■ a. Revise the second sentence and remove the third sentence of paragraph (a);

■ b. Add new paragraphs (a)(1), (a)(2), and (a)(3); and

■ c. Revise paragraph (b)(1).

The additions and revisions read as follows:

**§ 416.1202 Deeming of resources.**

(a) * * * In addition to the exclusions listed in § 416.1210, we also exclude the following items:

(1) Pension funds that the ineligible spouse may have. *Pension funds* are defined as funds held in individual retirement accounts (IRA), as described by the Internal Revenue Code, or in work-related pension plans (including such plans for self-employed persons, sometimes referred to as Keogh plans);

(2) For 9 months beginning with the month following the month of receipt, the unspent portion of any retroactive payment of special pay an ineligible spouse received from one of the uniformed services pursuant to 37 U.S.C. 310; and

(3) For 9 months beginning with the month following the month of receipt, the unspent portion of any retroactive payment of family separation allowance an ineligible spouse received from one of the uniformed services pursuant to 37 U.S.C. 427 as a result of deployment to or service in a combat zone (as defined in § 416.1160(d)).

(b) * * *

(1) *General.* In the case of a child (as defined in § 416.1856) who is under age 18, we will deem to that child any resources, not otherwise excluded under this subpart, of his or her ineligible parent who is living in the same household with him or her (as described in § 416.1851). We also will deem to the child the resources of his or her ineligible stepparent. As used in this section, the term "parent" means the natural or adoptive parent of a child, and the term "stepparent" means the spouse (as defined in § 416.1806) of such natural or adoptive parent who is living in the same household with the child and parent. We will deem to a child the resources of his or her parent and stepparent whether or not those resources are available to him or her. We will deem to a child the resources of his or her parent and stepparent only to the extent that those resources exceed the resource limits described in § 416.1205. (If the child is living with only one parent, we apply the resource limit for an individual. If the child is living with both parents, or the child is living with one parent and a stepparent, we apply the resource limit for an individual and spouse.) We will not deem to a child the resources of his or her parent or stepparent if the child is excepted from deeming under paragraph (b)(2) of this section. In addition to the exclusions listed in § 416.1210, we also exclude the following items:

(i) Pension funds of an ineligible parent (or stepparent). *Pension funds* are defined as funds held in IRAs, as described by the Internal Revenue Code, or in work-related pension plans (including such plans for self-employed persons, sometimes referred to as Keogh plans);

(ii) For 9 months beginning with the month following the month of receipt, the unspent portion of any retroactive payment of special pay an ineligible parent (or stepparent) received from one of the uniformed services pursuant to 37 U.S.C. 310; and

(iii) For 9 months beginning with the month following the month of receipt, the unspent portion of any retroactive payment of family separation allowance an ineligible parent (or stepparent) received from one of the uniformed services pursuant to 37 U.S.C. 427 as a result of deployment to or service in a

combat zone (as defined in § 416.1160(d)).

* * * * *

[FR Doc. 2010–3383 Filed 2–19–10; 8:45 am]

BILLING CODE 4191–02–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

### 21 CFR Part 558

**[Docket No. FDA–2010–N–0002]**

### New Animal Drugs for Use in Animal Feeds; Bacitracin Zinc; Nicarbazin

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Final rule.

**SUMMARY:** The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of an original abbreviated new animal drug application (ANADA) filed by Alpharma, Inc. The ANADA provides for use of single-ingredient Type A medicated articles containing bacitracin zinc and nicarbazin to make two-way combination drug Type C medicated feeds for broiler chickens.

**DATES:** This rule is effective February 22, 2010.

**FOR FURTHER INFORMATION CONTACT:** John K. Harshman, Center for Veterinary Medicine (HFV–170), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 240–276–8197, e-mail: *john.harshman@fda.hhs.gov*.

**SUPPLEMENTARY INFORMATION:** Alpharma, Inc., 440 Rte. 22, Bridgewater, NJ 08807, filed ANADA 200–478 for use of ALBAC 50 (bacitracin zinc) and NICARB (nicarbazin) single-ingredient Type A medicated articles to make two-way combination drug Type C medicated feeds for broiler chickens. Alpharma, Inc.'s, ANADA 200–478 is approved as a generic copy of NADA 141–146, sponsored by Phibro Animal Health, for combination use of BACIFERM (bacitracin zinc) and NICARB. The application is approved as of January 21, 2010, and the regulations are amended in 21 CFR 558.366 to reflect the approval.

In accordance with the freedom of information provisions of 21 CFR part 20 and 21 CFR 514.11(e)(2)(ii), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, between 9 a.m. and 4 p.m., Monday through Friday.

The agency has determined under 21 CFR 25.33 that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

This rule does not meet the definition of "rule" in 5 U.S.C. 804(3)(A) because it is a rule of "particular applicability." Therefore, it is not subject to the congressional review requirements in 5 U.S.C. 801–808.

**List of Subjects in 21 CFR Part 558**

Animal drugs, Animal feeds.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 558 is amended as follows:

## PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

■ 1. The authority citation for 21 CFR part 558 continues to read as follows:

**Authority:** 21 U.S.C. 360b, 371.

**§ 558.366 [Amended]**

■ 2. In § 558.366, in the table in paragraph (d), in the "Nicarbazin in grams per ton" column, in the entry for "113.5 (0.0125 pct.)" under the "Combination in grams per ton" column, in the entry for "Bacitracin zinc 4 to 50," add "046573" in numeral sequence under the "Sponsor" column.

Dated: February 17, 2010.

**William T. Flynn,**

*Acting Director, Center for Veterinary Medicine.*

[FR Doc. 2010–3328 Filed 2–19–10; 8:45 am]

BILLING CODE 4160–01–S

# Proposed Rules

Federal Register
Vol. 75, No. 34
Monday, February 22, 2010

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## DEPARTMENT OF ENERGY

### 10 CFR Part 460

**[Docket No. EERE–2009–BT–BC–0021]**

**RIN 1904–AC11**

## Energy Efficiency Standards for Manufactured Housing

**AGENCY:** Office of Energy Efficiency and Renewable Energy, Department of Energy.

**ACTION:** Advance notice of proposed rulemaking (ANOPR); request for comment.

**SUMMARY:** The U.S. Department of Energy (DOE) has initiated the process to develop and publish energy standards for manufactured housing as directed by the Energy Independence and Security Act (EISA) of 2007. To facilitate this process, enhance the quality of the standards and supporting documentation, and to allow interested parties to provide suggestions, comments and information, DOE is publishing this advance notice of proposed rulemaking. As the energy efficiency standards would cover new manufactured housing, DOE is interested in information that relates to the design, construction, financing, operating costs, and other areas of relevance to establishing and implementing such standards. This notice identifies several areas on which DOE is particularly interested in receiving information; however, any input and suggestions considered relevant to the topic are welcome.

**DATES:** Written comments and information are requested on or before March 24, 2010.

**ADDRESSES:** Interested persons may submit comments, identified by docket number EERE–2009–BT–BC–0021, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *E-mail: Manufactured.Housing@ee.doe.gov.* Include EERE–2009–BT–BC–0021 in the subject line of the message.
- *Mail:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, Mailstop EE–2J, Energy Efficiency Standards for Manufactured Housing, EERE–2009–BT–BC–0021, 1000 Independence Avenue, SW., Washington, DC 20585–0121. Phone: (202) 586–2945. Please submit one signed paper original.
- *Hand Delivery/Courier:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, 6th Floor, 950 L'Enfant Plaza, SW., Washington, DC 20024. Phone: (202) 586–2945. Please submit one signed paper original.
- *Instructions:* All submissions received must include the agency name and docket number or RIN for this rulemaking.
- *Docket:* For access to the docket to read background documents, or comments received, go to the U.S. Department of Energy, 6th Floor, 950 L'Enfant Plaza, SW., Washington, DC 20024, (202) 586–2945, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays. Please call Ms. Brenda Edwards at (202) 586–2945 for additional information regarding visiting the Building Technologies Resource Room.

**FOR FURTHER INFORMATION CONTACT:** Direct requests for additional information to Messer's Ronald B. Majette or Harry Indig, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Program, Mailstop EE–2J, 1000 Independence Avenue, SW., Washington, DC 20585–0121, Mr. Majette (202) 586–7935, e-mail: *ronald.majette@ee.doe.gov* or Mr. Indig (202) 287–1585, e-mail: *harry.indig@ee.doe.gov.* In the Office of the General Counsel, contact Mr. Michael Jensen, U.S. Department of Energy, Office of the General Counsel, Forrestal Building, GC–71, 1000 Independence Avenue, SW., Washington, DC 20585. Telephone: (202) 586–5829. E-mail: *Michael.Jensen@hq.doe.gov.*

**SUPPLEMENTARY INFORMATION:** *Authority and Background:* Section 413 of the Energy Independence and Security Act of 2007 (EISA), 42 U.S.C. 17071 requires that DOE:

- Establish by rule standards for energy efficiency in manufactured housing within four (4) years of the date of enactment of EISA.
- Provide a notice and an opportunity for comment on the proposed standards by all interested parties.
- Consult with the Secretary of the U.S. Department of Housing and Urban Development (HUD), who can seek further counsel from the HUD Manufactured Housing Consensus Committee.
- Base the energy efficiency standards on the most recent version of the International Energy Conservation Code (IECC), except where DOE finds that the IECC is not cost effective, or a more stringent standard would be more cost effective, based on the impact of the IECC on the purchase price of manufactured housing and on total life-cycle construction and operating costs.
- In establishing the energy efficiency standards, DOE is directed to consider:
  - The design and factory construction techniques of manufactured housing,
  - The climate zones established in HUD's current manufactured housing energy efficiency standards rather than the climate zones in the IECC, and
  - Alternative practices that result in net estimated energy consumption equal to or less than the specific IECC standards.
- Provide a system for enforcement in which "[a]ny manufacturer of manufactured housing that violates a provision of the regulations under subsection (a) is liable to the United States for a civil penalty in an amount not exceeding 1 percent of the manufacturer's retail list price of the manufactured housing."

In view of the above, DOE believes it is important to allow interested parties an opportunity to provide information they feel will assist DOE in developing the proposed standards. This initial request for input will be followed by a notice of proposed rulemaking, based on the information received as a result of this notice and other data and information gathered by DOE.

### Public Participation

*A. Submission of Information*

DOE will accept comments in response to this notice under the timeline provided in the **DATES** section

above. Comments submitted to the Department by e-mail should be provided in WordPerfect, Microsoft Word, PDF, or text file format. Those responding should avoid the use of special characters or any form of encryption, and wherever possible, comments should include the electronic signature of the author. Comments submitted to the Department by mail or hand delivery/courier should include one signed original paper copy. No telefacsimiles will be accepted.

Comments submitted in response to this notice will become a matter of public record and will be made publicly available.

*B. Issues on Which DOE Seeks Information*

DOE is particularly interested in receiving information on the following issues:

(1) Differences between site-built and factory-built construction techniques that may justify creating unique energy efficiency requirements for manufactured housing that are different from the requirements in the 2009 IECC.

(2) Specific construction cost data on manufactured home measures affecting energy efficiency such as insulation levels including associated construction impacts, fenestration (windows, skylights and doors), duct design and insulation, and permanent lighting; specifically any information on an increase or decrease in first cost to the home purchaser of designing and constructing manufactured homes consistent with the current IECC.

(3) Other economic parameters such as lending scenarios, interest rates, loan duration, energy costs, and recommended values and approaches for addressing financial considerations and life cycle costs.

(4) Statistics associated with HVAC system and equipment type, window type, and insulation levels, provided in recently built new manufactured homes by state or region.

(5) Energy and/or operational cost savings estimates and/or metered data associated with different energy options for manufactured housing design and construction.

(6) The range of design specifications available for products, systems, equipment, and materials used in the construction of manufactured homes, and statistics on their frequency of use in manufactured homes.

(7) The manner in which applicable climatic differences should be addressed through a singular energy standard addressing manufactured homes.

(8) Areas in the current HUD code that are directly or indirectly related to energy or affect energy use of which DOE should be aware in establishing energy standards for manufactured housing (*e.g.,* structural requirements that could affect the ability of a wall assembly to meet certain energy efficiency criteria or the relationship of wind loads and fenestration design).

(9) Relationship, if any, DOE energy standards for manufactured housing should have with other existing energy programs for manufactured housing (*e.g.,* ENERGY STAR) and/or the analysis that DOE should conduct in assessing such programs.

(10) Relationship, if any, that DOE energy conservation standards for manufactured housing should have with HUD's manufactured home construction and safety standards.

(11) Whether DOE's system of enforcement should compliment and/or be compatible with HUD's existing system of enforcement of the HUD Code for manufactured homes.

(12) What characteristics should DOE's system of enforcement have.

(13) Suggested sources, studies, and research results of other information considered relevant to DOE's effort to establish energy standards for manufactured housing.

*Docket:* For direct access to the docket, go to the U.S. Department of Energy, 950 L'Enfant Plaza (Resource Room of the Building Technologies Program, Sixth Floor), Washington, DC, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays. Please call Ms. Brenda Edwards at (202) 586–2945 for additional information regarding the Resource Room.

*Procedural Requirements:* Today's regulatory action has been determined to be a significant regulatory action under section 3(f)(1) of Executive Order 12866, "Regulatory Planning and Review", 58 FR 51735 (Oct. 4, 1993). Accordingly, section 6(a)(3) of the Executive Order requires a review of this advance notice of proposed rulemaking by the Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget. OIRA has concluded its review.

DOE intends to develop a regulatory impact analysis (RIA), also identified by section 6(a)(3), as this rulemaking process proceeds. As part of the notice of proposed rulemaking the draft RIA would be presented to OIRA for review and would be included in the rulemaking record for public review.

**Statutory Authority:** Section 413 of the Energy Independence and Security Act of 2007 (EISA), 42 U.S.C. 17071.

Issued in Washington, DC, on January 22, 2010.

**Cathy Zoi,**

*Assistant Secretary, Energy Efficiency and Renewable Energy.*

[FR Doc. 2010–3341 Filed 2–19–10; 8:45 am]

BILLING CODE 6450–01–P

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 39

**[Docket No. FAA–2010–0127; Directorate Identifier 2009–NM–242–AD]**

**RIN 2120–AA64**

## Airworthiness Directives; The Boeing Company Model 767 Airplanes

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** We propose to adopt a new airworthiness directive (AD) for certain Model 767–200, –300, –300F, and –400ER series airplanes. This proposed AD would require a detailed inspection of the entryway door movable ceiling panel for pin migration at either end of the hinge assembly and damage to the pin; a detailed inspection for correct crimp at both ends and damage to hinge stock; a detailed inspection of the ceiling area for any visible cosmetic and/or tie-rod chafing that could be caused by a migrated hinge pin; and a detailed inspection for wire damage and/or breakage; and other specified and corrective actions if necessary. This proposed AD results from reports of fault messages caused by improperly crimped hinge pins coming into contact with wires and causing damage. We are proposing this AD to detect and correct improperly crimped hinge pins, which could damage tie rods and wire bundles, causing shorts in many systems, including the spar fuel shut off valve, oxygen mask deployment, and burned wires, which could be an ignition source in a hidden area of the airplane.

**DATES:** We must receive comments on this proposed AD by April 8, 2010.

**ADDRESSES:** You may send comments by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov*. Follow the instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.

• *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this proposed AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P.O. Box 3707, MC 2H–65, Seattle, Washington 98124–2207; telephone 206–544–5000, extension 1; fax 206–766–5680; e-mail *me.boecom@boeing.com;* Internet *https://www.myboeingfleet.com.* You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221 or 425–227–1152.

## Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov;* or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Office (telephone 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

**FOR FURTHER INFORMATION CONTACT:** Shannon Lennon, Cabin Safety and Environmental Systems Branch, ANM–150S, FAA, Seattle Aircraft Certification Office (ACO), 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 917–6436; fax (425) 917–6590.

**SUPPLEMENTARY INFORMATION:**

## Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include "Docket No. FAA–2010–0127; Directorate Identifier 2009–NM–242–AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

We will post all comments we receive, without change, to *http://www.regulations.gov*, including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this proposed AD.

## Discussion

We received a report that an operator experienced several fault messages and circuit breakers tripping during a flight. An investigation revealed that the hinge pin on the movable ceiling panel of the entryway door on the forward left side had come into contact with some wire bundles, causing damaged, broken, and burned wires, resulting in system short circuits and circuit breakers tripping. There were also reported instances of migrating hinge pins causing minor cosmetic damage and tie-rod chafing. Boeing conducted a quality assurance investigation and determined that the cause of the migrating hinge pin resulted from the vendor not properly crimping the hinge assembly stock in accordance with specifications. This condition, if not corrected, could damage tie rods and wire bundles, causing shorts in many systems, including the spar fuel shut off valve, oxygen mask deployment, and burned wires, which could be an ignition source in a hidden area of the airplane.

## Relevant Service Information

We have reviewed Boeing Service Bulletin 767–25–0477, dated August 27, 2009. The service bulletin describes procedures for doing the following detailed inspections:

• A detailed inspection for pin migration at either end of the hinge assembly and damage to the pin.

• A detailed inspection for correct crimp at both ends and damage to hinge stock.

• A detailed inspection of the ceiling area for any visible cosmetic and/or tie-rod chafing that could be caused by a migrated hinge pin.

• A detailed inspection for wire damage and/or breakage.

The service bulletin also describes other specified actions including re-partmarking the moveable panel assemblies and the hinge if necessary, and corrective actions, including crimping the hinge assembly, repairing tie-rod chafing, repairing wire damage, and replacing the hinge assembly.

## FAA's Determination and Requirements of This Proposed AD

We are proposing this AD because we evaluated all relevant information and determined the unsafe condition described previously is likely to exist or develop in other products of the same type design. This proposed AD would require accomplishing the actions specified in the service information described previously.

## Costs of Compliance

We estimate that this proposed AD would affect 273 airplanes of U.S. registry. We also estimate that it would take about 6 work-hours per product to comply with this proposed AD. The average labor rate is $85 per work-hour. Required parts would cost about $770 per product. Based on these figures, we estimate the cost of this proposed AD to the U.S. operators to be $349,440, or $1,280 per product.

## Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. "Subtitle VII: Aviation Programs," describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in "Subtitle VII, Part A, Subpart III, Section 44701: General requirements." Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

## Regulatory Findings

We determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify this proposed regulation:

1. Is not a "significant regulatory action" under Executive Order 12866,

2. Is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979), and

3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

You can find our regulatory evaluation and the estimated costs of compliance in the AD Docket.

**List of Subjects in 14 CFR Part 39**

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

**The Proposed Amendment**

Accordingly, under the authority delegated to me by the Administrator, the FAA proposes to amend 14 CFR part 39 as follows:

## PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701.

**§ 39.13 [Amended]**

2. The FAA amends § 39.13 by adding the following new AD:

**The Boeing Company:** Docket No. FAA–2010–0127; Directorate Identifier 2009–NM–242–AD.

**Comments Due Date**

(a) We must receive comments by April 8, 2010.

**Affected ADs**

(b) None.

**Applicability**

(c) This AD applies to The Boeing Company Model 767–200, –300, –300F, and –400ER series airplanes, certificated in any category; as identified in Boeing Service Bulletin 767–25–0477, dated August 27, 2009.

**Subject**

(d) Air Transport Association (ATA) of America Code 25: Equipment/Furnishings.

**Unsafe Condition**

(e) This AD results from reports of fault messages caused by improperly crimped hinge pin on the movable ceiling panel of entryway door on the forward left side coming into contact with wires and causing damage. The Federal Aviation Administration is issuing this AD to detect and correct improperly crimped hinge pins, which could damage tie rods and wire bundles, causing shorts in many systems, including the spar fuel shut off valve, oxygen mask deployment, and burned wires, which could be an ignition source in a hidden area of the airplane.

**Compliance**

(f) You are responsible for having the actions required by this AD performed within the compliance times specified, unless the actions have already been done.

**Inspections and Corrective Actions**

(g) Within 72 months after the effective date of this AD: Accomplish the inspections required by paragraphs (g)(1), (g)(2), (g)(3), and (g)(4) of this AD and do all applicable other specified and corrective actions, in accordance with the Accomplishment Instructions of Boeing Service Bulletin 767–25–0477, dated August 27, 2009. Do all applicable other specified and corrective actions before further flight.

(1) A detailed inspection for pin migration at either end of the hinge assembly and to detect damage to the pin.

(2) A detailed inspection for correct crimp at both ends and to detect damage to hinge stock.

(3) A detailed inspection of the ceiling area for any visible cosmetic and tie-rod chafing that could be caused by a migrated hinge pin.

(4) A detailed inspection for wire damage and breakage.

**Alternative Methods of Compliance (AMOCs)**

(h)(1) The Manager, Seattle Aircraft Certification Office, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Shannon Lennon, Aerospace Engineer, Cabin Safety and Environmental Systems Branch, ANM–150S, FAA, Seattle Aircraft Certification Office (ACO), 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 917–6436; fax (425) 917–6590. Or, e-mail information to *9-ANM-Seattle-ACO-AMOC-Requests@faa.gov*.

(2) To request a different method of compliance or a different compliance time for this AD, follow the procedures in 14 CFR 39.19. Before using any approved AMOC on any airplane to which the AMOC applies, notify your principal maintenance inspector (PMI) or principal avionics inspector (PAI), as appropriate, or lacking a principal inspector, your local Flight Standards District Office. The AMOC approval letter must specifically reference this AD.

Issued in Renton, Washington, on February 11, 2010.

**Ali Bahrami,**

*Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 2010–3371 Filed 2–19–10; 8:45 am]

BILLING CODE 4910–13–P

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## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

## 24 CFR Part 1000

**[Docket No. FR–5275–N–05]**

## Native American Housing Assistance and Self-Determination Reauthorization Act of 2008: Negotiated Rulemaking Committee Meeting

**AGENCY:** Office of the Assistant Secretary for Public and Indian Housing, HUD.

**ACTION:** Notice of Negotiated Rulemaking Committee meeting.

**SUMMARY:** This document announces a meeting of the negotiated rulemaking committee that was established pursuant to the Native American Housing Assistance and Self-Determination Reauthorization Act of 2008. The primary purpose of the committee is to discuss and negotiate a proposed rule that would change the regulations for the Indian Housing Block Grant (IHBG) program and the Title VI Loan Guarantee program.

**DATES:** The committee meeting will be held on Tuesday, March 9, 2010, and Wednesday, March 10, 2010. On both days the meeting will begin at 8 a.m. and is scheduled to end at 5 p.m.

**ADDRESSES:** The meeting will take place at the Doubletree Paradise Valley Resort, 5401 North Scottsdale Road, Scottsdale, Arizona 85250; telephone number 480–946–1524 (this is not a toll-free number).

**FOR FURTHER INFORMATION CONTACT:** Rodger J. Boyd, Deputy Assistant Secretary for Native American Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 4126, Washington, DC 20410; telephone number 202–401–7914 (this is not a toll-free number). Hearing or speech-impaired individuals may access this number via TTY by calling the toll-free Federal Information Relay Service at 1–800–877–8339.

**SUPPLEMENTARY INFORMATION:**

### I. Background

The Native American Housing Assistance and Self-Determination Act of 1996 (25 U.S.C. 4101 *et seq.*) (NAHASDA) changed the way that housing assistance is provided to Native Americans. NAHASDA eliminated several separate assistance programs and replaced them with a single block grant program, known as the Indian Housing Block Grant (IHBG) program. In addition, Title VI of NAHASDA authorizes Federal guarantees for the financing of certain tribal activities (Title VI Loan Guarantee Program). The regulations governing the IHBG and Title VI Loan Guarantee programs are located in part 1000 of HUD's regulations in title 24 of the Code of Federal Regulations. In accordance with section 106 of NAHASDA, HUD developed the regulations with active tribal participation and using the procedures of the Negotiated Rulemaking Act of 1996 (5 U.S.C. 561–570).

The Native American Housing Assistance and Self-Determination Reauthorization Act of 2008 (Pub. L. 110–411, approved October 14, 2008) (NAHASDA Reauthorization) reauthorizes NAHASDA through September 30, 2013, and makes a number of amendments to the statutory

requirements governing the IHBG and Title VI Loan Guarantee programs. The NAHASDA Reauthorization amends section 106 of NAHASDA to provide that HUD shall initiate a negotiated rulemaking in order to implement aspects of the 2008 Reauthorization Act that require rulemaking. On January 5, 2010 (75 FR 423), HUD published a **Federal Register** notice announcing the final list of members of the negotiated rulemaking committee (the NAHASDA Reauthorization Rulemaking Committee).

## II. Negotiated Rulemaking Committee Meeting

This document announces the first meeting of the NAHASDA Reauthorization Rulemaking Committee. The committee meeting will take place as described in the **DATES** and **ADDRESSES** sections of this document. The agenda planned for the meeting includes the discussion of protocols, timeframes, and scope of the rulemaking process, as well as setting of future meetings. The meeting will be open to the public without advance registration. Public attendance may be limited to the space available. Members of the public may be allowed to make statements during the meeting, to the extent time permits, and to file written statements with the committee for its consideration. Written statements should be submitted to the address listed in the **FOR FURTHER INFORMATION** section of this document.

Dated: February 16, 2010.

**Rodger Boyd,**

*Deputy Assistant Secretary for Native American Programs.*

[FR Doc. 2010–3373 Filed 2–19–10; 8:45 am]

**BILLING CODE 4210–67–P**

## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 156

**[EPA–HQ–OPP–2009–0635; FRL–8813–3]**

## Public Availability of Identities of Inert Ingredients in Pesticides; Extension of Comment Period

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Advance notice of proposed rulemaking (ANPRM); extension of comment period.

**SUMMARY:** EPA issued an ANPRM in the **Federal Register** of December 23, 2009, concerning the initiation of rulemaking to increase public availability of the identities of the inert ingredients in pesticide products. Two requests for a 90–day extension of the comment period were submitted by the Responsible Industry for a Sound Environment and Syngenta Crop Protection, Inc. Based on these requests, EPA is extending the comment period for 60 days, from February 22, 2010, to April 23, 2010.

**DATES:** Comments, identified by docket identification (ID) number EPA–HQ–OPP–2009–0635, must be received on or before April 23, 2010.

**ADDRESSES:** Follow the detailed instructions as provided under **ADDRESSES** in the **Federal Register** document of December 23, 2009.

**FOR FURTHER INFORMATION CONTACT:** Kerry B. Leifer, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–8811; e-mail address: *leifer.kerry@epa.gov*.

**SUPPLEMENTARY INFORMATION:** EPA is extending for 60 days the comment period on the initiation of rulemaking to increase public availability of the identities of the inert ingredients in pesticide products. Two requests for a 90–day extension of the comment period were submitted by the Responsible Industry for a Sound Environment and Syngenta Crop Protection, Inc. Both of these requests are in docket EPA–HQ–OPP–2009–0635, accessible via *http://www.regulations.gov*. This document extends the public comment period established in the **Federal Register** of December 23, 2009 (74 FR 68215) (FRL–8803–3). In that document, EPA proposed to initiate rulemaking to increase public availability of the identities of the inert ingredients in pesticide products. EPA is hereby extending the comment period, which was set to end on February 22, 2010, to April 23, 2010.

To submit comments, or access the docket, please follow the detailed instructions as provided under **ADDRESSES** in the December 23, 2009 **Federal Register** document. If you have questions, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

## List of Subjects in 40 CFR Part 156

Environmental protection, Pesticides and pests.

Dated: February 16, 2010.

**James Jones,**

*Acting Assistant Administrator, Office of Prevention, Pesticides and Toxic Substances.*

[FR Doc. 2010–3415 Filed 2–19–10; 8:45 am]

**BILLING CODE 6560–50–S**

# Notices

Federal Register
Vol. 75, No. 34
Monday, February 22, 2010

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

## DEPARTMENT OF AGRICULTURE

### Office of the Assistant Secretary for Civil Rights

### Notice of Request for Approval of a New Information Collection

**AGENCY:** Office of the Assistant Secretary for Civil Rights, United States Department of Agriculture (USDA).

**ACTION:** Notice and request for comments.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), this notice announces the Office of the Assistant Secretary for Civil Rights' intention to request approval for a new information collection for the USDA Independent Assessment of the Delivery of Technical and Financial Assistance.

**DATES:** Comments on this notice must be received by April 23, 2010 to be assured of consideration.

**ADDITIONAL INFORMATION OR COMMENTS:** Contact Stacy Porto, Esq., Office of the Assistant Secretary for Civil Rights, U.S. Department of Agriculture, 1400 Independence Ave., SW., Mail Stop 0115, Washington, DC 20250; Fax: (202) 690–1782; E-mail: *stacy.porto@osec.usda.gov.*

**SUPPLEMENTARY INFORMATION:**

*Title:* USDA Independent Assessment of the Delivery of Technical and Financial Assistance.

*OMB Number:* 0503–New.

*Expiration Date of Approval:* Three years from approval date.

*Type of Request:* New information collection.

*Abstract:* USDA is interested in conducting an independent assessment of the delivery of programs of technical and financial assistance by certain agencies noted above. The project will examine USDA's program delivery at the State and local levels. The purpose of this project is to assess the effectiveness of USDA's programs in reaching America's diverse population in a non-discriminatory manner. This study will identify barriers to equal and fair access for USDA customers and provide recommendations to assist the Secretary of Agriculture in transforming USDA into a model organization.

As part of this assessment of the laws, regulations, policies, practices, and results achieved in administering key programs administered by four entities within USDA [the Farm Service Agency (FSA), the Rural Development (RD) mission area, the Natural Resources Conservation Service (NRCS), and the Risk Management Agency (RMA)], actual program delivery will be reviewed. The activities to be undertaken subject to this notice include:

- Conducting multi-modal (*e.g.* paper, Web, and telephone) survey of approximately 21,400 USDA customers and potential customers.
- Conducting in-depth in-person interviews with a sub-sample of up to 100 USDA customers.
- Conducting an impact analysis.

These activities are described below:

- Multi-modal Survey. Surveys will be administered to potential customers and customers who applied for FSA, RD, NRCS, or RMA financial or technical programs, including those for commodities, credit, conservation, disaster relief, and any providing for grants or loans, (as authorized by Congress in 84 Counties across 14 States. A sample of 21,400 customers including African American, Hispanic, American Indian, Alaska Native, Asian Pacific Islanders, persons with disabilities, or women farm and ranch operators will be drawn from USDA databases.
- In-depth Interviews. After the surveys are completed, a sub-sample will be drawn from among the customers who completed the surveys and up to 100 in-depth interviews will be conducted to delve deeper into the experiences of the customers about the process of application and services they received.
- Impact Analysis. Actual practices, and results, including those at USDA Headquarters, agency Headquarters, State/Regional/Local USDA and State/County areas will be analyzed. The use of statistical data (such as the percent of low-resource farmers participating in a specific loan program); the findings and conclusions of internal and external reports on USDA civil rights; other sources, such as the existing minority/female farmer lawsuits, and advocacy organizations will be determined under this task.

*Estimate of Burden:* Public reporting burden for this collection of information is estimated to average twenty (20) minutes per Self Administered Survey (paper or Web)/Telephone Survey response and two (2) hours per in-depth interview response. See Table 1 below.

*Type of Respondents:* Individuals or households.

*Estimated Number of Respondents:* Out of 21,400 USDA customers and potential customers to be surveyed, 15,100 respondents, (15,000 respondents for the Self Administered Survey/Telephone Survey and 100 respondents for the in-depth interview) are expected to respond.

*Estimated Number of Responses:* 15,100.

*Estimated Number of Responses per Respondent:* 1.

*Estimated Total Annual Burden on Respondents:* 5,200 hours.

| Data collection activity | Respondents | Annual frequency per response | Estimated number of respondents | Estimated burden per respondent (minutes) | Total burden estimate (hours) |
|---|---|---|---|---|---|
| Self administered survey/Telephone survey. | USDA customers and potential customers. | 1 | 15,000 | 20 | 5,000 |
| In depth interviews ..... | USDA customers and potential customers. | 1 | 100 | 120 | 200 |

| Data collection activity | Respondents | Annual frequency per response | Estimated number of respondents | Estimated burden per respondent (minutes) | Total burden estimate (hours) |
|---|---|---|---|---|---|
| Total | | | 15,100 | | 5,200 |

*Comments are invited on:* (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. All comments received will be available for public inspection during regular business hours at the same address.

All responses to this notice will be summarized and included in the request for the Office of Management and Budget approval. All comments will become a matter of public record.

Dated: February 8, 2010.

**Joe Leonard, Jr.,**

*Assistant Secretary for Civil Rights, United States Department of Agriculture.*

[FR Doc. 2010–3359 Filed 2–19–10; 8:45 am]

**BILLING CODE P**

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–489–807]**

### Certain Steel Concrete Reinforcing Bars From Turkey: Notice of Court Decision Not in Harmony With Final Results of Administrative Review

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**SUMMARY:** On January 19, 2010, the United States Court of International Trade (CIT) sustained the Department of Commerce's (the Department's) results of redetermination pursuant to the CIT's remand order in *Nucor Corporation, Gerdau Ameristeel Corporation, and Commercial Metals Company* v. *United States and Icdas Celik Enerji Tersane ve Ulasim Sanayi A.S.,* Court No. 05–00616, Slip Op. 10–6 (Jan. 19, 2010). *See* Results of Redetermination Pursuant to Remand, dated November 6, 2009 (found at *http://ia.ita.doc.gov/remands*). Consistent with the decision of the United States Court of Appeals for the Federal Circuit (CAFC) in *Timken Co.* v. *United States,* 893 F.2d 337 (Fed. Cir. 1990) (*Timken*), the Department is notifying the public that the final judgment in this case is not in harmony with the Department's final results of the administrative review of the antidumping duty order on certain steel concrete reinforcing bars (rebar) from Turkey covering the period of review (POR) of April 1, 2003, through March 31, 2004. *See Certain Steel Concrete Reinforcing Bars From Turkey; Final Results, Rescission of Antidumping Duty Administrative Review in Part, and Determination To Revoke in Part,* 70 FR 67665 (Nov. 8, 2005) (*Final Results*).

**FOR FURTHER INFORMATION CONTACT:** Elizabeth Eastwood, AD/CVD Operations, Office 2, Import Administration—International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–3874.

**SUPPLEMENTARY INFORMATION:**

### Background

On November 8, 2005, the Department published the final results of the administrative review. *See Final Results.* In the final results, the Department: (1) Reversed its preliminary decision with respect to the U.S. date of sale for ICDAS and used the contract date as the date of sale for ICDAS's U.S. sales, rather than the invoice date, because it determined that the material terms of sale were established at the contract date; (2) computed ICDAS's cost of production (COP) using annual-average, rather than quarterly, costs; and (3) defined the universe of U.S. sales transactions examined during the administrative review to rely on the date that subject merchandise entered the customs territory of the United States, rather than the date that subject merchandise was sold here.

On November 18, 2005, the Department requested a voluntary remand in order to reconsider the date-of-sale issue. On December 15, 2005, the CIT granted the Department's request to reconsider whether, based upon the record evidence, the Department reasonably applied its date-of-sale methodology to the facts at issue.

On January 31, 2006, the Department issued its final results of redetermination pursuant to the CIT's December 15, 2005, ruling. In its remand results, the Department determined that the invoice date is the appropriate date of sale for ICDAS's U.S. sales in the 2003–2004 administrative review.

On March 24, 2009, the CIT again remanded this issue to the Department, requiring that the Department provide a more in-depth analysis as to why the use of invoice date as U.S. date of sale was appropriate. In addition, the CIT remanded two additional issues, at the Department's request, related to the calculation of ICDAS's COP and an explanation for the methodology used to determine the universe of U.S. sales examined in the review.

On November 6, 2009, the Department issued its final results of redetermination pursuant to the CIT's March 24, 2009, ruling. In its remand redetermination the Department explained that, in accordance with the CIT's instructions, it reconsidered the issues contained in the CIT's March 24, 2009, ruling and determined that it was appropriate to: (1) Base ICDAS's universe of sales on entry date; (2) use invoice date as the date of sale for ICDAS's U.S. sales; and (3) use ICDAS's quarterly-average costs in its margin calculations. On January 19, 2010, the CIT affirmed the Department's November 6, 2009, remand redetermination.

The Department's redetermination resulted in changes to the *Final Results* weighted-average margin for ICDAS from 0.16 percent to 0.70 percent.

### Timken Notice

In its decision in *Timken,* 893 F.2d at 341, the CAFC held that, pursuant to section 516A(e) of the Tariff Act of 1930, as amended (the Act), the Department must publish a notice of a court decision that is not "in harmony" with a Department determination and must suspend liquidation of entries pending a "conclusive" court decision.

The CIT's decision on January 19, 2010, constitutes a final decision of that Court that is not in harmony with the Department's *Final Results.* Accordingly, this notice is published in

fulfillment of the publication requirements of *Timken,* with an effective date of January 29, 2010, (*i.e.,* 10 days following the CIT's ruling). The Department will continue the suspension of liquidation of the subject merchandise pending the expiration of the period of appeal or, if appealed, pending a final and conclusive court decision. In the event the CIT's ruling is not appealed or, if appealed, upheld by the CAFC, the Department will instruct U.S. Customs and Border Protection to assess antidumping duties on entries of the subject merchandise during the POR from ICDAS based on the revised assessment rates calculated by the Department.

This notice is issued and published in accordance with section 516A(c)(1) of the Act.

Dated: February 12, 2010.

**Ronald K. Lorentzen,**

*Deputy Assistant Secretary for Import Administration.*

[FR Doc. 2010–3266 Filed 2–19–10; 8:45 am]

**BILLING CODE 3510–DS–P**

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–533–843]**

### Certain Lined Paper Products from India: Notice of Final Results of Antidumping Duty Administrative Review

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**SUMMARY:** On October 7, 2009, the Department of Commerce (the Department) published in the **Federal Register** the preliminary results of the antidumping duty administrative review for certain lined paper products from India (CLPP). *See Certain Lined Paper Products From India: Notice of Preliminary Results of Antidumping Duty Administrative Review*, 74 FR 51558 (October 7, 2009) (*Preliminary Results*). This review covers 25 manufacturers and exporters of the subject merchandise.[1] As a result of our analysis of the comments received, these final results differ from the *Preliminary Results*.

For our final results, we continue to find that Navneet and Blue Bird made sales of subject merchandise at less than normal value (NV). In addition, based on the final results for Navneet, we have determined a weighted–average margin for those companies that were not selected for individual review.

**DATES:** *Effective Date:* February 22, 2010.

**FOR FURTHER INFORMATION CONTACT:** Stephanie Moore (Navneet, and non–selected companies) and Cindy Robinson (Blue Bird), AD/CVD Operations, Office 3, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–3692, (202) 482–3797, respectively.

**SUPPLEMENTARY INFORMATION:**

### Background

On November 25, 2008, the Department selected Kejriwal and Blue Bird as companies to be individually examined in this second administrative review of the antidumping duty order on CLPP from India. *See* Memorandum to Melissa Skinner from George McMahon titled "Certain Lined Paper Products from India: Selection of Respondents for Individual Review" (Respondent Selection Memo), dated November 25, 2008. On December 22, 2008, both Kejriwal and petitioner timely withdrew their requests for a review of Kejriwal. On January 9, 2009, after we determined that we would rescind the review with respect to Kejriwal, we selected Navneet as a mandatory respondent.

On October 7, 2009, the Department published the *Preliminary Results*. As noted in the *Preliminary Results*, Blue Bird withheld requested information, significantly impeded the proceeding, and failed to cooperate to the best of its ability. Therefore, pursuant to sections 776(a)(2)(A) and (C) and 776(b) of the Tariff Act of 1930, as amended (the Act), the Department preliminarily determined that the use of facts available for Blue Bird was appropriate, and assigned a rate of 72.96 percent, which was based on the highest margin preliminarily calculated for Navneet in this review.

### Comments from Interested Parties

We invited parties to comment on our *Preliminary Results*. Case briefs were filed November 20, 2009, by Navneet, and Blue Bird; November 24, 2009, by petitioner; and on November 25, 2009, by IScholar, Inc., an importer of subject merchandise from respondent Blue Bird. On December 4, 2009, petitioner and Navneet filed rebuttal briefs.

### Scope of the Order

The scope of this order includes certain lined paper products, typically school supplies (for purposes of this scope definition, the actual use of or labeling these products as school supplies or non–school supplies is not a defining characteristic) composed of or including paper that incorporates straight horizontal and/or vertical lines on ten or more paper sheets (there shall be no minimum page requirement for loose leaf filler paper) including but not limited to such products as single- and multi–subject notebooks, composition books, wireless notebooks, loose leaf or glued filler paper, graph paper, and laboratory notebooks, and with the smaller dimension of the paper measuring 6 inches to 15 inches (inclusive) and the larger dimension of the paper measuring 8–3/4 inches to 15 inches (inclusive). Page dimensions are measured size (not advertised, stated, or "tear–out" size), and are measured as they appear in the product (*i.e.*, stitched and folded pages in a notebook are measured by the size of the page as it appears in the notebook page, not the size of the unfolded paper). However, for measurement purposes, pages with tapered or rounded edges shall be measured at their longest and widest points. Subject lined paper products may be loose, packaged or bound using any binding method (other than case bound through the inclusion of binders board, a spine strip, and cover wrap). Subject merchandise may or may not contain any combination of a front cover, a rear cover, and/or backing of any composition, regardless of the inclusion of images or graphics on the cover, backing, or paper. Subject merchandise is within the scope of this order whether or not the lined paper and/or cover are hole punched, drilled, perforated, and/or reinforced. Subject merchandise may contain accessory or informational items including but not limited to pockets, tabs, dividers, closure devices, index cards, stencils, protractors, writing implements, reference materials such as mathematical tables, or printed items

[1] On September 29, 2008, the Department received a timely request for an administrative review filed on behalf of Kejriwal Paper Limited (Kejriwal) and a timely request for an administrative review filed on behalf of Navneet Publications (India) Ltd., (Navneet). On September 30, 2008, the Department received a timely request for an administrative review of the following 25 companies, filed on behalf of the Association of American School Paper Suppliers (Petitioner), a domestic interested party: Agility Logistics Pvt. Ltd., Blue Bird (India) Limited (Blue Bird), Ceal Shipping Logistics Pvt. Ltd., Cello International Pvt. Ltd., Corporate Stationary Pvt. Ltd., Creative Divya, Exel India Pvt. Ltd., FFI International, Global Art India Inc., International Greetings Pvt. Ltd., Karim General Handmade Paper DIAR, Kejriwal Exports, M/S Super ImpEx., Magic International, Marigold ExIm Pvt. Ltd., Marisa International, Navneet, Pentagon Waterlines Pvt. Ltd., Pioneer Stationery Pvt. Ltd., Rajvansh International, Riddhi Enterprises, SAB International, TKS Overseas, Unlimited Accessories Worldwide, and V. Joshi Co.

such as sticker sheets or miniature calendars, if such items are physically incorporated, included with, or attached to the product, cover and/or backing thereto.

Specifically excluded from the scope of this order are:

• unlined copy machine paper;
• writing pads with a backing (including but not limited to products commonly known as "tablets," "note pads," "legal pads," and "quadrille pads"), provided that they do not have a front cover (whether permanent or removable). This exclusion does not apply to such writing pads if they consist of hole–punched or drilled filler paper;
• three–ring or multiple–ring binders, or notebook organizers incorporating such a ring binder provided that they do not include subject paper;
• index cards;
• printed books and other books that are case bound through the inclusion of binders board, a spine strip, and cover wrap;
• newspapers;
• pictures and photographs;
• desk and wall calendars and organizers (including but not limited to such products generally known as "office planners," "time books," and "appointment books");
• telephone logs;
• address books;
• columnar pads & tablets, with or without covers, primarily suited for the recording of written numerical business data;
• lined business or office forms, including but not limited to: pre–printed business forms, lined invoice pads and paper, mailing and address labels, manifests, and shipping log books;

• lined continuous computer paper;
• boxed or packaged writing stationary (including but not limited to products commonly known as "fine business paper," "parchment paper," and "letterhead"), whether or not containing a lined header or decorative lines;
• Stenographic pads ("steno pads"), Gregg ruled ("Gregg ruling" consists of a single- or double–margin vertical ruling line down the center of the page. For a six–inch by nine–inch stenographic pad, the ruling would be located approximately three inches from the left of the book), measuring 6 inches by 9 inches;

Also excluded from the scope of this order are the following trademarked products:

•™ Fly lined paper products: A notebook, notebook organizer, loose or glued note paper, with papers that are printed with infrared reflective inks and readable only by a Fly™ pen–top computer. The product must bear the valid trademark Fly™ (products found to be bearing an invalidly licensed or used trademark are not excluded from the scope).
• Zwipes™ : A notebook or notebook organizer made with a blended polyolefin writing surface as the cover and pocket surfaces of the notebook, suitable for writing using a specially–developed permanent marker and erase system (known as a Zwipes™ pen). This system allows the marker portion to mark the writing surface with a permanent ink. The eraser portion of the marker dispenses a solvent capable of solubilizing the permanent ink allowing the ink to be removed. The product must bear the valid trademark Zwipes™ (products found to be bearing an invalidly licensed or used trademark are not excluded from the scope).
• FiveStar® Advance™: A notebook or notebook organizer bound by a continuous spiral, or helical, wire and with plastic front and rear covers made of a blended polyolefin plastic material joined by 300 denier polyester, coated on the backside with PVC (poly vinyl chloride) coating, and extending the entire length of the spiral or helical wire. The polyolefin plastic covers are of specific thickness; front cover is 0.019 inches (within normal manufacturing tolerances) and rear cover is 0.028 inches (within normal manufacturing tolerances). Integral with the stitching that attaches the polyester spine covering, is captured both ends of a 1" wide elastic fabric band. This band is located 2–3/8" from the top of the front plastic cover and provides pen or pencil storage. Both ends of the spiral wire are cut and then bent backwards to overlap with the previous coil but specifically outside the coil diameter but inside the polyester covering. During construction, the polyester covering is sewn to the front and rear covers face to face (outside to outside) so that when the book is closed, the stitching is concealed from the outside. Both free ends (the ends not sewn to the cover and back) are stitched with a turned edge construction. The flexible polyester material forms a covering over the spiral wire to protect it and provide a comfortable grip on the product. The product must bear the valid trademarks FiveStar® Advance™ (products found to be bearing an invalidly licensed or used trademark are not excluded from the scope).
• FiveStar Flex™: A notebook, a notebook organizer, or binder with plastic polyolefin front and rear covers joined by 300 denier polyester spine cover extending the entire length of the spine and bound by a 3–ring plastic fixture. The polyolefin plastic covers are of a specific thickness; front cover is 0.019 inches (within normal manufacturing tolerances) and rear cover is 0.028 inches (within normal manufacturing tolerances). During construction, the polyester covering is sewn to the front cover face to face (outside to outside) so that when the book is closed, the stitching is concealed from the outside. During construction, the polyester cover is sewn to the back cover with the outside of the polyester spine cover to the inside back cover. Both free ends (the ends not sewn to the cover and back) are stitched with a turned edge construction. Each ring within the fixture is comprised of a flexible strap portion that snaps into a stationary post which forms a closed binding ring. The ring fixture is riveted with six metal rivets and sewn to the back plastic cover and is specifically positioned on the outside back cover. The product must bear the valid trademark FiveStar Flex (products found to be bearing an invalidly licensed or used trademark are not excluded from the scope).

Merchandise subject to this order is typically imported under headings 4810.22.5044, 4811.90.9050, 4811.90.9090, 4820.10.2010, 4820.10.2020, 4820.10.2030, 4820.10.2040, 4820.10.2050, 4820.10.2060, and 4820.10.4000 of the Harmonized Tariff Schedule of the United States (HTSUS). The HTSUS headings are provided for convenience and customs purposes; however, the written description of the scope of the order is dispositive.

**Period of Review**

The period of review (POR) is September 1, 2007, through August 31, 2008.

**Analysis of Comments Received**

All issues raised in the case and rebuttal briefs by parties to this administrative review are addressed in the accompanying Issues and Decision Memorandum, which is hereby adopted by this notice. A list of the issues which parties have raised, and to which we have responded in the Issues and Decision Memorandum, is attached to this notice as an Appendix. In addition, a complete version of the Issues and Decision Memorandum can be accessed directly on the Internet at http://ia.ita.doc.gov/frn. The paper copy and electronic version of the Issues and Decision Memorandum are identical in content. As a result of comments received and our analysis, we have

made changes to the margin calculations.

**Final Results of Review:**

We determine that the following weighted–average margins exist:

| Manufacturer/Exporter | Weighted Average Margin (percent) |
|---|---|
| Navneet Publications (India) Ltd. | 1.34 |
| Blue Bird | 72.03 |

Review–Specific Average Rate Applicable to the 22 Non–Selected Companies Subject to This Review:

| Manufacturer/Exporter | Weighted Average Margin (percent) |
|---|---|
| Agility Logistics Pvt. Ltd. | 1.34 |
| Ceal Shipping Logistics Pvt. Ltd. | 1.34 |
| Cello International Pvt. Ltd. | 1.34 |
| Corporate Stationary Pvt. Ltd. | 1.34 |
| Creative Divya | 1.34 |
| Exel India Pvt. Ltd. | 1.34 |
| FFI International | 1.34 |
| Global Art India Inc. | 1.34 |
| International Greetings Pvt. Ltd. | 1.34 |
| Karim General Hand-made Paper DIAR | 1.34 |
| M/S Super ImpEx. | 1.34 |
| Magic International | 1.34 |
| Marigold ExIm Pvt. Ltd. | 1.34 |
| Marisa International | 1.34 |
| Pentagon Waterlines Pvt. Ltd. | 1.34 |
| Pioneer Stationery Pvt. Ltd. | 1.34 |
| Rajvansh International | 1.34 |
| Riddhi Enterprises | 1.34 |
| SAB International | 1.34 |
| TKS Overseas | 1.34 |
| Unlimited Accessories Worldwide | 1.34 |
| V. Joshi Co. | 1.34 |

**Assessment Rates**

Pursuant to these final results, the Department has determined, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries. Pursuant to 19 CFR 351.212(b)(1), we calculated importer–specific *ad valorem* duty assessment rates based on the ratio of the total amount of the antidumping margins calculated for the examined sales to the total entered value of the examined sales for that importer. Where the assessment rate is above *de minimis*, we will instruct CBP to assess duties on all entries of subject merchandise by that importer. Pursuant to 19 CFR 351.106(c)(2), we will instruct CBP to liquidate without regard to antidumping duties any entries for which the assessment rate is *de minimis (i.e.*, less than 0.50 percent). The Department intends to issue assessment instructions directly to CBP 15 days after publication of the final results of this review.

The Department clarified its "automatic assessment" regulation on May 6, 2003. S*ee Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties*, 68 FR 23954, (May 6, 2003) (*Assessment Policy Notice*). This clarification applies to POR entries of subject merchandise produced by companies examined in this review (*i.e.*, companies for which a dumping margin was calculated) where the companies did not know that their merchandise was destined for the United States. In such instances, we will instruct CBP to liquidate unreviewed entries at the 3.91 percent all–others rate for India if there is no company–specific rate for an intermediary company(ies) involved in the transaction. *See Notice of Amended Final Determination of Sales at Less Than Fair Value: Certain Lined Paper Products from the People's Republic of China; Notice of Antidumping Duty Orders: Certain Lined Paper Products from India, Indonesia and the People's Republic of China; and Notice of Countervailing Duty Orders: Certain Lined Paper Products from India and Indonesia, 71 FR 56949 (September 28, 2006) (Lined Paper Orders). See also Assessment Policy Notice*, 68 FR at 23954.

**Cash Deposit Requirements**

The following deposit requirements will be effective upon publication of these final results for all shipments of CLPP from India entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a) of the Act: (1) for companies covered by this review, the cash deposit rate will be the rate listed above; (2) for previously reviewed or investigated companies other than those covered by this review, the cash deposit rate will be the company–specific rate established for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the less–than-fair–value investigation, but the producer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the subject merchandise; and (4) if neither the exporter nor the producer is a firm covered in this review, a prior review, or the investigation, the cash deposit rate will be 3.91 percent, the all–others rate established in the less–than-fair–value investigation. These deposit requirements, when imposed, shall remain in effect until further notice.

**Reimbursement of Duties**

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping and/or countervailing duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the presumption that reimbursement of antidumping and/or countervailing duties occurred and the subsequent increase in antidumping duties by the amount of antidumping and/or countervailing duties reimbursed.

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this POR. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of doubled antidumping duties. *See* 19 CFR 351.402(f)(3).

**Administrative Protective Order**

This notice also serves as a reminder to parties subject to administrative protective orders (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3), which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

We are issuing and publishing this notice in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: February 4, 2010.

**Ronald K. Lorentzen,**

*Deputy Assistant Secretary for Import Administration.*

## APPENDIX I

*List of Comments in the Accompanying Issues and Decision Memorandum*

**Company–Specific Issues**

**Blue Bird**

**IScholar**

*Comment 1:* Whether the Transaction–Specific Margin Assigned to Blue Bird Is Aberrational

**Navneet**

*Comment 2:* Whether to Use the Invoice Date or Purchase Order Date for U.S. Sales

*Comment 3:* Navneet's Model Match Sub–Codes
*Comment 4:* Offset of Countervailing Duty Duties
*Comment 5:* Levels of Trade
*Comment 6:* Treatment of Merchandising Expense
*Comment 7:* Treatment of Negative Dumping Margins (Zeroing)

[FR Doc. 2010–3404 Filed 2–19–10; 8:45 am]

BILLING CODE 3510–DS–S

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–570–878]**

### Saccharin from the People's Republic of China: Final Results of Changed Circumstances Review

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**SUMMARY:** The Department of Commerce ("Department") published its preliminary results of changed circumstances review for saccharin from the People's Republic of China in ("PRC") on December 1, 2009.[1] We invited interested parties to comment on our preliminary results. No parties commented on our preliminary results. Therefore, the preliminary results are hereby adopted as the final results.

**DATES:** *Effective Date:* February 22, 2010.

**FOR FURTHER INFORMATION CONTACT:** Giselle Cubillos or Charles Riggle, AD/CVD Operations, Office 8, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–1778 and (202) 482–0650, respectively.

**SUPPLEMENTARY INFORMATION:**

### Background

On July 9, 2003, the Department published in the **Federal Register** an antidumping duty order on saccharin from the PRC.[2] On June 8, 2009, the Department published in the **Federal Register** the notice of continuation of antidumping duty order on saccharin from the PRC.[3] On June 4, 2009, the Department received a request on behalf of PMC Specialties Group, Inc. ("PMCSG") for a changed circumstances review to revoke the antidumping duty order on saccharin from the PRC. PMCSG claimed that, as the sole domestic producer of saccharin, it no longer had an interest in the *Saccharin Order*. As part of its submission, PMCSG requested that the Department combine the notice of initiation with the preliminary results to revoke the *Saccharin Order*.

On July 9, 2009, the Department received a letter opposing the request for a changed circumstances review from Kinetic Industries ("Kinetic").[4] Kinetic claimed that it produces saccharin through a third party toller in the United States and that both parties, Kinetic and its toll producer, are interested parties as domestic producers of saccharin. Both Kinetic and its toll producer requested that the Department not issue expedited preliminary results in this changed circumstances review.

On July 23, 2009, the Department published in the **Federal Register** a notice of initiation of changed circumstances review for saccharin from the PRC. On July 23, 2009, the Department also issued questionnaires to PMCSG, Kinetic, and Kinetic's toller to solicit relevant information and fully evaluate the request to revoke the *Saccharin Order*, as well as the arguments against revocation. On July 24, 2009, the Department issued a letter to Kinetic and its toller notifying them that the Department could not grant proprietary treatment to the toll producer's name if the toll producer wished to be an interested party to the proceeding, and that, should the toller wish to continue as an interested party, the toller would need to submit a revised notice of appearance without its name bracketed. The toller did not submit a revised notice of appearance.

On August 17, 2009, the Department received questionnaire responses from Kinetic and Kinetic's toller. The Department has not received any response from PMCSG. In addition, PMCSG indicated to the Department that it would not respond to the questionnaire.[5]

On September 4, 2009, Kinetic submitted a letter urging the Department to issue expedited negative preliminary results of the changed circumstances review and determine that domestic producers have affirmatively expressed an interest in maintaining the *Saccharin Order*. On October, 26 2009, PMCSG submitted a letter stating that it determined not to respond to the Department's July 23, 2009, questionnaire, and that it is PMCSG's position that the record contains substantial evidence that it is a commercial producer and accounts for all U.S. production.

On December 1, 2009, the Department published its preliminary results. No parties commented on our preliminary results.

### Scope of the Order

The product covered by this antidumping duty order is saccharin. Saccharin is defined as a non–nutritive sweetener used in beverages and foods, personal care products such as toothpaste, table top sweeteners, and animal feeds. It is also used in metalworking fluids. There are four primary chemical compositions of saccharin: (1) Sodium saccharin (American Chemical Society Chemical Abstract Service ("CAS") Registry 128–44–9); (2) calcium saccharin (CAS Registry 6485–34–3); (3) acid (or insoluble) saccharin (CAS Registry 81–07–2); and (4) research grade saccharin. Most of the U.S.-produced and imported grades of saccharin from the PRC are sodium and calcium saccharin, which are available in granular, powder, spray–dried powder, and liquid forms. The merchandise subject to this order is currently classifiable under subheading 2925.11.00 of the *Harmonized Tariff Schedule of the United States*

[1] *See Saccharin from the People's Republic of China: Preliminary Results of Changed Circumstances Review*, 74 FR 62745 (December 1, 2009) ("Preliminary Results").

[2] *See Notice of Antidumping Duty Order: Saccharin from the People's Republic of China*, 68 FR 40906 (June 9, 2003) ("Saccharin Order").

[3] *See Continuation of Antidumping Duty Order on Saccharin from the People's Republic of China*, 74 FR 27089 (June 8, 2009).

[4] Although Kinetic filed a letter opposing PMCSG's request for changed circumstances review on July 2, 2009, the Department rejected that letter because it did not contain the appropriate certifications. The Department requested that Kinetic re-file its submission by July 10, 2009. On July 9, 2009, Kinetic refiled its submission with the appropriate certifications.

[5] *See* Memorandum to The File, "Changed Circumstances Review of Saccharin from the People's Republic of China: Phone Call to Wiley Rein LLP" (August 28, 2009).

("HTSUS") and includes all types of saccharin imported under this HTSUS subheading, including research and specialized grades. Although the HTSUS subheading is provided for convenience and customs purposes, the Department's written description of the scope of this order remains dispositive.

**Analysis of Comments Received**

No parties commented on the preliminary results.

**Final Results of Changed Circumstances Review**

As the Department explained in the *Preliminary Results*, in the five-year sunset review of this order, the Department stated that "PMCSG claimed interested party status under section 771(9)(C) of the Tariff Act of 1930, as amended ("the Act"), as the sole domestic producer of saccharin in the United States and the petitioner in the original investigation," which was not contested during the sunset review.[6] However, since PMCSG failed to respond to the Department's questionnaire in the instant review, the Department is unable to determine PMCSG's status as a producer of the domestic like product during the instant review period and whether it represents "substantially all of the production of the domestic like product," as required under the Department's regulations governing revocation. *See* 19 CFR 351.222(g)(1)(i). Accordingly, we are notifying the public of our intent to not revoke the antidumping duty order as it relates to imports of saccharin from the People's Republic of China.

This notice of the final results of this administrative review is issued and published in accordance with sections 751(a)(1) and 777(i) of the Act.

Dated: February 4, 2010.

**Ronald K. Lorentzen,**

*Deputy Assistant Secretary for Import Administration.*

[FR Doc. 2010–3410 Filed 2–19–10; 8:45 am]

**BILLING CODE 3510–DS–S**

[6] *See Saccharin from the People's Republic of China: Notice of Final Results of Expedited Sunset Review of Antidumping Duty Order*, 73 FR 59604 (October 9, 2008).

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**RIN 0648–XU41**

### Marine Mammals; File No. 13545

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Notice; issuance of permit.

**SUMMARY:** Notice is hereby given that Ocean Alliance, Inc. (Responsible Party: Iain Kerr), 191 Weston Road, Lincoln, MA 01773, has been issued a permit to conduct research on and import specimens of marine mammals.

**ADDRESSES:** The permit and related documents are available for review upon written request or by appointment (See **SUPPLEMENTARY INFORMATION**).

**FOR FURTHER INFORMATION CONTACT:** Amy Hapeman or Amy Sloan, (301)713–2289.

**SUPPLEMENTARY INFORMATION:** On August 20, 2008, notice was published in the **Federal Register** (73 FR 49174) that a request for a scientific research permit to take sperm (*Physeter macrocephalus*), blue (*Balaenoptera musculus*), Bryde's (*B. edeni*), dwarf sperm (*Kogia sima*), false killer (*Pseudorca crassidens*), fin (*B. physalus*), gray (*Eschrichtius robustus*), humpback (*Megaptera novaeangliae*), killer (*Orcinus orca*), minke (*B. acutorostrata*), pilot (*Globicephala* spp.), pygmy sperm (*K. breviceps*), sei (*B. borealis*), southern right (*Eubalaena australis*), northern right (*E. glacialis*), and unidentified beaked (*Ziphius cavirostris* and *Mesoplodon* spp.) whales, and common dolphins (*Delphinus delphis*), had been submitted by the above-named organization. The requested permit has been issued under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the regulations governing the taking and importing of marine mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR parts 222–226).

Permit No. 13545 authorizes Ocean Alliance, Inc. to conduct research over a five-year period to determine contaminant levels; culture cells; and collect data on abundance, movement and distribution patterns, habitat use, energetics, behaviors, and stock and social structures of the above identified species. During vessel surveys researchers may harass live animals and collect tissues from dead, stranded cetaceans in U.S. waters and on the high seas. Researchers may conduct: biopsy sampling, collection of sloughed skin and feces, photo-identification, videography, passive acoustic recording, focal follows, and behavioral observation of up to 250 sperm whales annually and 20 animals annually for each of the above remaining species, except southern right whales. Researchers may import from foreign waters 150 sperm whale samples per year and 20 samples per year each for all other identified species. Research may occur in U.S. waters and the high seas of the Pacific and Atlantic Oceans, including the Gulf of Maine, Mexico and the Caribbean Sea, the territorial waters of Mexico, Indian Ocean, and Mediterranean Sea.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), an environmental assessment was prepared analyzing the effects of the permitted activities. After a Finding of No Significant Impact, the determination was made that it was not necessary to prepare an environmental impact statement.

Issuance of this permit, as required by the ESA, was based on a finding that such permit: (1) was applied for in good faith; (2) will not operate to the disadvantage of such endangered species; and (3) is consistent with the purposes and policies set forth in section 2 of the ESA.

Documents may be reviewed in the following locations:

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301)713–2289; fax (301)713–0376;

Northwest Region, NMFS, 7600 Sand Point Way NE, BIN C15700, Bldg. 1, Seattle, WA 98115–0700; phone (206)526–6150; fax (206)526–6426;

Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802–1668; phone (907)586–7221; fax (907)586–7249;

Southwest Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213; phone (562)980–4001; fax (562)980–4018;

Pacific Islands Region, NMFS, 1601 Kapiolani Blvd., Rm 1110, Honolulu, HI 96814–4700; phone (808)944–2200; fax (808)973–2941;

Northeast Region, NMFS, 55 Great Republic Drive, Gloucester, MA 01930; phone (978)281–9328; fax (978)281–9394; and

Southeast Region, NMFS, 263 13th Avenue South, Saint Petersburg, Florida 33701; phone (727)824–5312; fax (727)824–5309.

Dated: February 16, 2010.

**P. Michael Payne,**

*Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.*

[FR Doc. 2010–3364 Filed 2–19–10; 8:45 am]

**BILLING CODE 3510–22–S**

## COMMODITY FUTURES TRADING COMMISSION

### Sunshine Act Meetings

**TIME AND DATE:** 11 a.m., Friday March 5, 2010.

**PLACE:** 1155 21st St., NW., Washington, DC, 9th Floor Commission Conference Room.

**STATUS:** Closed.

**MATTERS TO BE CONSIDERED:** Surveillance Matters.

**CONTACT PERSON FOR MORE INFORMATION:** Sauntia S. Warfield, 202–418–5084.

**Sauntia S. Warfield,**

*Assistant Secretary of the Commission.*

[FR Doc. 2010–3520 Filed 2–18–10; 4:15 pm]

**BILLING CODE 6351–01–P**

## COMMODITY FUTURES TRADING COMMISSION

### Sunshine Act Meetings

**TIME AND DATE:** 11 a.m., March 19, 2010.

**PLACE:** 1155 21st St., NW., Washington, DC, 9th Floor Commission Conference Room.

**STATUS:** Closed.

**MATTERS TO BE CONSIDERED:** Surveillance Matters.

**CONTACT PERSON FOR MORE INFORMATION:** Sauntia S. Warfield, 202–418–5084.

**Sauntia S. Warfield,**

*Assistant Secretary of the Commission.*

[FR Doc. 2010–3524 Filed 2–18–10; 4:15 pm]

**BILLING CODE 6351–01–P**

## COMMODITY FUTURES TRADING COMMISSION

### Sunshine Act Meetings

**TIME AND DATE:** 11 a.m., Friday March 12, 2010.

**PLACE:** 1155 21st St., NW., Washington, DC, 9th Floor Commission Conference Room.

**STATUS:** Closed.

**MATTERS TO BE CONSIDERED:** Surveillance Matters.

**CONTACT PERSON FOR MORE INFORMATION:** Sauntia S. Warfield, 202–418–5084.

**Sauntia S. Warfield,**

*Assistant Secretary of the Commission.*

[FR Doc. 2010–3522 Filed 2–18–10; 4:15 pm]

**BILLING CODE 6351–01–P**

## COMMODITY FUTURES TRADING COMMISSION

### Sunshine Act Meetings

**TIME AND DATE:** 2 p.m., Wednesday March 17, 2010.

**PLACE:** 1155 21st St., NW., Washington, DC, 9th Floor Commission Conference Room.

**STATUS:** Closed.

**MATTERS TO BE CONSIDERED:** Enforcement Matters.

**CONTACT PERSON FOR MORE INFORMATION:** Sauntia S. Warfield, 202–418–5084.

**Sauntia S. Warfield,**

*Assistant Secretary of the Commission.*

[FR Doc. 2010–3533 Filed 2–18–10; 4:15 pm]

**BILLING CODE 6351–01–P**

## COMMODITY FUTURES TRADING COMMISSION

### Sunshine Act Meetings

**TIME AND DATE:** 11 a.m., Friday March 26, 2010.

**PLACE:** 1155 21st St., NW., Washington, DC, 9th Floor Commission Conference Room.

**STATUS:** Closed.

**MATTERS TO BE CONSIDERED:** Surveillance matters.

**CONTACT PERSON FOR MORE INFORMATION:** Sauntia S. Warfield, 202–418–5084.

**Sauntia S. Warfield,**

*Assistant Secretary of the Commission.*

[FR Doc. 2010–3529 Filed 2–18–10; 4:15 pm]

**BILLING CODE 6351–01–P**

## CONSUMER PRODUCT SAFETY COMMISSION

**[Docket No. CPSC–2009–0093]**

### Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Consumer Opinion Forum

**AGENCY:** Consumer Product Safety Commission.

**ACTION:** Notice.

**SUMMARY:** The Consumer Product Safety Commission (CPSC) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

**DATES:** Fax written comments on the collection of information by March 24, 2010.

**ADDRESSES:** To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: CPSC Desk Officer, FAX: 202–395–6974, or e-mailed to *oira_submission@omb.eop.gov.* All comments should be identified with the OMB control number 3041–0135 and CPSC Docket No. CPSC–2009–0093. The written comments should also be submitted to the CPSC, identified by Docket No. CPSC–2009–0093, by any of the following methods:

Submit electronic comments in the following way:

*Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments. To ensure timely processing of comments, the Commission is no longer accepting comments submitted by electronic mail (e-mail) except through *http://www.regulations.gov.*

Submit written submissions in the following way:

*Mail/Hand delivery/Courier (for paper, disk, or CD–ROM submissions), preferably in five copies, to:* Office of the Secretary, Consumer Product Safety Commission, Room 502, 4330 East West Highway, Bethesda, MD 20814; telephone (301) 504–7923.

*Instructions:* All submissions received must include the agency name and docket number for this notice. All comments received may be posted without change, including any personal identifiers, contact information, or other personal information provided, to *http://www.regulations.gov.* Do not submit confidential business information, trade secret information, or other sensitive or protected information electronically. Such information should be submitted in writing.

*Docket:* For access to the docket to read background documents or comments received, go to *http://www.regulations.gov.*

**FOR FURTHER INFORMATION CONTACT:** Linda L. Glatz, Division of Policy and Planning, Office of Information Technology Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814, (301) 504–7671, *lglatz@cpsc.gov.*

**SUPPLEMENTARY INFORMATION:** In compliance with 44 U.S.C. 3507, the CPSC has submitted the following proposed collection of information to OMB for review and clearance. Consumer Opinion Forum (OMB Control Number 3041–0135—Extension).

The Commission is authorized under section 5(a) of the Consumer Product

Safety Act (CPSA), 15 U.S.C. 2054(a), to conduct studies and investigations relating to the causes and prevention of deaths, accidents, injuries, illnesses, other health impairments, and economic losses associated with consumer products. Section 5(b) of the CPSA, 15 U.S.C. 2054(b), further provides that the Commission may conduct research, studies and investigations on the safety of consumer products or test consumer products and develop product safety test methods and testing devices.

In order to better identify and evaluate the risks of product-related incidents, the Commission staff seeks to solicit consumer opinions and perceptions related to consumer product use, on a voluntary basis, through questions posted on the CPSC's Consumer Opinion Forum. Through the forum, consumers will be able to answer questions and provide information regarding their experiences, opinions and/or perceptions on the use or pattern of use of a specific product or type of product. The Consumer Opinion Forum is intended for consumers, 18 years and older, who have access to the Internet and e-mail, who voluntarily register to participate through a participant registration process, and respond to the questions posted in the Consumer Opinion Forum. A link to the Consumer Opinion Forum login page is available on the CPSC Web site, *http://www.cpsc.gov.* Consumers may link directly to the login page for the Consumer Opinion Forum at *https://www.cpsc.gov/cgibin/cof/login.aspx.* When new questions are posted on the CPSC Web site, registered participants will be invited via e-mail to respond to various questions, but not more frequently than once every four weeks.

The information collected from the Consumer Opinion Forum will help inform the Commission's evaluation of consumer products and product use by providing insight and information into consumer perceptions and usage patterns. Such information also may help the Commission in its efforts to support voluntary standards activities and help the staff identify areas regarding consumer safety issues that need additional research. In addition, based on the information obtained, the staff may be able to provide safety information to the public that is easier to read and is more easily understood by a wider range of consumers. For example, the staff may be able to propose new language or revisions to existing language in warning labels or manuals if the staff finds that certain warning language is perceived by many participants to be unclear or subject to misinterpretation. Finally, the Consumer Opinion Forum may be used to invite consumer opinions and feedback regarding the effectiveness of product recall communications and in determining what action consumers are taking in response to such communications and why they are taking those actions. This may help tailor future recall activities to increase the success of those activities. If this information is not collected, the Commission would not have available useful information regarding consumer experiences, opinions, and perceptions related to specific product use, which the Commission relies on in its ongoing efforts to improve the safety of consumer products on behalf of consumers.

In the **Federal Register** of November 13, 2009 (74 FR 58610), the CPSC published a 60-day notice requesting public comment on the proposed collection of information. No comments were received.

*Burden Estimates:* During the past two years, 2,300 individuals have registered to participate in the Consumer Opinion Forum. Although the registration is still open, the Commission staff does not expect the number of registrants will exceed 5,000 over the next few years. The Commission staff estimates that each respondent will take 10 minutes or less to complete the one-time registration process. Based on that estimate, the registration burden is estimated to have been approximately 192 burden hours per year for 2,300 registrants.

The Commission staff further estimates that the amount of time required to respond to each set of questions on the Consumer Opinion Forum will be five minutes or less. The Commission staff foresees the possibility of up to four surveys per year. If, at the maximum, each respondent responds to four sets of questions in one year, the yearly burden would result in approximately 20 minutes per year for each respondent. Based on an estimated 44 percent response rate for 2,300 potential respondents, the annual burden could total 337 hours. If as many as 5,000 registrants respond, the Commission staff estimates that the annual burden could total approximately 733 hours per year (44 percent response rate for 5,000 potential respondents at five minutes per survey for four surveys).

The Commission staff estimates that the total estimated burden for new registrations and surveys, combined, will not exceed 925 hours annually (no more than 733 hours for four surveys per year, plus no more than 192 hours for new registrations). The Commission staff estimated the value of the time of respondents to this collection of information at $29.39 an hour. This is based on the 2009 U.S. Department of Labor Employer Costs for Employee Compensation. At this valuation, the estimated annual cost to the public of this information collection will be approximately $27,000 per year.

The Commission will expend approximately one month of professional staff time annually for preparing questions and analysis of responses for each survey. Assuming that four surveys will be conducted annually, (and four staff months) the total annual cost to the Federal government of the collection of information is estimated to be $55,360.

Dated: February 16, 2010.

**Todd A. Stevenson,**

*Secretary, Consumer Product Safety Commission.*

[FR Doc. 2010–3295 Filed 2–19–10; 8:45 am]

BILLING CODE 6355–01–P

## DEPARTMENT OF DEFENSE

### Office of the Secretary

**[Docket ID: DOD–2010–HA–0014]**

### Proposed Collection; Comment Request

**AGENCY:** Office of the Assistant Secretary of Defense for Health Affairs, DoD.

**ACTION:** Notice.

**SUMMARY:** In compliance with section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Assistant Secretary of Defense for Health Affairs announces a proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the agency's estimate of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

**DATES:** Consideration will be given to all comments received by April 23, 2010.

**ADDRESSES:** You may submit comments, identified by docket number and title, by any of the following methods:

• *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the instructions for submitting comments.

• *Mail:* Federal Docket Management System Office, 1160 Defense Pentagon, Washington, DC 20301–1160.

*Instructions:* All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

**FOR FURTHER INFORMATION CONTACT:** To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the Office of the Assistant Secretary of Defense for Health Affairs, Force Health Protection and Readiness, ATTN: Ms. Caroline Miner, 5113 Leesburg Pike, Suite 901, Falls Church, VA 22041, or call Force Health Protection and Readiness, at 703–578–8500 or 1–800–754–2132.

*Title; Associated Form; and OMB Number:* Department of Defense Addendum to the Department of Health and Human Services' Federalwide Assurance for the Protection of Human Subjects; OMB Control Number 0720–TBD.

*Needs and Uses:* This form is a tool to help institutions with an existing Federalwide Assurance (FWA) approved by the Department of Health and Human Services (DHHS) to know about and acknowledge key DoD policies and requirements since the DHHS FWA does not identify DoD requirements.

*Affected Public:* Individuals.

*Annual Burden Hours:* 5.

*Number of Respondents:* 10.

*Responses per Respondent:* 1.

*Average Burden per Response:* 30 Minutes.

*Frequency:* On Occasion.

**SUPPLEMENTARY INFORMATION:**

**Summary of Information Collection**

This Addendum is for non-DoD institutions that already have a Federalwide Assurance (FWA) approved by DHHS and will be engaged in DoD-supported human subject research. Its purpose is help these institutions to know about and acknowledge key DoD policies and requirements as the DHHS FWA does not identify DoD requirements.

Dated: February 16, 2010.

**Mitchell S. Bryman,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 2010–3377 Filed 2–19–10; 8:45 am]

**BILLING CODE 5001–06–P**

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## DEPARTMENT OF DEFENSE

### Federal Advisory Committee; Military Leadership Diversity Commission (MLDC); Meeting Cancellation

**AGENCY:** Office of the Under Secretary of Defense for Personnel and Readiness, DoD.

**ACTION:** Meeting notice; cancellation.

**SUMMARY:** Under the provisions of the Federal Advisory Committee Act of 1972 (5 U.S.C., Appendix, as amended), the Government in the Sunshine Act of 1976 (5 U.S.C. 552b, as amended), and 41 CFR 102–3.150, the Department of Defense announces that the Military Leadership Diversity Commission (MLDC) meeting that was scheduled for February 10–12, 2010, in Hampton, VA, has been canceled due to major snow storms affecting the eastern coast of the United States. The meeting was announced in the **Federal Register** on January 14, 2010 (75 FR 2114).

**FOR FURTHER INFORMATION CONTACT:** Master Chief Steven A. Hady, Designated Federal Officer, MLDC, at (703) 602–0838, 1851 South Bell Street, Suite 532, Arlington, VA, E-mail *Steven.Hady@wso.whs.mil.*

Dated: February 16, 2010.

**Mitchell S. Bryman,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 2010–3379 Filed 2–19–10; 8:45 am]

**BILLING CODE 5001–06–P**

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## DEPARTMENT OF DEFENSE

### Department of the Army; Corps of Engineers

### Extension of the Public Comment Period for the Draft Environmental Impact Statement for the Moffat Collection System Project, City and County of Denver, Adams County, Boulder County, Jefferson County, and Grand County, CO

**AGENCY:** Department of the Army, U.S. Army Corps of Engineers, DoD.

**ACTION:** Notice.

**SUMMARY:** The U.S. Army Corps of Engineers (Corps) Omaha District is announcing a 16-day extension of the public comment period for the Moffat Collection System Project (Moffat Project) Draft Environmental Impact Statement (Draft EIS). The originally announced comment period ends on March 1, 2010, but has been extended until March 17, 2010. The original Notice of Availability of the Draft EIS was published in the **Federal Register** on Friday, October 30, 2009 (74 FR 56186) and included an initial 90-day comment period (October 30, 2009 to January 27, 2010). A second Notice of Availability announcing an extension of 32 days (January 27, 2010 to March 1, 2010) was issued on December 18, 2009 (74 FR 67180).

**DATES:** Comments on the Draft EIS should be postmarked no later than March 17, 2010.

**ADDRESSES:** Written comments on the Draft EIS should be sent to the attention of: Scott Franklin, Moffat EIS Project Manager, U.S. Army Corps of Engineers, Omaha District—Denver Regulatory Office, 9307 South Wadsworth Boulevard, Littleton, CO 80128; via Fax at 303–979–0602; or via e-mail at *moffat.eis@usace.army.mil.*

**SUPPLEMENTARY INFORMATION:** None.

**Timothy T. Carey,**

*Chief, Denver Regulatory Office.*

[FR Doc. 2010–3338 Filed 2–19–10; 8:45 am]

**BILLING CODE 3720–58–P**

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## DEPARTMENT OF DEFENSE

### Department of the Navy

### Notice of Public Hearings for the Draft Environmental Impact Statement for the Silver Strand Training Complex, San Diego, CA; Correction

**AGENCY:** Department of Navy, DoD.

**ACTION:** Notice; correction.

**SUMMARY:** The Department of the Navy published a document in the **Federal Register** (75 FR 4537) of January 28, 2010, concerning public hearings on a Draft Environmental Impact Statement for the Silver Strand Training Complex, San Diego, CA. The document contained incorrect dates.

**FOR FURTHER INFORMATION CONTACT:** Naval Facilities Engineering Command Southwest, Attention: Mr. Kent Randall, SSTC EIS Project Manager, 1220 Pacific Highway, Building 1, 5th Floor, San Diego, CA, 92132; or *http://www.silverstrandtrainingcomplexeis.com.*

**Correction**

In the **Federal Register** (75 FR 4537) of January 28, 2010, on page 4537, in the third column, correct *Dates and Addresses* caption to read:

*Dates and Addresses:* Two public hearings will be held in San Diego County, CA to receive oral and written comments on the DEIS. All meetings will start with an open house session from 4 p.m. to 6 p.m., followed by a presentation and formal public comment period from 6 p.m. to 7:30 p.m. Public hearings will be held on the following dates and at the following locations:

1. Tuesday, February 23, 2010, at the Imperial Beach City Hall Community Room, 825 Imperial Beach Boulevard, Imperial Beach, CA; and
2. Wednesday, February 24, 2010, at the Coronado Community Center, Nautilus Banquet Room, 1845 Strand Way, Coronado, CA.

Dated: February 5, 2010.

**A.M. Vallandingam**

*Lieutenant Commander, Office of the Judge Advocate General, U.S. Navy, Federal Register Liaison Officer.*

[FR Doc. 2010–3376 Filed 2–19–10; 8:45 am]

**BILLING CODE 3810–FF–P**

## DEPARTMENT OF DEFENSE

### Department of the Navy

### Notice of Intent To Grant Exclusive Patent License; Applied Minerals, Inc.

**AGENCY:** Department of the Navy, DoD.

**ACTION:** Notice; correction.

**SUMMARY:** The Department of the Navy published a document in the **Federal Register** on February 2, 2010, announcing an intent to grant to Applied Minerals, Inc., a revocable, nonassignable, exclusive license. The original publication contained incorrect information.

**FOR FURTHER INFORMATION CONTACT:** Rita Manak, Head, Technology Transfer Office, NRL Code 1004, 4555 Overlook Avenue, SW., Washington, DC 20375–5320, telephone 202–767–3083. Due to U.S. Postal delays, please fax 202–404–7920, e-mail: *rita.manak@nrl.navy.mil* or use courier delivery to expedite response.

**Correction**

In the **Federal Register** of February 2, 2010, in FR Doc. 02fe10–38, make the following changes:

1. The correct Subject line, on page 5290, should read:

"Notice of Intent to Grant Co-Exclusive Patent License; Applied Minerals, Inc.; Correction"

2. In the first column, on page 5290, correct the **SUMMARY** caption to read:

**SUMMARY:** The Department of the Navy hereby gives notice of its intent to grant to Applied Minerals, Inc., a revocable, nonassignable, co-exclusive license to practice the field of use of building materials which means the use of Halloysite Microtubles for the elution of any and all substances from them as a biocide in building materials including but not limited to, grouts, cements, parging materials, stuccos, and mortars; and wallboards, and cellulose-based materials such as particleboard, paneling, medium density fiberboard (MDF) paneling, plywood, lumber, chipboard, and ceiling tile; and caulks, sealants and adhesives; and high pressure laminates, wall, counter top and floor coverings or components thereof; and ceramics, cultured marbles, and tiles; and non-cellulose (*i.e.* polymer) based wallpapers, paneling, and other wall, counter top, and floor coverings or components; and insulations; and the field of use of paint which means the use of Halloysite Microtubules for the elution of any and all substances in paints, sealers, fillers, varnishes, shellac, polyurethane coatings, and any and all "paint-like" coatings applied in liquid form to any and all surfaces for the beautification or protection of surfaces in structures or components thereof, including but not limited to, buildings, marine structures (including boats), furniture and other normally "painted" materials in the United States, the Government-owned inventions described in U.S. Patent No. 5,492,696: Controlled Release Microstructures, Navy Case No. 76,896.//U.S. Patent No. 5,651,976: Controlled Release of Active Agents Using Inorganic Tubules, Navy Case No. 76,652.//U.S. Patent No. 5,705,191: Sustained Delivery of Active Compounds from Tubules with Rational Control, Navy Case No. 77,037.//U.S. Patent No. 6,280,759: Method of Controlled Release and Controlled Release Microstructures, Navy Case No. 78,215 and any continuations, divisionals or re-issues thereof.

**DATES:** Anyone wishing to object to the grant of this license must file written objections along with supporting evidence, if any, not later than March 9, 2010.

Dated: February 12, 2010.

**A.M. Vallandingam,**

*Lieutenant Commander, Office of the Judge Advocate General, U.S. Navy, Federal Register Liaison Officer.*

[FR Doc. 2010–3369 Filed 2–19–10; 8:45 am]

**BILLING CODE 3810–FF–P**

## DEPARTMENT OF DEFENSE

### Department of the Army

### Board of Visitors, United States Military Academy (USMA)

**AGENCY:** Department of the Army, DoD.

**ACTION:** Meeting Notice. (This meeting is rescheduled from February 10, 2010)

**SUMMARY:** Under the provisions of the Federal Advisory Committee Act of 1972 (5 U.S.C., Appendix, as amended), the Government in the Sunshine Act of 1976 (5 U.S.C. 552b, as amended), and 41 CFR 102–3.150, the Department of Defense announces that the following Federal advisory committee meeting will take place:

1. *Name of Committee:* United States Military Academy Board of Visitors.
2. *Date:* Tuesday, March 9, 2010.
3. *Time:* 12:30 p.m.–3:30 p.m. Members of the public wishing to attend the meeting will need to notify Ms. Joy A. Pasquazi no later than March 4, 2010 at *joy.pasquazi@us.army.mil* or (845) 938–5078 in order to have their name included on the list for Capitol Visitor Center access. Photo identification will be required in order to gain access to the meeting location. All participants are subject to security screening.
4. *Location:* Room SVC 209/208, Capitol Visitors Center, Washington, DC 20510.
5. *Purpose of the Meeting:* This is the 2010 Organizational Meeting of the USMA Board of Visitors (BoV). Members of the Board will be provided updates on Academy issues.
6. *Agenda:* The Academy leadership will provide the Board updates on the following: Science, Technology, Engineering & Math (STEM) Center of Excellence, Energy Costs and Initiatives, Wastewater Privatization, A–76 Commercial Activities, and Resources. The Board will discuss proposed meeting dates for the 2010 Spring Meeting, and will hold elections for the 2010 Chairperson and Vice-Chairperson.
7. *Public's Accessibility to the Meeting:* Pursuant to 5 U.S.C. 552b and 41 CFR 102–3.140 through 102–3.165, and the availability of space, this meeting is open to the public. Seating is on a first-come basis.
8. *Committee's Designated Federal Officer or Point of Contact:* Ms. Joy A. Pasquazi, (845) 938–5078, *Joy.Pasquazi@us.army.mil.*

**SUPPLEMENTARY INFORMATION:** Any member of the public is permitted to file a written statement with the USMA Board of Visitors. Written statements should be sent to the Designated Federal Officer (DFO) at: United States Military

Academy, Office of the Secretary of the General Staff (MASG), 646 Swift Road, West Point, NY 10996–1905 or faxed to the Designated Federal Officer (DFO) at (845) 938–3214. Written statements must be received no later than five working days prior to the next meeting in order to provide time for member consideration. By rule, no member of the public attending open meetings will be allowed to present questions from the floor or speak to any issue under consideration by the Board.

**FOR FURTHER INFORMATION CONTACT:** Ms. Joy A. Pasquazi, (845) 938–5078, (Fax: 845–938–3214) or via e-mail: *Joy.Pasquazi@us.army.mil.*

**Brenda S. Bowen,**

*Army Federal Register Liaison Officer.*

[FR Doc. 2010–3340 Filed 2–19–10; 8:45 am]

**BILLING CODE 3710–08–P**

## DEPARTMENT OF EDUCATION

### Submission for OMB Review; Comment Request

**AGENCY:** Department of Education.

**SUMMARY:** The Acting Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

**DATES:** Interested persons are invited to submit comments on or before March 24, 2010.

**ADDRESSES:** Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Education Desk Officer, Office of Management and Budget, 725 17th Street, NW., Room 10222, New Executive Office Building, Washington, DC 20503, be faxed to (202) 395–5806 or e-mailed to *oira_submission@omb.eop.gov* with a cc: to *ICDocketMgr@ed.gov.*

**SUPPLEMENTARY INFORMATION:** Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Acting Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.,* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: February 17, 2010.

**James Hyler,**

*Acting Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management.*

### Office of Postsecondary Education

*Type of Review:* Revision.

*Title:* Application Forms and Instructions for the International Research and Studies (IRS) Program (CFDA Numbers 84.017A–1 and 84.017A–3) (1894–0001).

*Frequency:* Annually.

*Affected Public:* Businesses or other for-profit; Individuals or households; Not-for-profit institutions; State, Local, or Tribal Gov't, SEAs or LEAs.

*Reporting and Recordkeeping Hour Burden:*

Responses: 118.
Burden Hours: 13,306.

*Abstract:* The IRS Program provides grants to conduct research and studies to improve and strengthen instruction in modern foreign languages, area studies, and other international fields. Applications are divided into two groups, research, surveys, and studies (CFDA 84.017A–1) and instructional materials (CFDA 84.017A–3). Minor revisions have been made to both applications to clarify the directions for submitting the budget and other attachments. In addition, versions of the latest laws and regulations for the program have been updated.

This information collection is being submitted under the Streamlined Clearance Process for Discretionary Grant Information Collections (1894–0001). Therefore, the 30-day public comment period notice will be the only public comment notice published for this information collection.

Requests for copies of the information collection submission for OMB review may be accessed from *http://edicsweb.ed.gov,* by selecting the "Browse Pending Collections" link and by clicking on link number 4217. When you access the information collection, click on "Download Attachments " to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., LBJ, Washington, DC 20202–4537. Requests may also be electronically mailed to the Internet address *ICDocketMgr@ed.gov* or faxed to 202–401–0920. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to *ICDocketMgr@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 2010–3390 Filed 2–19–10; 8:45 am]

**BILLING CODE 4000–01–P**

## DEPARTMENT OF EDUCATION

### Notice of Proposed Information Collection Requests

**AGENCY:** Department of Education.

**SUMMARY:** The Acting Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

**DATES:** Interested persons are invited to submit comments on or before April 23, 2010.

**SUPPLEMENTARY INFORMATION:** Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Acting Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or

reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: February 16, 2010.

**James Hyler,**

*Acting Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management.*

**Institute of Education Sciences**

*Type of Review:* Extension.

*Title:* Study of the Program for Infant Toddler Care.

*Frequency:* Once.

*Affected Public:* Individuals or households; Private Sector.

*Reporting and Recordkeeping Hour Burden:*

*Responses:* 3,722.

*Burden Hours:* 2,298.

*Abstract:* The current OMB package requests a three month extension for the clearance for data collection instruments to be used in the Study of the Program for Infant Toddler Care (PITC). This study is one of the rigorous research studies of REL West (the Regional Educational Laboratory–West) and will measure the impact of the PITC on child care quality and children's development. The evaluation is conducted by Berkeley Policy Associates in partnership with the University of Texas at Austin and SRM Boulder. Evaluation measures include baseline and follow-up questionnaires for parents, programs, and caregivers; baseline and follow-up program observations; and two rounds of child observations/interviews to measure children's language, social and cognitive development. Baseline data collection took place 2007; follow-up data collection took place in 2008, 2009, and will be completed in 2010.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov,* by selecting the "Browse Pending Collections" link and by clicking on link number 4224. When you access the information collection, click on "Download Attachments" to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., LBJ, Washington, DC 20202–4537. Requests may also be electronically mailed to *ICDocketMgr@ed.gov* or faxed to 202–401–0920. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be electronically mailed to *ICDocketMgr@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 2010–3392 Filed 2–19–10; 8:45 am]

BILLING CODE 4000–01–P

## DEPARTMENT OF EDUCATION

## Office of Safe and Drug-Free Schools; Overview Information; Models of Exemplary, Effective, and Promising Alcohol or Other Drug Abuse Prevention Programs on College Campuses; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2010

*Catalog of Federal Domestic Assistance (CFDA) Number:* 84.184N.

*Dates:*

*Applications Available:* February 22, 2010.

*Deadline for Transmittal of Applications:* March 31, 2010.

*Deadline for Intergovernmental Review:* June 1, 2010.

### Full Text of Announcement

### I. Funding Opportunity Description

*Purpose of Program:* The goals of this program are to identify and disseminate information about exemplary and effective alcohol or other drug abuse prevention programs implemented on college campuses. Through this grant competition, the U.S. Department of Education (ED) also will recognize colleges and universities whose programs, while not yet exemplary or effective, show evidence that they are promising.

*Priority:* This priority is from the notice of final priority, definitions, requirements, and selection criteria for this competition, published in the **Federal Register** on April 1, 2008 (73 FR 17867).

*Absolute Priority:* For FY 2010 and any subsequent year in which we make awards based on the list of unfunded applicants from this competition, this priority is an absolute priority. Under 34 CFR 75.105(c)(3) we consider only applications that meet this priority.

This priority is:

*Exemplary, Effective, and Promising Alcohol or Other Drug Abuse Prevention Programs on College Campuses.*

Under this priority the Department provides funding to institutions of higher education (IHEs) that have implemented an exemplary, effective, or promising alcohol or other drug abuse prevention program on their campus. To meet the priority, in its application, an applicant must:

1. Describe the program that has for at least two full years been implemented on its campus, including the structure and content of the program, the student population that is targeted by the program, and any unique features of the program;
2. Provide a detailed theoretical basis for the program's effectiveness;
3. Provide data to demonstrate the program's impact on the target student population, including evidence of cognitive or behavioral changes, or both, among the target population; and
4. Consent to a site visit to clarify information in the application and verify evaluation data.

Under this competition, the Department selects an IHE for recognition as having an exemplary, effective, or promising program based on the recommendation from the two peer reviewers who conduct the site visit. Therefore, note that selection for a site visit does not ensure recognition as an exemplary, effective, or promising program by the Department.

*Recognition Types*

Contingent upon the quality of data provided by the applicant and the recommendation of site visitors, an applicant may earn one of three levels of recognition. Level 1 is recognition as an exemplary program. An IHE whose program is designated as exemplary must:

1. Within 30 days of receiving an award, provide to the Department a plan to disseminate information about its program to other IHEs;
2. Upon approval by the Department, implement its dissemination plan; and
3. Enhance and further evaluate the exemplary program during the project period of the grant award.

Level 2 is recognition as an effective program. An IHE whose program is designated as effective must:

1. Within 30 days of receiving an award, provide to the Department a plan to disseminate information about its program to other IHEs;

2. Upon approval by the Department, implement its dissemination plan; and

3. Enhance and further evaluate the effective program during the project period of the grant award.

Level 3 is designation as a promising program. An IHE whose program is recognized as promising must:

1. Within 30 days of receiving an award, submit to the Department a plan to enhance and further evaluate its program;

2. Upon approval by the Department, implement its enhancement and evaluation plan; and

3. Within 12 months of award, provide to the Department a report detailing the results of its evaluation.

*Definitions*

1. *Exemplary program* means a program that has a strong theoretical base and demonstrated effectiveness in reducing alcohol or other drug abuse among college students or reducing problems resulting from alcohol or other drug use among college students, using a research design of the highest quality. For the purpose of this grant competition, a research design of the highest quality means an experimental design in which students are randomly assigned to participate in a project being evaluated (treatment group) or not participate in the project (control group). The effect of the project is the difference in outcomes between the treatment and control groups.

If strong, experimentally determined evidence of the effectiveness of a program already exists, and the program was implemented on the applicant's campus with fidelity to the research, then a quasi-experimental evaluation of the program's implementation on the applicant's campus may be an acceptable research design. For the purpose of this grant competition, quasi-experimental designs include several designs that attempt to approximate a random assignment design.

2. *Effective program* means a program that has a strong theoretical base and has been evaluated using either an experimental or quasi-experimental research design, with the evaluation results suggesting effectiveness in reducing alcohol or other drug abuse among college students, reducing problems resulting from alcohol or other drug use among college students, reducing risk factors, enhancing protective factors, or resulting in some combination of those impacts.

3. *Promising program* means a program that has a strong theoretical base and for which evidence has been obtained, using limited research methods, that the program may reduce alcohol or other drug abuse among college students, reduce problems resulting from alcohol or other drug use among college students, reduce risk factors, enhance protective factors, or result in some combination of those impacts. For the purpose of this grant competition, limited research methods are methods that include a pre- and post-treatment measurement of the effects of a treatment on a single subject or group of single subjects.

*Program Authority:* 20 U.S.C. 7131.

*Applicable Regulations:* (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 81, 82, 84, 85, 86, 97, 98, and 99. (b) The regulations in 34 CFR part 299. (c) The notice of final priority, definitions, requirements, and selection criteria, published in the **Federal Register** on April 1, 2008 (73 FR 17867).

**Note:** The regulations in 34 CFR part 79 apply to all applicants except federally recognized Indian tribes.

**Note:** The regulations in 34 CFR part 86 apply to institutions of higher education only.

## II. Award Information

*Type of Award:* Discretionary grants.

*Estimated Available Funds:* $825,000.

Contingent upon the availability of funds and the quality of applications, we may make additional awards later in FY 2010 and in subsequent years from the list of unfunded applicants from this competition.

*Estimated Range of Awards:* $125,000–$175,000.

*Estimated Average Size of Awards:* $137,500.

*Estimated Number of Awards:* 6.

**Note:** The Department is not bound by any estimates in this notice.

*Project Period:* Up to 24 months. No continuation awards will be provided.

## III. Eligibility Information

1. *Eligible Applicants:* IHEs that offer an associate or baccalaureate degree.

*Limitations on Eligibility*

(a) *Exemplary or effective programs.* The length of time an IHE is ineligible for a subsequent award after receiving recognition for an exemplary or effective program is three years.

(b) *Promising programs.* Programs recognized as promising may be eligible for a new award when their current grant is no longer active. A grant is considered active until the end of the grant's project or funding period, including any extensions of those periods that extend the grantee's authority to obligate funds. A project that fails to achieve exemplary or effective status after a second designation as a promising program may not reapply for three years after its second project period is no longer active.

2. *Cost Sharing or Matching:* This competition does not require cost sharing or matching.

## IV. Application and Submission Information

1. *Address to Request Application Package:*

You can obtain an application package via the Internet. To obtain a copy via the Internet, use the following address: *http://www.ed.gov/fund/grant/apply/grantapps/index.html.*

Individuals with disabilities can obtain a copy of the application package in an accessible format (*e.g.,* braille, large print, audiotape, or computer diskette) by contacting the person listed under *Accessible Format* in section VIII of this notice.

2. *Content and Form of Application Submission:* Requirements concerning the content of an application, together with the forms you must submit, are in the application package for this competition.

3. *Submission Dates and Times:*

*Applications Available:* February 22, 2010.

*Deadline for Transmittal of Applications:* March 31, 2010.

Applications for grants under this competition may be submitted electronically using the Electronic Grant Application System (e-Application) accessible through the Department's e-Grants site, or in paper format by mail or hand delivery. For information (including dates and times) about how to submit your application electronically, or in paper format by mail or hand delivery, please refer to section IV.6. *Other Submission Requirements* of this notice.

We do not consider an application that does not comply with the deadline requirements.

Individuals with disabilities who need an accommodation or auxiliary aid in connection with the application process should contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII in this notice. If the Department provides an accommodation or auxiliary aid to an individual with a disability in connection with the application process, the individual's application remains subject to all other requirements and limitations in this notice.

*Deadline for Intergovernmental Review:* June 1, 2010.

4. *Intergovernmental Review:* This competition is subject to Executive Order 12372 and the regulations in 34 CFR part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for this competition.

5. *Funding Restrictions:* We reference regulations outlining funding restrictions in the *Applicable Regulations* section of this notice. The maximum amount an applicant may receive for a project recognized as an exemplary or effective program may be no more than $150,000 plus indirect costs, and a project recognized as a promising program may receive no more than $100,000 plus indirect costs.

6. *Other Submission Requirements:* Applications for grants under this competition may be submitted electronically or in paper format by mail or hand delivery.

a. *Electronic Submission of Applications.*

If you choose to submit your application to us electronically, you must use e-Application, accessible through the Department's e-Grants Web site at: *http://e-grants.ed.gov.*

While completing your electronic application, you will be entering data online that will be saved into a database. You may not e-mail an electronic copy of a grant application to us.

Please note the following:

- Your participation in e-Application is voluntary.
- You must complete the electronic submission of your grant application by 4:30:00 p.m., Washington, DC time, on the application deadline date. E-Application will not accept an application for this competition after 4:30:00 p.m., Washington, DC time, on the application deadline date. Therefore, we strongly recommend that you do not wait until the application deadline date to begin the application process.
- The hours of operation of the e-Grants Web site are 6:00 a.m. Monday until 7:00 p.m. Wednesday; and 6:00 a.m. Thursday until 8:00 p.m. Sunday, Washington, DC time. Please note that, because of maintenance, the system is unavailable between 8:00 p.m. on Sundays and 6:00 a.m. on Mondays, and between 7:00 p.m. on Wednesdays and 6:00 a.m. on Thursdays, Washington, DC time. Any modifications to these hours are posted on the e-Grants Web site.
- You will not receive additional point value because you submit your application in electronic format, nor will we penalize you if you submit your application in paper format.
- You must submit all documents electronically, including all information you typically provide on the following forms: the Application for Federal Assistance (SF 424), the Department of Education Supplemental Information for SF 424, Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications. You must attach any narrative sections of your application as files in a .DOC (document), .RTF (rich text), or .PDF (Portable Document) format. If you upload a file type other than the three file types specified in this paragraph or submit a password protected file, we will not review that material.
- Your electronic application must comply with any page limit requirements described in this notice.
- Prior to submitting your electronic application, you may wish to print a copy of it for your records.
- After you electronically submit your application, you will receive an automatic acknowledgment that will include a PR/Award number (an identifying number unique to your application).
- Within three working days after submitting your electronic application, fax a signed copy of the SF 424 to the Office of Safe and Drug Free Schools after following these steps:

(1) Print SF 424 from e-Application.

(2) The applicant's Authorizing Representative must sign this form.

(3) Place the PR/Award number in the upper right hand corner of the hard-copy signature page of the SF 424.

(4) Fax the signed SF 424 to Amalia Cuervo at (202) 245–7166.

- We may request that you provide us original signatures on other forms at a later date.

*Application Deadline Date Extension in Case of System Unavailability:* If you are prevented from electronically submitting your application on the application deadline date because e-Application is unavailable, we will grant you an extension of one business day to enable you to transmit your application electronically, by mail, or by hand delivery. We will grant this extension if—

(1) You are a registered user of e-Application and you have initiated an electronic application for this competition; and

(2)(a) E-Application is unavailable for 60 minutes or more between the hours of 8:30 a.m. and 3:30 p.m., Washington, DC time, on the application deadline date; or

(b) E-Application is unavailable for any period of time between 3:30 p.m. and 4:30:00 p.m., Washington, DC time, on the application deadline date.

We must acknowledge and confirm these periods of unavailability before granting you an extension. To request this extension or to confirm our acknowledgment of any system unavailability, you may contact either (1) the person listed elsewhere in this notice under **FOR FURTHER INFORMATION CONTACT** (see VII. Agency Contact) or (2) the e-Grants help desk at 1–888–336–8930. If e-Application is unavailable due to technical problems with the system and, therefore, the application deadline is extended, an e-mail will be sent to all registered users who have initiated an e-Application.

Extensions referred to in this section apply only to the unavailability of e-Application. If e-Application is available, and, for any reason, you are unable to submit your application electronically or you do not receive an automatic acknowledgment of your submission, you may submit your application in paper format by mail or hand delivery in accordance with the instructions in this notice.

b. *Submission of Paper Applications by Mail.*

If you submit your application in paper format by mail (through the U.S. Postal Service or a commercial carrier), you must mail the original and two copies of your application, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.184N), LBJ Basement Level 1, 400 Maryland Avenue, SW., Washington, DC 20202–4260.

You must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary of the U.S. Department of Education.

If you mail your application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

If your application is postmarked after the application deadline date, we will not consider your application.

**Note:** The U.S. Postal Service does not uniformly provide a dated postmark. Before

relying on this method, you should check with your local post office.

c. *Submission of Paper Applications by Hand Delivery.*

If you submit your application in paper format by hand delivery, you (or a courier service) must deliver the original and two copies of your application by hand, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.184N), 550 12th Street, SW., Room 7041, Potomac Center Plaza, Washington, DC 20202–4260.

The Application Control Center accepts hand deliveries daily between 8:00 a.m. and 4:30:00 p.m., Washington, DC time, except Saturdays, Sundays, and Federal holidays.

**Note for Mail or Hand Delivery of Paper Applications:** If you mail or hand deliver your application to the Department—

(1) You must indicate on the envelope and—if not provided by the Department—in Item 11 of the SF 424 the CFDA number, including suffix letter, if any, of the competition under which you are submitting your application; and

(2) The Application Control Center will mail to you a notification of receipt of your grant application. If you do not receive this grant notification within 15 business days from the application deadline date, you should call the U.S. Department of Education Application Control Center at (202) 245–6288.

## V. Application Review Information

*Selection Criteria:* The selection criteria for this competition are from the notice of final priority, definitions, requirements, and selection criteria published in the **Federal Register** on April 1, 2008 (73 FR 17867) and are listed in the application package.

## VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN). We may notify you informally, also.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Reporting:* At the end of your project period, you must submit a final performance report, including financial and performance information, as directed by the Secretary. For this competition, if you receive an award for a project period of more than 12 months you must also submit an interim report 12 months after the award date that provides the most current performance and financial expenditure information as directed by the Secretary. The Secretary may also require more frequent performance reports under 34 CFR 75.720(c). For specific requirements on reporting, please go to *http://www.ed.gov/fund/grant/apply/appforms/appforms.html.*

4. *Performance Measure:* The Secretary may choose to develop performance measures for the Models of Exemplary, Effective, and Promising Alcohol or Other Drug Abuse Prevention Programs on College Campuses in accordance with the Government Performance and Results Act of 1993 (GPRA). If measures are developed, grantees will be asked to provide information that relates to participant outcomes and project management.

## VII. Agency Contact

**FOR FURTHER INFORMATION CONTACT:** Amalia Cuervo, U.S. Department of Education, 400 Maryland Avenue, SW., Room 10068, PCP, Washington, DC 20202–6450. Telephone: 202–245–7881. Or by e-mail: *amalia.cuervo@ed.gov.*

If you use a TDD, call the FRS, toll free, at 1–800–877–8339.

## VIII. Other Information

*Accessible Format:* Individuals with disabilities can obtain this document and a copy of the application package in an accessible format (*e.g.,* braille, large print, audiotape, or computer diskette) on request to the competition contact person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice.

*Electronic Access to This Document:* You can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *www.ed.gov/news/fedregister.* To use PDF you must have Adobe Acrobat Reader, which is available free at this site.

**Note:** The official version of this document is the document published in the **Federal Register.** Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html.*

Dated: February 16, 2010.

**Kevin Jennings,**

*Assistant Deputy Secretary for Safe and Drug-Free Schools.*

[FR Doc. 2010–3387 Filed 2–19–10; 8:45 am]

BILLING CODE 4000–01–P

# DEPARTMENT OF ENERGY

## Environmental Management Site-Specific Advisory Board, Oak Ridge Reservation

**AGENCY:** Department of Energy.

**ACTION:** Notice of Open Meeting.

**SUMMARY:** This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Oak Ridge Reservation. The Federal Advisory Committee Act (Pub. L. No. 92–463, 86 Stat. 770) requires that public notice of this meeting be announced in the **Federal Register**.

**DATES:** Wednesday, March 10, 2010, 6 p.m.

**ADDRESSES:** DOE Information Center, 475 Oak Ridge Turnpike, Oak Ridge, Tennessee.

**FOR FURTHER INFORMATION CONTACT:** Patricia J. Halsey, Federal Coordinator, Department of Energy Oak Ridge Operations Office, P.O. Box 2001, EM–90, Oak Ridge, TN 37831. Phone (865) 576–4025; Fax (865) 576–2347 or e-mail: *halseypj@oro.doe.gov* or check the Web site at *http://www.oakridge.doe.gov/em/ssab.*

**SUPPLEMENTARY INFORMATION:**

*Purpose of the Board:* The purpose of the Board is to make recommendations to DOE–EM and site management in the areas of environmental restoration, waste management, and related activities.

*Tentative Agenda:* The main meeting presentation will be an update on Building 3019 U–233 Processing.

*Public Participation:* The EM SSAB, Oak Ridge, welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Patricia J. Halsey at least seven days in advance of the meeting at the phone number listed above. Written statements may be filed with the Board either before or after the meeting. Individuals who wish to make oral statements pertaining to the agenda

item should contact Patricia J. Halsey at the address or telephone number listed above. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Individuals wishing to make public comments will be provided a maximum of five minutes to present their comments.

*Minutes:* Minutes will be available by writing or calling Patricia J. Halsey at the address and phone number listed above. Minutes will also be available at the following Web site: *http://www.oakridge.doe.gov/em/ssab/minutes.htm*.

Issued at Washington, DC on February 16, 2010.

**Rachel Samuel,**

*Deputy Committee Management Officer.*

[FR Doc. 2010–3346 Filed 2–19–10; 8:45 am]

BILLING CODE 6450–01–P

## DEPARTMENT OF ENERGY

### Environmental Management Site-Specific Advisory Board, Portsmouth

**AGENCY:** Department of Energy (DOE).

**ACTION:** Notice of Open Meeting.

**SUMMARY:** This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Portsmouth. The Federal Advisory Committee Act (Pub. L. No. 92–463, 86 Stat. 770) requires that public notice of this meeting be announced in the **Federal Register**.

**DATES:** Thursday, March 4, 2010, 6 p.m.

**ADDRESSES:** Ohio State University, South Center Auditorium, 1864 Shyville Road, Piketon, Ohio 45661.

**FOR FURTHER INFORMATION CONTACT:** Joel Bradburne, Deputy Designated Federal Officer, Department of Energy Portsmouth/Paducah Project Office, Post Office Box 700, Piketon, Ohio 45661, (740) 897–3822, *Joel.Bradburne@lex.doe.gov*.

**SUPPLEMENTARY INFORMATION:**

*Purpose of the Board:* The purpose of the Board is to make recommendations to DOE–EM and site management in the areas of environmental restoration, waste management and related activities.

*Tentative Agenda:*

- Call to Order, Introductions, Review of Agenda
- Approval of November Minutes
- Deputy Designated Federal Officer's Comments
- Risk Based Presentation—Rick Bonczek
- Federal Coordinator's Comments
- Liaisons' Comments
- Administrative Issues—Actions:
  - Subcommittee Updates
  - Recommendation 10–01 End Use Study for the Portsmouth Gaseous Diffusion Plant
- Public Comments
- Final Comments
- Adjourn

Breaks taken as appropriate.

*Public Participation:* The meeting is open to the public. The EM SSAB, Portsmouth, welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Joel Bradburne at least seven days in advance of the meeting at the phone number listed above. Written statements may be filed with the Board either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Joel Bradburne at the address or telephone number listed above. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Individuals wishing to make public comments will be provided a maximum of five minutes to present their comments. This notice is being published less than 15 days prior to the meeting date due to programmatic issues that had to be resolved prior to the meeting date.

*Minutes:* Minutes will be available by writing or calling Joel Bradburne at the address and phone number listed above. Minutes will also be available at the following Web site: *http://www.ports-ssab.org/publicmeetings.html*.

Issued at Washington, DC on February 16, 2010.

**Rachel Samuel,**

*Deputy Committee Management Officer.*

[FR Doc. 2010–3347 Filed 2–19–10; 8:45 am]

BILLING CODE 6450–01–P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

### Combined Notice of Filings # 1

February 12, 2010.

Take notice that the Commission received the following electric corporate filings:

*Docket Numbers:* EC10–45–000.
*Applicants:* J–POWER USA Generation, LP.
*Description:* Application Pursuant to Section 203 for Authorization of the Acquisition of Orange Grove Energy, L.P. by J–POWER USA Generation, LP, Request for Waiver and Expedited Consideration.
*Filed Date:* 02/09/2010.
*Accession Number:* 20100209–5046.
*Comment Date:* 5 p.m. Eastern Time on Tuesday, March 2, 2010.

Take notice that the Commission received the following exempt wholesale generator filings:

*Docket Numbers:* EG10–18–000.
*Applicants:* CER Generation, LLC.
*Description:* Notice of Self-Certification of Exempt Wholesale Generator Status of CER Generation, LLC.
*Filed Date:* 02/03/2010.
*Accession Number:* 20100203–5075.
*Comment Date:* 5 p.m. Eastern Time on Wednesday, February 24, 2010.

*Docket Numbers:* EG10–19–000.
*Applicants:* Day County Wind, LLC.
*Description:* Notice of Self-Certification of Exempt Wholesale Generator Status of Day County Wind, LLC.
*Filed Date:* 02/04/2010.
*Accession Number:* 20100204–5100.
*Comment Date:* 5 p.m. Eastern Time on Thursday, February 25, 2010.

*Docket Numbers:* EG10–20–000.
*Applicants:* Northeastern Power Company.
*Description:* Notice of Self-Certification of Exempt Wholesale Generator Status of Northeastern Power Company.
*Filed Date:* 02/04/2010.
*Accession Number:* 20100204–5108.
*Comment Date:* 5 p.m. Eastern Time on Thursday, February 25, 2010.

*Docket Numbers:* EG10–21–000.
*Applicants:* AES ES Westover, LLC.
*Description:* Notice of Self-Certification as an Exempt Wholesale Generator of AES ES Westover, LLC.
*Filed Date:* 02/05/2010.
*Accession Number:* 20100205–5050.
*Comment Date:* 5 p.m. Eastern Time on Friday, February 26, 2010.

Take notice that the Commission received the following electric rate filings:

*Docket Numbers:* ER97–4143–022; ER98–2075–027; ER98–542–024; ER07–1130–004.

*Applicants:* American Electric Power Service Corporation; CSW Energy Services, Inc.; Central & South West Services, Inc.; AEP Energy Partners, Inc.

*Description:* Supplement to its Updated market power analysis of American Electric Power Service Corporation *et al.*

*Filed Date:* 02/05/2010.

*Accession Number:* 20100205–5108.

*Comment Date:* 5 p.m. Eastern Time on Friday, February 26, 2010.

*Docket Numbers:* ER97–4257–014.

*Applicants:* Mid-Power Service Corporation.

*Description:* Mid-Power Service Corporation submits an amendment to the tariff page that was included in their Amended and Restated Application for authorization to make wholesale sales of energy and capacity at negotiated, market-bases rates.

*Filed Date:* 02/01/2010.

*Accession Number:* 20100202–0028.

*Comment Date:* 5 p.m. Eastern Time on Monday, February 22, 2010.

*Docket Numbers:* ER99–1435–022; ER00–1814–010; ER10–390–001.

*Applicants:* Avista Corporation; Avista Turbine Power, Inc.

*Description:* Avista Corp.'s Request for Waiver of Affiliate Restrictions as Necessary to Implement the Avista Power Purchase Agreement.

*Filed Date:* 02/05/2010.

*Accession Number:* 20100205–5112.

*Comment Date:* 5 p.m. Eastern Time on Friday, February 26, 2010.

*Docket Numbers:* ER99–2284–014; ER98–2185–019; ER09–1278–003; ER09–38–004; ER99–1773–014; ER99–1761–010; ER01–1315–010; ER01–2401–010; ER98–2184–019; ER98–2186–020; ER00–33–010; ER05–442–008; ER00–1026–021.

*Applicants:* AEE 2, LLC; AES Alamitos, Inc.; AES Armenia Mountain Wind, LLC; AES Energy Storage, LLC; AES Creative Resources, LP; AES Eastern Energy, LP; AES Ironwood, LLC; AES Red Oak, LLC; AES Huntington Beach, LLC; AES Redondo Beach, LLC; AES Placerita, Inc.; Condon Wind Power, LLC; Indianapolis Power & Light Company; Mountain View Power Partners, LLC.

*Description:* Quarterly Report of Generation Site Acquisitions of the AES MBR Affiliates.

*Filed Date:* 02/01/2010.

*Accession Number:* 20100201–5114.

*Comment Date:* 5 p.m. Eastern Time on Monday, February 22, 2010.

*Docket Numbers:* ER99–2948–020; ER10–346–005; ER08–860–001; ER07–247–011; ER07–245–011; ER07–244–011; ER05–728–012; ER04–485–017; ER02–2567–019; ER01–556–018; ER01–1654–022; ER00–2918–019.

*Applicants:* Constellation Energy Commodities Group, R.E. Ginna Nuclear Power Plant, LLC, Baltimore Gas and Electric Company, Constellation Pwr Source Generation LLC, Constellation NewEnergy, Inc., Nine Mile Point Nuclear Station, LLC, CER Generation II, LLC, Handsome Lake Energy, LLC, Constellation Energy Commodities Group M, Calvert Cliffs Nuclear Power Plant LLC, Raven One, LLC, Raven Three, LLC, Raven Two, LLC.

*Description:* Notice of Change in Status of Constellation MBR Entities.

*Filed Date:* 02/03/2010.

*Accession Number:* 20100203–5091.

*Comment Date:* 5 p.m. Eastern Time on Wednesday, February 24, 2010.

*Docket Numbers:* ER00–1115–012; ER00–3562–013; ER00–38–011; ER01–2887–011; ER01–480–010; ER02–1319–010; ER02–1367–008; ER02–1633–008; ER02–1959–009; ER02–2227–011; ER02–2229–010; ER02–600–012; ER03–1288–007; ER03–209–009; ER03–24–010; ER03–341–008; ER03–342–009; ER03–446–009; ER03–49–009; ER03–838–010; ER04–1081–007; ER04–1099–008; ER04–1100–008; ER04–1221–007; ER04–831–009; ER05–67–007; ER05–68–007; ER05–819–007; ER05–820–007; ER06–441–006; ER06–741–007; ER06–742–007; ER06–749–007; ER06–750–007; ER06–751–008; ER06–752–007; ER06–753–006; ER06–755–007; ER06–756–007; ER07–1335–007; ER09–1084–004; ER09–71–004; ER99–970–011; ER99–1983–010.

*Applicants:* Calpine Construction Finance Company, LP; Calpine Energy Services, LP; Broad River Energy LLC; South Point Energy Center, LLC; Mobile Energy LLC; Zion Energy LLC; Calpine Oneta Power, LP; Auburndale Peaker Energy Center, LLC; CPN Bethpage 3rd Turbine, Inc.; Creed Energy Center, LLC; Goose Haven Energy Center, LLC; Delta Energy Center, LLC; Rocky Mountain Energy Center, LLC; CES Marketing V, LP; Los Esteros Critical Energy Facility LLC; Calpine Power America—OR, LLC; Calpine Power America—CA, LLC; Calpine Philadelphia, Inc; Riverside Energy Center, LLC; Power Contract Financing, LLC; PCF2, LLC; Bethpage Energy Center 3, LLC; TBG Cogen Partners; Mankato Energy Center, LLC; Calpine Newark, LLC; Metcalf Energy Center, LLC; Pastoria Energy Center, LLC; CES Marketing X, LLC; Decatur Energy Center, LLC; KIAC PARTNERS; Pine Bluff Energy, LLC; Nissequogue Cogen Partners; Carville Energy LLC; Morgan Energy Center, LLC; Columbia Energy LLC; CPN Pryor Funding Corporation; Calpine Gilroy Cogen, LP; Los Medanos Energy Center LLC; Santa Rosa Energy Center, LLC; Hermiston Power, LLC; Otay Mesa Energy Center, LLC; RockGen Energy, LLC; Geysers Power Company, LLC.

*Description:* The Calpine MBR Sellers submits the quarterly report for the fourth quarter of 2009 on the acquisition of sites for new generation *etc.*

*Filed Date:* 02/01/2010.

*Accession Number:* 20100204–0208.

*Comment Date:* 5 p.m. Eastern Time on Monday, February 22, 2010.

*Docket Numbers:* ER04–659–013; ER04–660–013; ER04–994–008; ER99–3168–012; ER04–657–013.

*Applicants:* Fore River Development, LLC; Mystic Development, LLC; Boston Generating, LLC; Astoria Generating Company, LP; Mystic Development, LLC.

*Description:* Astoria Generating Company, LP *et al.* submits quarterly report for the fourth quarter of 2009 on the acquisition of site for new generation capacity development *etc.*

*Filed Date:* 02/01/2010.

*Accession Number:* 20100204–0253.

*Comment Date:* 5 p.m. Eastern Time on Monday, February 22, 2010.

*Docket Numbers:* ER10–315–001.

*Applicants:* Northeast Utilities Service Company.

*Description:* Refund Report of Northeast Utilities Service Company.

*Filed Date:* 02/09/2010.

*Accession Number:* 20100209–5015.

*Comment Date:* 5 p.m. Eastern Time on Tuesday, March 2, 2010.

*Docket Numbers:* ER10–450–002; ER00–3696–014; ER02–506–014; ER98–2783–018; ER03–1383–017; ER07–1000–006; ER96–1947–028; ER01–3109–015; ER01–1044–015; ER99–2157–015; ER09–1491–002.

*Applicants:* Arlington Valley, LLC; Griffith Energy LLC; Bluegrass Generation Company, LLC; Bridgeport Energy, LLC; DeSoto County Generating Company, LLC; Las Vegas Power Company, LLC; LS Power Marketing, LLC; Renaissance Power, LLC; Riverside Generating Company, LLC; Rocky Road Power, LLC; Tilton Energy LLC.

*Description:* LS Power Development, LLC submits their quarterly report for the fourth quarter of 2009 on the acquisition of sites for new generation capacity development etc.

*Filed Date:* 02/01/2010.

*Accession Number:* 20100205–0001.

*Comment Date:* 5 p.m. Eastern Time on Monday, February 22, 2010.

*Docket Numbers:* ER10–583–001.

*Applicants:* Monarch Global Energy, Inc.

*Description:* Monarch Global Energy, Inc submits amended petition for acceptance of initial rate schedule, waiver and blanket authority.
*Filed Date:* 02/01/2010.
*Accession Number:* 20100203–0202.
*Comment Date:* 5 p.m. Eastern Time on Monday, February 22, 2010.

*Docket Numbers:* ER10–706–000.
*Applicants:* Midwest Independent Transmission System Operator, Inc.
*Description:* Midwest Independent Transmission System Operator, Inc. submits amended and restated large generator interconnection agreement.
*Filed Date:* 02/01/2010.
*Accession Number:* 20100202–0235.
*Comment Date:* 5 p.m. Eastern Time on Monday, February 22, 2010.

*Docket Numbers:* ER10–707–000.
*Applicants:* Florida Power Corporation.
*Description:* Florida Power Corporation submits Interchange Service Agreements.
*Filed Date:* 02/01/2010.
*Accession Number:* 20100202–0233.
*Comment Date:* 5 p.m. Eastern Time on Monday, February 22, 2010.

*Docket Numbers:* ER10–708–000.
*Applicants:* American Electric Power Service Corporation.
*Description:* Kentucky Power Company submits and request acceptance of a first revised Interconnection Agreement 1530 to its FERC Electric Tariff, Sixth Revised Volume 1 with East Kentucky Power Cooperative.
*Filed Date:* 02/01/2010.
*Accession Number:* 20100202–0234.
*Comment Date:* 5 p.m. Eastern Time on Monday, February 22, 2010.

*Docket Numbers:* ER10–709–000.
*Applicants:* Pacific Gas and Electric Company.
*Description:* Pacific Gas and Electric Co. submits the Twenty-Eighth Filing of Facilities Agreements.
*Filed Date:* 02/01/2010.
*Accession Number:* 20100202–0242.
*Comment Date:* 5 p.m. Eastern Time on Monday, February 22, 2010.

*Docket Numbers:* ER10–710–000.
*Applicants:* Nevada Power Company, Sierra Pacific Power Company.
*Description:* Nevada Power Company *et al.* submit revisions to the Sierra Pacific Resources Operating Companies FERC Electric Third Revised Volume No. 1 Open Access Transmission Tariff.
*Filed Date:* 02/01/2010.
*Accession Number:* 20100202–0240.
*Comment Date:* 5 p.m. Eastern Time on Monday, February 22, 2010.

*Docket Numbers:* ER10–711–000.
*Applicants:* Respond Power LLC.
*Description:* Respond Power, LLC submits their petition for acceptance of FERC Electric Tariff, original Volume 1.
*Filed Date:* 02/04/2010.
*Accession Number:* 20100205–0214.
*Comment Date:* 5 p.m. Eastern Time on Thursday, February 25, 2010.

*Docket Numbers:* ER10–714–000.
*Applicants:* ISO New England Inc., New England Power Pool.
*Description:* ISO New England, Inc *et al.* submits Installed Capacity Requirement, Local Sourcing Requirements and Maximum Capacity Limits and Hydro Quebuec Interconnection Capability.
*Filed Date:* 02/02/2010.
*Accession Number:* 20100204–0218.
*Comment Date:* 5 p.m. Eastern Time on Tuesday, February 23, 2010.

*Docket Numbers:* ER10–719–000.
*Applicants:* Matched LLC.
*Description:* Matched LLC submits Petition for Acceptance of Initial Tariff, Waivers and Blanket Authority.
*Filed Date:* 02/04/2010.
*Accession Number:* 20100204–0251.
*Comment Date:* 5 p.m. Eastern Time on Thursday, February 25, 2010.

*Docket Numbers:* ER10–721–000.
*Applicants:* New York Independent System Operator, Inc.
*Description:* New York Independent System Operator, Inc submits its Open Access Transmission Tariff and its Market Administration and Control Area Services Tariff to establish credit requirements for bidding *etc.*
*Filed Date:* 02/04/2010.
*Accession Number:* 20100205–0201.
*Comment Date:* 5 p.m. Eastern Time on Thursday, February 25, 2010.

*Docket Numbers:* ER10–722–000.
*Applicants:* Pittsfield Generating Company, LP.
*Description:* Pittsfield Generating Company, LP *et al.* request that the Commission grant a limited waiver of the deadline prescribed in the ISO New England Inc Forward Capacity Market Rules for modifying the Summer Qualified Capacity *etc.*
*Filed Date:* 02/04/2010.
*Accession Number:* 20100205–0202.
*Comment Date:* 5 p.m. Eastern Time on Thursday, February 25, 2010.

*Docket Numbers:* ER10–723–000.
*Applicants:* Puget Sound Energy, Inc.
*Description:* Puget Sound Energy, Inc submits revisions to its Open Access Transmission Tariff, to be effective May 1, 2010.
*Filed Date:* 02/04/2010.
*Accession Number:* 20100205–0203.
*Comment Date:* 5 p.m. Eastern Time on Thursday, February 25, 2010.

*Docket Numbers:* ER10–724–000.
*Applicants:* PJM Interconnection, LLC.
*Description:* PJM Interconnection, LLC submits a fully executed Emergency Energy Transactions Agreement dated January 12, 2010 with East Kentucky Power Cooperative.
*Filed Date:* 02/04/2010.
*Accession Number:* 20100205–0204.
*Comment Date:* 5 p.m. Eastern Time on Thursday, February 25, 2010.

Take notice that the Commission received the following electric securities filings:

*Docket Numbers:* ES10–13–002.
*Applicants:* FirstEnergy Service Company.
*Description:* Joint Application under Section 204 of the Federal Power Act for Authorization to issue short term debt securities re FirstEnergy Service Company on behalf of Jersey Central Power & Light Company *et al.*
*Filed Date:* 01/29/2010.
*Accession Number:* 20100204–0209.
*Comment Date:* 5 p.m. Eastern Time on Friday, February 19, 2010.

*Docket Numbers:* ES10–26–000.
*Applicants:* PJM Interconnection, LLC.
*Description:* Application of PJM Interconnection, LLC under Section 204 for an Order Authorizing the Issuance of Securities.
*Filed Date:* 02/05/2010.
*Accession Number:* 20100205–5036.
*Comment Date:* 5 p.m. Eastern Time on Friday, February 26, 2010.

Take notice that the Commission received the following foreign utility company status filings:

*Docket Numbers:* FC10–1–000.
*Applicants:* EDF EN Canada Inc.
*Description:* Notification of Self-Certification of Foreign Utility Company Status of EDF EN Canada Inc.
*Filed Date:* 02/05/2010.
*Accession Number:* 20100205–5051.
*Comment Date:* 5 p.m. Eastern Time on Friday, February 26, 2010.

Take notice that the Commission received the following open access transmission tariff filings:

*Docket Numbers:* OA08–34–003.
*Applicants:* Public Service Company of New Mexico.
*Description:* Public Service Company of New Mexico submits Notification filing pursuant to Sections 19.10 and 32.5 of their Open Access Transmission Tariff and FERC directives in Order 890 *et al.*
*Filed Date:* 02/01/2010.
*Accession Number:* 20100204–0212.
*Comment Date:* 5 p.m. Eastern Time on Monday, February 22, 2010.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern

time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed dockets(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

**Nathaniel J. Davis, Sr.,**

*Deputy Secretary.*

[FR Doc. 2010–3317 Filed 2–19–10; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Southeastern Power Administration

### Proposed Rate Adjustment for Kerr-Philpott System

**AGENCY:** Southeastern Power Administration (Southeastern), DOE.

**ACTION:** Notice of public hearing and opportunities for review and comment.

**SUMMARY:** Southeastern proposes to replace existing schedules of rates and charges applicable for the sale of power from the Kerr-Philpott System effective for a five-year period from October 1, 2010, to September 30, 2015. Additionally, opportunities will be available for interested persons to review the present rates, the proposed rates and supporting studies, to participate in a public forum, and to submit written comments. Southeastern will evaluate all comments received in this process.

**DATES:** Written comments are due on or before May 24, 2010. A public information and comment forum will be held in Raleigh, North Carolina, at 10 a.m. on March 30, 2010. Persons desiring to speak at the forum should notify Southeastern at least seven (7) days before the forum is scheduled so that a list of forum participants can be prepared. Others present at the forum may speak if time permits. Persons desiring to attend the forum should notify Southeastern at least seven (7) days before the forum is scheduled. Unless Southeastern has been notified by the close of business on March 23, 2010, that at least one person intends to be present at the forum, the forum may be canceled with no further notice.

**ADDRESSES:** Written comments should be submitted to: Kenneth E. Legg, Administrator, Southeastern Power Administration, Department of Energy, Elberton, GA 30635. The public comment forum will meet at the Marriott-Raleigh Crabtree Valley, 4500 Marriott Drive, Raleigh, NC 27612, phone (919) 781–7000.

**FOR FURTHER INFORMATION CONTACT:** Leon Jourolmon, Assistant Administrator, Finance and Marketing, Southeastern Power Administration, Department of Energy, 1166 Athens Tech Road, Elberton, GA 30635–6711, (706) 213–3800.

**SUPPLEMENTARY INFORMATION:** The Federal Energy Regulatory Commission (FERC), by order issued December 8, 2006,117 FERC ¶ 62,220, confirmed and approved Rate Schedules VA–1–A, VA–2–A, VA–3–A, VA–4–A, CP&L–1–A, CP&L–2–A, CP&L–3–A, CP&L–4–A, AP–1–A, AP–2–A, AP–3–A, AP–4–A, NC–1–A, Replacement-2, and VANC–1 for the period October 1, 2006, to September 30, 2011. A repayment study prepared in January of 2010 showed that existing rates are not adequate to recover all costs required by present repayment criteria. Due to the projected shortfall a revised repayment study was prepared with a revenue increase of $3,723,000 in Fiscal Year 2011 and all future years. The revised repayment plan shows that all costs will be repaid within their service life. Therefore, Southeastern is proposing to revise the existing rates to generate this additional revenue. The increase is primarily due to a severe drought. The rate adjustment is an increase of about 20 percent.

**Proposed Unit Rates**

Under the proposed rates, the capacity charge will increase from the current $2.98 per kilowatt per month to $3.91 per kilowatt per month. The energy charge will increase from the current 11.90 mills per kilowatt-hour to 15.66 mills per kilowatt-hour. In addition, Southeastern proposes to continue a Tandem Transmission rate, which is designed to recover the cost of transmitting power from a project to the border of another transmitting system. This rate is to be a formulary pass-through rate based on the charges by transmission facilitators and is estimated to be $2.14 per kilowatt per month.

In addition to these proposed rate adjustments, Southeastern is proposing to continue a true-up based on the costs that are transferred to plant in service in the preceding fiscal year to cover the costs associated with this rehabilitation. The John H. Kerr Project is currently undergoing rehabilitation, and a true-up adjustment is incorporated in the current rates. For each increase of $1,000,000 to plant in service, an increase of $0.013 per kilowatt per month will be added to the capacity charge, and 0.052 mills per kilowatt-hour will be added to the energy charge.

Southeastern is proposing the following rate schedules to be effective for the period from October 1, 2010, to September 30, 2015. The capacity charge and energy charge will be the same for all rate schedules. These rate schedules are necessary to accommodate the transmission and scheduling arrangements that are available in the Kerr-Philpott System.

*Rate Schedule VA–1–B*

Available to public bodies and cooperatives in Virginia and North Carolina to whom power may be transmitted and scheduled pursuant to contracts between the Government, Virginia Electric and Power Company (also known as Dominion Virginia Power [DVP]), and DVP's Transmission Operator, currently PJM Interconnection, LLC (PJM).

*Rate Schedule VA–2–B*

Available to public bodies and cooperatives in Virginia and North Carolina to whom power may be transmitted pursuant to contracts between the Government, DVP, and PJM. The customer is responsible for providing a scheduling arrangement with the Government.

*Rate Schedule VA–3–B*

Available to public bodies and cooperatives in Virginia and North Carolina to whom power may be scheduled pursuant to contracts between the Government, DVP, and PJM. The customer is responsible for providing a transmission arrangement.

*Rate Schedule VA–4–B*

Available to public bodies and cooperatives in the service area of DVP and PJM. The customer is responsible for providing a scheduling arrangement with the Government and for providing a transmission arrangement.

*Rate Schedule CP&L–1–B*

Available to public bodies and cooperatives in North Carolina to whom power may be transmitted and scheduled pursuant to contracts between the Government and Carolina Power & Light (also known as Progress Energy Carolinas).

*Rate Schedule CP&L–2–B*

Available to public bodies and cooperatives in North Carolina to whom power may be transmitted pursuant to contracts between the Government and Carolina Power & Light. The customer is responsible for providing a scheduling arrangement with the Government.

*Rate Schedule CP&L–3–B*

Available to public bodies and cooperatives in North Carolina to whom power may be scheduled pursuant to contracts between the Government and Carolina Power & Light. The customer is responsible for providing a transmission arrangement.

*Rate Schedule CP&L–4–B*

Available to public bodies and cooperatives in the service area of Carolina Power & Light. The customer is responsible for providing a scheduling arrangement with the Government and for providing a transmission arrangement.

*Rate Schedule AP–1–B*

Available to public bodies and cooperatives in Virginia to whom power may be transmitted and scheduled pursuant to contracts between the Government, American Electric Power Service Corporation and the American Electric Power Service Corporation's Transmission Operator, currently and the PJM Interconnection, LLC (PJM).

*Rate Schedule AP–2–B*

Available to public bodies and cooperatives in Virginia to whom power may be transmitted pursuant to contracts between the Government, American Electric Power Service Corporation, and PJM. The customer is responsible for providing a scheduling arrangement with the Government.

*Rate Schedule AP–3–B*

Available to public bodies and cooperatives in Virginia to whom power may be scheduled pursuant to contracts between the Government, American Electric Power Service Corporation, and PJM. The customer is responsible for providing a transmission arrangement.

*Rate Schedule AP–4–B*

Available to public bodies and cooperatives in the service area of American Electric Power Service Corporation and PJM. The customer is responsible for providing a scheduling arrangement with the Government and for providing a transmission arrangement.

*Rate Schedule NC–1–B*

Available to public bodies and cooperatives in Virginia and North Carolina to whom power may be transmitted pursuant to a contract between the Government and PJM and scheduled pursuant to a contract between the Government and Carolina Power & Light.

*Rate Schedule Replacement-2*

This rate schedule shall be applicable to the sale energy purchased to meet contract minimum energy and sold under appropriate contracts between the Government and the Customer.

The referenced repayment studies are available for examination at 1166 Athens Tech Road, Elberton, GA 30635. Proposed Rate Schedules VA–1–B, VA–2–B, VA–3–B, VA–4–B, CP&L–1–B, CP&L–2–B, CP&L–3–B, CP&L–4–B, AP–1–B, AP–2–B, AP–3–B, AP–4–B, NC–1–A, and Replacement-2 are also available.

Dated: February 10, 2010.

**Kenneth E. Legg,**

*Administrator.*

[FR Doc. 2010–3344 Filed 2–19–10; 8:45 am]

BILLING CODE 6450–01–P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. AD10–5–000]**

### RTO/ISO Performance Metrics; Notice Requesting Comments on RTO/ISO Performance Metrics

February 3, 2010.

In September 2008, the United States Government Accountability Office (GAO) issued a report titled "Electricity Restructuring: FERC Could Take Additional Steps to Analyze Regional Transmission Organizations' Benefits and Performance," GAO–08–987. This report recommends that the Chairman of the Federal Energy Regulatory Commission (Commission or FERC), among other actions, work with regional transmission organizations (RTO), Independent System Operators (ISO), stakeholders and other experts to develop standardized measures that track the performance of RTO/ISO operations and markets and report the performance results to Congress and the public annually, while also providing interpretation of (1) what the measures and reported performance communicate about the benefits of RTOs and, where appropriate, (2) changes that need to be made to address any performance concerns.

As recommended by GAO, Commission staff has worked with a team comprised of staff from all the jurisdictional ISOs/RTOs to develop a set of performance metrics that the ISOs/RTOs will use to report annually to the Commission. Commission staff and representatives from the ISOs/RTOs have also met with interested stakeholders to solicit their perspectives and comments on the proposed performance metrics.

Commission staff requests comments on whether the proposed performance metrics will effectively track the performance of ISO/RTO operations and markets. Comments must be filed on or before March 5, 2010. Reply comments must be filed on or before March 19, 2010.

*Addresses:* Parties may submit comments, identified by Docket No. AD10–5–000, by one of the following methods.

*Agency Web site: http://www.ferc.gov/.* Follow the instructions for submitting comments via the eFiling link found under the "Documents and Filing" tab.

*Mail:* Commenters unable to file comments electronically must mail or hand deliver an original and 14 copies of their comments to: Federal Energy

Regulatory Commission, Secretary of the Commission, 888 First Street, NE., Washington, DC 20426.

*For further information contact:*

Jeffrey Hitchings, Office of Energy Market Regulation, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Telephone: (202) 502–6042, E-mail: *jeffrey.hitchings@ferc.gov.* or

Lisa Luftig, Office of the General Counsel—Energy Markets, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Telephone: (202) 502–6791, E-mail: *lisa.luftig@ferc.gov.*

**Nathaniel J. Davis, Sr.,**

*Deputy Secretary.*

[FR Doc. 2010–3316 Filed 2–19–10; 8:45 am]

**BILLING CODE 6717–01–P**

## ENVIRONMENTAL PROTECTION AGENCY

**[EPA–HQ–OAR–2009–0866; FRL–9114–5]**

## Access by EPA Contractors to Information Claimed as Confidential Business Information (CBI) Submitted Under Title II of the Clean Air Act

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** EPA's Office of Transportation and Air Quality (OTAQ) has authorized various contractors to access information which has been submitted to EPA under Title II of the Clean Air Act that is claimed to be, or has been determined to be, confidential business information (CBI). EPA is providing notice of past disclosure and of ongoing and contemplated future disclosure.

**DATES:** Access by EPA contractors to material discussed in this Notice that has been either claimed or determined to be confidential business information (CBI) is ongoing, and is expected to continue in the future. EPA will accept comments on this Notice through March 1, 2010.

**FOR FURTHER INFORMATION CONTACT:** Anne-Marie C. Pastorkovich, Environmental Protection Agency, 1200 Pennsylvania Avenue, NW. (6406J), Washington, DC 20460; telephone number: 202–343–9623; fax number: 202–343–2801; e-mail address: *pastorkovich.anne-marie@epa.gov.*

**SUPPLEMENTARY INFORMATION:**

### I. Does This Notice Apply to Me?

This action is directed to the general public. However, this action may be of particular interest to parties who submit or have previously submitted information to EPA regarding the following programs: Fuel and fuel additive registration (40 CFR part 79), various fuels programs including reformulated gasoline, anti-dumping, gasoline sulfur, ultra low sulfur diesel, benzene content, and the renewable fuel standard (40 CFR part 80), certification and defect reporting/recall of light-duty vehicles (including motorcycles) and heavy duty on-highway vehicles and engines (40 CFR part 86 and 40 CFR part 85, subpart T), certification and defect reporting/recall of non-road compression-ignition engines (40 CFR part 89, subparts B and I, 40 CFR part 1039, subpart C, and 40 CFR part 1068, subpart F), certification and defect reporting/recall of spark-ignition engines less than or equal to 19 kilowatts (40 CFR part 90, subparts C and I, 40 CFR part 1054, subpart C, and 40 CFR part 1068, subpart F), certification and defect reporting/recall of marine spark-ignition engines (40 CFR part 91, subparts B and J, 40 CFR part 1045, subpart C, and 40 CFR part 1068, subpart F), certification and defect reporting/recall of locomotives (40 CFR part 92, subparts C and E, 40 CFR part 1033, subpart C, and 40 CFR part 1068, subpart F), certification and defect reporting/recall of marine compression-ignition engines (40 CFR part 94, subparts C and E, 40 CFR part 1042, subpart C, and 40 CFR part 1068, subpart F), certification of large non-road spark-ignition engines (40 CFR part 1048, subpart C, and 40 CFR part 1068, subpart F), certification of recreational engines and vehicles (40 CFR part 1051, subpart C, and 40 CFR part 1068, subpart F), certification of non-road and stationary equipment for evaporative emissions compliance (40 CFR part 1060, subpart C), certification of stationary compression-ignition and spark-ignition engines (40 CFR part 60, subparts IIII and JJJJ, respectively), fees (40 CFR part 1027), and fuel economy information (40 CFR part 600). Reports submitted to EPA under 40 CFR parts 79 and 80 fuels programs are commonly referred to as the "OTAQ Fuels Reporting System." Reporting submitted to EPA under 40 CFR parts 86 and 600 related to engine and vehicle compliance, such as light-duty certification and fuel economy information, is commonly referred to by the name of the reporting system itself—i.e., as CFEIS (prior to September 2008) and Verify (thereafter). Both the OTAQ Fuels Reporting System and Verify utilize the EPA Central Data Exchange (CDX).

This Notice may be of particular relevance to parties that have submitted data under the above-listed programs or systems. Since other parties may also be interested, the Agency has not attempted to describe all the specific parties that may be affected by this action. If you have further questions regarding the applicability of this action to a particular party, please contact the person listed in **FOR FURTHER INFORMATION CONTACT**.

### II. How Can I Get Copies of This Document and Other Related Information?

*A. Electronically*

EPA has established a public docket for this Notice under Docket EPA–HQ–OAR–2009–0866.

All documents in the docket are identified in the docket index available at *http://www.regulations.gov.* Although listed in the index, some information is not publicly available, such as confidential business information (CBI) or other information for which disclosure is restricted by statute. Certain materials, such as copyrighted material, will only be available in hard copy at the EPA Docket Center.

*B. EPA Docket Center*

Materials listed under Docket EPA–HQ–OAR–2009–0866 will be available for public viewing at the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Avenue, NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Air Docket is (202) 566–1742.

### III. Description of Programs and Potential Disclosure of Information Claimed as Confidential Business Information (CBI) to Contractors

EPA's Office of Transportation and Air Quality (OTAQ) has responsibility for protecting public health and the environment by regulating air pollution from motor vehicles, engines, and the fuels used to operate them, and by encouraging travel choices that minimize emissions. In order to implement various Clean Air Act programs, and to permit regulated entities flexibility in meeting regulatory requirements (*e.g.,* compliance on average), we collect compliance reports and other information from them. Occasionally, the information submitted is claimed to be confidential business information. Information submitted

under such a claim is handled in accordance with EPA's regulations at 40 CFR part 2, subpart B and in accordance with EPA procedures, including comprehensive system security plans (SSPs), that are consistent with those regulations. When EPA has determined that disclosure of information claimed as CBI to contractors is necessary, the corresponding contract must address the appropriate use and handling of the information by the contractor and the contractor must require its personnel who require access to information claimed as CBI to sign written non-disclosure agreements before they are granted access to data.

Controls regarding the handling of information claimed as CBI, including sharing of information with contractors, are also addressed in individual SSPs. The required SSPs adhere to EPA regulations and policies, as well as with the National Institute of Standards and Technology (NIST) Standard 800–53, "Recommended Security Controls for Federal Information Systems and Organizations." (NIST Standard 800–53 addresses technical, physical, environmental and other controls for information systems, including Local Area Networks (LANs) where information claimed as CBI may be stored.) Security plans address background investigations, required training, and rules of behavior for employees and contractors who require access to information claimed as CBI. Controls contained in OTAQ's SSPs are approved by OTAQ management and by the Information Management Official in the Office of Air and Radiation and such approvals are valid for a period of three (3) years, but we review the individual controls in our SSPs at least annually or whenever any major program or system change occurs, whichever is more frequent. Information which has been submitted to EPA under Title II of the Clean Air Act that is claimed to be, or has been determined to be, CBI has been handled and will continue to be handled at all times in accordance with the appropriate security controls as stated above.

In accordance with 40 CFR 2.301(h), we have determined that the contractors, subcontractors, and grantees (collectively referred to as "contractors") listed below require access to CBI submitted to us under Title II of the Clean Air Act and in connection with various OTAQ programs related to fuels, vehicles, and engines and are providing notice and an opportunity to comment. OTAQ collects this data in order to monitor compliance with Clean Air Act programs and, in many cases, to permit regulated parties flexibility in meeting regulatory requirements. For example, data that may contain CBI is collected in order to register fuels and fuel additives prior to introduction into commerce and to certify engines. Certain programs are designed to permit regulated parties an opportunity to comply on average, or to engage in transactions using various types of credits. For example, OTAQ collects information about batches of gasoline that refiners produce in order to ensure compliance with reformulated gasoline standards. The nature of the work and its necessity, and the type of access granted, is described below for each contractor.

Normally, EPA is required to give affected businesses notice and an opportunity to comment at least five (5) working days prior to disclosure of information claimed as CBI to a Federal contractor. This **Federal Register** Notice provides advance notice to all affected businesses that, as described below, certain information may be provided to EPA contractors or enrollees under the Senior Environmental Employment (SEE) program.

In the past, as also described below, EPA has disclosed certain information that had been claimed as CBI to EPA contractors providing support services prior to providing notice to the affected businesses and an opportunity to comment. EPA regrets this unintentional error and has taken steps to avoid this error in the future. We are unaware of any disclosures by contractors of information claimed as CBI. We are publishing this notice in order to comply with the notification requirements of 40 CFR part 2, subpart B.

We are issuing this Notice to inform all submitters of information related to various fuels, vehicles, and engines programs that we have provided, and may in the future provide, access to material claimed as CBI to the contractors identified below on a need-to-know basis.

Under Contract Number EP–W–09–22, PowerSolv, Incorporated, 1801 Robert Fulton Drive #550, Reston, Virginia, 20191 and its subcontractor, Indus Corporation, 1951 Kidwell Drive—8th Floor, Vienna, Virginia, 22182 provide information technology (IT) development and support services related to various fuels reporting programs under 40 CFR parts 79 and 80. The fuels programs for which reporting information may be provided to these entities include: Fuel and fuel additive registration, reformulated gasoline, anti-dumping, gasoline sulfur, ultra low sulfur diesel, benzene content and the renewable fuel standard. Access to fuels data, including information claimed as CBI, has been ongoing since July 1, 2009 and will continue until May 31, 2010. If the contract is extended, this access will continue for the remainder of the contract without further notice. From October 1, 1993 until September 30, 1998, the contractor was Vista Computer Services, under Contract Number 68–W3–0032. From October 1, 1998 until March 31, 2004, the contractor was Vista Computer Services, under Contract Number 68–W–98–230. From April 1, 2004 until June 30, 2009, the contractor was SPS Technologies, Incorporated (formerly known as Vista Computer Services) under Contract Number EP–W–04–024.

Under Contract Number EP–06–095, Compass Solutions, Incorporated, 2760 Eisenhower Avenue, Suite 404, Alexandria, Virginia 22314 provides report processing and support services related to various fuels reporting programs under 40 CFR parts 79 and 80. Access to fuels data, including information claimed as CBI, has been on-going since October 1, 1992 and will continue until September 30, 2010. Compass Solutions was formerly known as McWane and Associates and was referenced in a 1992 letter sent to all then-registered fuel and fuel additive manufacturers to inform them of the disclosure of information claimed as CBI to these contractors. If the contract is extended, the access described in this paragraph will continue for the remainder of the contract and any further extensions without further notice.

Under Contract Number GS35F4381G—Task Order 1530, Software Engineering & Specialized Scientific Support (SES3), 8400 Corporate Drive, New Carrollton, Maryland 20785, and its subcontractor, Computer Sciences Corporation (CSC), of the same address, provide IT support services related to the engine and vehicle compliance information system (*i.e.*, the system formerly called CFEIS and currently called Verify) under 40 CFR parts 86 and 600 Access by this contractor and subcontractor to vehicle and engine data, including information claimed as CBI, has been ongoing since September 11, 2009 and is expected to continue until September 10, 2015. If the contract is extended, this access will continue for the remainder of the contract and any further extensions without further notice. Prior to 2009, the following contractors had access to the data, including information claimed as CBI, described in this paragraph: From July 1, 2004 until September 25, 2009, the contractor was CSC, 8400 Corporate Drive, New Carrollton, Maryland 20785,

with the following subcontractors: Concurrent Tech, Compubahn, Inc., TEK Systems, Science Applications International Corporation (SAIC), Innovate, Inc., CCS Technology Group, Ross & Associated, and CTC. The Contract Number was GS00T99ALD0203, Task Order Number T0002AJM038. From January 26, 2004 until July 7, 2006, the contractor was Lockheed Martin, 1010 Glebe Road, Arlington, Virginia 22201 and the following subcontractors: Solutron, Quest, Aprimus, DigitalNet, and Data Tech. The Contract Number was 68–W–04–005, Task Order Number 21. From December 1, 1998 until June 30, 2004, the contractor was Science Applications International Corporation, 200 North Glebe Road, Suite 300, Arlington, Virginia 22203 and the following subcontractor: DynCorp, Indus. The Contract Number was 68–W–99–002.

Under Contract Number EPC–07–050, URS EG&G Division, 20501 Seneca Meadows Parkway, Suite 300, Germantown, Maryland 20876 provides technical services and support related to defect and recall reporting for light-duty, heavy-duty, and non-road and marine engines under 40 CFR parts 85 (subpart T), 89 (subpart I), 90 (subpart I), 91 (subpart J), 92 (subpart E), 94 (subpart E), and 1068 (subpart F). Certain data collected with regard to testing programs (*e.g.*, sales data for engines and vehicles) may be claimed as CBI. Access to data, including information claimed as CBI, has been ongoing since October 1, 2007 and will continue until September 30, 2012. If the contract is extended, this access will continue for the remainder of the contract and any further extensions without further notice.

Under Contract Number EP–C–06–003, Perrin Quarles Associates (PQA), Inc.,[1] 652 Peter Jefferson Parkway, Suite 300, Charlottesville, Virginia 22911 provides technical and analytical support that involves access to information claimed as CBI related to the Information Management System (and internal certification database) and Verify under 40 CFR parts 86 and 600, OTAQ's Greenhouse Gas Project (a computer simulation of light-duty vehicle technologies for greenhouse gas emission reduction in the 2020–2025 timeframe), and the Fuels Economy Trends report under 40 CFR parts 600 and 1027 Access to data, including information claimed as CBI, started January 9, 2006 and will continue until December 31, 2010. If the contract is extended, this access will continue for the remainder of the contract and any further extensions without further notice.

Under Contract Number GS35F4797H, CGI, Incorporated, 12601 Fair Lakes Circle, Fairfax, Virginia 22033 provides IT development and support services related to submission of data via EPA's Central Data Exchange (CDX) related to various fuels reporting programs covered by the OTAQ Fuels Reporting System under 40 CFR parts 79 and 80 and Verify under 40 CFR parts 86 and 600. Access to fuels data, including information claimed as CBI, started on September 14, 2009 and will continue until March 31, 2012. Please note that information claimed as CBI is handled by this contractor only in encrypted (*i.e.*, not human-readable) format at its facility (at the address listed above) in Fairfax, Virginia. If the contract is extended, this access will continue for the remainder of the contract and any further extensions without further notice.

Under Contract Number EPC–07–078, Eastern Research Group (ERG), 110 Hartwell Avenue, Lexington, Massachusetts 02421 provides support to the SmartWay Transport program (a voluntary program) by collecting data from equipment manufacturers, vendor sales data, fleet and operational data from transportation providers and logistics firms, and freight operations data from shippers. ERG also assists in the processing of applications for EPA verification of diesel retrofit devices (a voluntary program). Access to data, including information claimed as CBI, started on May 30, 2008 and will continue until August 31, 2011. If the contract is extended, this access will continue for the remainder of the contract and any further extensions without further notice.

In July 2004, OTAQ utilized the emergency services of AAA–Datarecovery, 15 Ingleside Court, Rockville, Maryland 20850 in order to repair and restore a server that stored engine certification information, under EPA Procurement Request/Order PROKGRM–62EH32. This contractor had access to information claimed as CBI, but none of that data was in a human-readable format.

OTAQ utilizes the services of enrollees under the Senior Environmental Employment (SEE) program. In Ann Arbor and Washington, DC, these enrollees are provided through Grant Number CQ–83880–01, Senior Service America, Inc., (SSAI) 8403 Colesville Road, Suite 1200, Silver Spring, Maryland 20910–3314. In Washington, DC, enrollees are also provided through Grant Number CQ–833436, the National Association for Hispanic Elderly (NAHE), 234 E. Colorado Blvd., Suite 300, Pasadena, California 91101. Access to data involving all of OTAQ's programs, including information claimed as CBI, is ongoing and will continue until August 31, 2011. If these grants are extended, this access will continue for the remainder of the grants and any future extensions without further notice.

Parties who wish further information about this Notice or about OTAQ's disclosure of information claimed as CBI to contactors may contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

### List of Subjects

Environmental protection, Confidential business information.

Dated: February 2, 2010.

**Christopher Grundler,**

*Deputy Director, Office of Transportation & Air Quality.*

[FR Doc. 2010–3406 Filed 2–19–10; 8:45 am]

**BILLING CODE 6560–50–P**

[1] On January 25, 2010, PQA announced that it had been acquired by SRA International (SRA) of Fairfax, Virginia.

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## ENVIRONMENTAL PROTECTION AGENCY

**[EPA–HQ–OAR–2009–0911; FRL–9115–2]**

## Agency Information Collection Activities; Proposed Collection; Comment Request; EPA–ICR No. 1774.05—Mobile Air Conditioner Retrofitting Program, OMB Control No. 2060–0350

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** In compliance with the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), this document announces that EPA is planning to submit a request to renew an existing approved Information Collection Request (ICR) to the Office of Management and Budget (OMB). This ICR is scheduled to expire on July 31, 2010. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

**DATES:** Comments must be submitted on or before April 23, 2010.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2009–0911 by one of the following methods:

- *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.

- *E-mail: a-and-r-Docket@epa.gov.*
- *Fax:* 202–566–1741.
- *Mail:* Environmental Protection Agency, EPA Docket Center (EPA/DC) Mailcode 6102T, Attention Docket ID No. OAR, 1200 Pennsylvania Avenue, NW., Washington, DC 20460.
- *Hand Delivery:* Public Reading Room, Room 3334, EPA West Building, 1301 Constitution Avenue, NW., Washington, DC.

Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

*Instructions:* Direct your comments to Docket ID No. EPA–HQ–OAR–2009–0911. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

**FOR FURTHER INFORMATION CONTACT:** Yaidi Cancel, Environmental Protection Agency, Stratospheric Protection Division, Office of Atmospheric Programs, MC 6205J, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 343–9512; fax number: (202) 343–2338; e-mail address: *Cancel.Yaidi@epa.gov.*

**SUPPLEMENTARY INFORMATION:**

## How Can I Access the Docket and/or Submit Comments?

EPA has established a public docket for this ICR under Docket ID No. EPA–HQ–OAR–2009–0911, which is available for online viewing at *http://www.regulations.gov,* or in person viewing at the Air and Radiation Docket in the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The EPA/DC Public Reading Room is open from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is 202–566–1744, and the telephone number for the Air and Radiation Docket is 202–566–1742

Use *http://www.regulations.gov* to obtain a copy of the draft collection of information, submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the docket ID number identified in this document.

## What Information Is EPA Particularly Interested In?

Pursuant to section 3506(c)(2)(A) of the PRA, EPA specifically solicits comments and information to enable it to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(ii) Evaluate the accuracy of the Agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses. In particular, EPA is requesting comments from very small businesses (those that employ less than 25) on examples of specific additional efforts that EPA could make to reduce the paperwork burden for very small businesses affected by this collection.

## What Should I Consider When I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible and provide specific examples.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Offer alternative ways to improve the collection activity.
6. Make sure to submit your comments by the deadline identified under **DATES**.
7. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

## What Information Collection Activity or ICR Does This Apply To?

*Docket ID No. EPA–HQ–OAR–2009–0911*

*Affected entities:* Entities potentially affected by this action are new and used car dealers, gas service stations, top and body repair shops, general automotive repair shops, automotive repair shops not elsewhere classified, including air conditioning and radiator specialty shops.

*Title:* Information Collection Activities Associated with EPA's Mobile Air Conditioner Retrofitting Program, 40 CFR 82.180

*ICR numbers:* EPA ICR No. 1774.05, OMB Control No. 2060–0350.

*ICR status:* This ICR is currently scheduled to expire on July 31, 2010. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in Title 40 of the CFR, after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9, are displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR part 9.

*Abstract:* EPA's Significant New Alternatives Policy (SNAP) program implements Section 612 of the 1990 Clean Air Act (CAA) Amendments which authorized the Agency to

establish regulatory requirements to ensure that ozone-depleting substances (ODS) are replaced by alternatives that reduce overall risks to human health and the environment, and to promote an expedited transition to safe substitutes. To promote this transition, CAA specified that EPA establish an information clearinghouse of available alternatives, and coordinate with other Federal agencies and the public on research, procurement practices, and information and technology transfers.

Since the program's inception in 1994, SNAP has reviewed over 400 new chemicals and alternative manufacturing processes for a wide range of consumer, industrial, space exploration, and national security applications. Roughly 90% of alternatives submitted to EPA for review have been listed as acceptable for a specific use, typically with some condition or limit to minimize risks to human health and the environment.

Regulations promulgated under SNAP require that Motor Vehicle Air Conditioners (MVACs) retrofitted to use a SNAP substitute refrigerant include basic information on a label to be affixed to the air conditioner. The label includes the name of the substitute refrigerant, when and by whom the retrofit was performed, environmental and safety information about the substitute refrigerant, and other information. This information is needed so that subsequent technicians working on the MVAC system will be able to service the equipment properly, decreasing the likelihood of significant refrigerant cross-contamination and potential failure of air conditioning systems and recovery/recycling equipment.

*Burden Statement:* The annual public reporting and recordkeeping burden for this collection of information is estimated to average 5 minutes per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements which have subsequently changed; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

The ICR provides a detailed explanation of the Agency's estimate, which is only briefly summarized here:

*Estimated total number of potential respondents:* 6,500.

*Frequency of response:* Once per a retrofit done on a motor vehicle air conditioner.

*Estimated total annual burden hours:* 1,500 hours.

*Estimated total annual costs:* $205,000 which includes an estimated burden cost of $100,000 for recordkeeping and an estimated cost of $105,000 for capital investment or maintenance and operational costs.

The U.S. Department of Labor statistics indicated from the most current available data that there are approximately 650,000 automotive service technicians and mechanics (SOC Code Number 49–3023) in the US. Data from the Motor Air Conditioning Society (MACS) Worldwide, estimated that the mobile air conditioning service industry has over 170,000 service providers and over 600,000 technicians (MACS, 2008). EPA estimated that approximately 1% of the total automotive service technicians, or 6,500, would be responsible for retrofitting the estimated 100,000 MVACs over the three-year term of this ICR.

EPA estimated the time to complete and apply the label at 5 minutes per MVAC, making the total burden 4500 hours over three years (1,500 hours per year). At an estimated average labor rate of $70 per hour, the overall cost associated with the burden hours is $315,000 over three years ($105,000 per year). The cost for designing, typesetting, printing and distributing 55,000 labels is estimated at $0.10 per label to be $5,500 ($1,833.33 per year). Adding the labor and capital costs together yields a total cost burden of $320,500 ($106,833.33 per year).

The Agency welcomes public comment on the number of CFC–12 MVACs that will undergo a retrofit, the number of MVAC service technicians performing such service, the average labor rate of MVAC service technicians from 2007 to 2010 and any other relevant information.

### Are There Changes in the Estimates From the Last Approval?

Based on the decline of CFC–12 MVACs in service today EPA estimates a continued reduction in the number of CFC–12 MVACs retrofits that will occur during the next three years. EPA estimated that the total percent of CFC–12 MVACs retrofitted in 2003 was 1.5%, which equals an estimated 500,000 CFC–12 MVACs retrofitted to R–134a. EPA observed from MACS survey data that for each year, starting from 2003, an approximate decrease of 1% of retrofits occurred. Therefore, every three years, the amount of retrofits decreases approximately 3%. Based on this trend analysis, EPA estimated that the total percent CFC–12 MVACs retrofits for 2006, 2009, and 2012 are 0.5%, 0.2%, and a 0.1%, for an estimate of 62,000, 7,000 and 700, respectively. These reductions are due to the decrease of CFC–12 MVACs available on the road for retrofitting.

### What Is the Next Step in the Process for This ICR?

EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval pursuant to 5 CFR 1320.12. At that time, EPA will issue another **Federal Register** notice pursuant to 5 CFR 1320.5(a)(1)(iv) to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB. If you have any questions about this ICR or the approval process, please contact the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

Dated: February 16, 2010.

**Brian J. McLean,**

*Director, Office of Atmospheric Programs.*

[FR Doc. 2010–3363 Filed 2–19–10; 8:45 am]

BILLING CODE 6560–50–P

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## ENVIRONMENTAL PROTECTION AGENCY

**[EPA–HQ–OPPT–2010–0015; FRL–8810–4]**

## Baled Natural Rubber in Tires; TSCA Section 21 Petition; Agency Response

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** This notice announces the availability of EPA's response to a petition it received under section 21 of the Toxic Substances Control Act (TSCA). The petition was received from an individual on November 19, 2009. The petitioner requested EPA to "establish regulations prohibiting the use and distribution in commerce of *Hevea brasiliensis* baled natural-rubber for the manufacture of tires, wherein said rubber fails to satisfy *The American Society for Testing Materials method* ASTM D1076-06 (Category 5)." The petition states: "Implementation of an EPA regulation that guides tire

manufacturers to use *Hevea brasiliensis* baled natural-rubber that satisfies ASTM D1076-06 (Category 5) may affect the incidence of *Hevea brasiliensis* natural-rubber allergies and allergy induced autism." After careful consideration, EPA has denied the TSCA section 21 petition for the reasons discussed in this notice.

**FOR FURTHER INFORMATION CONTACT:** *For general information contact*: Colby Linter, Regulatory Coordinator, Environmental Assistance Division (7408M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 554–1404; e-mail address: *TSCA-Hotline@epa.gov*.

*For technical information contact*: Robert Jones, Chemical Control Division (7405M), Office Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 564–8161; e-mail address: *jones.robert@epa.gov*.

**SUPPLEMENTARY INFORMATION:**

## I. General Information

### *A. Does this Action Apply to Me?*

This action is directed to the public in general. This action may, however, be of interest to you if you manufacture, process, import, or distribute in commerce *Hevea brasiliensis* natural rubber. Potentially interested entities may include, but are not limited to:

- Tire Manufacturing (NAICS code 32621).
- Tire Manufacturing, except retreading (NAICS code 326211).
- Tire Retreading (NAICS code 326212).
- Tire and Tube Merchant Wholesalers (NAICS code 423130).
- Tire Dealers (NAICS code 441320).
- Recyclable Material Merchant Wholesalers (NAICS code 423930).
- Other Chemical and Allied Products Merchant Wholesalers (NAICS code 424690).

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

### *B. How Can I Access Information About this Petition?*

EPA has established a docket for this TSCA section 21 petition under docket identification (ID) number EPA–HQ–OPPT–2010–0015. All documents in the docket are listed in the docket index available at *http://www.regulations.gov*. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available electronically at *http://www.regulations.gov*, or, if only available in hard copy, at the OPPT Docket. The OPPT Docket is located in the EPA Docket Center (EPA/DC) at Rm. 3334, EPA West Bldg., 1301 Constitution Ave., NW., Washington, DC. The EPA/DC Public Reading Room hours of operation are 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number of the EPA/DC Public Reading Room is (202) 566–1744, and the telephone number for the OPPT Docket is (202) 566–0280. Docket visitors are required to show photographic identification, pass through a metal detector, and sign the EPA visitor log. All visitor bags are processed through an X-ray machine and subject to search. Visitors will be provided an EPA/DC badge that must be visible at all times in the building and returned upon departure.

## II. Background

### *A. What Action was Requested Under this TSCA Section 21 Petition?*

On November 19, 2009, an individual filed a petition with EPA to "establish regulations prohibiting the use and distribution in commerce of *Hevea brasiliensis* baled natural-rubber for the manufacture of tires, wherein said rubber fails to satisfy *The American Society for Testing Materials method* ASTM D1076-06 (Category 5)," because "Implementation of an EPA regulation that guides tire manufacturers to use *Hevea brasiliensis* baled natural-rubber that satisfies ASTM D1076-06 (Category 5) may affect the incidence of *Hevea brasiliensis* natural-rubber allergies and allergy induced autism" (Refs. 1 and 2).

This petition is similar to a previous petition that the same individual filed with EPA in March 2008 requesting that EPA "establish regulations prohibiting the use and distribution in commerce of *Hevea brasiliensis* [italics added] natural rubber latex adhesives having a total protein content greater than 200 micrograms per [gram] dry weight of latex based on the American Society for Testing and Materials method ASTM D1076-06 (Category 4)." EPA denied the petition in June 2008 (Ref. 3).

### *B. What Support Does the Petitioner Offer for this Request?*

1. Exhibit A is a Portable Document Format (PDF) of a webpage from the website of the *Journal of Allergy and Clinical Immunology* (*http://www.jacionline.org/article/S0091-6749(95)70156-7/abstract*), dated November 13, 2009, providing an abstract of an article entitled "Latex Allergen in Respirable Particulate Air Pollution" (Ref. 1). Exhibit A is offered to support the petition's statements that "tires contain ... *Hevea brasiliensis* baled natural-rubber," "Hev-b proteins[1] are extractable from tire natural-rubber dust," "urban air samples have been shown to contain irregular inhalable-black particulates from airborne tire natural–rubber dust," and "the impact of the particles should be considered in the issue of morbidity and mortality rates associated with respiratory diseases and air pollution." For purposes of reviewing the petition, EPA obtained a full copy of the article (Ref. 8).

2. Exhibit B is a PDF of a webpage from the website of NOVA Science Publishers, Inc., (*http://www.novapublishers.com/catalog/advanced_search_result.php?keywords=allergies+and+autism&x=13+y=9*) dated November 13, 2009, which advertises, and includes an abstract of, a publication written by the petitioner entitled "Allergies and Autism" (Ref. 1, Exhibit B) is offered to support the petitioner's statements that "Hev-b proteins affect the incidence of hyper-adaptive immunity and atypical neurological development in allergy sensitive children," and "repeated exposure to the Hev-b proteins from *Hevea brasiliensis* baled natural-rubber has been shown to cause an increased incidence of allergies." According to NOVA Science Publishers, Inc., "Allergies and Autism" is scheduled to be published in the first quarter of 2010. At EPA's request, the petitioner provided EPA with a copy of his publication, which "explores how certain proteins induce hyper adaptive-immunity affecting Autism Spectrum Disorders" (Ref. 4).

3. Exhibit C is a PDF of a photograph labeled "VYTEX-BALE." Exhibit C is offered to support the petitioner's statement that "ultra low-protein *Hevea*

[1] The petition refers to antigenic proteins from *Hevea brasiliensis* as "Hev-b proteins."

*brasiliensis* baled natural-rubber is available commercially" (Ref. 1).

*C. What are the Legal Standards Regarding TSCA Section 21 Petitions and TSCA Section 6 Rules?*

Section 21(b)(1) of TSCA requires that the petition "set forth the facts which it is claimed establish that it is necessary" to issue the rule or order requested. 15 U.S.C. 2620(b)(1). Thus, TSCA section 21 implicitly incorporates the statutory standards that are required to issue the requested rule or order. In addition, TSCA section 21 establishes standards that a court must use to decide whether to order EPA to initiate rulemaking in the event of a lawsuit after denial of a TSCA section 21 petition. 15 U.S.C. 2620(b)(4)(B).

The petition asks EPA to "establish regulations prohibiting the use and distribution in commerce of *Hevea brasiliensis* baled natural-rubber for the manufacture of tires, wherein said rubber fails to satisfy *The American Society for Testing Materials method* ASTM D1076-06 (Category 5)," but does not state under which provision of TSCA the regulation should be issued. Only TSCA section 6, however, appears to be applicable, because it authorizes the promulgation of regulations on chemical substances and mixtures to the extent necessary to protect adequately against unreasonable risk, including prohibiting the manufacture or distribution in commerce of a chemical substance for a particular use. Accordingly, EPA has relied on the standards in TSCA section 21 and section 6 to evaluate this petition.

In order to promulgate a rule under TSCA section 6, the EPA Administrator must find that "there is a reasonable basis to conclude that the manufacture, processing, distribution in commerce, use, or disposal of a chemical substance or mixture . . . presents or will present an unreasonable risk of injury to health or the environment." 15 U.S.C. 2605(a). This finding cannot be made considering risk alone. In promulgating any rule under TSCA section 6(a), the statute requires that the EPA Administrator consider:

- The effects of such substance or mixture on health and the magnitude of the exposure of human beings to such substance or mixture.
- The effects of such substance or mixture on the environment and the magnitude of the exposure of the environment to such substance or mixture.
- The benefits of such substance or mixture for various uses and the availability of substitutes for such uses.
- The reasonably ascertainable economic consequences of the rule, after consideration of the effect on the national economy, small business, technological innovation, the environment, and public health. 15 U.S.C. 2605(c)(1).

Furthermore, the control measure adopted is to be the "least burdensome requirement" that adequately protects against the unreasonable risk. 15 U.S.C. 2605(a).

Section 21(b)(4)(B) of TSCA provides the standard for judicial review should EPA deny a request for rulemaking under TSCA section 6(a): "If the petitioner demonstrates to the satisfaction of the court by a preponderance of the evidence that ... there is a reasonable basis to conclude that the issuance of such a rule or order is necessary to protect health or the environment against an unreasonable risk of injury to health or the environment," the court shall order the EPA Administrator to initiate the requested action. 15 U.S.C. 2620(b)(4)(B).

## III. Disposition of the TSCA Section 21 Petition

*A. What is EPA's Response?*

After careful consideration, EPA has denied the petition. A copy of the Agency's response, which consists of a letter to the petitioner, is available in the docket for this TSCA section 21 petition.

*B. What is EPA's Reason for this Response?*

The petition asks EPA to "establish regulations prohibiting the use and distribution in commerce of *Hevea brasiliensis* baled natural-rubber for the manufacture of tires, wherein said rubber fails to satisfy *The American Society for Testing Materials method* ASTM D1076-06 (Category 5)," because "Implementation of an EPA regulation that guides tire manufacturers to use *Hevea brasiliensis* baled natural-rubber that satisfies ASTM D1076-06 (Category 5) may affect the incidence of *Hevea brasiliensis* natural-rubber allergies and allergy induced autism." According to the petition, ASTM D1076-06 (Category 5) "defines *Hevea brasiliensis* natural-rubber latex having total protein content less than 200 μg/dm² and an antigenic Hev-b protein content less than 10 μg/dm²" (Ref. 1).

However, there is at present no ASTM D1076-06 (Category 5). ASTM refers to ASTM International (formerly the American Society for Testing Materials), which is a voluntary organization that develops consensus technical standards for materials, products, systems, and services. See *http://www.astm.org*, ASTM D 1076-06, "Standard Specification for Rubber–Concentrated, Ammonia Preserved, Creamed, and Centrifuged Natural Latex," is a specification that "covers requirements for first grade concentrated natural rubber latex" in only four categories. An ASTM D1076-06 (Category 5) does not yet exist. See *http://engineers.ihs.com/document/abstract/SKGGJBAAAAAAAAAA*, last visited December 9, 2009.

For the following reasons, the petition does not set forth facts sufficient to establish that it is necessary to issue a rule that prohibits the use and distribution in commerce of *Hevea brasiliensis* baled natural rubber for the manufacture of tires that has a "total protein content less than 200 μg/dm² and an antigenic Hev-b protein content less than 10 μg/dm²" (Ref. 1) in order to protect human health or the environment against unreasonable risk of injury.

First, the petitioner has not presented or identified any direct evidence that *Hevea brasiliensis* natural rubber antigens, or any other antigens, cause, induce, or affect autism. Based on the evidence provided by the petitioner (Exhibit B and the petitioner's publication entitled "Allergies and Autism") and evidence otherwise available to EPA, this idea is an unproven hypothesis (Refs. 1, 5, and 6). In "Allergies and Autism," the petitioner states that "[a]llergy induced Autism is an area of research wherein immune responses to certain environmental proteins, and foodstuff proteins, may affect the development and intensity of atypical behaviors within the Autism Spectrum." Thus, the petitioner recognizes that the allergy-induced-autism proposition remains indefinite and unproven. Moreover, reviewing different paths of research, the petitioner repeatedly characterizes "allergy induced autism" as a "hypothesis." The petitioner also asserts that "research has shown that allergy may play a role in the pathogenesis of Autism," and cited a study that purported to find "a significant positive association between autistic severity and the frequency of allergic manifestations." However, the cited study does not directly test the allergy-induced-Autism hypothesis, notes that the causes of autism are "an area of significant controversy," and only concludes that the "significant positive association between these manifestations and important disease characteristics ... may shed light on the possible causal role of allergy in some

autistic children" (Ref. 5). A recent consensus report published in *Pediatrics*, the official peer-reviewed journal of the American Academy of Pediatrics, concludes that a direct cause-and-effect relationship between immune dysfunction and Autism Spectrum Disorders has yet to be proven (Ref. 6). Based on its controversial nature, the allergy-induced-Autism hypothesis and the supporting evidence are insufficient to sustain a finding of unreasonable risk required to support a regulation under TSCA section 6.

In addition, as noted in the **Federal Register** notice (Ref. 3) denying the petitioner's previous petition, *Hevea brasiliensis* natural rubber latex allergies have already been the subject of considerable Federal Government evaluation. For example, the Consumer Protect Safety Commission concluded that the incidence of natural rubber latex allergy in the general population was very low (below 1%), that many consumer products contain natural rubber latex, and that "in spite of the prevalence of [natural rubber latex] in consumer products, there are few documented cases of reactions to [natural rubber latex]-containing consumer products," most of which involved medical devices. See EPA's response to the petitioner's previous petition for a more detailed discussion (Ref. 3).

Second, the petition fails to demonstrate that there is a sufficient level of exposure to *Hevea brasiliensis* antigenic proteins[2] from the use of *Hevea brasiliensis* baled natural rubber in tires to cause adverse effects from this exposure. Available data are ambiguous and do not support the position that the general population is subject to widespread exposure to natural rubber latex proteins from tires. EPA obtained the full article referenced in Exhibit A and considered it in light of this petition (Ref. 7). In the study, particulates were collected and analyzed from ambient air samples from the Denver metropolitan area. The size of the particles was determined using optical microscopy, and it was reported that a significant portion (58.5%) was in the respirable range. The particles were also characterized using chemical solubility tests and mass spectrometry. The authors of the study hypothesized that the particles represent abraded tire fragments and concluded that their hypothesis was supported by the mass spectroscopic, physical, and chemical data. In the study, the authors also demonstrated that *Hevea brasiliensis* antigenic proteins can be extracted from rubber tire fragments. The authors speculated that airborne tire fragments "could contribute, through direct and indirect mechanisms, to the increase in both latex sensitization and asthma," but did not investigate the hypothesis or demonstrate that airborne tire fragments directly or indirectly contribute to an increase in, or have any impact on, latex sensitization and asthma. Moreover, the study only showed that *Hevea brasiliensis* antigenic proteins could be extracted from rubber tire fragments, not from particles that were collected from air samples.

"Allergies and Autism" describes a study that reports the presence of extractable *Hevea brasiliensis* antigenic proteins in ambient samples of sedimented freeway dust and airborne particulate matter from two locations within the Los Angeles basin (Ref. 8). However, in a subsequent study examining paved road dust and atmospheric particulate matter for allergen exposure in three sites within the greater Los Angeles area, the same authors reported no *Hevea brasiliensis* antigenic proteins were detected in paved road dust samples (Ref. 9). The authors concluded that the different results could be explained by "differences in driving conditions and sampling locations for the roadways examined in each of the two studies." The authors also reported that material collected from guardrails contained about 75% rubber particles, but paved road dust collected from the center two-thirds of straight sections of city surface streets did not contain rubber particles.

EPA identified another study that investigated whether exposure to road traffic in a large city in Germany (Dresden) is associated with allergic sensitization to latex in children (Ref. 10). In this study, immunoglobulin E (IgE) levels against *Hevea brasiliensis* antigenic proteins and a panel of common aeroallergens were measured in 2,505 children, ages 5–11, and an analysis was conducted to determine whether there was any correlation between latex sensitization and exposure to road traffic as measured by parental self-reporting, traffic counts, and measurements of benzene. The authors concluded that their data suggest exposure to road traffic is not associated with allergic sensitization to latex in children.

Finally, a letter published in *Epidemiology*, the official, peer-reviewed journal of the International Society of Environmental Epidemiology, reported that "[o]btaining solid natural rubber (NR) out of latex," unlike "production and use of dipped latex products" used in personal products and medical devices, "involves intensive heating, which destroys many, [though] not all, proteins," and that, "[i]n the rubber manufacturing industry, exposure to inhalable NR particles can be orders of magnitude higher ..., without producing any evidence of latex allergies," and concluded that, "[b]ased on these results[,] an association between heavy traffic and sensitization to NRL in the general population seems to be unlikely" (Ref. 11). This letter is consistent with comments submitted by the Rubber Manufacturers Association in response to the petitioner's previous petition to ban antigenic natural rubber latex adhesives. According to the Rubber Manufacturers Association, natural rubber latex "proteins in dry rubber products [including tires] are largely denatured, diluted, and immobilized to a far greater extent than in products formed from liquid latex" and "most dry rubber products that have been tested have had no detectable levels of latex allergens" (Ref. 12).

Third, the petition provides little information on the specific factors listed in TSCA section 6(c) that must be considered for a TSCA section 6 rulemaking. See Unit II.C.

For example, the petition provides little specific information on the magnitude of exposure of human beings or the environment. Exhibit A concludes that *Hevea brasiliensis* latex antigens are extractible from rubber tire fragments, which are abundant in urban air samples, but provides little factual information on the magnitude of exposure of human beings to the *Hevea brasiliensis* antigenic proteins from the tire fragments. See discussion in Unit II.B.1. concerning natural rubber latex proteins in tire particles, as referenced in Exhibit B (Ref. 4).

The petition provides little factual information on the reasonably ascertainable economic consequences of prohibiting the use and distribution in commerce of *Hevea brasiliensis* baled natural-rubber in tires that does not have a "total protein content less than 200 $\mu g/dm^2$ and an antigenic Hev-b protein content less than 10 $\mu g/dm^2$." In "Allergies and Autism," for example, the petitioner recounts who are the major natural rubber latex consuming and producing countries, the percentage of natural rubber latex consumed today, and rates of natural latex consumption in the past 43 years. However, this information fails to offer specific factual

[2] ASTM D1076-06 uses the term "*Hevea* antigenic protein" to refer to antigenic proteins in natural rubber and its products as measured by test method ASTM D6499. EPA uses *Hevea brasiliensis* antigenic proteins throughout this notice to refer to any antigenic proteins from *Hevea brasiliensis* and not just those measured by test method ASTM D6499.

information on the "reasonably ascertainable economic consequences" that would occur as a result of enacting the proposed regulation (Ref. 4).

The petition states that "proteins inherent in *Hevea brasiliensis* baled natural-rubber can be substantially eliminated" and that "ultra low-protein natural-rubber latex (e.g., Vytex-NRL) that can be used to make *Hevea brasiliensis* baled natural-rubber that satisfies ASTM D 1076-06 (Category 5)" is available, but provides little other information on the availability and suitability of substitutes. In "Allergies and Autism," the petitioner reports that non-*Hevea brasiliensis* latex does not provide a suitable substitute. According to the petitioner: "Efforts have been made to commercialize alternative latex having inherently lower antigenic protein content (i.e., guayule rubber latex and the Russian dandelion), but such materials are reported to be higher in cost and presently are available only in limited quantities" and "both of these materials have their own unique set of proteins with potential allergenic behavior not yet clearly understood." With respect to Vytex, the petitioner reports that it "can be used for making surgical and examination gloves, condoms, foam, tubing, breather bags, balloons, adhesives as well as many other natural–latex based products across a wide range of industries" (Ref. 4). Vytex does not appear to be a viable substitute for use in tires, however, at this time. Vytex was developed and is produced by the Vystar Corp. According to the Vystar Corp. website, Vytex is Vystar Corp.'s first commercial product and is presently used only in Envy condoms, which were introduced commercially only in October of 2009. In addition, Vystar Corp.'s webpage focuses on Vytex's suitability for the specialty use of medical devices. See *http://www.vytex.com*, last visited January 11, 2010.

Nor does the petition provide evidence showing that prohibiting the use of "*Hevea brasiliensis* baled natural-rubber" that does not have a "total protein content less than 200 μg/dm$^2$ and an antigenic Hev-b protein content less than 10 μg/dm$^2$" in the manufacture of tires would be the least burdensome requirement to address the potential risks the petition identifies.

Finally, the petition has not demonstrated that a regulation prohibiting the use of "*Hevea brasiliensis* baled natural-rubber" that does not have a "total protein content less than 200 μg/dm$^2$ and an antigenic Hev-b protein content less than 10 μg/dm$^2$" in the manufacture of tires is likely to be successful in reducing the incidence of latex allergy or autism.

## IV. References

The following is a list of the documents that are specifically referenced in this notice and placed in the docket that was established under docket ID number EPA–HQ–OPPT–2010–0015. For information on accessing the docket, refer to Unit I.B.

1. Dochniak, M. "Citizen Petition under TSCA to prohibit the use of *Hevea brasiliensis* baled natural-rubber for the manufacture of tires, wherein said baled natural-rubber fails to satisfy *The American Society for Testing and Materials method* ASTM D1076-06 (Category 5)." November 19, 2009.

2. EPA. Letter from OPPT, to Michael Dochniak, acknowledging receipt of his petition under TSCA section 21: "Citizen Petition under TSCA to prohibit the use of *Hevea brasiliensis* baled natural-rubber for the manufacture of tires, wherein said baled natural-rubber fails to satisfy *The American Society for Testing and Materials method* ASTM D1076-06 (Category 5)." December 8, 2009.

3. EPA. Natural Rubber Latex Adhesives; Disposition of TSCA Section 21 Petition; Notice. **Federal Register** (73 FR 32573, June 9, 2008) (FRL–8368–4). Docket ID number EPA–HQ–OPPT–2008–0273. Available on-line at *http://www.regulations.gov*.

4. Dochniak, M. and Dunn, D. Allergies and Autism. Nova Science Publishers, Inc. 2008.

5. Mostafa, G. A.; Hamza, R. T.; and El-Shahawi, H. H. Allergic manifestations in autistic children: Relation to disease severity. *Journal of Pediatric Neurology*. 2008. 6(2):115–123.

6. Buie, T., et al., Evaluation, Diagnosis, and Treatment of Gastrointestinal Disorders in Individuals With ASDs: A Consensus Report. *Pediatrics*. 2010. 125:S1–S18.

7. Williams, P. B.; Buhr, M. P.; Weber, R. W.; Volz, M. A.; Koepke, J. W.; and Selner, J. C. Latex Allergen in Respirable Particulate Air Pollution. *Journal of Allergy and Clinical Immunology*. 1995. 95:88–95.

8. Miguel, A. G.; Cass, G. R.; Weiss, J.; and Glovsky, M. M. Latex Allergens in Tire Dust and Airborne Particles. *Environmental Health Perspectives*. November 1996. 104(11):1180–1186.

9. Miguel, A. G., Cass, G. R., Weiss, J., and Glovsky, M. M. Allergens in Paved Road Dust and Airborne Particles. *Environmental Science Technology*. 1999. 33:4159–4168.

10. Hirsch, T.; Neumeister, V.; Weiland, S. K.; von Mutius, E.; Hirsch, D.; Grafe, H.; Duhme, H.; and Leupold, W. Traffic exposure and allergic sensitization against latex in children. *Journal of Allergy and Clinical Immunology*. 2000. 106:573–8.

11. Vermeulen, R.; Doekes, G.; and Kromhout, H. Latex Allergy Risk among the General Population due to Traffic-Related Airborne Dust? *Epidemiology*. Cambridge, MA. 2000. 11(1):92.

12. Rubber Manufacturers Association Letter to EPA (Docket ID number EPA–HQ–OPPT–2008–0273), Comments on Mr. Michael Dochniak TSCA Section 21 Petition. May 12, 2008.

## List of Subjects

Environmental protection, Antigenic proteins, Autism, Health, *Hevea brasiliensis* baled natural rubber, Latex, Tires.

Dated: February 16, 2010.

**Stephen A. Owens,**

*Assistant Administrator, Office of Prevention, Pesticides and Toxic Substances.*

[FR Doc. 2010–3414 Filed 2–19–10; 8:45 am]

BILLING CODE 6560–50–S

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## ENVIRONMENTAL PROTECTION AGENCY

**[FRL–9114–9]**

## North Carolina Waters Along the Entire Length of New Hanover County; Final No Discharge Zone Determination

On August 24, 2009, the Environmental Protection Agency (EPA) published a notice that the North Carolina Department of Environment and Natural Resources (DENR) Division of Water Quality (DWQ) had petitioned the Region 4 Regional Administrator to determine that adequate and reasonably available pumpout facilities exist for the designation of New Hanover County, North Carolina, Coastal Waters as a No Discharge Zone (NDZ). One comment in favor of this designation was received.

Specifically, these waters extend three nautical miles (nm) into the Atlantic Ocean along the entire length of New Hanover County, including Futch Creek, Pages Creek, Bradley Creek, Hewlett's Creek, Howe Creek, Whiskey Creek, Snow's Cut, as well as unnamed tributaries and all unnamed tidal creeks to those waters.

The geographic description including latitudes and longitudes are as follows: northern border of New Hanover County with southern border of Pender County (34°17′53.5″ N 77°42′32.2″ W), to a point 3 nm off the coast at the intersection of New Hanover and Pender Counties (34°16′01.9″ N 77°40′20.5″ W).

Intersection of the southern tip of New Hanover County with Brunswick County at the Cape Fear River (33°55′43.0″ N 77°56′13.6″ W), southeastward along the extended intersection of the two counties, 3 nm into the Atlantic Ocean (33°53′07.5″ N 77°55′34.5″ W).

This petition was filed pursuant to the Clean Water Act, Section 312(f)(3), Public Law 92–500 as amended by Public Law 95–217 and Public Law 100–4. A NDZ is defined as a body of water in which the discharge of vessel sewage, both treated and untreated, is prohibited.

Section 312(f)(3) states:

"After the effective date of the initial standards and regulations promulgated under this section, if any State determines that the protection and enhancement of the quality of some or all of the waters within such States require greater environmental protection, such State may completely prohibit the discharge from all vessels of any sewage, whether treated or not, into such waters, except that no such prohibition shall apply until the Administrator determines that adequate facilities for the safe and sanitary removal and treatment of sewage from all vessels are reasonably available for such water to which such prohibition would apply."

According to DENR DWQ the following facilities are located in New Hanover County for pumping out vessel holding tanks:

(1) Carolina Beach Municipal Marina, Carolina Beach, 910–458–2540, open 24 hours per day, 7 days per week, 6′ draft at mean low tide.

(2) Carolina Beach State Park Marina, Carolina Beach State Park, Carolina Beach, 910–458–7770, 8 AM–5:45 PM, 7 days/week, 6′ draft at mean low tide.

(3) Federal Point Yacht Club, 910 Basin Road, Carolina Beach, 910–458–4511, only available to club members, 5′ draft at mean low tide.

(4) Mona Black Marina, Carolina Beach, 910–458–0575, open 24/7, 20′ draft at mean low tide.

(5) Joyner Marina, Carolina Beach, 910–458–5053, open 7 AM–6 PM, 7 days per week, 6′ draft at mean low tide.

(6) Bridge Tender Marina, City of Wilmington, 910–256–6550, 7 AM–8 PM, 7 days/week, 10′ draft at mean low tide.

(7) Creekside Yacht Club, City of Wilmington, 910–350–0023, Operational December 2009, 4′ draft at mean low tide.

(8) Sea Path Yacht Club, Town of Wrightsville Beach, 910–256–3747, 7 AM–7 PM, 7 days/week, 10′ draft at mean low tide.

(9) Wrightsville Beach Marina & Transient Dock, Town of Wrightsville Beach, 910–256–6666, 7 AM–7 PM, 7 days/week, 12′ draft at mean low tide.

Two Marinas that are located within 7 nautical miles of the proposed NDZ are:

(A) Wilmington Marine Center, 910–395–5055, 8 AM—5 PM 7 days/week, 7′ draft at mean low tide.

(B) Bald Head Island Marina, 910–457–7380, 8:30 AM–5:30 PM 7 days/week, 8′ draft at mean low tide.

The total vessel population for New Hanover County as of August 5, 2008, was 13,940. This number reflects active vessel registrations and was obtained from the North Carolina Wildlife Resources Commission. During the period of 2006 to 2008, the total number of active registered vessels increased nearly 15%. The result is that there are nearly 1,800 more pleasure boats in the area waters today than just two years ago, with the largest increase occurring in boats between 16′ and 25′ in length. It is recognized that only a percentage of the vessels in the coastal waters of New Hanover County are equipped with a Marine Sanitation Device (MSD). To estimate the number of MSDs in use, percentages obtained from EPA (Region 2) were applied, and are listed below:

| Boat length | Percent with MSDs |
|---|---|
| <16′ | 8.3 |
| 16′–25′ | 10.6 |
| 26′–40′ | 78.5 |
| >40′ | 82.6 |

This yields an estimated 2,046 MSDs in use by registered boats within New Hanover County.

Through the use of a marina survey, the number of transient boats serviced by marinas in New Hanover County was calculated to be approximately 180 per month. This figure was arrived at by using the peak season transient boat figures from each marina. Using the figures for both county and transient boats, the total number of MSDs in the New Hanover County waters is estimated to be 2,194. There are 9 marinas within New Hanover County and this yields a ratio of about 244 boats per pumpout facility. This figure does not include the two marinas that are located within 7 nautical miles of this proposed NDZ area.

All vessel pumpout facilities that are described either discharge into State approved and regulated septic tanks or State approved on-site waste treatment plant, or the waste is collected into a large holding tank for transport to a sewage treatment plant. Thus all vessel sewage will be treated to meet existing standards for secondary treatment. Based on the examination of this petition, its supporting documentation, and public response, EPA concurs with the State of North Carolina's determination that adequate and reasonably available facilities for the safe and sanitary removal and treatment of sewage from all vessels are present in New Hanover County North Carolina, and therefore this area is designated as a NDZ.

Dated: January 29, 2010.

**J. Scott Gordon,**

*Acting Regional Administrator, Region 4.*

[FR Doc. 2010–3372 Filed 2–19–10; 8:45 am]

BILLING CODE 6560–50–P

## ENVIRONMENTAL PROTECTION AGENCY

**[EPA–HQ–SFUND–2009–0907; FRL–9114–6]**

**RIN 2050–ZA05**

## Guidance on Recommended Interim Preliminary Remediation Goals for Dioxin in Soil at CERCLA and RCRA Sites; Extension of Comment Period

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of public comment; extension of comment period.

**SUMMARY:** In response to requests from the public, the Environmental Protection Agency (EPA) is providing an additional 35 days for the public to provide its comments on the draft recommended interim preliminary remediation goals (PRGs) developed in the draft *Guidance on Recommended Interim Preliminary Remediation Goals for Dioxin in Soil at Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) and Resource Conservation and Recovery Act (RCRA) Sites.* In EPA's initial notice, which was published in the **Federal Register** on January 7, 2010 (75 FR 984), the deadline for the public to provide its comments was February 26, 2010. The purpose of this notice is to provide additional time until April 2, 2010.

**DATES:** Comments must be received on or before April 2, 2010.

**ADDRESSES:** Provide your comments, identified by Docket ID No. EPA–HQ–SFUND–2009–0907, by one of the following methods:

- *http://www.regulations.gov.* Follow the on-line instructions for submitting your views.
- *E-mail: OSWER.Docket@epa.gov.* In contrast to EPA's electronic public docket, EPA's e-mail system is not an "anonymous access" system. If you send an e-mail comment directly to the

Docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

- *Fax:* 202–566–0272.
- *Mail:* EPA Docket Center, Environmental Protection Agency, Mail Code: 5305T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460. Please include a total of two copies.
- *Hand Delivery:* EPA Docket Center (EPA/DC), Room 3334, EPA West Building, 1301 Constitution Avenue, NW., Washington, DC 20460, Attention Docket ID No. EPA–HQ–SFUND–2009–0907. Deliveries are only accepted from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. Special arrangements should be made for deliveries of boxed information. Please include a total of two copies.

*Instructions:* Direct your comments to Docket ID No. EPA–HQ–SFUND–2009–0907. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected by statute through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA, without going through *http://www.regulations.gov,* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

*Docket:* This **Federal Register** notice and supporting documentation are available in a docket EPA has established under Docket ID No. EPA–HQ–SFUND–2009–0907. All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the OSWER Docket, EPA West, Room 3334, 1301 Constitution Avenue, NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OSWER docket is (202) 566–0270.

**FOR FURTHER INFORMATION CONTACT:** Marlene Berg, Office of Superfund Remediation and Technology Innovation, 1200 Pennsylvania Avenue, NW., Mail Code: 5204P, Washington, DC 20460; by telephone/voicemail at (703) 603–8701; Fax: (703) 603–9112; or via e-mail at *berg.marlene@epa.gov.*

**SUPPLEMENTARY INFORMATION:** EPA is extending the deadline for interested parties to submit their comments by 35 days in response to a request from the American Chemistry Council's Chlorine Council for more time to submit comments on the draft recommended interim PRGs. The initial deadline published in the **Federal Register** on January 7, 2010 (75 FR 984), was for 50 days. Therefore, the new deadline will now be April 2, 2010.

Dated: February 12, 2010.

**Mathy Stanislaus,**

*Assistant Administrator, Office of Solid Waste and Emergency Response.*

[FR Doc. 2010–3368 Filed 2–19–10; 8:45 am]

**BILLING CODE 6560–50–P**

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## ENVIRONMENTAL PROTECTION AGENCY

**[FRL–9114–7]**

## Science Advisory Board Staff Office; Notification of a Public Teleconference of the Chartered Science Advisory Board

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** The EPA Science Advisory Board (SAB) Staff Office announces a public notice for the chartered SAB to hold a public teleconference on March 24, 2010 to conduct quality reviews of three draft reports.

**DATES:** The public teleconference will be held on March 24, 2010 from 1 p.m. to 5 p.m. (Eastern Time).

**ADDRESSES:** The public teleconference will be conducted by telephone only.

**FOR FURTHER INFORMATION CONTACT:** Any member of the public wishing to obtain general information concerning this public teleconference should contact Dr. Angela Nugent, Designated Federal Officer (DFO), EPA Science Advisory Board (1400F), 1200 Pennsylvania Avenue, NW., Washington, DC 20460; via telephone/voice mail (202) 343–9981; fax (202) 233–0643; or e-mail at *nugent.angela@epa.gov.* General information concerning the EPA Science Advisory Board can be found on the SAB Web site at *http://www.epa.gov/sab.*

**SUPPLEMENTARY INFORMATION:** Pursuant to the Federal Advisory Committee Act, 5 U.S.C., App. 2 (FACA), notice is hereby given that the EPA Science Advisory Board will hold a public teleconference to conduct quality reviews of three draft SAB Panel reports: (1) The SAB Drinking Water Committee's draft Review of EPA's Microbial Risk Assessment Protocol; (2) the SAB Ecological Processes and Effects Committee's draft Review of Empirical Approaches for Nutrient Criteria Derivation; and (3) the draft Report of the Risk and Technology Methods Review Panel. The SAB was established pursuant to 42 U.S.C. 4365 to provide independent scientific and technical advice to the Administrator on the technical basis for Agency positions and regulations. The SAB is a Federal Advisory Committee under FACA. The SAB will comply with the provisions of FACA and all appropriate SAB Staff Office procedural policies.

*Background: (1) The SAB Drinking Water Committee's Draft Review of EPA's Microbial Risk Assessment Protocol.* EPA's Office of Water (OW) conducts microbial risk assessments (MRA) as part of its responsibility for protecting human health and the environment from contaminants in water. OW has requested the SAB conduct a review of the draft "Protocol for Microbial Risk Assessment for Support Human Health Protection for Water-Based Media" and provide recommendations on how to improve the overall approach, the applicability of the protocol, the reasonableness of the protocol, the clarity of the protocol, the completeness and robustness of the protocol, and the ease of use of the protocol for conducting water-based

microbial risk assessments. Background information about this advisory activity can be found on the SAB Web site at *http://yosemite.epa.gov/sab/sabproduct.nsf/fedrgstr_activites/MRA%20Protocol?OpenDocument.*

*(2) SAB Ecological Processes and Effects Committee's Draft Review of Empirical Approaches for Nutrient Criteria Derivation:* Nutrient enrichment is one of the leading causes of surface water quality impairment in the United States. The adoption of numeric nutrient criteria in state water quality standards for the protection of aquatic life is a high priority for EPA's Office of Water. EPA's OW has requested SAB review of the Agency's draft Technical Guidance on Empirical Approaches for Numerical Nutrient Criteria Development. This draft guidance would supplement EPA's published technical guidance for developing numeric nutrient water quality by using empirically-derived stressor-response relationships as the basis for developing numeric nutrient endpoints for water quality standards.

Background information about this advisory activity can be found on the SAB Web site at *http://yosemite.epa.gov/sab/sabproduct.nsf/fedrgstr_activites/Empirical%20Criteria%20Guidance?OpenDocument.*

*(3) The Draft Report of the Risk and Technology Methods Review Panel:* Section 112(f)(2)(A) of the 1990 Clean Air Act Amendments (CAA) requires EPA to evaluate whether emission standards that were previously adopted under the technology-based, Maximum Achievable Control Technology (MACT) program provide an ample margin of safety to protect public health and prevent adverse environmental effects (taking into consideration costs, energy, safety, and other relevant factors). Within eight years of the promulgation of a MACT standard for the source category, EPA is mandated by the CAA to assess the risks to determine whether additional standards are needed. EPA's Office of Air and Radiation requested the SAB to review the draft assessments which evaluate the potential risks to human health and the environment from two source categories (petroleum refinery and Portland kiln cement) that remain after compliance with MACT. Background information about this advisory activity can be found on the SAB Web site at *http://yosemite.epa.gov/sab/sabproduct.nsf/fedrgstr_activites/RTR%20Risk%20Assessments%20(P2%2C%20G3)?OpenDocument.*

*Availability of Meeting Materials:* The agenda and other materials in support of the teleconference will be placed on the SAB Web site at *http://www.epa.gov/sab* in advance of the teleconference.

*Procedures for Providing Public Input:* Interested members of the public may submit relevant written or oral information for the SAB to consider during this teleconference. *Oral Statements:* In general, individuals or groups requesting time to make an oral presentation at a public SAB teleconference will be limited to three minutes, with no more than one-half hour for all speakers. Those interested in being placed on the public speakers list should contact Dr. Nugent at the contact information provided above by March 17, 2010. *Written Statements:* Written statements should be received in the SAB Staff Office by March 17, 2010. Written statements should be supplied to the DFO via e-mail to *nugent.angela@epa.gov* (acceptable file format: Adobe Acrobat PDF, WordPerfect, MS Word, MS PowerPoint, or Rich Text files in IBM–PC/Windows98/2000/XP format). Submitters are asked to provide versions of each document submitted with and without signatures, because the SAB Staff Office does not publish documents with signatures on its Web sites.

*Accessibility:* For information on access or services for individuals with disabilities, please contact Dr. Angela Nugent at (202) 343–9981 or *nugent.angela@epa.gov.* To request accommodation of a disability, please contact her preferably at least 10 days prior to the teleconference, to give EPA as much time as possible to process your request.

Dated: February 4, 2010.

**Anthony Maciorowski,**

*Deputy Director, EPA Science Advisory Board Staff Office.*

[FR Doc. 2010–3358 Filed 2–19–10; 8:45 am]

BILLING CODE 6560–50–P

## ENVIRONMENTAL PROTECTION AGENCY

**[EPA–HQ–OAR–2007–1196; FRL–9113–6]**

## Recent Postings of Broadly Applicable Alternative Test Methods

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of availability.

**SUMMARY:** This notice announces the broadly applicable alternative test method approval decisions the EPA has made under and in support of New Source Performance Standards (NSPS) and the National Emission Standards for Hazardous Air Pollutants (NESHAP) in 2009.

**FOR FURTHER INFORMATION CONTACT:** An electronic copy of each alternative test method approval document is available on EPA's Web site at *http://www.epa.gov/ttn/emc/approalt.html.* For questions about this notice, contact Jason M. DeWees, Air Quality Assessment Division, Office of Air Quality Planning and Standards (E143–02), Environmental Protection Agency, Research Triangle Park, NC 27711; telephone number: 919–541–9724; fax number: 919–541–0516; e-mail address: *dewees.jason@epa.gov.* For technical questions about individual alternative test method decisions, refer to the contact person identified in the individual approval documents.

**SUPPLEMENTARY INFORMATION:**

### I. General Information

*A. Does this notice apply to me?*

This notice will be of interest to entities regulated under 40 Code of Federal Regulations (CFR) parts 60, 61, and 63, State, local, and Tribal agencies, and EPA Regional Offices responsible for implementation and enforcement of regulations under 40 CFR parts 60, 61, and 63.

*B. How can I get copies of this information*

You may access copies of the broadly applicable alternative test method approval documents from the EPA's Web site at *http://www.epa.gov/ttn/emc/approalt.html.*

### II. Background

This notice identifies EPA's broadly applicable alternative test method approval decisions issued between January 1, 2009, and December 31, 2009, under the NSPS, 40 CFR part 60, and the NESHAP, 40 CFR parts 61 and 63 (see Table 1). Source owners and operators may voluntarily use these broadly applicable alternative test methods subject to their specific applicability. Use of these broadly applicable alternative test methods does not change the applicable emission standards.

As explained in a previous **Federal Register** notice published at 72 FR 4257 (January 30, 2007) and found on the EPA's Web site at *http://www.epa.gov/ttn/emc/approalt.html,* the EPA Administrator has the authority to approve the use of alternative test methods to comply with requirements under 40 CFR parts 60, 61, and 63. This authority is found in sections 60.8(b)(3), 61.13(h)(1)(ii), and 63.7(e)(2)(ii). In the past, we have performed thorough technical reviews of numerous requests for alternatives and modifications to test

methods and procedures. Based on these experiences, we have often found that these changes or alternatives would be equally valid and appropriate to apply to other sources within a particular class, category, or subcategory. Consequently, we have concluded that, where a method modification or an alternative method is clearly broadly applicable to a class, category, or subcategory of sources, it is both more equitable and efficient to approve its use for all appropriate sources and situations at the same time.

It is important to clarify that alternative methods are not mandatory but permissive. Sources are not required to employ such a method but may choose to do so in appropriate cases. Source owners or operators should review the specific broadly applicable alternative method approval decision on the EPA's Web site at *http://www.epa.gov/ttn/emc/approalt.html* before electing to employ it. As per 63.7(f)(5) by electing to use an alternative method for 40 CFR part 63 standards, the source owner or operator must use the alternative method until approved otherwise.

The criteria for approval and procedures for submission and review of broadly applicable alternative test methods are outlined at 72 FR 4257 (January 30, 2007). EPA will continue to announce approvals for broadly applicable alternative test methods on the EPA's Web site at *http://www.epa.gov/ttn/emc/approalt.html* and intends to publish a notice annually that summarizes approvals for broadly applicable alternative test methods.

This notice comprises a summary of fourteen such approval documents added to our technology transfer network from January 1, 2009, through December 31, 2009. The alternative test method number, the reference method affected, sources allowed to use this alternative, and modification or alternative method allowed are summarized in Table 1 of this notice. Please refer to the complete copies of these approval documents available from the EPA's Web site at *http://www.epa.gov/ttn/emc/approalt.html* as the table serves only as a brief summary of the broadly applicable alternative test methods. If you are aware of reasons why a particular alternative test method approval that we issue should not be broadly applicable, we request that you make us aware of the reasons in writing and we will revisit the broad approval. Any objection to a broadly applicable alternative test method as well as the resolution of that objection will be announced on the EPA's Web site at *http://www.epa.gov/ttn/emc/approalt.html* and in the subsequent **Federal Register** notice. If we should decide to retract a broadly applicable test method, we would continue to grant case-by-case approvals, as appropriate, and would (as States, local and Tribal agencies and EPA Regional Offices should) consider the need for an appropriate transition period for users either to request case-by-case approval or to transition to an approved method.

Dated: February 3, 2010.

**Jennifer Noonan Edmonds,**

*Acting Director, Office of Air Quality Planning and Standards.*

TABLE 1—APPROVED ALTERNATIVE TEST METHODS AND MODIFICATIONS TO TEST METHODS REFERENCED IN OR PUBLISHED UNDER APPENDICES IN 40 CFR PARTS 60, 61, AND 63 MADE BETWEEN JANUARY 2009 AND DECEMBER 2009

| Alternative No. | As an alternative or modification to . . . | For . . . | You may . . . |
|---|---|---|---|
| ALT–050 | Method 25D—Determination of the Volatile Organic Concentration of Waste Samples. | Sources subject to 40 CFR part 63, subpart FFFF, National Emission Standards for Hazardous Air Pollutants for Miscellaneous Organic Chemical Manufacturing. | Use EPA SW–846 Method 8260B for the analysis of Methyl Methacrylate in lieu of Method 25D. |
| ALT–050 | Method 305—Measurement of Emission Potential of Individual Volatile Organic Compounds in Waste. | Sources subject to 40 CFR part 63, subpart FFFF, National Emission Standards for Hazardous Air Pollutants for Miscellaneous Organic Chemical Manufacturing. | Use EPA SW–846 Method 8260B for the analysis of Methyl Methacrylate in lieu of Method 305. |
| ALT–050 | Method 624—Purgeables | Sources subject to 40 CFR part 63, subpart FFFF, National Emission Standards for Hazardous Air Pollutants for Miscellaneous Organic Chemical Manufacturing. | Use EPA SW–846 Method 8260B for the analysis of Methyl Methacrylate in lieu of Method 624. |
| ALT–050 | Method 625—Base/Neutrals and Acids | Sources subject to 40 CFR part 63, subpart FFFF, National Emission Standards for Hazardous Air Pollutants for Miscellaneous Organic Chemical Manufacturing. | Use EPA SW–846 Method 8260B for the analysis of Methyl Methacrylate in lieu of Method 625. |
| ALT–050 | Method 1624—Volatile Organic Compounds by Isotope Dilution GC/MS. | Sources subject to 40 CFR part 63, subpart FFFF, National Emission Standards for Hazardous Air Pollutants for Miscellaneous Organic Chemical Manufacturing. | Use EPA SW–846 Method 8260B for the analysis of Methyl Methacrylate in lieu of Method 1624. |
| ALT–050 | Method 1625—Semivolatile Organic Compounds by Isotope Dilution GC/MS. | Sources subject to 40 CFR part 63, subpart FFFF, National Emission Standards for Hazardous Air Pollutants for Miscellaneous Organic Chemical Manufacturing. | Use EPA SW–846 Method 8260B for the analysis of Methyl Methacrylate in lieu of Method 1625. |
| ALT–051 | Method 101A—Determination of Particulate and Gaseous Mercury Emissions from Sewage Sludge Incinerators. | Sludge Drying or Sludge Incineration Facilities affected under the NESHAP for Mercury in 40 CFR part 61, subpart E. | Use Method 29 with limitations outlined in the approval letter in lieu of Method 101A. |

TABLE 1—APPROVED ALTERNATIVE TEST METHODS AND MODIFICATIONS TO TEST METHODS REFERENCED IN OR PUBLISHED UNDER APPENDICES IN 40 CFR PARTS 60, 61, AND 63 MADE BETWEEN JANUARY 2009 AND DECEMBER 2009—Continued

| Alternative No. | As an alternative or modification to . . . | For . . . | You may . . . |
|---|---|---|---|
| ALT–051 | Method 103—Beryllium Screening Method. | Sludge Drying or Sludge Incineration Facilities affected under the NESHAP for Beryllium in 40 CFR part 61, subpart C. | Use Method 29 in lieu of Method 103. |
| ALT–051 | Method 104—Determination of Beryllium Emissions from Stationary Sources. | Sludge Drying or Sludge Incineration Facilities affected under the NESHAP for Beryllium in 40 CFR part 61, subpart C. | Use Method 29 in lieu of Method 104. |
| ALT–052 | Method 23—Determination of Polychlorinated Dibenzo-p dioxins and Polychlorinated Dibenzofurans from Municipal Waste Combustors. | Waste combustors or waste incinerators. | Omit the methylene chloride rinse; Combine acetone and toluene rinse, filter and XAD–2 trap into one sample prior to extraction and analysis in lieu of a separate toluene analysis. |
| ALT–053 | Method 26A—Determination of Hydrogen Halide and Halogen Emissions from Stationary Sources Isokinetic Method. | Sources subject to 40 CFR part 63, subpart EEE, National Emissions Standards for Hazardous Air Pollutants for Hazardous Waste Combustors. | Replace the post-analysis check with single mid-range standard with additional quality assurance; Prepare calibration standards in water in lieu of dilute sulfuric acid or sodium hydroxide. |
| ALT–053 | Method 29—Determination of Metal Emissions from Stationary Sources. | Sources subject to 40 CFR part 63, subpart EEE, National Emissions Standards for Hazardous Air Pollutants for Hazardous Waste Combustors. | Use 0.4 percent hydrochloric acid in the digestate for the front half sample recovery. |
| ALT–054 | Method 25C—Determination of Nonmethane Organic Compounds (NMOC) in Landfill Gas. | Sources affected under the NSPS for Municipal Solid Waste Landfills in 40 CFR part 60, subpart WWW. | Use leachate risers vents for sampling locations in lieu of the inserting surface probes. |
| ALT–055 | Method 2—Determination of Stack Gas Velocity and Volumetric Flow Rate (Type S Pitot Tube). | Flares subject to 60.18(f)(4) | Use a mass flow meter in lieu of Method 2. |
| ALT–055 | Method 2A—Direct Measurement of Gas Volume through Pipes and Small Ducts. | Flares subject to 60.18(f)(4) | Use a mass flow meter in lieu of Method 2A. |
| ALT–055 | Method 2C—Determination of Gas Velocity and Volumetric Flow Rate in Small Stacks or Ducts (Standard Pitot Tube). | Flares subject to 60.18(f)(4) | Use a mass flow meter in lieu of Method 2C. |
| ALT–055 | Method 2D—Measurement of Gas Volume Flow Rates in Small Pipes and Ducts. | Flares subject to 60.18(f)(4) | Use a mass flow meter in lieu of Method 2D. |
| ALT–056 | Method 26—Determination of Hydrogen Halide and Halogen Emissions from Stationary Sources Non-Isokinetic Method. | Sources required to use Method 26 | Use pre-treated Teflon probes in place of borosilicate glass probes. |
| ALT–057 | Method 18—Measurement of Gaseous Organic Compound Emissions by Gas Chromatography. | Sources subject to 40 CFR part 63, subpart DD—National Emission Standards for Hazardous Air Pollutants from Off-Site Waste and Recovery Operations. | Use Method 25A in lieu of Method 18 due to the variability in the composition of the waste stream. |
| ALT–058 | ASTM D396—Standard Specification for Fuel Oils. | Sources affected under the NSPS for Small Industrial-Commercial-Institutional Steam Generating Units in 40 CFR part 60, subpart Dc. | Use ASTM D975–07b—Standard Specification for Diesel Fuel Oils in lieu of ASTM D396. |
| ALT–059 | ASTM D6522–00—Standard Test Method for Determination of Nitrogen Oxides, Carbon Monoxide, and Oxygen Concentrations in Emissions from Natural Gas- Fired Reciprocating Engines, Combustion Turbines, Boilers, and Process Heaters Using Portable Analyzers. | Sources subject to 40 CFR part 63, subpart ZZZZ, National Emissions Standards for Hazardous Air Pollutants for Stationary Reciprocating Internal Combustion Engines. | Use an unheated sampling line for carbon monoxide measurements. |
| ALT–060 | Method 4—Determination of Moisture Content in Stack Gases. | Sources affected under the NSPS for Stationary Spark Ignition Internal Combustion Engines in 40 CFR part 60, subpart JJJJ. | Use ALT–008 in lieu of Method 4. |

TABLE 1—APPROVED ALTERNATIVE TEST METHODS AND MODIFICATIONS TO TEST METHODS REFERENCED IN OR PUBLISHED UNDER APPENDICES IN 40 CFR PARTS 60, 61, AND 63 MADE BETWEEN JANUARY 2009 AND DECEMBER 2009—Continued

| Alternative No. | As an alternative or modification to . . . | For . . . | You may . . . |
|---|---|---|---|
| ALT–061 | Method 1—Sample and Velocity Traverses for Stationary Sources. | Sources affected under the NSPS for Stationary Spark Ignition Internal Combustion Engines in 40 CFR part 60, subpart JJJJ. | Use single point testing in lieu of Method 1. |
| ALT–061 | Method 1A—Sample and Velocity Traverses for Stationary Sources with Small Stacks or Ducts. | Sources affected under the NSPS for Stationary Spark Ignition Internal Combustion Engines in 40 CFR part 60, subpart JJJJ. | Use single point testing in lieu of Method 1A. |
| ALT–062 | Method 29—Determination of Metal Emissions from Stationary Sources. | Sources subject to 40 CFR part 63, subpart EEE—National Emission Standards for Hazardous Air Pollutants from Hazardous Waste Combustors. | Use laboratory reagent water that meets ASTM Type II specifications for electrical conductivity.<br>Use boric acid for digestion of samples; Adopt EPA CLP ILM4.0 for determining the "specified concentration range around the calibration blank".<br>Use 5% nitric acid and 5% hydrochloric acid matrix for the laboratory blank.<br>Consider method blanks acceptable if the values are below the reporting limit in lieu of the method detection limit. |
| ALT–062 | SW–846 Method 8260B—Volatile Organic Compounds by Gas Chromatography/Mass Spectrometry (GC/MS). | Sources subject to 40 CFR part 63, subpart EEE—National Emission Standards for Hazardous Air Pollutants from Hazardous Waste Combustors. | Use an alternate ion 119 for quantification of chlorobenze-$d_5$ for the 25-mL purge test.<br>Use a 0.2 minute absolute retention time window.<br>Use alternate ions in the mass spectrum for the analysis of 12 target analytes.<br>Use a single 30-mL aliquot of methylene chloride in lieu of 3 10-mL aliquots for rinse of the filter sample container or front rinse sample container for transferring sample for analysis. |
| ALT–062 | SW–846 Method 3542—Extraction of Semivolatile Analytes Collected using Method 0010 (Modified Method 5 Sampling Train). | Sources subject to 40 CFR part 63, subpart EEE—National Emission Standards for Hazardous Air Pollutants from Hazardous Waste Combustors. | Use a continuous liquid to liquid extraction in lieu of using a separatory funnel. |
| ALT–062 | Method 23—Determination of Polychlorinated Dibenzo-p dioxins and Polychlorinated Dibenzofurans from Municipal Waste Combustors. | Sources subject to 40 CFR part 63, subpart EEE—National Emission Standards for Hazardous Air Pollutants from Hazardous Waste Combustors. | Omit the methylene chloride rinse; Combine acetone and toluene rinses, filter and XAD–2 trap into one sample prior to extraction and analysis in lieu of a separate toluene analysis.<br>Use alternative extraction and clean-up procedures provided all quality assurance measures are met.<br>Use an alternative ion abundance ratio for pentachlorodibenzo dioxin. |
| ALT–063 | Method 8—Determination of Sulfuric Acid and Sulfur Dioxide Emissions from Stationary Sources. | Sources affected under the NSPS for Sulfuric Acid Plants in 40 CFR part 60, subpart H. | Use Method 6C in lieu of Method 8 to certify sulfur dioxide continuous emission monitors. |

Source owners or operators should review the specific broadly applicable alternative method approval letter on the EPA's Web site at *http://www.epa.gov/ttn/emc/approalt.html* before electing to employ it.

[FR Doc. 2010–3405 Filed 2–19–10; 8:45 am]

**BILLING CODE 6560–50–P**

## EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

### Agency Information Collection Activities: Proposed Collection; Comments Request

**AGENCY:** Equal Employment Opportunity Commission.

**ACTION:** Notice.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995, the Commission announces that it intends to submit to the Office of Management and Budget (OMB) a request for an extension without change of the existing recordkeeping requirements under 29 CFR part 1602 *et seq.,* Recordkeeping

and Reporting Requirements under Title VII and the ADA. The Commission is seeking public comments on the proposed extension.

**DATE:** Written comments must be received on or before April 23, 2010.

**ADDRESSES:** Send written comments by mail to Stephen Llewellyn, Executive Officer, Executive Secretariat, Equal Employment Opportunity Commission, 131 M Street, NE., Suite 6NE03F, Washington, DC 20507. Written comments of six or fewer pages may be faxed to the Executive Secretariat at (202) 663–4114. (There is no toll free FAX number.) Receipt of facsimile transmittals will not be acknowledged, except that the sender may request confirmation of receipt by calling the Executive Secretariat staff at (202) 663–4070 (voice) or (202) 663–4074 (TTY). (These are not toll free numbers.) Instead of sending written comments to EEOC, comments may be submitted to EEOC electronically on the Federal eRulemaking Portal: *http://www.regulations.gov.* After accessing this Web site, follow its instructions for submitting comments.

All comments received will be posted without change to *http://www.regulations.gov,* including any personal information you provide. Copies of the received comments also will be available for inspection in the EEOC Library by advance appointment only, from 9 a.m. to 5 p.m., Monday through Friday except legal holidays. Persons who schedule an appointment in the EEOC Library and need assistance to view the comments will be provided with appropriate aids upon request, such as readers or print magnifiers. To schedule an appointment to inspect the comments at the EEOC Library, contact the EEOC Library by calling (202) 663–4630 (voice) or (202) 663–4641 (TTY). (These are not toll free numbers.)

**FOR FURTHER INFORMATION CONTACT:** Thomas J. Schlageter, Assistant Legal Counsel, (202) 663–4668, or Erin N. Norris, Senior Attorney, (202) 663–4876, Office of Legal Counsel, 131 M Street, NE., Washington, DC 20507. Copies of this notice are available in the following alternate formats: large print, braille, electronic computer disk, and audio-tape. Requests for this notice in an alternative format should be made to the Publications Center at 1–800–699–3362 (voice), 1–800–800–3302 (TTY), or 703–821–2098 (FAX—this is not a toll free number).

**SUPPLEMENTARY INFORMATION:** The Equal Employment Opportunity Commission (EEOC) enforces Title VII of the Civil Rights Act of 1964 and Title I of the Americans with Disabilities Act, which prohibit discrimination on the basis of race, color, religion, sex, national origin or disability. Sections 709(c) of Title VII and section 107(a) of the ADA authorize the EEOC to issue recordkeeping and reporting regulations that are deemed reasonable, necessary or appropriate. EEOC has promulgated recordkeeping regulations under those authorities that are contained in 29 CFR part 1602 et seq. Those regulations do not require the creation of any particular records but generally require employers to preserve any personnel and employment records they make or keep for a period of one year. The EEOC seeks extension of these regulations without change.

**Overview of This Information Collection**

*Collection title:* Recordkeeping under Title VII and the ADA.

*OMB number:* 3046–0040.

*Description of affected public:* Employers with 15 or more employees are subject to Title VII and the ADA.

*Number of responses:* 899,580.

*Reporting hours:* One.

*Number of forms:* None.

*Federal cost:* None.

*Abstract:* Section 709(c) of Title VII, 42 U.S.C. 2000e–8(c) and section 107(a) of the ADA, 42 U.S.C. 12117(a) require the Commission to establish regulations pursuant to which employers subject to those Acts shall make and preserve certain records to assist the EEOC in assuring compliance with the Acts' nondiscrimination in employment requirements. This is a recordkeeping requirement. Any of the records maintained which are subsequently disclosed to the EEOC during an investigation are protected from public disclosure by the confidentiality provisions of section 706(b) and 709(e) of Title VII which are also incorporated by reference into the ADA at section 107(a).

*Burden statement:* The estimated number of respondents is approximately 899,580 employers. The recordkeeping requirement does not require reports or the creation of new documents, but merely requires retention of documents that the employer has made or kept. Thus, the burden imposed by these regulations is minimal. The burden is estimated to be less than one hour per employer.

Pursuant to the Paperwork Reduction Act of 1995, and OMB regulation 5 CFR 1320.8(d)(1), the Commission solicits public comment to enable it to:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the Commission's functions, including whether the information will have practical utility;

(2) Evaluate the accuracy of the Commission's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

For the Commission.

Dated: February 16, 2010.

**Stuart J. Ishimaru,**

*Acting Chairman.*

[FR Doc. 2010–3342 Filed 2–19–10; 8:45 am]

**BILLING CODE 6570–01–P**

## FEDERAL RESERVE SYSTEM

### Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than March 8, 2010.

**A. Federal Reserve Bank of Cleveland** (Nadine Wallman, Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101–2566:

*1. Harris Rakestraw, III*, Somerset, Kentucky, individually; and The Rogers Family Immediate Family Control Group, consisting of Harold D. Rogers, individually, and as Trustee of the Harold D. Rogers Revocable Trust, Anthony M. Rogers, and John M. Rogers, all of Somerset, Kentucky, and Margaret Allison Rogers, Versailles, Kentucky; to acquire voting shares of Citizens Bancshares, Inc., and thereby indirectly acquire voting shares of Citizens

National Bank of Somerset, both of Somerset, Kentucky.

*2. Timothy Robert Aiken, Trustee of Hometown Bancshares, Inc. 401(k) Profit Sharing Plan*, Middlebourne, West Virginia; to retain voting shares of Hometown Bancshares, Inc., and thereby indirectly retain voting shares of Union Bank, both of Middlebourne, West Virginia.

**B. Federal Reserve Bank of Kansas City** (Dennis Denney, Assistant Vice President) 1 Memorial Drive, Kansas City, Missouri 64198–0001:

*1. Donna M. Curry, Trustee of the The Galen L. Curry Marital Trust, and as Voting Trustee of the Voting Trust Agreement*, both of Piqua, Kansas; to retain control of My Anns Corporation, and thereby indirectly retain control of Piqua State Bank, both in Piqua, Kansas.

**C. Federal Reserve Bank of San Francisco** (Kenneth Binning, Vice President, Applications and Enforcement) 101 Market Street, San Francisco, California 94105–1579:

*1. Charles W. Reinking*, Santa Rosa, California; to become co–Trustee of the Frank P. Doyle Trust, Article IX, and thereby retain voting shares of Exchange Bank, both of Santa Rosa, California.

Board of Governors of the Federal Reserve System, February 16, 2010.

**Robert deV. Frierson,**

*Deputy Secretary of the Board.*

[FR Doc. 2010–3279 Filed 2–19–10; 8:45 am]

**BILLING CODE 6210–01–S**

## FEDERAL RESERVE SYSTEM

### Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than March 9, 2010.

**A. Federal Reserve Bank of Philadelphia** (Michael E. Collins, Senior Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105–1521:

*1. Allen E. Ertel and Catharine K. Ertel*, both of Montoursville Pennsylvania; Edward Ertel, Washington, D.C.; Amy Etrel, Jersey City, New Jersey; and Firetree, Ltd, Williamsport, Pennsylvania; to retain voting shares of Woodlands Financial Services Company, and thereby indirectly retain voting shares of Woodlands Bank, both of Williamsport, Pennsylvania.

Board of Governors of the Federal Reserve System, February 17, 2010.

**Robert deV. Frierson,**

*Deputy Secretary of the Board.*

[FR Doc. 2010–3336 Filed 2–19–10; 8:45 am]

**BILLING CODE 6210–01–S**

## FEDERAL RESERVE SYSTEM

### Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The applications also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than March 18, 2010.

**A. Federal Reserve Bank of Richmond** (A. Linwood Gill, III, Vice President) 701 East Byrd Street, Richmond, Virginia 23261–4528:

*1. Community Bank Investors of America, LP, and FA Capital, LLC*, both of Richmond, Virginia; to acquire additional voting shares, for a total of 49.99 percent of the voting shares of Progress Bank of Florida, Tampa, Florida. Comments regarding this application must be received not later than March 14, 2010.

**B. Federal Reserve Bank of Chicago** (Colette A. Fried, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

*1. Chemical Financial Corporation*, Midland, Michigan; to acquire 100 percent of the voting shares of O.A.K. Financial Corporation, Byron Center, Michigan, and thereby indirectly acquire voting shares of Byron Bank, Byron Center, Michigan.

**C. Federal Reserve Bank of Dallas** (E. Ann Worthy, Vice President) 2200 North Pearl Street, Dallas, Texas 75201–2272:

*1. Bank4Texas Holdings, Inc.*, Chillicothe, Texas; to become a bank holding company by acquiring 100 percent of the voting shares of Northern Bancshares, Inc., and thereby indirectly acquire voting shares of The First National Bank of Chillicothe, both of Chillicothe, Texas.

**D. Federal Reserve Bank of San Francisco** (Kenneth Binning, Vice President, Applications and Enforcement) 101 Market Street, San Francisco, California 94105–1579:

*1. Green Dot Corporation*, Monrovia, California; to become a bank holding company by acquiring 100 percent of the voting shares of Bonneville, Bancorp, and thereby indirectly acquire voting shares of Bonneville Bank, both of Provo, Utah.

Board of Governors of the Federal Reserve System, February 16, 2010.

**Robert deV. Frierson,**

*Deputy Secretary of the Board.*

[FR Doc. 2010–3280 Filed 2–19–10; 8:45 am]

**BILLING CODE 6210–01–S**

## FEDERAL RESERVE SYSTEM

### Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y (12 CFR Part 225) to engage *de novo*, or to

acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than March 8, 2010.

**A. Federal Reserve Bank of Chicago** (Colette A. Fried, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

*1. Ida Grove Bancshares, Inc.*, Ida Grove, Iowa; to continue to engage *de novo* in leasing personal or real property, pursuant to section 225.28(b)(3) of Regulation Y.

Board of Governors of the Federal Reserve System, February 16, 2010.

**Robert deV. Frierson,**

*Deputy Secretary of the Board.*

[FR Doc. 2010–3281 Filed 2–19–10; 8:45 am]

BILLING CODE 6210–01–S

## FEDERAL RESERVE SYSTEM

### Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than March 9, 2010.

**A. Federal Reserve Bank of Kansas City** (Dennis Denney, Assistant Vice President) 1 Memorial Drive, Kansas City, Missouri 64198–0001:

*1. Cedar Bancorp*, to retain Home Town Insurance Agency, Inc., both of Hartington, Nebraska, and thereby continue to engage in general insurance activities, pursuant to section 225.28(b)(11)(iii)(A) of Regulation Y.

Board of Governors of the Federal Reserve System, February 17, 2010.

**Robert deV. Frierson,**

*Deputy Secretary of the Board.*

[FR Doc. 2010–3335 Filed 02–19–10; 8:45 am]

BILLING CODE 6210–01–S

## FEDERAL MARITIME COMMISSION

### Notice of Public Hearing; Passenger Vessel Financial Responsibility

**AGENCY:** Federal Maritime Commission.

**ACTION:** Public hearing; extension of time to file requests to appear.

**SUMMARY:** The Commission has determined to hold a public hearing on March 3, 2010 to receive public testimony concerning the Commission's Passenger Vessel Financial Responsibility Program.

**DATES:** The due date for submitting a request to participate in the Public Hearing is extended to February 19, 2010. The due date for submitting (15) copies of participant's prepared hearing statements is February 26, 2010.

**ADDRESSES:** Address all requests to appear to: Karen V. Gregory, Secretary, Federal Maritime Commission, 800 North Capitol Street, NW., Room 1046, Washington, DC 20573–0001, (202) 523–5725, E-mail: *secretary@fmc.gov*.

**FOR FURTHER INFORMATION CONTACT:** Karen V. Gregory, Secretary, Federal Maritime Commission, 800 North Capitol Street, NW., Room 1046, Washington, DC 20573–0001, (202) 523–5725, E-mail: *secretary@fmc.gov.*

**SUPPLEMENTARY INFORMATION:** By public notice published in the **Federal Register** on January 28, 2010 (75 FR 4560), the Federal Maritime Commission announced that it would hold a public hearing on March 3, 2010, at which interested parties could make presentations concerning the Commission's passenger vessel financial responsibility program. The hearing will be held in the Commission's Main Hearing Room, Room 100, 800 North Capitol Street, NW., Washington, DC, at a time that will be announced in a subsequent notice.

The time for filing a request to appear at this hearing has been extended from February 16, 2010 to February 19, 2010. The due date for submitting fifteen (15) copies of participant's prepared hearing statement is February 26, 2010.

Requests to appear must be filed with the Office of the Secretary no later than 5 p.m. on February 19, 2010, and include the name, street address, e-mail, address, telephone number, and the name of your company or employer, if any. Parties wishing to participate should also provide a brief statement describing the nature of their business, e.g., PVO, port, industry association, credit and financial company, surety, guarantor, insurer, travel agent, cruise passenger, or other interested party.

Requests to appear should be addressed to the Office of the Secretary and submitted: by e-mail as an attachment (Microsoft Word) sent to *secretary@fmc.gov;* by facsimile to 202–523–0014; or by U.S. mail or courier to Federal Maritime Commission, 800 North Capitol Street, NW., Washington, DC 20573. Please note, to avoid delay, email or facsimile submissions are encouraged. The Commission will announce the time of the hearing, the order of presentation, and time allotment prior to the March 3, 2010 hearing.

By the Commission.

**Karen V. Gregory,**

*Secretary.*

[FR Doc. 2010–3397 Filed 2–19–10; 8:45 am]

BILLING CODE P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Announcement of Meeting of the Secretary's Advisory Committee on National Health Promotion and Disease Prevention Objectives for 2020

**AGENCY:** Office of Disease Prevention and Health Promotion, Office of Public

Health and Science, Office of the Secretary, Department of Health and Human Services.

**ACTION:** Notice of meeting.

**Authority:** 42 U.S.C. 217a, Section 222 of the Public Health Service Act, as amended. The Committee is governed by the provision of Public Law 92–463, as amended (5 U.S.C. Appendix 2), which sets forth standards for the formation and use of advisory committees.

**SUMMARY:** The U.S. Department of Health and Human Services (HHS) announces the next Federal advisory committee meeting regarding the national health promotion and disease prevention objectives for 2020. This meeting will be open to the public and will be held online via WebEx software. The Secretary's Advisory Committee on National Health Promotion and Disease Prevention Objectives for 2020 will address efforts to develop the nation's health promotion and disease prevention objectives and strategies to improve the health status and reduce health risks for Americans by the year 2020. The Committee will provide to the Secretary of Health and Human Services advice and consultation for developing and implementing the next iteration of national health promotion and disease prevention goals and objectives and provide recommendations for initiatives to occur during the initial implementation phase of the goals and objectives. The meeting's agenda will include the Committee's review of the work and recommendations of its subcommittees on Priorities, Social Determinants of Health, Implementation, Evidence-based Resources, Strategic Health Communication, and Data and Health Information Technology. HHS will use the recommendations to inform the development of the national health promotion and disease prevention objectives for 2020 and the process for implementing the objectives. The intent is to develop and launch objectives designed to improve the health status and reduce health risks for Americans by the year 2020.

**DATES:** The Committee will meet on April 1, 2010 from 2 p.m. to 4 p.m. Eastern Time (ET).

**ADDRESSES:** The meeting will be held online, via WebEx software. For detailed instructions about how to make sure that your windows computer and browser is set up for WebEx, please visit the "Secretary's Advisory Committee" Web page of the Healthy People Web site at: *http://www.healthypeople.gov/hp2020/advisory/default.asp.*

**FOR FURTHER INFORMATION CONTACT:** Emmeline Ochiai, Designated Federal Officer, Secretary's Advisory Committee on National Health Promotion and Disease Prevention Objectives for 2020, U.S. Department of Health and Human Services, Office of Public Health and Science, Office of Disease Prevention and Health Promotion, 1101 Wootton Parkway, Room LL–100, Rockville, MD 20852, (240) 453–8259 (telephone), (240) 453–8281 (fax). Additional information is available on the Internet at *http://www.healthypeople.gov.*

**SUPPLEMENTARY INFORMATION:**

*Purpose of Meeting:* Every 10 years, through the Healthy People initiative, HHS leverages scientific insights and lessons from the past decade, along with the new knowledge of current data, trends, and innovations to develop the next iteration of national health promotion and disease prevention objectives. Healthy People provides science-based, 10-year national objectives for promoting health and preventing disease. Since 1979, Healthy People has set and monitored national health objectives to meet a broad range of health needs, encourage collaborations across sectors, guide individuals toward making informed health decisions, and measure the impact of our prevention and health promotion activities. Healthy People 2020 will reflect assessments of major risks to health and wellness, changing public health priorities, and emerging issues related to our nation's health preparedness and prevention.

*Public Participation at Meeting:* Members of the public are invited to listen to the online Committee meeting. There will be no opportunity for oral public comments during the online Committee meeting. Written comments, however, are welcome throughout the development process of the national health promotion and disease prevention objectives for 2020. They can be submitted through the Healthy People Web site at: *http://www.healthypeople.gov/hp2020/comments/* or they can be e-mailed to *HP2020@hhs.gov.*

To listen to the Committee meeting, individuals must pre-register to attend at the Healthy People Web site located at *http://www.healthypeople.gov.* Participation in the meeting is limited. Registrations will be accepted until maximum WebEx capacity is reached and must be completed by 9 a.m. ET on April 1, 2010. A waiting list will be maintained should registrations exceed WebEx capacity. Individuals on the waiting list will be contacted as additional space for the meeting becomes available.

Registration questions may be directed to Hilary Scherer at *HP2020@norc.org* (e-mail), (301) 634–9374 (phone) or (301) 634–9301 (fax).

Dated: February 16, 2010.

**Penelope Slade-Sawyer,**

*RADM, USPHS, Deputy Assistant Secretary for Health, Disease Prevention and Health Promotion.*

[FR Doc. 2010–3309 Filed 2–19–10; 8:45 am]

**BILLING CODE 4150–32–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Substance Abuse and Mental Health Services Administration

### Agency Information Collection Activities: Proposed Collection; Comment Request

In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 concerning opportunity for public comment on proposed collections of information, the Substance Abuse and Mental Health Services Administration (SAMHSA) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the information collection plans, call the SAMHSA Reports Clearance Officer on (240) 276–1243.

*Comments are invited on:* (a) Whether the proposed collections of information are necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

**Proposed Project: Cross-Site Evaluation of the Garrett Lee Smith Memorial Suicide Prevention and Early Intervention Programs (OMB No. 0930–0286)—Revision**

The Substance Abuse and Mental Health Services Administration's (SAMHSA) Center for Mental Health Services (CMHS) will continue to conduct the cross-site evaluation of the Garrett Lee Smith Memorial Youth Suicide Prevention and Early Intervention State/Tribal Programs and

the Garrett Lee Smith Memorial Youth Suicide Prevention Campus Programs. The data collected through the cross-site evaluation addresses four stages of program activity: (1) The context stage includes a review of program plans, such as grantee's target population, target region, service delivery mechanisms, service delivery setting, types of program activities to be funded and evaluation activities; (2) the product stage describes the prevention strategies that are developed and utilized by grantees; (3) the process stage assesses progress on key activities and milestones related to implementation of program plans; and (4) the impact stage assesses the impact of the program on early identification, referral for services and service follow up of youth at risk.

Additionally, to obtain a comprehensive understanding of the integration of community-based behavioral health services with services provided by college or university campuses, SAMHSA will conduct case studies of four exemplary Campus suicide prevention programs. Currently, case studies of two campus grantees are underway. The goal of the Campus Case Studies is to understand how a public health approach is successfully applied as a model for campus suicide prevention efforts, and will explore, in a systematic manner: The suicide prevention related infrastructures and supports (*e.g.,* clinical and non-clinical) that exist on selected GLS-funded campuses; the various student-level factors that are related to suicide prevention efforts (*e.g.,* protective factors, coping strategies, social norms, and facilitators and barriers to student access and receipt of behavioral healthcare); campus interdepartmental collaboration and the relationship between various efforts to promote student mental health and wellness; and the extent to which the campus infrastructures and supports promote and address these factors.

To date, 86 State/Tribal grants and 93 Campus grants have participated in the cross-site evaluation, since FY2007. Currently, 48 State/Tribal grants and 38 Campus grants are participating in the cross-site evaluation. Data will continue to be collected from suicide prevention program staff (*e.g.*, project directors, evaluators), key program stakeholders (*e.g.*, state/local officials, child-serving agency directors, gatekeepers, mental health providers, and campus administrators), training participants, college students, and campus faculty/staff through FY2012.

Since the State/Tribal grantees differ from the campus grantees in programmatic approaches, specific data collection activities also vary by type of program. The following describes the specific data collection activities and data collection instruments to be used across State/Tribal and Campus grantees for the cross-site evaluation and the specific data collection instruments to be used by selected Campus grantees for the Campus Case Studies. While most of the data collection instruments described below are revised versions of instruments that have previously received OMB approval (OMB No. 0930–0286 with Expiration Date: May 2010) and are currently in use, the Training Utilization and Preservation—Survey (TUP–S) for State/Tribal grantees and the Training Exit Survey for Campus grantees (TES–C) are proposed as new instruments. The addition of these two new data collection activities, the inclusion of the Campus Case studies, and the revised estimate for number trained per site has increased the burden associated with the cross-site evaluation. A summary table of number of respondents and respondent burden has also been included.

*Data Collection Activities for State/Tribal Grantees*

For State/Tribal grantees, the Prevention Strategies Inventory State/Tribal (PSI–ST), Training Exit Survey State/Tribal (TES–ST), Referral Network Survey (RNS) and Training Utilization and Preservation—Interview (TUP–I) described below are revised versions of instruments that previously received OMB approval (OMB No. 0930–0286 with Expiration Date: May 2010) and are currently in use. The Training Exit Survey—Cover Page State/Tribal (TES–CP–ST), Early Identification, Referral and Follow up Aggregate Screening Form (EIRF–S) and the Early Identification, Referral and Follow up Analysis (EIRF) are data abstraction activities utilizing existing data sources. The Training Utilization and Preservation—Survey (TUP–S) is proposed as a new data collection instrument.

- Prevention Strategies Inventory-State/Tribal (PSI–ST)—Revised. The Prevention Strategies Inventory will collect information on the suicide prevention strategies that grantees have developed and utilized. Prevention strategies include outreach and awareness, gatekeeper training, assessment and referral training for mental health professionals and hotline staff, lifeskills development programs, screening programs, hotlines and helplines, means restriction, policies and protocols for intervention and postvention, coalitions and partnerships, and direct services and traditional healing practices. Baseline data will be collected from the State/Tribal grantees at the beginning of their grant cycle. Thereafter, they will complete the PSI–ST on a quarterly basis over the duration of their grant period. Baseline data will be collected on information on the types of prevention strategies grantees have developed and utilized, and the follow-up data collection asks the grantees to update the information they have provided on a quarterly basis over the period of the grant. On average, 48 State/Tribal grantees will fill out the PSI–ST per year. One respondent from each site will be responsible for completing the survey. The survey will take approximately 45 minutes; however, the number of products, services and activities implemented under each strategy will determine the number of items each respondent will complete. The PSI–ST primarily has multiple choice questions with several open-ended questions.
- Training Exit Survey State-Tribal Version (TES–ST)—Revised. The TES–ST will be administered to all participants in suicide prevention training activities immediately following their training experience in order to assess the content of the training, the participants' intended use of the skills and knowledge learned and satisfaction with the training experience. The survey will also contain modules with questions tailored to specific types of training. It is estimated that approximately 94,848 trainees per year will respond to the TES–ST. The questions on the TES–ST are multiple-choice, Likert-scale, and open-ended. The survey includes about 33 items and will take approximately 10 minutes to complete.
- Training Exit Survey Cover Page State/Tribal Version (TES–CP–ST)—Revised. State and Tribal grantees are required to report aggregate training participant information for all training conducted as part of their suicide prevention programs. These data are aggregated from existing data sources, some of which are attendance sheets, management information systems, etc. Grantees are responsible for aggregating these data and submitting to the cross-site evaluation team using the TES–CP–ST on a quarterly basis. It is estimated that abstracting this information will take 25 minutes.
- Training Utilization and Preservation Survey (TUP–S)—New. The Training Utilization and Preservation Survey (TUP–S) is a quantitative, computer-assisted telephone interview that will be

administered to a random sample of trainees two months following the training. The TUP–S will assess trainee knowledge retention and gatekeeper behavior, particularly behavior related to identifying youth at risk. The TUP–S will ask trainees to provide demographic information about individuals they have identified at risk, information about the subsequent referrals or supports provided by the trainee, and any available information about services accessed by the at-risk individual. An average of 2,000 participants per year will be sampled. The TUP–S includes 26 items and will take approximately 15 minutes to complete.

• Training Utilization and Preservation Key Informant Interview (TUP–I)—Revised. The TUP–I is a qualitative follow-up interview that is targeted towards locally developed and understudied standardized training curricula as well as towards particular understudied gatekeeper trainee populations. The TUP–I will be administered to respondents two months following the training experience to assess whether the suicide prevention knowledge, skills or techniques learned through training were utilized and had an impact on youth. On average, the TUP–I will be administered to 100 respondents per year. The interviews are semistructured and open ended. The TUP–I includes 22 items and will take approximately 40 minutes to complete.

• Referral Network Survey (RNS)—Revised. The Referral Network Survey (RNS) will be administered to representatives of youth-serving organizations or agencies that form referral networks supporting youth identified at risk. The RNS examines how collaboration and integration are used for sharing and transferring knowledge, resources, and technology among State/Tribal Program agencies and organizational stakeholders, how these networks influence referral mechanisms and service availability, policies and protocols regarding follow-up for youths who have attempted suicide and who are at risk for suicide, and access to electronic databases. Most State/Tribal grantees will select a single referral network for this survey, the average size of the network is 11 agencies/organizations and there will be 2 respondents per agency. The RNS will be administered to referral networks on an annual basis over the period of the grant. On average, 1,056 respondents per year will complete the RNS. Questions on the RNS are multiple-choice, Likert-scale, and open-ended. The RNS includes 28 items and will take approximately 40 minutes to complete.

• Early Identification, Referral and Follow up Aggregate Screening Form (EIRF–S)—State/Tribal grantees are also required to report aggregate screening information for all youth screened as part of their suicide prevention programs. These data are aggregated from existing data sources. Grantees are responsible for aggregating these data and submitting to the cross-site evaluation team using the Early Identification, Referral and Follow up Aggregate Screening Form. Grantees are required to submit information on a quarterly basis, and it is estimated that abstracting this information will take 20 minutes.

• Early Identification, Referral and Follow Up Analyses (EIRF)—State/Tribal grantees are required to share existing data with the cross-site evaluation team on the youth identified at risk as a result of early identification activities, the types of services these youth are referred for, and whether these youth receive services within 3 months of the referral. Grantees are required to submit information on a quarterly basis, and it is estimated that abstracting this information will take 60 minutes.

*Data Collection Activities for Campuses*

For Campus grantees, the Prevention Strategies Inventory-Campus Baseline and Follow Up (PSI–C), Suicide Prevention Exposure, Awareness and Knowledge Survey—Student Version (SPEAKS–S), Suicide Prevention Exposure, Awareness and Knowledge Survey—Faculty/StaffVersion (SPEAKS–FS) and Campus Infrastructure Interviews (CIFI) are revised versions of instruments that previously received OMB approval (OMB No. 0930–0286 with Expiration Date: May 2010) and are currently in use. The Training Exit Survey—Cover Page Campus (TES–CP–C) and MIS data abstraction are data abstraction activities utilizing existing data sources. The Training Exit Survey—Campus (TES–C) is proposed as a new data collection instrument.

• Prevention Strategies Inventory-Campus (PSI–C)—Revision. The Prevention Strategies Inventory will collect information on the suicide prevention strategies that grantees have developed and utilized. Prevention strategies include outreach and awareness, gatekeeper training, assessment and referral training for mental health professionals and hotline staff, lifeskills development activities, screening programs, hotlines and helplines, means restriction, policies and protocols for intervention and postvention, and coalitions and partnerships. The Campus grantees will first complete collect baseline data. Thereafter, they will collect follow-up data on a quarterly basis over the duration of their grant period. Baseline data will be collected on information on the types of prevention strategies grantees have developed and utilized, and the follow-up data collection asks the grantees to update the information they have provided on a quarterly basis over the period of the grant. On average, 38 Campus grantees will fill out the PSI–C per year. One respondent from each site will be responsible for completing the survey. The survey will take approximately 45 minutes. However, the number of products, services and activities implemented under each strategy will determine the number of items to complete. The survey primarily has multiple choice questions with several open-ended questions.

• Training Exit Survey Campus Version (TES–C)—New. The TES–C will be administered to all participants in suicide prevention training activities immediately following their training experience in order to assess the content of the training, the participants' intended use of the skills and knowledge learned, and satisfaction with the training experience. The survey will also contain modules with questions tailored to specific types of training. It is estimated that approximately 23,712 trainees per year will respond to the Training Exit Survey. The questions on the TES–C are multiple-choice, Likert-scale, and open-ended. The survey includes about 33 items and will take approximately 10 minutes to complete.

• Training Exit Survey Cover Page Campus Version (TES–CP–C)—Revision. State and Tribal grantees are required to report aggregate training participant information for all training conducted as part of their suicide prevention programs. These data are aggregated from existing data sources, some of which are attendance sheets, management information systems, etc. Grantees are responsible for aggregating these data and submitting to the cross-site evaluation team using the TES–CP–C data elements. Grantees are responsible for aggregating these data and submitting to the cross-site evaluation team using the TES–CP–C on a quarterly basis. It is estimated that abstracting this information will take 20 minutes.

• Suicide Prevention Exposure, Awareness and Knowledge Survey—Student Version (SPEAKS–S)—

Revision. This survey will examine: The exposure of campus populations to suicide prevention initiatives; awareness of appropriate crisis interventions, supports, services, and resources for mental health seeking; knowledge of myths and facts related to suicide and suicide prevention; perceived and personal stigma related to depression and mental health seeking; and behaviors related to seeking help and referring for mental health services. This survey will be administered annually over the grant period. It is estimated that 7,600 students per year will respond to the SPEAKS–S. The SPEAKS–S is web-based and includes multiple-choice, Likert-scale and true/false questions. The SPEAKS–Student Version includes 85 items and will take approximately 25 minutes to complete.

• Suicide Prevention Exposure, Awareness and Knowledge Survey—(SPEAKS–FS)—Revision. The SPEAKS–FS assesses the exposure, awareness and knowledge of suicide prevention activities among faculty/staff on campus as a result of the suicide prevention program. Questions include whether faculty/staff have been exposed to suicide prevention materials, their agreement with myths and facts about suicide, and the availability of resources to provide assistance to those at risk for suicide. This survey will be administered annually over the grant period. It is estimated that 1,900 faculty/staff per year will respond to the SPEAKS FS. The SPEAKS–FS is web-based and includes multiple-choice, Likert-scale and true/false questions. The survey includes 54 items and will take approximately 15 minutes to complete.

• Campus Infrastructure Interviews (CIFI)—Revision. CIFI is designed to gather information around campus infrastructure, program, policy, and planning related to suicide prevention; it involves key informant interviews conducted by the cross-site evaluation team via teleconference for each campus twice during the life of the grant. These semistructured interviews are conducted with up to five site representatives to gather information from multiple and varied perspectives on campus-based infrastructure development around suicide prevention activities. These representatives include: (1) Administrator, (2) Student Leader, (3) Counseling Center Staff, (4) Faculty/Staff-human services department, and (5) Faculty/Staff-non-human service department. Questions on the Campus Infrastructure Interview include whether respondents are aware of suicide prevention activities, what the campus culture is related to suicide prevention, and what specific efforts are in place to prevent suicide among the campus population. Questions will include close-ended background questions, with the remaining questions being open-ended and semi-structured. It is estimated that on average 64 respondents per year will respond to CIFI. The Campus Infrastructure Interviews include 29 items and will take approximately 60 minutes to complete.

• MIS Data Abstraction: For the cross-site evaluation of the Campus programs, existing program data related to student retention rate, student use of mental health services and student use of emergency services will be requested from Campuses once a year. It is estimated that abstracting this information will take 60 minutes.

*Data Collection Activities for Campus Case Studies*

For Campus Case Studies, the instruments described below are currently used by 2 Campus grantees. These instruments are proposed for 4 additional Campus grantees. The Campus Case Studies will take place over the period of the grant.

• Student Focus Group Moderator's Guide. This component will assess student risk and protective factors related to mental health, help-seeking behaviors, and knowledge of prevention activities on campus and their perceived effectiveness. This will help researchers more fully understand student-level factors in relation to population-level factors addressed by the SPEAKS–S. Questions address stressors that different groups of students face while in college, barriers to seeking help, attitudes and stigma related to seeking help, and the accessibility of the campus counseling center. Six focus groups will be conducted on each campus once over the data collection period. The following groups of students will potentially be represented in the focus groups, as decided by the campus: (1) First-year students, (2) athletes, (3) international students, (4) Lesbian, Gay, Bisexual, and Transgender (LGBT) students, (5) Greek life students, (6) graduate students, and (7) residential advisors/peer educators. Recruitment will be conducted by campus project staff. Focus groups will include a maximum of 9 students. It is estimated that on average 216 students will participate in focus groups. Groups will last approximately 90 minutes.

• Faculty/Staff Focus Group Moderator's Guide. The faculty and staff focus groups will assess the campus' approach to prevention, attitudes and stigma around student mental health and wellness on campus, campus infrastructure supports for students who need mental health help, and the general campus climate around mental health and wellness. Faculty and staff will also describe their knowledge of prevention activities on campus and their perceived effectiveness of these efforts. Local campus staff will recruit appropriate respondents for the faculty and staff focus groups to include a maximum of 9 respondents per group. Two faculty focus groups and one staff focus group will be conducted on each campus once over the period of data collection. It is estimated that 108 faculty/staff will participate in focus groups. The groups will last approximately 90 minutes.

• Case Study Key Informant Interviews (7 versions). The Case Study Key Informant Interviews (CSIs) include 7 qualitative interview versions: (1) Administrator, (2) Counseling Staff, (3) Coalition Member—Faculty, (4) Prevention Staff, (5) Case Finder, (6) Campus Police, and (7) Student Leader. Local project staff will be responsible for identifying appropriate respondents for each CSI version and scheduling the interview to occur during site visits by the case study team. Seven individuals from each of the campus sites will be selected as key informants to participate in the CSIs in each of the two stages of the GLS Campus Case Studies. Questions on the CSIs include whether respondents are aware of suicide prevention activities, what the campus culture is related to suicide prevention, and what specific efforts are in place to prevent suicide among the campus population. Items are formatted as open-ended and semi-structured questions. The CSIs include 16 to 21 items and will take approximately 60 minutes to complete. On the second site visit, the case study team will incorporate preliminary findings from the case studies in the interviews, which may be modified to some extent to collect more comprehensive information and gather feedback from local key informants surrounding the context of the preliminary findings. It is estimated that the CSI will be administered to 56 respondents. The CSIs for the second site visit will last 60 minutes.

Internet-based technology will continue to be used for collecting data via Web-based surveys, and for data entry and management. The average annual respondent burden is estimated below. The estimate reflects the average annual number of respondents, the average annual number of responses, the time it will take for each response, and the average annual burden. While the different cohorts of grantees finish their

grants at different times, we have assumed that new cohorts will replace previous cohorts. Therefore, the number of grantees in each year is assumed to be constant.

TABLE—ESTIMATES OF ANNUALIZED HOUR BURDEN

| Measure name | Number of respondents | Number of responses/ respondent | Hours/ response | Response burden (in hours) |
|---|---|---|---|---|
| **State/Tribal Cross-Site Evaluation Instruments** | | | | |
| Prevention Strategies Inventory—State Tribal (PSI–ST) | 48 | 4 | 0.75 | 144 |
| Training Exit Survey State/Tribal (TES–ST) | 94,848 | 1 | 0.17 | 16,125 |
| Training Utilization and Penetration Survey (TUP–S) | 2,000 | 1 | 0.25 | 500 |
| Training Utilization and Penetration Interview (TUP–I) | 100 | 1 | 0.67 | 67 |
| Referral Network Survey (RNS) | 1,024 | 1 | 0.67 | 687 |
| Early Identification, Referral and Follow Up Analysis (EIRF) | 48 | 4 | 1 | 192 |
| Early Identification, Referral and Follow Up Aggregate Screening Form (EIRF–S) | 48 | 4 | 0.33 | 64 |
| Training Exit Survey Cover Page State/Tribal (TES–CP–ST) | 48 | 4 | 0.33 | 64 |
| **Campus Cross-Site Evaluation Instruments** | | | | |
| Prevention Strategies Inventory—Campus (PSI–C) | 38 | 4 | 0.75 | 114 |
| Training Exit Survey Campus (TES–C) | 23,712 | 1 | 0.17 | 4,032 |
| Suicide Prevention Exposure, Awareness and Knowledge Survey—Student Version (SPEAKS–S) | 7,600 | 1 | 0.42 | 3,192 |
| Suicide Prevention Exposure, Awareness and Knowledge Survey—Faculty/Staff (SPEAKS–FS) | 1,900 | 1 | 0.25 | 475 |
| Campus Infrastructure Interview (CIFI) for Student | 38 | 1 | 0.75 | 29 |
| Campus Infrastructure Interview (CIFI) for Faculty | 76 | 1 | 0.75 | 57 |
| Campus Infrastructure Interview (CIFI) for Administrator | 38 | 1 | 0.75 | 29 |
| Campus Infrastructure Interview (CIFI) for Counselor | 38 | 1 | 0.75 | 29 |
| Training Exit Survey Cover Page Campus (TES–CP–C) | 38 | 4 | 0.33 | 51 |
| MIS Data Abstraction | 38 | 4 | 0.33 | 51 |
| **Campus Case Studies Evaluation Instruments** | | | | |
| Focus Group—Student Version | 216 | 1 | 1.5 | 324 |
| Focus Group—Faculty Version | 72 | 1 | 1.5 | 108 |
| Focus Group—Staff Version | 36 | 1 | 1.5 | 54 |
| Interview—Student Leader Version | 8 | 1 | 1 | 8 |
| Interview—Case Finder Version | 4 | 1 | 1 | 4 |
| Interview—Faculty Version | 8 | 1 | 1 | 8 |
| Interview—Campus Police Version | 8 | 1 | 1 | 8 |
| Interview—Counseling Staff Version | 8 | 1 | 1 | 8 |
| Interview—Prevention Staff Version | 12 | 1 | 1 | 12 |
| Interview—Administrator Version | 8 | 1 | 1 | 8 |
| Total | | 132,060 | | 26,444 |

Send comments to Summer King, SAMHSA Reports Clearance Officer, Room 7–1044, One Choke Cherry Road, Rockville, MD 20857 and e-mail a copy to *summer.king@samhsa.hhs.gov.* Written comments should be received within 60 days of this notice.

Dated: February 5, 2010.

**Elaine Parry,**

*Director, Office of Program Services.*

[FR Doc. 2010–3326 Filed 2–19–10; 8:45 am]

BILLING CODE 4162–20–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. FDA–2010–N–0079]**

### Agency Information Collection Activities; Proposed Collection; Comment Request; Experimental Study of Graphic Cigarette Warning Labels

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on the Experimental Study of Graphic Cigarette Warning Labels that is being conducted in support of the graphic label statement provision of the Family Smoking Prevention and Tobacco Control Act (the Tobacco Control Act).

**DATES:** Submit written or electronic comments on the collection of information by April 23, 2010.

**ADDRESSES:** Submit electronic comments on the collection of information to *http://*

*www.regulations.gov*. Submit written comments on the collection of information to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

**FOR FURTHER INFORMATION CONTACT:** Jonna Capezzuto, Office of Information Management (HFA–710), Food and Drug Administration, 1350 Piccard Dr., PI50–400B, Rockville, MD 20850, 301–796–3794, *JonnaLynn.Capezzuto@fda.hhs.gov*.

**SUPPLEMENTARY INFORMATION:** Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. "Collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

## Experimental Study of Graphic Cigarette Warning Labels

Tobacco products are responsible for more than 440,000 deaths each year. The Centers for Disease Control and Prevention report that approximately 46 million U.S. adults smoke cigarettes in the United States, even though this behavior will result in death or disability for half of all regular users. Paralleling this enormous health burden is the economic burden of tobacco use, which is estimated to total $193 billion annually in medical expenditures and lost productivity. Curbing the significant adverse consequences of tobacco use is one of the most important public health goals of our time. One way to do this is through health warnings that describe and graphically depict the harm caused by cigarette use.

On June 22, 2009, the President signed the Tobacco Control Act (Public Law 111–31) into law. The Tobacco Control Act granted FDA important new authority to regulate the manufacture, marketing, and distribution of tobacco products to protect the public health generally and to reduce tobacco use by minors. Section 201 of the Tobacco Control Act, which amends section 4 of the Federal Cigarette Labeling and Advertising Act (15 U.S.C. 1333), requires FDA to issue "regulations that require color graphics depicting the negative health consequences of smoking to accompany the label statements specified in subsection (a)(1)." FDA conducts research relating to tobacco products under its statutory authority in section 1103(d)(2)(C) of the Federal Food, Drug, and Cosmetic Act, as amended by the Tobacco Control Act, to conduct research "relating to foods, drugs, cosmetics, devices, and tobacco products in carrying out the act." The study proposed here is an effort by FDA to collect data concerning graphic warnings on cigarette packages and their impact on consumer perceptions, attitudes, and behavior with respect to smoking.

The study, the Experimental Study of Graphic Cigarette Warning Labels, is a voluntary experimental survey of consumers. The purpose of the study is to assess the effectiveness of various graphic warnings on cigarette packs for achieving three communication goals: (1) Conveying information about various health risks of smoking, (2) encouraging cessation of smoking among current smokers, and (3) discouraging initiation of smoking among youth and former smokers. The study will collect data from various groups of consumers, including current smokers aged 13 years and older, former smokers aged 13 years and older, and non-smokers aged between 13 and 25 years who may be susceptible to initiation of smoking. The study goals are to: (1) Measure consumer attitudes, beliefs, and intended behaviors related to cigarette smoking in response to graphic warning labels; (2) determine whether consumer responses to graphic warning labels differ across various groups based on smoking status, age, or other demographic variables; and (3) evaluate the relative effectiveness of various graphic images associated with each of the nine warning statements specified in the Tobacco Control Act for achieving each of the communication goals. The information collected from the study is necessary to inform the agency's efforts to implement the mandatory graphic warnings required by the Tobacco Control Act.

The experimental study data will be collected from participants of an Internet panel of approximately 43,000 people. Participation in the experimental study is voluntary.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

| Portion of Study | No. of Respondents | Annual Frequency per Response | Total Annual Responses | Hours per Response | Total Hours |
|---|---|---|---|---|---|
| Pre-test | 60 | 1 | 60 | 0.5 | 30 |
| Screener | 15,000 | 1 | 15,000 | 0.016 | 240 |
| Experimental Survey | 5,400 | 1 | 5,400 | 0.5 | 2,700 |
| Total | | 1 | 15,460 | | 2,970 |

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

FDA's burden estimate is based on prior experience with Internet panel experiments similar to the study proposed here. Sixty panel members will take part in a pre-test of the study, estimated to last 30 minutes (0.5 hours), for a total of 30 hours. Approximately 15,000 respondents will complete a screener to determine eligibility for participation in the study, estimated to take 1 minute (0.016 hours), for a total of 125 hours. Fifty-four hundred (5,400) respondents will complete the full study, estimated to last 30 minutes (0.5 hours), for a total of 2,700 hours. The total estimated burden is 2,970 hours.

Dated: February 16, 2010.

**Leslie Kux,**

*Acting Assistant Commissioner for Policy.*

[FR Doc. 2010–3320 Filed 2–19–10; 8:45 am]

**BILLING CODE 4160–01–S**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

### Advisory Committee to the Director (ACD), Centers for Disease Control and Prevention (CDC): Notice of Charter Renewal

This gives notice under the Federal Advisory Committee Act (Pub. L. 92–463) of October 6, 1972, that the Advisory Committee to the Director, Centers for Disease Control and Prevention of the Department of Health and Human Services, has been renewed for a 2-year period extending through February 1, 2012.

*Contact Person for More Information:* Anne C. Haddix, PhD, Designated Federal Officer, ACD, CDC, 1600 Clifton Road, NE., M/S D14, Atlanta, Georgia 30333. Telephone 404–639–0663.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: February 11, 2010.

**Andre Tyler,**

*Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.*

[FR Doc. 2010–3148 Filed 2–19–10; 8:45 am]

**BILLING CODE 4163–18–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

### Disease, Disability, and Injury Prevention and Control

Special Emphasis Panel (SEP): Healthy Passages Longitudinal Study of Youth, Funding Opportunity Announcement (FOA) DP 10–007, Initial Review.

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the aforementioned meeting:

*Time and Date:* 1 p.m.–3 p.m., April 20, 2010 (Closed).

*Place:* Teleconference.

*Status:* The meeting will be closed to the public in accordance with provisions set forth in Section 552b(c)(4) and (6), Title 5 U.S.C., and the Determination of the Director, Management Analysis and Services Office, CDC, pursuant to Public Law 92–463.

*Matters To Be Discussed:* The meeting will include the initial review, discussion, and evaluation of applications received in response to "Healthy Passages Longitudinal Study of Youth, FOA DP 10–007."

*Contact Person for More Information:* Michael Dalmat, DRPH., Scientific Review Officer, National Center for Chronic Disease and Health Promotion, Office of the Director, Extramural Research Program Office, 4770 Buford Highway, NE., Mailstop K–92, Atlanta, GA 30341, Telephone: (770) 488–6423, E-mail: *MED1@cdc.gov.*

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both CDC and the Agency for Toxic Substances and Disease Registry.

Dated: February 10, 2010.

**Elaine L. Baker,**

*Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.*

[FR Doc. 2010–3146 Filed 2–19–10; 8:45 am]

**BILLING CODE 4163–18–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. FDA–1996–N–0006] (formerly Docket No. 1996N–0277)**

### Safety and Efficacy Review for Additional Ingredients in Over-the-Counter Drug Products for Human Use; Request for Environmental Impact Data and Information

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Request for data and information.

**SUMMARY:** We (Food and Drug Administration (FDA)) are requesting data and information regarding the potential environmental impact of amending over-the-counter (OTC) drug monographs to include certain active ingredients not previously marketed in the United States or marketed in the United States under approved applications after the OTC drug review began in 1972. Thirteen active ingredients have been found eligible for potential inclusion in OTC drug monographs based on time and extent applications (TEAs). We are currently evaluating the safety and effectiveness of these ingredients.

**DATES:** Submit data, information, and general comments by May 24, 2010.

**ADDRESSES:** Submit electronic or written data, information, and general comments in response to this document. Submit electronic comments to *http://regulations.gov*. Submit written comments to the Division of Dockets Management HFA–305), 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

**FOR FURTHER INFORMATION CONTACT:** Michael L. Koenig, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 22, rm. 5411, Silver Spring, MD 20993–0002, 301–796–2090.

**SUPPLEMENTARY INFORMATION:**

### I. Ingredients Affected by This Notice

We are currently evaluating the safety and effectiveness of 13 active ingredients found eligible for possible addition to an OTC drug monograph via the TEA process described in 21 CFR 330.14. The ingredients under review are shown in table 1 of this document:

TABLE 1.—LIST OF ACTIVE INGREDIENTS FOUND ELIGIBLE FOR POSSIBLE ADDITION TO AN OTC DRUG MONOGRAPH

| Active Ingredient | Monograph | Docket No. | Eligibility |
|---|---|---|---|
| Amiloxate | Sunscreen | FDA–2003–N–0196 | July 11, 2003, 68 FR 41386 |
| Bemotrizinol | Sunscreen | FDA–2005–N–0453 | December 5, 2005, 70 FR 72449 |
| Bisoctrizole | Sunscreen | FDA–2005–N–0453 | December 5, 2005, 70 FR 72449 |
| Climbazole | Dandruff | FDA–2005–N–0021 | December 5, 2005, 70 FR 72448 |
| Diethylhexyl butamido triazone | Sunscreen | FDA–2006–O–0314 | July 26, 2006, 71 FR 42405 |
| Ecamsule[1] | Sunscreen | FDA–2008–N–0474 | September 12, 2008, 73 FR 53029 |
| Enzacamene | Sunscreen | FDA–2003–N–0196 | July 11, 2003, 68 FR 41386 |
| Octyl triazone | Sunscreen | FDA–2003–N–0196 | July 11, 2003, 68 FR 41386 |
| Piroctone olamine | Dandruff | FDA–2004–N–0037 | February 18, 2004, 69 FR 7652 |
| Sodium picosulfate | Laxative | FDA–2006–O–0057 | June 22, 2006, 71 FR 35917 |
| Sodium shale oil sulfonate | Dandruff | FDA–2009–N–0146 | April 7, 2009, 74 FR 15741 |
| Triclosan | Acne | FDA–2005–N–0454 | December 5, 2005, 70 FR 72447 |
| Triclosan[1] | Antigingivitis/Antiplaque | FDA–1981–N–0015 | July 6, 2004, 69 FR 40640 |

[1] These ingredients are marketed under approved new drug applications (NDAs).

When our initial assessment of safety and effectiveness data for any of these ingredients is complete, we will prepare a proposed rule describing our conclusions, which may include a proposal to add the ingredient to an OTC drug monograph. Such an action would be subject to the National Environmental Policy Act of 1969 (NEPA). In order to comply with NEPA, we need data and information regarding the potential environmental impact if these ingredients are included in an OTC drug monograph, especially if this results in their use in drug products marketed in the United States for the first time (see section II of this document). We did not previously request such data and information for these 13 active ingredients. Therefore, we are requesting such data at this time. We cannot publish proposed rules for any of these 13 active ingredients until we receive this data and information.

## II. Data Being Requested

As stated in 21 CFR 25.1, FDA regulations must comply with NEPA. To comply with NEPA, an environmental assessment (EA) of agency actions is required unless we determine that a categorical exclusion is warranted. Many actions on OTC drug monographs have been categorically excluded from the NEPA requirement for an EA under § 25.31(a) (21 CFR 25.31(a)), because, for active ingredients already marketed in the United States, the actions generally have not resulted in increased use of active ingredient. However, if we amend a monograph to include a new generally recognized as safe and effective (GRASE) active ingredient not previously marketed in the United States, this exclusion would not apply because our action would increase the use of the active ingredient. This situation may occur for active ingredients found eligible for inclusion in an OTC drug monograph under the TEA process on the basis of foreign marketing experience.

Active ingredients found eligible for potential inclusion in an OTC drug monograph under the TEA process might qualify for the categorical exclusions provided under § 25.31(b) or (c). These exclusions allow for active ingredients that will not exceed 1 part per billion (ppb) (1 microgram per liter) in the aquatic environment or active ingredients that naturally occur in the environment and do not alter significantly the concentration or distribution of the ingredient, its metabolites, or degradation products in the environment.

In order to determine whether any of the active ingredients found eligible for potential inclusion in an OTC monograph meet the requirements for any categorical exclusion, including § 25.31(b) or (c), or to prepare an EA, we need additional data and information. To assist the agency, we are requesting any information that would support the application of any categorical exclusion, or that would support the preparation of an EA, if necessary.

To estimate the expected introductory concentration of an ingredient or ingredients in the aquatic environment for purposes of § 25.31(b), please refer to section III of the CDER Guidance on Environmental Assessment of Human Drug and Biologic Applications (CDER EA Guidance Document). This guidance document can be viewed at *http://www.fda.gov/downloads/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/ucm070561.pdf*.

To complete an EA, we need information similar to that specified in section IV of the CDER EA Guidance Document (pages 9–27). We request that a submitter segregate any data or information that the submitter believes is protected from disclosure by 18 U.S.C. 1905 or 21 U.S.C. 331(j) or 360j(c). If such data or information is included in the submission, we request that the submitter summarize the information, to the extent possible, for public disclosure (see 21 CFR 25.50 and 25.51(a)).

## III. Submission of Data

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic data, information, and general comments. Submit a single copy of electronic data, information, and general comments or two paper copies of any mailed data, information, and general comments, except that individuals may submit one paper copy. Data, information, and

general comments are to be identified with the docket number found in brackets in the heading of this document. Received data, information, and general comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Dated: February 15, 2010.

**Leslie Kux,**

*Acting Assistant Commissioner for Policy.*

[FR Doc. 2010–3319 Filed 2–19–10; 8:45 am]

**BILLING CODE 4160–01–S**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Health Resources and Services Administration

### Statement of Organization, Functions and Delegations of Authority

This notice amends Part R of the Statement of Organization, Functions and Delegations of Authority of the Department of Health and Human Services (HHS), Health Resources and Services Administration (HRSA) (60 FR 56605, as amended November 6, 1995; as last amended at 75 FR 391–404 dated January 5, 2010).

This notice reflects organizational changes in the Health Resources and Services Administration. Specifically, this notice establishes the Office of Policy Analysis (RA53) and the Office of Data Management and Research (RA54) within the Office of Planning, Analysis and Evaluation (RA5); renames the Division of Health Information Technology and Quality (RA52) as the Office of Health Information Technology and Quality (RA52); establishes the Division of Workforce Development (RB44) within the Office of Management (RB4); and renames the Division of Policy Review and Coordination as the Division of Policy and Information Coordination (RB41) within the Office of Management (RB4).

**Chapter RA5—Office of Planning, Analysis and Evaluation**

*Section RA5–10, Organization*

Delete in its entirety and replace with the following:

The Office of Planning, Analysis and Evaluation (RA5) is headed by the Director, Office of Planning, Analysis and Evaluation, within the Office of the Administrator, Health Resources and Services Administration, who reports directly to the Administrator. The Office of Planning, Analysis and Evaluation includes the following components:

(1) Immediate Office of the Director (RA5);

(2) Office of Planning and Evaluation (RA51);

(3) Office of Health Information Technology & Quality (RA52);

(4) Office of Policy Analysis (RA53); and

(5) Office of Data Management and Research (RA54).

*Section RA5–20, Functions*

(1) Delete the functional statement for the Office of Planning, Analysis and Evaluation (RA5) and replace in its entirety; (2) establish the Office Policy Analysis (RS53); (3) establish the Office of Data Management and Research (RA54); and renames the Division of Health Information Technology and Quality (RA52) as the Office of Health Information Technology and Quality (RA52).

**Office of Planning, Analysis and Evaluation (RA5)**

(1) Provides Agency-wide leadership for policy development, data collection and management, major analytic activities, research, and evaluation: (2) develops HRSA-wide policies; (3) coordinates the Agency's strategic planning process; (4) conducts and coordinates analyses, evaluation and research; (5) coordinates the Agency's intergovernmental activities; (6) maintains liaison between the Administrator, other OPDIVs, Office of the Secretary staff components, and other Departments on critical matters involving analysis of program policy undertaken in the Agency; (7) prepares policy analysis papers and planning documents as required; (8) analyzes budgetary data with regard to planning guidelines; (9) collaborates with the Office of Operations in the development of budgets, performance plans, and other administration reporting requirements; (10) conducts and/or guides the Agency's research and program evaluation; (11) provides leadership in the development of policies on health information technology and quality; and (12) provides support for the Department's Medical Claims Review Panel.

**Office of Planning and Evaluation (RA51)**

(1) Provides leadership in the development of the long-term Agency-wide strategic plan; (2) participates with HRSA organizations in developing strategic plans for their component; (3) conducts major program evaluation efforts; (4) provides advice and assistance to program-level HRSA components in the design and conduct of evaluations; (5) develops annual performance plans; (6) analyzes budgetary data with regard to planning guidelines; (7) develops and produces performance reports required under the Government Performance and Accountability Report and OMB; (8) conducts the public use reports clearance function; and (9) conducts, guides, and/or participates in evaluations studies and prepares reports on HRSA program efficiencies.

**Office of Health Information Technology & Quality (RA52)**

(1) Provides support, policy direction, and leadership for HRSA's health quality efforts; (2) serves as the focal point for developing policy to promote the coordination and advancement of health information technology, including telehealth, to HRSA's programs, including the use of electronic health record systems; (3) develops an Agency-wide health information technology and telehealth strategy for HRSA; (4) assists HRSA components in program-level health information technology and health quality efforts; (5) ensures successful dissemination of appropriate information technology advances, such as electronic health records systems, to HRSA programs; (6) works collaboratively with States, foundations, national organizations, private sector providers, as well as departmental agencies and other Federal departments in order to promote the adoption of health information technology and health quality policy; (7) ensures the health information technology policy and activities of HRSA are coordinated with those of other HHS components; (8) assesses the impact of health information technology and quality initiatives in the community, especially for the uninsured, underserved, and special needs populations; (9) translates technological advances in health information technology to HRSA's programs; (10) provides guidance in using the results of the medical claims review process to HRSA programs to improve quality; and (11) provides support for the Department's Medical Claims Review Panel.

**Office of Policy Analysis (RA53)**

(1) Serves as the principal Agency resource for policy analysis; (2) analyzes issues arising from legislation, budget proposals, regulatory actions, and other program or policy actions; (3) serves as focal point within HRSA for analysis of healthcare payment systems and financing issues; (4) collaborates with HHS Agencies to examine the impact of Medicare, Medicaid, and Children's Health Insurance Program (CHIP) on HRSA grantees and safety net providers;

(5) provides Agency leadership guidance on policy development; (6) serves as a resource of information and institutional knowledge for the Agency; (7) coordinates the Agency's participation in Healthy People, and other Department and Federal initiatives; (8) coordinates the Agency's intergovernmental activities, including: Providing the Administrator with a single point of contact on all activities related to important State and local government, stakeholder association, and interest group activities; coordinating Agency cross-Bureau cooperative agreements and activities with organizations such as the National Governors Association, National Conference of State Legislature, Association of State and Territorial Health Officials, National Association of Counties, and National Association of County and City Health Officials; interacting with various commissions such as the Delta Regional Authority, Appalachian Regional Commission, and on Denali Commission; and serving as the primary liaison to Department intergovernmental staff; and (9) prepares policy analysis papers and other planning documents as required.

**Office of Data Management and Research (RA54)**

(1) Serves as the principal source of leadership and advice on program information and research; (2) analyzes and coordinates the Agency's need for information and data for use in the management and direction of Agency programs; (3) manages an Agency-wide information and data group as well as an Agency-wide research group; (4) maintains an inventory of HRSA databases; (5) provides technical assistance to HRSA staff in database development, maintenance, analysis, and distribution; (6) promotes the availability of HRSA data through web-sites and other on-line applications; (7) conducts, oversees, and fosters high quality research across HRSA programmatic interests; (8) develops an annual research agenda for the Agency; (9) conducts, leads, and/or participates with HRSA staff in the development of research and demonstration projects; (10) coordinates HRSA participation in institutional review boards and the protection of human subjects; and (11) manages HRSA activity related to the Paperwork Reduction Act and other OMB policies.

*Section RA5–30, Delegations of Authority*

All delegations of authority and re-delegations of authority made to HRSA officials that were in effect immediately prior to this reorganization, and that are consistent with this reorganization, shall continue in effect pending further re-delegation.

**Chapter RB4—Office of Management**

*Section RB4–10, Organization*

Delete in its entirety and replace with the following:

The Office of Management (RB4) is headed by the Director, Office of Management within the Office of Operations, Health Resources and Services Administration, who reports directly to the Chief Operating Officer. The Office of Management includes the following components:

(1) Immediate Office of the Director (RB4);

(2) Division of Policy and Information Coordination (RB41);

(3) Division of Workforce Management (RB42);

(4) Division of Management Services (RB43); and

(5) Division of Workforce Development (RB44).

*Section RB4–20, Functions*

(1) Delete the functional statement for the Office of Management (RB4) and replace in its entirety; (2) establish the Division of Workforce Development (RB44); and rename the Division of Policy Review and Coordination as the Division of Policy and Information Coordination (RB41).

**Office of Management (RB4)**

Provides Agency-wide leadership, program direction, and coordination of all phases of administrative management. Specifically, the Office of Management: (1) Provides management expertise, staff advice, and support to the Administrator in program and policy formulation and execution; (2) provides administrative management services including human resources, procurement, property, space planning, safety, physical security, and general administrative services; (3) conducts Agency-wide workforce analysis studies and surveys; (4) plans, directs, and coordinates the Agency's activities in the areas of human resources management, including labor relations, personnel security, performance and alternative dispute resolution; (5) coordinates the development of policy and regulations; (6) oversees the development of annual operating objectives and coordinates HRSA work planning and appraisals; (7) directs and coordinates the Agency's organizations, functions and delegations of authority programs; (8) manages the Continuity of Operations (COOP) program for the Offices supported by the Office of Management; (9) administers the Agency's Executive Secretariat and committee management functions; (10) provides staff support to the Agency Chief Travel Official; (11) provides staff support to the Deputy Ethics Counselor; and (12) directs, coordinates, and conducts workforce development activities for the Agency.

**Division of Policy and Information Coordination (RB41)**

(1) Advises the Administrator and other key Agency officials on cross-cutting policy issues and assists in the identification and resolution of cross-cutting policy issues and problems; (2) establishes and maintains tracking systems that provide Agency-wide coordination and clearance of policies, regulations and guidelines; (3) plans, organizes and directs the Agency's Executive Secretariat with primary responsibility for preparation and management of written correspondence; (4) arranges briefings for Department officials on critical policy issues and oversees the development of necessary briefing documents; (5) administers administrative early alert system for the Agency to assure senior Agency officials are informed about administrative actions and opportunities; (6) coordinates the preparation of proposed rules and regulations relating to Agency programs and coordinates Agency review and comment on other Department regulations and policy directives that may affect the Agency's programs; (7) manages and maintains a records management program for the Agency; (8) oversees and coordinates the Agency's committee management activities; (9) coordinates the review and publication of **Federal Register** Notices; (10) provides advice and guidance for the establishment or modification of administrative delegations of authority; (11) provides advice and guidance for the establishment or modification of program delegations of authority; and (12) contributes to the analysis, development and implementation of Agency-wide administrative policies through coordination with relevant Agency program components and other related sources.

**Division of Workforce Management (RB42)**

(1) Conducts Agency-wide workforce analysis studies and surveys; (2) develops comprehensive workforce strategies that meet the requirements of the President's Management Agenda, programmatic needs of HRSA, and the governance and management needs of HRSA leadership; (3) evaluates

employee development practices to develop and enhance strategies to ensure HRSA retains a cadre of public health professionals and reduces risks associated with turnover in mission critical positions; (4) provides advice and guidance for the establishment or modification of organization structures, functions, and delegations of authority; (5) manages ethics and personnel security programs; (6) administers the Agency's performance management programs, including the SES Performance Review Board; (7) manages quality of work life, flexi place, and incentive and honor awards programs; (8) coordinates with the service provider the provision of human resources management, working with the service provider to communicate human resources requirements and monitoring the provider's performance; (9) manages the Alternative Dispute Resolution Program; (10) provides support and guidance on human resources issues for the Offices supported by the Office of Management; and (11) oversees the commissioned corps liaison activities including the day-to-day operations of workforce management.

**Division of Management Services (RB43)**

(1) Provides administrative management services including procurement, property, space planning, safety, physical security, and general administrative services; (2) ensures implementation of statutes, Executive Orders, and regulations related to official travel, transportation, and relocation; (3) provides oversight for the HRSA travel management program involving use of travel management services/systems, passenger transportation, and travel charge cards; (4) provides planning, management and oversight of all interior design projects, move services and furniture requirements; (5) develops space and furniture standards and related policies; (6) provides analysis of office space requirements required in supporting decisions relating to the acquisition of commercial leases and manages the furniture inventory; (7) provides advice, counsel, direction, and support to employees to fulfill the Agency's primary safety responsibility of providing a workplace free from recognizable safety and health concerns; (8) manages, controls, and/or coordinates all matters relating to mail management within HRSA, including developing and implementing procedures for the receipt, delivery, collection, and dispatch of mail; (9) maintains overall responsibility for the HRSA Forms Management Program which includes establishing internal controls to assure conformity with departmental policies and standards, including adequate systems for reviewing, clearing, costing, storing and controlling forms; and (10) manages the Continuity of Operations (COOP) program for the Offices supported by the Office of Management.

**Division of Workforce Development (RB44)**

(1) Plans, directs, and manages HRSA-wide training programs, intern, professional and leadership development programs, the long-term training program, and the mentoring program; (2) develops, designs, and implements a comprehensive strategic human resource leadership development and career management program for all occupational series throughout HRSA; (3) provides technical assistance in organizational development, career management, employee development, and training; (4) maximizes economies of scale through systematic planning and evaluation of Agency-wide training initiatives to assist HRSA employees in achieving required competencies; (5) identifies relevant scanning/benchmarking on workforce and career development processes, services and products; (6) establishes policies governing major learning initiatives and new learning activities, and works collaboratively with other components of HRSA in planning, developing and implementing policies related to training initiatives; and (7) plans, directs, and manages HRSA-wide training and service programs for fellowships and internships sponsored by other partner organizations and implemented within HRSA.

*Section RB4–30, Delegations of Authority*

All delegations of authority and re-delegations of authority made to HRSA officials that were in effect immediately prior to this reorganization, and that are consistent with this reorganization, shall continue in effect pending further re-delegation.

This reorganization is effective February 11, 2010.

Dated: February 10, 2010.

**Mary K. Wakefield,**

*Administrator.*

[FR Doc. 2010–3355 Filed 2–19–10; 8:45 am]

BILLING CODE 4165–15–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Indian Health Service

### Office of Urban Indian Health Programs; Title V HIV/AIDS Competing Continuation Grants

*Announcement Type:* Title V HIV/AIDS Competing Continuation Grants.

*Funding Opportunity Number:* HHS–2010–IHS–UIHP–0001.

*Catalog of Federal Domestic Assistance Number:* 93.193.

*Key Dates:*

*Application Deadline Date:* March 1, 2010.

*Review Date:* April 1, 2010.

*Earliest Anticipated Start Date:* July 1, 2010.

**I. Funding Opportunity Description**

*Statuary Authority*

The Indian Health Service (IHS), Office of Urban Indian Health Programs (OUIHP) announces competing continuations for the 4-in-1 Title V grants responding to an Office of HIV/AIDS Policy (OHAP), Minority AIDS (Acquired Immunodeficiency Syndrome) Initiative (MAI). This program is authorized under the authority of the Snyder Act, Public Law 67–85 and 25 U.S.C. 1652, 1653 of the Indian Health Care Improvement Act, Public Law 94–437, as amended. This program is described at 93.193 in the Catalog of Federal Domestic Assistance (CFDA).

*Background*

This competitive continuation seeks to expand OUIHP's existing Title V grants to increase the number of American Indian/Alaska Natives (AI/AN) with awareness of his/her HIV status. This will provide routine and/or rapid HIV screening, prevention, and pre- and post-test counseling (when appropriate). Enhancement of urban Indian health program HIV/AIDS activities is necessary to reduce the incidence of HIV/AIDS in the urban Indian health communities by increasing access to HIV related services, reducing stigma, and making testing routine.

*Purpose*

These competing continuation grants will be used to enhance HIV testing, including rapid testing and/or standard HIV antibody testing and to provide a more focused effort to address HIV/AIDS prevention, targeting some of the largest urban Indian populations in the United States. The grantees will attempt to provide routine HIV screening for

adults as per 2006 Centers for Disease Control and Prevention (CDC) guidelines and pre- and post-test counseling (when appropriate). These grants will be used to identify best practices to enhance HIV testing, including rapid testing and/or conventional HIV antibody testing, and to provide a more focused effort to address HIV/AIDS prevention in AI/AN populations in the United States.

The nature of these projects will require collaboration with the OUIHP to: (1) Coordinate activities with the IHS National HIV Program; (2) participate in projects in other operating divisions of the Department of Health and Human Services (HHS) such as the CDC, Substance Abuse and Mental Health Services Administration, Health Resource and Services Administration and the Office of HIV/AIDS Policy; and (3) submit and share anonymous, non-identifiable data on HIV/AIDS testing, treatment, and education.

These grants are also intended to encourage development of sustainable, routine HIV screening programs in urban facilities that are aligned with 2006 CDC HIV Screening guidelines (*http://www.cdc.gov/mmwr/preview/mmwrhtml/rr5514a1.htm*). Key features include streamlined consent and counseling procedures (verbal consent, opt-out), a clear HIV screening policy, identifying and implementing any necessary staff training, community awareness, and a clear followup protocol for HIV positive results including linkages to care. Grantees may choose to bundle HIV tests with sexually transmitted disease (STD) screening.

## II. Award Information

*Type of Award:* Title V Competitive Continuation Grants.

*Estimated Funds Available:* The total amount identified for Fiscal Year (FY) 2010 is five awards totaling $75,000. Individual awards must include one project evaluation and provide administrative support of the project. All future awards under this announcement are subject to the availability of funds. Hence, the agency has no obligation to award additional funding beyond the first year.

*Anticipated Number of Awards:* Five grant awards will be made under the program.

*Project Period:* July 1, 2010–June 30, 2012.

Award Amount: $75,000.

### *A. Requirements of Recipient Activities*

In FY 2010, each grantee's attempted goal shall include screening as many individuals as possible; however, each funded program's *attempted* goal will be to increase screening to a minimum of 300 AI/AN tested per program funded, for a total of 1,500 AI/AN tested. This reflects an MAI requirement to maintain the actual cost per MAI fund HIV testing client below the medical care inflation rate. This does not include counts of re-testing individuals in the same year. Each program shall also collect evidence, as part of the testing process, to document lessons learned, best practices, and barriers to increased routine HIV screening within this population.

## III. Eligibility Information

### *1. Eligibility*

This funding announcement is limited to Urban Indian organizations, as defined by 25 U.S.C. 1603(h), and is limited to urban Indian organizations which meet the following criteria:

- Received State certification to conduct HIV rapid testing (where needed);
- Health professionals and staff have been trained in the HIV/AIDS screening tools, education, prevention, counseling, and other interventions for AI/ANs;
- Developed programs to address community and group support to sustain risk-reduction skills;
- Implemented HIV/AIDS quality assurance and improvement programs; and
- Must provide proof of non-profit status with the application.

Urban Indian organization means a non-profit corporate body of any Indian tribe or any legally established organization of Indians which is controlled by one or more such bodies or by a board of directors elected or selected by one or more such bodies (or elected by the Indian population to be served by such organization) and which includes the maximum participation of Indians in all phases of its activities. 25 U.S.C. 1603(h).

### *2. Cost Sharing or Matching*

The OUIHP does not require matching funds or cost sharing.

### *3. Other Requirements*

If application budget exceeds the stated dollar amount that is outlined within this announcement, it will not be considered for funding.

## IV. Application and Submission Information

### *1. Obtaining Application Materials*

Applicant package may be found on Grants.gov (*http://www.grants.gov*) or at: *http://www.ihs.gov/NonMedicalPrograms/gogp/*.

### *2. Content and Form Application Submission*

The applicant must include the project narrative as an attachment to the application package.

Mandatory documents for all applicants include:

- Application forms:
  - SF–424.
  - SF–424A.
  - SF–424B.
- Budget Narrative (must be single spaced).
- Project Narrative (must not exceed 10 pages).
- Tribal Resolution or Tribal Letter of Support (Tribal Organizations only).
- Letter of Support from organization's Board of Directors (Title V Urban Indian Health Programs only).
- 501(c) (3) Certificate (Title V Urban Indian Health Programs only).
- Biographical sketches for all key personnel.
- Disclosure of Lobbying Activities (SF–LLL) (if applicable).
- Documentation of current OMB A–133 required Financial Audit, if applicable. Acceptable forms of documentation include:
  - E-mail confirmation from Federal Audit Clearinghouse (FAC) that audits were submitted; or
  - Face sheets from audit reports. These can be found on the FAC Web site: *http://harvester.census.gov/fac/dissem/accessoptions.html?submit=Retrieve+Records*

*Public Policy Requirements:*

All Federal-wide public policies apply to IHS grants with exception of the Discrimination policy.

*Requirements for Project and Budget Narratives:*

A. *Project Narrative:* This narrative should be a separate Word document that is no longer than 10 pages (see page limitations for each Part noted below) with consecutively numbered pages. Be sure to place all responses and required information in the correct section or they will not be considered or scored. If the narrative exceeds the page limit, only the first 10 pages will be reviewed. There are three parts to the narrative: Part A—Program Information; Part B—Program Planning and Evaluation; and Part C—Program Report. See below for additional details about what must be included in the narrative.

*Part A:* Program Information (page limitation)

Section 1: Needs

*Part B:* Program Planning and Evaluation (page limitation)

Section 1: Program Plans

Section 2: Program Evaluation

*Part C:* Program Report (page limitation)

Section 1: Describe major Accomplishments over the last 24 months.

Section 2: Describe major Activities over the last 24 months.

B. *Budget Narrative:* This narrative must describe the budget requested and match the scope of work described in the project narrative. The page limitation should not exceed three pages.

*3. Submission Dates and Times*

The application from each urban Indian organization must be submitted electronically through Grants.gov by 12 midnight Eastern Standard Time (EST) on March 1, 2010. Any application received after the application deadline will not be accepted for processing, and it will be returned to the applicant(s) without further consideration for funding.

If technical challenges arise and assistance is required with the electronic application process, contact Grants.gov Customer Support via e-mail to *support@grants.gov* or at (800) 518–4726. Customer Support is available to address questions 24 hours a day, 7 days a week (except on Federal holidays). If problems persist, contact Tammy Bagley, Division of Grants Policy (DGP) (*tammy.bagley@ihs.gov*) at (301) 443–5204. Please be sure to contact Ms. Bagley at least ten days prior to the application deadline. Please do not contact the DGP until you have received a Grants.gov tracking number. In the event you are not able to obtain a tracking number, call the DGP as soon as possible.

If an applicant needs to submit a paper application instead of submitting electronically via Grants.gov, prior approval must be requested and obtained (*see* page 16 for additional information). The waiver must be documented in writing (e-mails are acceptable) *before* submitting a paper application. A copy of the written approval must be submitted along with the hardcopy that is mailed to the DGO (Refer to Section IV to obtain the mailing address). Paper applications that are submitted without a waiver will be returned to the applicant without review or further consideration. Late applications will not be accepted for processing, will be returned to the applicant and will not be considered for funding.

*4. Intergovernmental Review*

Executive Order 12372 requiring intergovernmental review is not applicable to this program.

*5. Funding Restrictions*

- Pre-award costs are allowable pending prior approval from the awarding agency. However, in accordance with 45 CFR part 74, all pre-award costs are incurred at the recipient's risk. The awarding office is under no obligation to reimburse such costs if for any reason any of the urban Indian organizations do not receive an award or if the award to the recipient is less than anticipated.
- The available funds are inclusive of direct and appropriate indirect costs.
- Only one competing continuation award will be issued to each organization.
- IHS will not acknowledge receipt of the application.

*6. Electronic Submission Requirements*

Use the *http://www.Grants.gov* Web site to submit an application electronically and select the "Apply for Grants" link on the homepage. Download a copy of the application package, complete it offline, and then upload and submit the application via the Grants.gov Web site. Electronic copies of the application may not be submitted as attachments to e-mail messages addressed to IHS employees or offices.

Applicants that receive a waiver to submit paper application documents must follow the rules and timelines that are noted below. The applicant must seek assistance at least ten days prior to the application deadline.

Applicants that do not adhere to the timelines for Central Contractor Registry (CCR) and/or Grants.gov registration and/or request timely assistance with technical issues will not be considered for a waiver to submit a paper application.

Please be aware of the following:

- Please search for the application package in Grants.gov by entering the CFDA number or the Funding Opportunity Number. Both numbers are located in the header of this announcement.
- Paper applications are not the preferred method for submitting applications. However, if you experience technical challenges while submitting your application electronically, please contact Grants.gov Support directly at: *http://www.Grants.gov/CustomerSupport* or (800) 518–4726. Customer Support is available to address questions 24 hours a day, 7 days a week (except on Federal holidays).
- Upon contacting Grants.gov, obtain a tracking number as proof of contact. The tracking number is helpful if there are technical issues that cannot be resolved and a waiver from the agency must be obtained.
- If it is determined that a waiver is needed, you must submit a request in writing (e-mails are acceptable) to *GrantsPolicy@ihs.gov* with a copy to *Tammy.Bagley@ihs.gov.* Please include a clear justification for the need to deviate from the standard electronic submission process.
- If the waiver is approved, the application should be sent directly to the DGO by the deadline date of March 1, 2010.
- Applicants are strongly encouraged not to wait until the deadline date to begin the application process through Grants.gov as the registration process for CCR and Grants.gov could take up to fifteen working days.
- Please use the optional attachment feature in Grants.gov to attach additional documentation that may be requested by the DGO.
- All applicants must comply with any page limitation requirements described in this Funding Announcement.
- After electronically submitting the application, applicants will receive an automatic acknowledgment from Grants.gov that contains a Grants.gov tracking number. The DGO will download the application from Grants.gov and provide necessary copies to the appropriate agency officials. Neither the DGO nor the OUIHP will notify applicants that the application has been received.

E-mail applications will not be accepted under this announcement.

Dun and Bradstreet (D&B) Data Universal Numbering System (DUNS)

Applicants are required to have a DUNS number to apply for a grant or cooperative agreement from the Federal Government. The DUNS number is a unique nine-digit identification number provided by D&B, which uniquely identifies an entity. The DUNS number is site specific; therefore each distinct performance site may be assigned a DUNS number. Obtaining a DUNS number is easy and there is no charge. To obtain a DUNS number, access is through the following Web site *http://fedov.dnb.com/webform* or to expedite the process call (866) 705–5711.

Another important fact is that applicants must also be registered with the CCR and a DUNS number is required before an applicant can complete their CCR registration. Registration with the CCR is free of charge. Applicants may register online at *http://www.ccr.gov.* Additional information regarding the DUNS, CCR,

and Grants.gov processes can be found at: *http://www.Grants.gov.*

Applicants may register by calling 1 (866) 606–8220. Please review and complete the CCR Registration worksheet located at *http://www.ccr.gov.*

**V. Application Review Information**

Points will be assigned to each evaluation criteria adding up to a total of 100 points.

*1. Evaluation Criteria*

The instructions for preparing the application narrative also constitute the evaluation criteria for reviewing and scoring the application. Weights assigned to each section are noted in parentheses. The narrative should include all prior years of activity; information for multi-year projects should be included as an appendix (*see* E. "Categorical Budget and Budget Justification" at the end of this section for more information). The narrative should be written in a manner that is clear to outside reviewers unfamiliar with prior related activities of the urban Indian organization. It should be well organized, succinct, and contain all information necessary for reviewers to understand the project fully.

A. Understanding of the Need and Necessary Capacity (15 Points)

1. Understanding of the Problem

a. Define the project target population, identify their unique characteristics, and describe the impact of HIV on the population.

b. Describe the gaps/barriers in HIV testing for the population.

c. Describe the unique cultural or sociological barriers of the target population to adequate access for the described services.

2. Facility Capability

a. Briefly describe your clinic programs and services and how this initiative will assist to commence, compliment and/or expand existing efforts.

b. Describe your clinic's ability to conduct this initiative through:

- Your clinic's present resources.
- Collaboration with other providers.
- Partnerships established to accept referrals for counseling, testing, and referral and confirmatory blood tests and/or social services for individuals who test HIV positive.
- Linkages to treatment and care: partnerships established to refer out of your clinic for specialized treatment, care, confirmatory testing (if applicable) and counseling services.

B. Work Plan (40 Points)

1. Project Goal and Objectives

Address all of the following program goals and objectives of the project. The objectives must be specific as well as quantitatively and qualitatively measurable to ensure achievement of goal(s).

- Implementation Plan

a. Identify the proposed program activities and explain how these activities will increase and sustain HIV screening.

b. Describe policy and procedure changes anticipated for implementation that include:

(1) Support of the 2006 CDC Revised HIV Testing Recommendations.

(2) Community awareness.

(3) Age ranges of persons to be screened.

(4) Bundling of HIV testing with STD tests.

(5) Type of HIV Screen/Test (Rapid, Conventional, Western Blot) and who will perform test (in-house, send-out).

c. Provide a clear timeline with quarterly milestones for project implementation.

d. Certify that the program identified and agreed to follow the state regulations for HIV testing in their state and how the clinic will follow their state reporting guidelines for seropositive results.

e. Describe how individuals will be selected for testing to identify selection criteria and which group(s)—if any—will you be able, via state regulations, to offer testing in an opt-out format.

f. Describe how the program will ensure that clients receive their test results, particularly clients who test positive.

g. Describe how the program will ensure that individuals with initial HIV-positive test results will receive confirmatory tests. If you do not provide confirmatory HIV testing, you must provide a letter of intent or Memorandum of Understanding with an external laboratory documenting the process through which initial HIV-positive test results will be confirmed.

h. Describe the program strategies to linking potential seropositive patients to care.

i. Describe the program quality assurance strategies.

j. Describe how the program will train, support and retain staff providing counseling and testing.

k. Describe how the program will ensure client confidentiality.

l. Describe how the program will ensure that its services are culturally fluent and relevant.

m. Describe how the program will attempt to streamline procedures so as to reduce the overall cost per test administered.

C. Project Evaluation (20 Points)

1. Evaluation Plan

The grantee shall provide a plan for monitoring and evaluating the HIV rapid test and/or standard HIV antibody test.

2. Reporting Requirements

The following quantitative and qualitative measures shall be addressed:

- Required Quantitative Indicators (Quantitative)

a. Number of tests performed and number of test refusals.

b. Number of clients learning of their serostatus for the first time via this testing initiative (unique patients, non-repeated tests).

c. Number of reactive tests and confirmed seropositive (actual and proportion).

d. Number of clients linked to care/treatment or referrals for prevention counseling.

e. Number of individuals receiving their confirmatory test results.

- Required Qualitative Information

a. Measures in place to protect confidentiality.

b. Identify barriers of implementation as well as lessons learned for best practices to share with other IHS/Urban or Tribal entities.

c. Sustainability plan and measures of ongoing testing in future years, after grant money has been spent.

- Other quantitative indicators may be collected to improve clinic processes and add to information reported; however, they are not required.

a. Number of clients who refused due to prior knowledge of status.

b. Number of rapid versus standard antibody test.

c. Number of false negatives and/or positives after confirmatory testing.

- Develop a plan for obtaining knowledge, attitudes, and behavior data pending official approval of patient survey.

D. Organizational Capabilities and Qualifications (10 Points)

This section outlines the broader capacity of the organization to complete the project outlined in the work plan. It includes the identification of personnel responsible for completing tasks and the chain of responsibility for successful completion of the project outlined in the work plan.

1. Describe the organizational structure.

2. Describe the ability of the organization to manage the proposed project. Include information regarding similarly sized projects in scope and financial assistance as well as other grants and projects successfully completed.

3. Describe what equipment (*i.e.,* phone, Web sites, *etc.*) and facility space (*i.e.,* office space) will be available for use during the proposed project. Include information about any equipment not currently available that will be purchased throughout the agreement.

4. List key personnel who will work on the project.

- Identify existing personnel and new program staff to be hired.
- In the appendix, include position descriptions and resumes for all key personnel. Position descriptions should clearly describe each position and duties indicating desired qualifications, experience, and requirements related to the proposed project and how they will be supervised. Resumes must indicate that the proposed staff member is qualified to carry out the proposed project activities and who will determine if the work of a contractor is acceptable.
- Note who will be writing the progress reports.
- If a position is to be filled, indicate that information on the proposed position description.
- If the project requires additional personnel beyond those covered by the supplemental grant (*i.e.,* Information Technology support, volunteers, interviewers, *etc.*), note these and address how these positions will be filled and, if funds are required, the source of these funds.
- If personnel are to be only partially funded by this supplemental grant, indicate the percentage of time to be allocated to this project and identify the resources used to fund the remainder of the individual's salary.

E. Categorical Budget and Budget Justification (15 Points)

This section should provide a clear estimate of the project program costs and justification for expenses for the entire grant period. The budget and budget justification should be consistent with the tasks identified in the work plan. The budget focus should be on routinizing and sustaining HIV testing services as well as reducing the cost per person tested.

1. Categorical budget (Form SF 424A, Budget Information Non-Construction Programs) completing each of the budget periods requested.

2. Narrative justification for all costs, explaining why each line item is necessary or relevant to the proposed project. Include sufficient details to facilitate the determination of cost allowability.

3. Budget justification should include a brief program narrative for the second and third years.

4. If indirect costs are claimed, indicate and apply the current negotiated rate to the budget. Include a copy of the rate agreement in the appendix.

*2. Review and Selection Process*

Each application will be prescreened by the DGO staff for eligibility and completeness as outlined in the funding announcement. Incomplete applications and applications that are non-responsive to the eligibility criteria will not be referred to the Objective Review Committee. Applicants will be notified by DGO, via letter, to outline the missing components of the application.

To obtain a minimum score for funding, applicants must address all program requirements and provide all required documentation. Applicants that receive less than a minimum score will be informed via e-mail of their application's deficiencies. A summary statement outlining the strengths and weaknesses of the application will be provided to these applicants. The summary statement will be sent to the Authorized Organizational Representative that is identified on the face page of the application.

In addition to the above criteria/requirements, the application will be considered according to the following:

A. *The submission deadline:* March 1, 2010. The application submitted in advance of or by the deadline and verified by the postmark will undergo a preliminary review to determine that:

- The applicant is eligible in accordance with this grant announcement.
- The application is not a duplication of a previously funded project.
- The application narrative, forms, and materials submitted meet the requirements of the announcement allowing the review panel to undertake an in-depth evaluation; otherwise, it may be returned.

B. The Competitive Continuation Review date is April 1, 2010. Competitive Continuation applications that are complete, responsive, and conform to this program announcement will be reviewed for merit. Prior to review, the application will be screened by the DGO to determine eligibility. Programs proposed should be those in which the IHS has the authority to provide either directly or through funding agreements. These programs should be designed for the benefit of IHS beneficiaries. If an urban Indian organization does not meet these requirements, the application will not be reviewed. The application will be evaluated and rated on the basis of the evaluation criteria listed in Section V. 1. The criteria are used to evaluate the quality of a proposed project and determine the likelihood of success.

C. Anticipated Announcement and Award Dates

Anticipated announcement date is June 1, 2010 with an Award Date of July 1, 2010.

## VI. Award Administration Information

*1. Award Notices*

The Notice of Award (NoA) will be initiated by the DGO and will be mailed via postal mail to the urban Indian organization. The NoA will be signed by the Grants Management Officer, and this is the authorizing document under which funds are dispersed to the approved entities. The NoA will serve as the official notification of the grant award and will reflect the amount of Federal funds awarded for the purpose of the grant, the terms and conditions of the award, the effective date of the award, and the budget/project period. The NoA is the legally binding document and is signed by an authorized grants official within the IHS.

*2. Administrative Requirements*

Grants are administered in accordance with the following regulations, policies and OMB cost principles:

A. The criteria as outlined in this Program Announcement.

B. *Administrative Regulations for Grants:*

- 45 CFR part 92, Uniform Administrative Requirements for Grants and Cooperative Agreements to State, Local and Tribal Governments.
- 45 CFR part 74, Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and other Non-profit Organizations.

C. *Grants Policy:*

- HHS Grants Policy Statement, Revised 01/07.

D. *Cost Principles:*

- *Title 2:* Grant and Agreements, Part 225—Cost Principles for State, Local, and Indian Tribal Governments (OMB A–87). Title 2: Grant and Agreements, Part 230—Cost Principles for Non-Profit Organizations (OMB Circular A–122).

E. *Audit Requirements:*

- OMB Circular A–133, Audits of States, Local Governments, and Non-profit Organizations.

*3. Indirect Costs*

This section applies to all grant recipients that request reimbursement of indirect costs in their grant application. In accordance with HHS Grants Policy Statement, Part II–27, IHS requires applicants to obtain a current indirect cost rate agreement prior to award. The rate agreement must be prepared in accordance with the applicable cost principles and guidance as provided by the cognizant agency or office. A current rate covers the applicable grant activities under the current award's budget period. If the current rate is not on file with the DGO at the time of award, the indirect cost portion of the budget will be restricted. The restrictions remain in place until the current rate is provided to the DGO.

Generally, indirect costs rates for IHS grantees are negotiated with the Division of Cost Allocation *http://rates.psc.gov/* and the Department of Interior (National Business Center) *http://www.aqd.nbc.gov/indirect/indirect.asp.* If your organization has questions regarding the indirect cost policy, please call (301) 443–5204 to request assistance.

*4. Reporting Requirements*

The reporting requirements for this program are noted below.

A. Progress Reports

Program progress reports on number of tests performed and milestones are required semi-annually by the OUIHP in order to satisfy quarterly reports due to funding source at MAI. These reports will include a brief comparison of actual accomplishments to the goals established for the period, or if applicable, provide sound justification for lack of progress, reasons for unmet milestones (if applicable), and other pertinent information as required.

B. A Final Assessment and Evaluation report must be submitted within 90 days of expiration of the budget/project period.

C. Semi-annual Financial Status Reports (FSR) must be submitted within 30 days after the six months period ends. Refer to the terms and conditions of the grant award for details on submission times. Final FSRs are due within 90 days after the end of the project period. Standard Form 269 (long form for those reporting on program income; short form for all others) will be used for financial reporting.

D. Participation in a minimum of two teleconferences. Teleconferences will be required semi-annually (unless further followup is needed) for technical assistance and information to be provided and progress to be shared among grantees with the OUIHP and National HIV Program Consultant.

E. Federal Cash Transaction Reports are due every calendar quarter to the Division Payment Management, Payment Management Branch. Failure to submit timely reports may cause a disruption in timely payments to the grantee.

Grantees are responsible and accountable for accurate reporting of the Progress Reports and Financial Status Reports which are generally due [semi-annually/annually]. Financial Status Reports (SF–269) are due 90 days after each budget period and the final SF–269 must be verified from the grantee records on how the value was derived.

Failure to submit required reports within the time allowed may result in suspension or termination of an active agreement, withholding of additional awards for the project, or other enforcement actions such as withholding of payments or converting to the reimbursement method of payment. Continued failure to submit required reports may result in one or both of the following: (1) The imposition of special award provisions; and (2) the non-funding or non-award of other eligible projects or activities. This requirement applies whether the delinquency is attributable to the failure of the grantee organization or the individual responsible for preparation of the reports.

Telecommunication for the hearing impaired is available at: TTY (301) 443–6394.

**VII. Agency Contacts**

*Grants (Business):* Kimberly Pendleton, Grants Management Officer, 801 Thompson Avenue, TMP Suite 360, Rockville, MD 20852, (301) 443–5204 or *Kimberly.Pendleton@ihs.gov.*

*Program (Programmatic/Technical):* Danielle Steward, Health Systems Specialist, Office of Urban Indian Health Programs, 801 Thompson Avenue, Suite 200, Rockville, MD 20852, (301) 443–4680 or *danielle.steward@ihs.gov.*

The Public Health Service (PHS) strongly encourages all grant and contract recipients to provide a smoke-free workplace and promote the non-use of all tobacco products. In addition, Public Law 103–227, the Pro-Children Act of 1994, prohibits smoking in certain facilities (or in some cases, any portion of the facility) in which regular or routine education, library, day care, health care or early childhood development services are provided to children. This is consistent with the HHS mission to protect and advance the physical and mental health of the American people.

Dated: February 2, 2010.

**Yvette Roubideaux,**

*Director, Indian Health Service.*

[FR Doc. 2010–3352 Filed 2–19–10; 8:45 am]

BILLING CODE 4165–16–P

## DEPARTMENT OF HOMELAND SECURITY

## Coast Guard

**[Docket No. USCG–2010–0088]**

## Towing Safety Advisory Committee; Meetings

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of meetings.

**SUMMARY:** The Towing Safety Advisory Committee and its working group on the Revision of Navigation and Vessel Inspection Circular 04–01 will meet in New Orleans, LA. The Committee will also discuss various issues relating to shallow-draft inland and coastal waterway navigation and towing safety. All meetings will be open to the public.

**DATES:** The working group will meet on Tuesday, March 9, 2010, from 8:30 a.m. to 4:30 p.m. The full Committee will meet on, Wednesday, March 10, 2010, from 8:30 a.m. to 3 p.m. These meetings may close early if all business is finished. Written material and requests to make oral presentations at the meetings should reach the Coast Guard on or before March 2, 2010. Requests to have a copy of your material distributed to each member of the Committee or working groups should reach the Coast Guard electronically on or before March 2, 2010.

**ADDRESSES:** The meetings will be held at the New Orleans Marriott Metairie at Lakeway in New Orleans, LA; 3838 N. Causeway Boulevard, Metairie, LA 70002; *Phone:* 1–504–836–5253, *Toll-free:* 1–866–882–4377. The nearest large commercial airport is Louis Armstrong New Orleans International Airport (MSY). Information on and directions to the Marriott Metairie may be found on its web site at *http://www.marriott.com/hotels/hotel-information/travel/msymm-new-orleans-marriott-metairie-at-lakeway.*

Send written material and requests to make oral presentations to TSAC's Assistant Designated Federal Officer (ADFO), identified in the **FOR FURTHER INFORMATION CONTACT** section below. This notice is available on the Internet at *http://www.regulations.gov* under the docket number USCG–2010–0088.

**FOR FURTHER INFORMATION CONTACT:** Mr. Michael J. Harmon, ADFO, TSAC, U.S. Coast Guard Headquarters, CG–5222; 2100 Second Street, SW., STOP 7126, Washington, DC 20593–7126. Telephone (202) 372–1427, fax (202) 372–1926, or e-mail at: *Michael.J.Harmon@USCG.MIL.*

**SUPPLEMENTARY INFORMATION:** Notice of these meetings is given under the Federal Advisory Committee Act, 5 U.S.C. App. (Pub. L. 92–463).

### Agenda of Meetings

*Navigation and Vessel Inspection Circular (NVIC) 04–01 Working Group.* The agenda for the working group is to continue discussions on possible revisions to NVIC 04–01, Licensing and Manning for Officers of Towing Vessels, including the enclosures on the Towing Officer Assessment Records (TOARs). (A copy of the amended Task Statement 08–01 is available in the docket where listed under ADDRESSES.) The current version of the NVIC can be viewed at *http://www.uscg.mil/hq/cg5/nvic/2000s.ASP#2001.*

*Towing Safety Advisory Committee.* The tentative agenda for the Committee is as follows:

(1) Update on Commercial/Recreational Boating Interface;

(2) Report on the Review and Recommendations for the Revision of NVIC 04–01 "Licensing and Manning for Officers of Towing Vessels;"

(3) Report on the Review and Recommendations for the Revision of NVIC 04–01 Sub-Working Group on Assistance Towing;

(4) Update on National Maritime Center (NMC) activities;

(5) Report on Mariner credentialing policy including the Merchant Mariner Medical Advisory Committee;

(6) Update on the Transportation Worker Identification Credential (TWIC);

(7) Update on Office of Vessel Activities information; and

(8) Discuss a Member recommended Task to examine the career path from Towing Vessel Master (Master 1600 GT) to Inland Mate Any Gross Tons.

### Procedural

All meetings are open to the public. **Please note** that the meetings may close early if all business is finished. At the Chair's discretion, members of the public may make oral presentations during the meetings. If you would like to make an oral presentation at a meeting, please notify the ADFO, listed above in the "**FOR FURTHER INFORMATION CONTACT**" section, no later than March 2, 2010. Written material (20 copies) for distribution at a meeting should reach the Coast Guard no later than March 2, 2010. If you would like a copy of your material distributed to each member of the Committee or Working Groups in advance of a meeting, please submit it electronically to the ADFO, for e-mail distribution, no later than March 2, 2010. Also at the Chair's discretion, members of the public may present comment at the end of the Public Meeting. Please understand that the Committee's schedule may be quite demanding and time for public comment may be limited.

### Information on Services for Individuals With Disabilities

For information on facilities or services for individuals with disabilities or to request special assistance at the meetings, contact the ADFO as soon as possible.

Dated: February 16, 2010.

**J. G. Lantz,**

*Director of Commercial Regulations and Standards.*

[FR Doc. 2010–3312 Filed 2–19–10; 8:45 am]

**BILLING CODE 9110–04–P**

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## DEPARTMENT OF HOMELAND SECURITY

## U.S. Customs and Border Protection

## Mitigation of Carrier Fines for Transporting Aliens Without Proper Documents; Modification of Memorandum of Understanding and Recalculation of Performance Levels To Measure Carrier Performance; CBP Dec. 09–06

**AGENCY:** Customs and Border Protection; Department of Homeland Security.

**ACTION:** General notice.

**SUMMARY:** A carrier that transports to the United States an alien who does not have a valid passport and an unexpired visa, as required under applicable law, is subject to a fine for each alien transported lacking the required documentation. Pursuant to statute and regulations, a carrier may receive a reduction, refund, or waiver of the fine upon submission of an application for such relief supported by evidence that it screened all passengers on the conveyance providing the transport (flight or voyage). Alternatively, pursuant to statute and regulations, if a carrier that enters into a Memorandum of Understanding (MOU) with U.S. Customs and Border Protection (CBP), agreeing to follow procedures set forth in the MOU, commits a violation and becomes subject to a penalty, such carrier would not have to apply for a reduction of the fine, but would be eligible for an automatic reduction. This notice announces that CBP has made changes to the existing MOU and has recalculated and reset the performance levels CBP will use to measure carrier performance of its travel document screening responsibilities pursuant to the MOU. The revised MOU is appended to this notice.

**DATES:** CBP will commence applying the revised performance levels explained in this document for all carriers, signatory to the MOU and non-signatory, on April 23, 2010. Although a carrier may submit a signed revised MOU any time after February 22, 2010, CBP will begin accepting (as explained in this document) signed revised MOU's on April 23, 2010. All terms of the MOU (except for performance levels) will take effect for the carrier that submitted the MOU on the date of acceptance by CBP. CBP will discontinue automatic processing of reduced fines based on the expired MOU practice on April 23, 2010.

**ADDRESSES:** Copies of the revised MOU may be obtained by writing to Mr. Dennis McKenzie, Director, Fines, Penalties, and Forfeitures Division, U.S. Customs and Border Protection, Office of Field Operations, Room 5.2C, 1300 Pennsylvania Avenue, NW., Washington, DC 20229, and through the following e-mail address: *Dennis.McKenzie@dhs.gov.*

**FOR FURTHER INFORMATION CONTACT:** Mr. Dennis McKenzie, Director, Fines, Penalties, and Forfeitures Division, U.S. Customs and Border Protection, Office of Field Operations: (202) 344–2730; *Dennis.McKenzie@dhs.gov.*

**SUPPLEMENTARY INFORMATION:**

### I. Purpose of this Notice

Section 273 of the Immigration and Nationality Act (INA) (8 U.S.C. 1323), herein referenced as INA section 273, provides that it is unlawful for a transportation company to bring to the United States from any place outside the United States (other than from a foreign contiguous territory) any alien who does not have a valid passport and an unexpired visa, if a visa is required under the INA or regulations issued pursuant to the INA (INA section 273(a)(1)). INA section 273 further provides that a transportation company that violates this provision will be subject to a fine for each alien brought into the United States without the required documentation (INA section 273(b)). Further, no fine shall be remitted or refunded unless the

transportation company establishes that it did not know, and could not have ascertained by the exercise of reasonable diligence, that the individual transported was an alien and that a valid passport or visa was required (INA section 273(c)). INA section 273 allows for reduction, refund, or waiver of a fine under its provisions if a transportation company follows procedures prescribed in regulations which demonstrate that it has screened all passengers on the vessel or aircraft or if the violation involved circumstances described in regulations for which such a reduction, refund or waiver is justified (INA section 273(e)).

Part 273 of title 8 of the Code of Federal Regulations (8 CFR part 273) implements section 273 of the INA by establishing what a carrier must do to seek a reduction, refund, or waiver of a fine under that section. It describes steps a carrier must take to prevent the boarding of improperly documented aliens (8 CFR 273.3(b)); explains that the carrier needs to provide evidence that it has taken these steps (8 CFR 273.4); and provides for an application procedure for carriers seeking a reduction, refund, or waiver (8 CFR 273.5). It also establishes a procedure for carriers to obtain automatic reduction, refund, or waiver of a fine without the filing of an application (8 CFR 273.6).[1] Under this procedure, the Carrier and CBP enter into a Fines Mitigation Memorandum of Understanding (MOU) under which both parties agree to undertake certain responsibilities to improve the performance of the Carrier with respect to its duty under INA section 273 to prevent the transport of aliens to the United States without proper documentation (valid passport and, where required, an unexpired visa). The goal of the automatic fines reduction program is to maximize carrier cooperation and vigilance in its screening procedures to reduce INA section 273 violations.

The MOU that carriers signed with the legacy Immigration and Naturalization Service was published in the **Federal Register** (63 FR 23643) on April 30, 1998 as an Appendix to the final regulations promulgating Part 273 of Title 8 CFR.[2] Among other things, the MOU identified the method CBP used to establish performance levels or benchmarks for measuring carrier performance. The benchmarks that were established in 1998 pursuant to the MOU were based on 1994 carrier statistics. Although the MOU allowed for the recalculation of these benchmarks periodically, as deemed warranted by CBP, they were never updated.

CBP is announcing in this document that it has revised and is reauthorizing the MOU. The primary revision is the recalculation and resetting of the benchmarks for measuring carrier performance under the revised MOU based on more recent statistics. After 11 years and significant improvement by the carriers in screening alien passengers, CBP has determined that this recalculation of the benchmarks is warranted to further the goal of the program. The revisions to the MOU and the resetting of the benchmarks will encourage carriers to continue to improve the effectiveness of their passenger screening operations. This goal has taken on special significance since the terrorist events of September 11, 2001, as it will enhance the capability of DHS to protect America from the threat of terrorism by individuals who may attempt to use fraudulent, counterfeit, or altered travel documents to board a commercial aircraft or vessel bound for the United States.

## II. The Revised MOU

The MOU published in the **Federal Register** with the 1998 final rule expired, by its terms, on September 30, 2000, and was extended for one year to September 30, 2001. However, since its expiration, legacy INS, CBP, and the carriers that signed the MOU continued to operate as though the expired MOU had continued in force. This notice terminates the practice of CBP honoring the expired MOU and reauthorizes the revised MOU for an indefinite period.

In order to benefit from automatic processing of reduced fines in the future, carriers must sign the MOU in its revised form. A copy is appended to this notice. Copies of the revised MOU may be obtained by writing to Mr. Dennis McKenzie, Director, Fines, Penalties and Forfeitures Division, U.S. Customs and Border Protection, Office of Field Operations, Room 5.2C, 1300 Pennsylvania Avenue, NW., Washington, DC 20229 or through the e-mail address: *Dennis.McKenzie@dhs.gov*. Carriers must submit to CBP two copies of the revised MOU, each with original signatures and all information requested. CBP will review the MOUs and determine whether to countersign. Soon after publication of this document, CBP will issue appropriate instructions through the CBP Web site for submitting an MOU and informing the public of CBP's approval process.

## III. The Performance Levels

The benchmarks set forth in the MOU, referred to in the MOU as the Acceptable Performance Level (APL) and the Second APL (APL2), are essentially standards that signatory carriers must meet to obtain automatic reduction of fines imposed under INA section 273. The 1998 final rule that established the regulations for passenger travel document screening and the method for reduction, refund, or waiver of fines for INA section 273 violations stated that any significant adverse change regarding fines reduction (which may include a change to the acceptable performance levels used to determine fines mitigation under the MOU) would be published in the **Federal Register**. CBP uses these same standards as part of the mitigation determination of fines for non-signatory carriers on a case-by-case basis when they apply for reduction, refund, or waiver of a fine under INA section 273. Non-signatory carriers have to apply for, and submit evidence to justify, mitigation in accordance with 8 CFR 273.5, 280.12, and 280.51.

CBP believes that, on the whole, the changes described in this notice do not constitute a substantial adverse change. Based on CBP's examination of fines reduction in 2006, use of the revised performance levels (rather than the original performance levels that have been used to determine fines reductions since 1998) would have reduced the total number of carriers eligible for mitigation of fines from 87% to 82%. The examination also revealed that 15 carriers (about 8%) possibly could lose eligibility for the higher level of mitigation permitted. Notwithstanding the foregoing, because the performance levels/benchmarks have not been changed since 1998, CBP has decided to publish this notice in the **Federal Register**.

[1] In practice, the primary function of the regulation is fine reduction (as opposed to refund or waiver); therefore, that term and the terms "mitigation" or "fines mitigation" often appear in this document.

[2] Under the Homeland Security Act of 2002, 6 U.S.C. 101 *et seq*. (Pub. L. 107–296, 116 Stat. 2135), the Department of Homeland Security (DHS) was created and, among other things, the U.S. Customs Service was renamed the Bureau of Customs and Border Protection (CBP) and the U.S. Immigration and Naturalization Service (INS) was abolished. Under the Act, effective on March 1, 2003, CBP retained most of the components/functions of the Customs Service and assumed some functional elements of the former INS. Thus, under the Act, immigration functions under the INA vested in the Attorney General, with a few exceptions, were transferred to the Secretary of DHS. Accordingly, this document references the Secretary of DHS, CBP, and the Commissioner of CBP, except where references to the Attorney General, INS, or the Commissioner of INS are historically appropriate.

*Calculation of Automatic Fines Mitigation*

Under the MOU, a signatory carrier's individual performance level (PL) is measured against the APL and the APL2 to determine the level of automatic fine reduction (mitigation) applied by CBP to the carrier's INA section 273 violations. Under both the old and the revised MOU, each carrier's PL is calculated by dividing the number of improper documentation violations under INA section 273 incurred by the carrier in a fiscal year by the number of documented non-immigrant aliens [3] transported by the carrier in that fiscal year and multiplying that result by 1000. The first carrier PLs were calculated for the 1998 final rule using relevant statistics from 1994 (and were used retroactively for fines mitigation for fiscal years 1994 through 1998). The PLs have been recalculated each year since 1998 through 2006, using the previous year's statistics.

Under the old MOU, the APL and APL2 also were calculated using relevant statistics from 1994, the former by dividing the number of section 273 violations by all carriers during that year by the number of documented non-immigrant aliens (as described above) transported to the United States by all carriers during that year, and multiplying the result by 1000, and the latter by performing the same calculation but using data relative only to carriers whose PL met or exceeded the APL. Under both the old MOU process (which has continued in practice since the MOU's expiration) and the revised MOU process, a signatory carrier with a PL that is equal to or better than the APL is automatically assessed a 25% fine reduction, provided that the carrier is otherwise operating in compliance with the MOU (paragraph 4.9 of the old MOU; paragraph 4.11 of the revised MOU). A signatory carrier with a PL that meets or exceeds the APL2 is automatically assessed a 50% fine reduction (if otherwise in compliance with the MOU) (paragraph 4.10 of the old MOU; paragraph 4.12 of the revised MOU). A signatory carrier performing below the APL is also eligible for the 25% reduction (if otherwise in compliance with the MOU) (paragraph 4.13 of the revised MOU, which is a revision of paragraph 4.11 of the old MOU); however, continued performance below the APL warrants closer CBP scrutiny, and termination of the MOU is an option where CBP determines that INA section 273 violations are excessive, such as an unacceptable pattern of underperformance.

*The Recalculated APL and APL2*

Under paragraph 4.8 of the old and revised MOU, the PLs, APL, and APL2 may be recalculated periodically, as deemed necessary by CBP based on carrier performance during the previous period. As stated above, the PLs were recalculated yearly through 2006 (using the previous year's statistics), but the APL and APL2, the benchmarks, have not been recalculated since they were originally calculated in 1998 (using 1994 carrier performance data). Any recalculation of the APL and APL2 performance levels under this paragraph is intended "to maximize carrier cooperation and vigilance in their screening procedures" (63 FR 23644). This provision of the MOU gives CBP flexibility to make appropriate adjustments to the performance levels, as carrier screening performance improves over time. Such adjustments are necessary to provide an effective incentive that encourages carriers to continue to improve their screening performance, the fundamental purpose of the MOU process.

In recalculating the APL and APL2 performance levels, CBP used 2005 carrier statistics and employed the same formula that was used to set the initial performance levels in 1998 (*i.e.,* dividing the number of INA section 273 violations by the number of documented non-immigrant aliens transported to the United States, as described previously, multiplied by 1000, for all carriers to yield the APL and for all carriers meeting the APL to yield the APL2). Because carrier performance has improved since 1998, the APL and APL2 recalculation results were significantly lower than the 1998 calculation results (the higher carrier success rates produced fewer carrier violations). However, rather than adopt the raw recalculations as the new performance levels that carriers must meet or exceed for reduced fines, as was done in 1998, CBP set the new APL and APL2 at points between the recent recalculations and the old APL and APL2, thereby raising the bar somewhat from what was required under the old APL and APL2 and lowering the bar somewhat from where it would have been set under the raw recalculations alone. CBP believes that the new performance levels are reasonably obtainable performance targets.[4]

CBP believes that application of the new APL and APL2 will incrementally restore the efficacy observed in the program in the past without negatively impacting the industry or straying from the purpose of INA section 273(e).

As stated previously, the revised MOU (paragraph 4.8) permits the periodic recalculation of performance levels (but not necessarily yearly) as deemed warranted by CBP. CBP will publish notice of any future change that is deemed adverse to the carriers.

**IV. Other Changes to the MOU**

The revised MOU includes a number of additional changes, including the following rudimentary changes: A change to the name of the applicable agency that is a party to the MOU, from INS to CBP; appropriate changes to the titles of pertinent officials; the appropriate renumbering of paragraphs necessitated by the addition of five new paragraphs in the revised MOU (paragraphs 3.4, 3.9, 3.16, 4.9, and 4.10); a change to the number of days that advance written notice is required by either party to terminate the MOU agreement, from 30 to 15 days (see MOU introductory text); and removal of the expiration date. In addition, the revised MOU reflects the following changes/additions (references are to paragraphs of the revised MOU unless specified otherwise):

1. In paragraph 1.4, the carrier must provide the email address of its contact person and must notify CBP of any changes to the contact information.

2. In paragraph 1.5, a carrier's contract staff is added to the carrier employees who must be required by the carrier to comply with the terms of the MOU.

3. In paragraph 3.3, the carrier agrees to conduct additional document checks for verification purposes at the boarding gate. This is a change from the old MOU which provided for carriers conducting additional checks "when deemed appropriate."

4. A new paragraph 3.4 is added. It reads as follows: "The Carrier is responsible for screening all passengers boarding their aircraft, regardless of who was the issuing agent for the ticket or what flight number exists on the tickets." This new paragraph

[3] Documented non-immigrant aliens are those subject to the Arrival/Departure Record (Form I–94 or I–94W) requirement, either to submit one upon arrival at a U.S. port or have an electronic equivalent and corresponding admission record created at time of arrival based on information submitted electronically prior to travel.

[4] Under the revised MOU process, signatory carriers whose performance level falls below the reset APL may still qualify for automatic 25% fines mitigation for periods determined by CBP if they are in compliance with the MOU. However, CBP may terminate the MOU if it deems that the carrier's continued performance below the APL is not justified or that INA section 273 violations are excessive.

necessitated the renumbering of the paragraphs that followed.

5. In paragraph 3.5 (paragraph 3.4 of the old MOU), "other U.S. Government (USG) officials" is added to the officials who may be allowed by carriers to examine passenger documents in the circumstances identified.

6. In paragraph 3.6 (paragraph 3.5 of the old MOU), regarding cases of suspected fraud, the carrier may contact CBP for advice and assistance.

7. In paragraph 3.7 (paragraph 3.6 of the old MOU), the "Regional Carrier Liaison Group" and "other USG officials" are added to the groups that a carrier may consult for advice on authentication of documents.

8. A new paragraph 3.9 is added. It reads as follows: "The Carrier agrees to provide CBP-required information regarding the date and number of improperly documented aliens intercepted by the Carrier at the port(s) of embarkation."

9. Paragraphs 3.8 through 3.13 of the old MOU are redesignated as paragraphs 3.10 through 3.15 of the revised MOU.

10. A new paragraph 3.16 is added. It commits a carrier to comply with the CBP APIS regulations requiring electronic transmission of passenger and crew arrival and departure manifests (19 CFR 4.7b, 4.64, 122.49a–122.49c, 122.75a, and 122.75b; see also 8 CFR part 231). (Commercial carriers are required to comply with the APIS regulations regardless of this paragraph in the revised MOU.)

11. In paragraph 4.1 (also paragraph 4.1 of the old MOU), the CBP coordinator's email address has been added to the information CBP will provide to the carrier.

12. In paragraph 4.3, the words "as necessary" have been added to the following sentence: "Initial and refresher training, as necessary, will be conducted by CBP or Carrier representatives trained by CBP."

13. In paragraph 4.4, "other USG personnel" has been added to the officials identified who may be consulted by the carrier for assistance in performing its passenger screening function.

14. Language has been added at the end of both paragraphs 4.6 and 4.7 of the revised MOU (pertaining to how the APL and APL2, respectively, are determined) to reflect that CBP may adjust the calculation result to achieve, as deemed by CBP, the optimum measure that will encourage carriers to improve screening operations.

15. A new paragraph 4.9 is added to provide that: (a) CBP will review any carrier's application for participation in the MOU program regardless of whether the carrier's PL meets or is below the APL; (b) CBP will consider evidence submitted by the carrier demonstrating that it has taken extensive measures to prevent the transportation of improperly documented aliens to the United States; and (c) CBP will accept the carrier's MOU, by signature of the Director, Fines, Penalties, and Forfeitures Division, if satisfied with the evidence and if satisfied that the carrier is capable of meeting the MOU's terms and conditions. The evidence that a carrier may submit under (b) above is found in paragraph 4.11 of the old MOU. The three kinds of evidence set forth in paragraph 4.11 of the old MOU are included in paragraph 4.9 of the revised MOU, and an additional kind of evidence has been added (see paragraph 4.9 (2)): "Evidence that the carrier operates efficient and effective boarding gate checks to deter boarding pass swaps and to verify that all passengers' documents, including transit passengers, have been examined."

16. A new paragraph 4.10 is added. It contains an explanation of the effective dates of the MOU's terms (see also the **DATES** section of this document).

17. Paragraph 4.13 of the revised MOU (paragraph 4.11 of the old MOU) has been modified to apply to signatory carriers performing below the APL. These carriers are eligible for automatic 25% fines reduction as signatory carriers, provided that they are otherwise in compliance with the MOU; CBP may suspend or terminate the MOU if it deems that the carrier's continued performance below the APL is not justified or that INA section 273 violations are excessive.

## V. Effective Dates

CBP will commence applying the revised performance levels explained in this document for all carriers, signatory to the MOU and non-signatory, on April 23, 2010. Although a carrier may submit a signed revised MOU any time after February 22, 2010, CBP will begin accepting (as explained in this document) signed revised MOU's on April 23, 2010. All terms of the MOU (except for performance levels) will take effect for the carrier that submitted the MOU on the date of acceptance by CBP. CBP will discontinue automatic processing of reduced fines based on the expired MOU practice on April 23, 2010.

Dated: December 29, 2009.

**Jayson P. Ahern,**

*Acting Commissioner, Customs and Border Protection.*

## Appendix A—Customs and Border Protection INA Section 273(e) Fines Mitigation Memorandum of Understanding

This voluntary Memorandum of Understanding (MOU) is made between ____ (hereafter referred to as the "Carrier") and the U.S. Customs and Border Protection (hereafter referred to as "CBP"). The purpose of this MOU is to identify the responsibilities of each party to improve the performance of the Carrier with respect to its duty under section 273 of the Immigration and Nationality Act (INA) to prevent the transport of improperly documented aliens to the United States. Based on the Carrier's Performance Level (PL) in comparison to the Acceptable Performance Level (APL) or Second APL (APL2) set by CBP, and based upon compliance with the other stipulations outlined in the MOU, CBP may refund, reduce, or waive a part of the Carrier's administrative penalties under section 273 of the INA. The MOU cannot, by law, exempt the Carrier from liability for civil penalties. Although taking the steps set forth below will not relieve the Carrier of liability from penalties, the extent to which the Carrier has complied with this MOU will be considered as a factor in cases where CBP may reduce, refund, or waive a fine. It is understood and agreed by the parties that this MOU is not intended to be legally enforceable by either party. No claims, liabilities, or rights shall arise from or with respect to this MOU except as provided for in the INA or the Code of Federal Regulations (CFRs). Nothing in this MOU relieves the Carrier of any responsibilities with respect to United States laws, the INA, or the CFRs. This document, once jointly endorsed (i.e., signed by the carrier and accepted by CBP upon the signature of the appropriate CBP official), will serve as a working agreement to be utilized for all fines cases relating to section 273 of the INA, and reflects the mutual understanding of the Carrier and CBP. CBP will commence applying the APL and APL2 set forth in this MOU (sections 4.6 and 4.7) on April 23, 2010, regardless of the date the MOU is accepted by CBP (section 4.10). Acceptance occurs upon the signature of the CBP Director, Fines, Penalties and Forfeitures (FP&F) Division, Office of Field Operations (OFO) (sections 4.9 and 4.10). All other terms of the MOU, including automatic processing of fines reduction, take effect on the date CBP accepts the MOU. The MOU shall be a valid working document for an indefinite period, subject to the MOU's terms relating to cancellation by either party. The Carrier's compliance with the MOU shall be evaluated periodically. CBP will notify the Carrier in writing of its PL and the applicable APL for each rating period. Accordingly, the Carrier agrees to begin prompt and complete implementation of all of the terms listed in this MOU. With 15 days written notice, either party may terminate this MOU, for any reason, including CBP's termination of this

MOU for the Carrier's failure to abide by its terms. Termination for failure to abide by the MOU's terms may be Carrier-wide or limited to one or more of a Carrier's port(s) of embarkation. Any subsequent fines will be imposed for the full penalty amount.

**Memorandum of Understanding**

*1. Introduction*

1.1 The Director, FP&F Division, OFO, shall exercise oversight regarding the Carrier's compliance with this MOU.

1.2 The Carrier agrees to begin implementation of the provisions set forth below immediately upon acceptance of the MOU by CBP, as outlined in this MOU (section 4.10).

1.3 The Carrier agrees to permit CBP to monitor its compliance with the terms of this MOU. The Carrier shall permit CBP to conduct an inspection of the Carrier's document screening procedures at ports of embarkation before arrival in the United States, to determine compliance with the procedures listed in this MOU, to the extent permitted by competent local authorities responsible for port access and security. If necessary, the carrier agrees to use its good offices to obtain this permission.

1.4 The Carrier agrees to designate a coordinator to be the contact point for all issues arising from the implementation of this MOU. The Carrier shall provide CBP with the coordinator's name, title, mailing address, telephone and facsimile number, and email address. If the contact information for the carrier should change, the carrier agrees to promptly notify CBP of the changes.

1.5 The Carrier shall require that all of its employees, including its representatives and contract staff, follow the provisions of this MOU, and comply with all requirements of the INA. The Carrier further agrees to cooperate with CBP in an open two-way exchange of pertinent information.

*2. Prompt Payment*

2.1 CBP agrees to authorize a reduction in penalty amount based on compliance with this MOU only if the Carrier has a satisfactory payment record with CBP for all administrative fines, liquidated damages, and user fees. This includes interest and penalties that have been imposed by either a formal order or final decision, except cases on appeal. The carrier agrees to present a satisfactory payment record of its user fee account prior to its applying to become signatory to the MOU.

2.2 The Carrier agrees to promptly pay all administrative fines, liquidated damages, and user fees. This includes interest and penalties that are imposed by a formal order or a final decision during the time this MOU is in effect, except cases on appeal. Prompt payment for the purposes of this MOU means payments made within 30 days from the date of billing.

2.3 CBP shall periodically review the Carrier's record of prompt payment for administrative fines, liquidated damages, and user fees including interest and penalties. Failure to make prompt payment will result in the loss of benefits under the MOU.

2.4 The Carrier agrees to select a person from its organization as a contact point for the CBP FP&F Office for the resolution of payment issues. The Carrier shall provide FP&F with the contact person's name, title, address, telephone and facsimile number, and email address and will report promptly to CBP any changes in this information.

*3. Carrier Agreement*

3.1 The Carrier shall refuse to knowingly carry any improperly documented passenger.

3.2 The Carrier agrees to verify that trained personnel examine and screen all passengers' travel documents to confirm that the passenger is properly documented for the purpose of his/her travel to the United States and to confirm, to the best of their ability, that the passport, visa (if one is required), or other travel documents presented are valid and unexpired, and that the passenger, and any accompanying passenger named in the passport, is the apparent rightful holder of the document.

3.3 The Carrier agrees to conduct additional document checks at the boarding gate, to verify that all passengers, including transit passengers, are in possession of their own proper boarding pass and travel documents as they board the aircraft, and to identify any fraudulent documents.

3.4 The Carrier is responsible for screening all passengers boarding their aircraft, regardless of who was the issuing agent for the ticket or what flight number exists on the tickets.

3.5 The Carrier agrees to permit CBP officers, Department of State (DOS) Consular officials, or other U.S. Government (USG) officials to screen passengers' travel documents before or after the Carrier has screened those passengers for boarding, to the extent permitted by the competent local authorities responsible for port access and security. If necessary, the carrier agrees to use its good offices to obtain this permission.

3.6 In cases involving suspected fraud, the Carrier shall assess the adequacy of the documents presented, question the individual(s) or take other appropriate steps to corroborate the identity of the passengers, such as requesting secondary identification or contacting CBP for advice and assistance.

3.7 Following notification by CBP, or its representative, about a particular passenger or passengers, the carrier shall refuse to knowingly transport any such individual determined by a CBP official not to be in possession of proper documentation to enter or pass through the United States. Transporting any improperly documented passenger so identified may result in a civil penalty. At locations where there is no CBP presence, carriers may contact the Regional Carrier Liaison Group, request local DOS Consular officials or other USG officials to examine and advise on authenticity of passenger documentation. DOS Consular officials and other USG officials will act in an advisory capacity only.

3.8 Where the Carrier has refused to board a passenger based on a suspicion of fraud or other lack of proper documentation, the Carrier agrees to make every effort to notify other carriers at that port of embarkation about that passenger, to the extent permitted by competent local authorities responsible for port access and security. If necessary, the carrier agrees to use its good offices to obtain this permission.

3.9 The Carrier agrees to provide CBP-required information regarding the date and number of improperly documented aliens intercepted by the Carrier at the port(s) of embarkation.

3.10 The Carrier shall maintain a reasonable level of security designed to prevent passengers from circumventing any Carrier document checks. The Carrier shall also maintain an adequate level of security designed to prevent stowaways from boarding the Carrier's aircraft or vessel.

3.11 The Carrier agrees to participate in CBP training programs and utilize CBP Carrier Information Guides and other information provided by CBP to assist the Carrier in determining documentary requirements and detecting fraud.

3.12 The Carrier agrees to make CBP Carrier Information Guides and other information provided by CBP readily available for use by Carrier personnel at every port of embarkation.

3.13 The Carrier agrees to make appropriate use of technological aids in screening documents including ultra violet lights, magnification devices, or other equipment identified by CBP to screen documents.

3.14 The Carrier agrees to expeditiously respond to requests from the appropriate CBP official(s) for information pertaining to the identity, itinerary, and seating arrangements of individual passengers. The Carrier also agrees to provide manifests and other information, required to identify passengers, information and evidence regarding the identity and method of concealment of a stowaway, and information regarding any organized alien smuggling activity.

3.15 Upon arrival at a CBP port of entry (POE) and prior to inspection, the Carrier agrees to notify CBP personnel at the POE of any unusual circumstances, incidents, or problems at the port of embarkation involving the transportation of improperly documented aliens to the United States.

3.16 The Carrier will comply with the electronic submission of manifests. The provisions setting forth requirements applicable to carriers regarding the electronic transmission of arrival manifests covering passengers and crew members under section 231 of the INA are set forth in 19 CFR 4.7b (passengers and crew members onboard vessels) and in 19 CFR 122.49a (passengers onboard aircraft) and 122.49b (crew members onboard aircraft). The carrier will also comply with the provisions setting forth requirements applicable to commercial carriers regarding the electronic transmission of departure manifests covering passengers and crewmembers under section 231 of the INA which are set forth in 19 CFR 4.64 (passengers and crew members onboard vessels) and in 19 CFR 122.75a (passengers onboard aircraft) and 122.75b (crew members onboard aircraft).

3.17 The Carrier agrees to notify the Director, FP&F Division, in writing, if it is unable to comply with any section of the MOU because of local law or local competent authority. The Carrier shall list the specific section of the MOU with which it is unable

to comply and, to be in compliance with the MOU, shall notify CBP within ten (10) days after becoming cognizant of this prohibition to comply. Further, in such instances the Carrier shall propose alternative means for meeting the objective sought by the paragraph in question. For instance, where review of foreign boarding procedures cannot be performed by CBP personnel, the Carrier could provide that an audit of its operation be performed by local authorities or by private auditors.

*4. CBP Agreement*

4.1 The Director, FP&F Division, Office of Field Operations, will serve as a coordinator for all fines issues arising from the implementation of this MOU. The Director, Alien Smuggling Interdiction (ASI), will serve as coordinator for all ASI issues arising from this MOU. The Director, Fraud Document Analysis Unit (FDAU) and the Carrier Liaison Program (CLP), and the Director, Passenger Programs, Immigration Advisory Program (IAP), as appropriate, will coordinate all CBP training, airline liaison officer, and on-site airport interdiction issues arising from this MOU. CBP shall provide the carrier with these offices' coordinator's names, addresses, telephone and facsimile numbers, and email addresses.

4.2 CBP agrees to publish a Carrier Information Guide to be used by Carrier personnel at all ports of embarkation prior to boarding passengers destined to the United States. The Carrier Information Guide will function as a resource to assist Carrier personnel in determining proper documentary requirements and detecting fraud.

4.3 CBP agrees to develop a formal, continuing training program to assist carriers in their screening of passengers. Carriers may provide input to CBP concerning specific training needs that they have identified. Initial and refresher training, as necessary, will be conducted by CBP or Carrier representatives trained by CBP.

4.4 To the extent possible, CBP, DOS Consular officials, or other USG personnel will consult, support, and assist the Carrier's efforts to screen passengers prior to boarding.

4.5 CBP shall determine each Carrier's Performance Level (PL), based on statistical analysis of the Carrier's performance, as a means of evaluating whether the Carrier has successfully screened all of its passengers in accordance with 8 CFR 273.3 and this MOU. The PL is determined by taking the number of each Carrier's violations of section 273 of the INA for a fiscal year and dividing this by the number of documented nonimmigrants transported by the Carrier and multiplying the result by 1,000. Documented nonimmigrants are those that are subject to the Arrival/Departure Record (CBP Form I–94 or I–94W) requirement, either to submit one upon arrival at a U.S. port or to have an electronic equivalent and corresponding admission record created at time of arrival based on information submitted electronically prior to travel.

4.6 CBP shall establish an Acceptable Performance Level (APL), based on statistical analysis of the performance of all carriers, as a means of evaluating whether the Carrier has successfully screened all of its passengers in accordance with 8 CFR 273.3 and this MOU. The APL shall be determined by taking the total number of all carrier violations of section 273 of the INA for a fiscal year (normally the fiscal year previous to the year the APL is calculated) and dividing this by the total number of documented nonimmigrants (as described in paragraph 4.5 above) transported by all carriers for that same fiscal year and multiplying the result by 1,000. CBP will then evaluate the result of that calculation and either adopt it or adjust it to achieve what it deems to be the optimum measure that encourages carriers to improve their screening operations with a reasonably challenging and reasonably attainable performance target.

4.7 CBP shall establish a Second Acceptable Performance Level (APL2), based on statistical analysis of the performance of all carriers operating at or better than the APL, as a means of further evaluating carrier success in screening its passengers in accordance with 8 CFR 273.3 and this MOU. Using carrier statistics for only those carriers which are at or better than the APL, the APL2 shall be determined by taking the total number of these carrier violations of section 273 of the INA for a fiscal year (normally the fiscal year previous to the year the APL2 is calculated) and dividing by the total number of documented nonimmigrants (as described in paragraph 4.5 above) transported by these carriers for that same year and multiplying the result by 1,000. CBP will then evaluate the result of that calculation and either adopt it or adjust it to achieve what it deems to be the optimum measure that encourages carriers to improve their screening operations with a reasonably challenging and reasonably attainable performance target.

4.8 The PL, APL, and APL2 may be recalculated periodically (including yearly) as deemed necessary by CBP, based on Carrier performance during the previous period(s).

4.9 The Director, FP&F Division, will review the signed MOU submitted by any carrier seeking to participate in the automatic fines reduction process under this MOU regardless of whether that carrier's PL meets or exceeds the APL at the time of submission. The Director will consider evidence submitted by the carrier that demonstrates that the carrier has taken extensive measures to prevent the transport of improperly documented passengers to the United States. This evidence may include, but is not limited to, the following: (1) Information regarding the Carrier's training program, including participation of the Carrier's personnel in any CBP, DOS, or other training programs and the number of employees trained; (2) evidence that the carrier operates efficient and effective boarding gate checks to deter boarding pass swaps and to verify that all passengers' documents, including transit passengers, have been examined; (3) information regarding the date and number of improperly documented aliens intercepted by the Carrier at the port(s) of embarkation, including, but not limited to, the aliens' name, date of birth, passport nationality, passport number or other travel document information, and reason boarding was refused, if otherwise permitted under local law; and (4) other evidence, including screening procedure enhancements, technological or otherwise, to demonstrate the Carrier's good faith efforts to properly screen passengers destined to the United States. If the Director is satisfied with the carrier's evidence, and is otherwise satisfied that the carrier is capable of meeting the terms and conditions contained in this MOU, CBP will accept the carrier's signed MOU, such acceptance evidenced by the Director's signature (section 4.10).

4.10 CBP will commence applying the APL and APL2 set forth in this MOU (sections 4.6 and 4.7) on April 23, 2010 regardless of the date the MOU is accepted by CBP. All other terms of the MOU, including automatic processing of fines reduction, take effect on the date CBP accepts the MOU. Acceptance occurs upon the signature of the Director, FP&F Division.

4.11 Carriers whose PL is at or better than the APL are eligible to receive an automatic 25 percent reduction, if signatory to and in compliance with this MOU, on fines imposed under section 273 of the INA for periods determined by CBP.

4.12 Carriers whose PL is at or better than the APL2 are eligible to receive an automatic 50 percent reduction, if signatory to and in compliance with this MOU, on fines imposed under section 273 of the INA for periods determined by CBP.

4.13 Carriers whose PL is below the APL are eligible to receive an automatic 25 percent reduction, if signatory to and in compliance with this MOU, on fines imposed under section 273 of the INA for periods determined by CBP, provided that CBP may terminate the MOU if it deems that the carrier's performance below the APL is not justified in the circumstances or that violations of section 273 of the INA are excessive.

4.14 The Carrier may defend against imposition of, or seek a waiver or further reduction of, an administrative fine if the case is timely defended pursuant to 8 CFR part 280, in response to the Form I–79, Notice of Intent to Fine, and the Carrier establishes that further mitigating or extenuating circumstances existed at the time of the violation that warrant the relief sought.

Dated: _____

(Carrier Representative's Signature)

_____

(Title)

_____

(Carrier Name)

Dated: _____

Director, FP&F Division, OFO

Customs and Border Protection.

[FR Doc. 2010–3243 Filed 2–19–10; 8:45 am]

BILLING CODE 9111–14–P

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

**[Docket No. FR–5376–N–07]**

## Rent Schedule—Low Rent Housing

**AGENCY:** Office of the Chief Information Officer, HUD

**ACTION:** Notice.

**SUMMARY:** The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

HUD requires project owners to submit information when requesting adjustments to established rents and utility allowances. HUD uses the information to ensure that rent changes are in accordance with HUD regulatory and administrative policy.

**DATES:** *Comments Due Date: March 24, 2010.*

**ADDRESSES:** Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval Number (2502–0012) and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202–395–5806.

**FOR FURTHER INFORMATION CONTACT:** Leroy McKinney Jr., Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; e-mail Leroy McKinney Jr. at *Leroy.McKinneyJr@hud.gov* or telephone (202) 402–5564. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Mr. McKinney.

**SUPPLEMENTARY INFORMATION:** This notice informs the public that the Department of Housing and Urban Development has submitted to OMB a request for approval of the Information collection described below. This notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This notice also lists the following information:

*Title of Proposal:* Rent Schedule-Low Rent Housing.

*OMB Approval Number:* 2502–0012.

*Form Numbers:* HUD–92458.

*Description of the Need for the Information and Its Proposed Use:* HUD requires project owners to submit information when requesting adjustments to established rents and utility allowances. HUD uses the information to ensure that rent changes are in accordance with HUD regulatory and administrative policy.

*Frequency of Submission:* On occasion, annually.

| | Number of respondents | Annual responses | × | Hours per response | = | Burden hours |
|---|---|---|---|---|---|---|
| Reporting Burden | 5,669 | 1 | | 5.33 | | 30,216 |

*Total Estimated Burden Hours:* 30,216.

*Status:* Extension of a currently approved collection.

**Authority:** Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: February 16, 2010.

**Leroy McKinney, Jr.,**

*Departmental Reports Management Officer, Office of the Chief Information Officer.*

[FR Doc. 2010–3403 Filed 2–19–10; 8:45 am]

**BILLING CODE 4210–67–P**

## DEPARTMENT OF THE INTERIOR

### U.S. Geological Survey

### Proposed Information Collection; Nonindigenous Aquatic Species Sighting Reporting Form

**AGENCY:** United States Geological Survey (USGS), Interior.

**ACTION:** Notice of a new collection; request for comments.

**SUMMARY:** We (the U.S. Geological Survey) will ask the Office of Management and Budget (OMB) to approve the information collection (IC) described below. As required by the Paperwork Reduction Act of 1995 and as a part of our continuing effort to reduce paperwork and respondent burden, we invite the general public and other federal agencies to take this opportunity to comment on this IC. We may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

**DATES:** You must submit comment on or before April 23, 2010.

**ADDRESSES:** Send your comments on the ICR to Phadrea Ponds, Information Collection Clearance Officer, U.S. Geological Survey, 2150–C Centre Avenue, Fort Collins, CO 80526 (mail); *pponds@usgs.gov.*

**FOR FURTHER INFORMATION CONTACT:** To request additional information about this ICR, please contact USGS Pam Fuller at 7920 NW. 71st Street, Gainesville, Florida 32653 (mail); *pam_fuller@usgs.gov* (e-mail); or by telephone (352) 264–3481.

**SUPPLEMENTARY INFORMATION:**

#### I. Abstract

Information is collected from the public regarding the distribution of nonindigenous aquatic species, primarily fish, in open waters of the United States. This is vital information for early detection and rapid response for the possible eradication of organisms that may be considered invasive in a natural environment such as a lake, river, stream, and pond. These species are not native to the environment in which they are now found. Nonindigenous species can and do have negative impacts on our natives species. Early detection is a major focus of the Bureau. The public can help us with this task by serving as the "eyes and ears" for our Program because the USGS cannot possibly be everywhere, observing and monitoring all open waters for nonindigenous aquatic species.

The USGS does not actively solicit this information; a form is posted on our Web site to be completed with biologic, geographic and sender information. It is completely voluntary and sent to us only when the public has encountered a nonindigenous aquatic organism, usually through fishing or some other outdoor recreational activity and they chose to let us know.

#### II. Data

*OMB Control Number:* None. This is a new collection.

*Title:* Nonindigenous Aquatic Species Sighting Reporting Form.

*Type of Request:* New.

*Affected Public:* State/local/Tribal/Academia; Individual, private.

*Respondent's Obligation:* Voluntary.

*Frequency of Collection:* On occasion.

*Estimated Annual Number of Respondents:* 4,500.

*Estimated Total Annual Responses:* 4,500.

*Estimated Time per Response:* 10 minutes.

*Estimated Total Annual Burden Hours:* 750 hours.

**III. Request for Comments**

We invite comments concerning this IC on: (a) Whether the proposed collection of information is necessary for the agency to perform its duties, including whether the information is useful; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, usefulness, and clarity of the information to be collected; and (d) ways to minimize the burden on the respondents, including the use of automated collection techniques or other forms of information technology.

Comments that you submit in response to this notice are a matter of public record. Before including your address, phone number, e-mail address or other personal identifying information in your comment, you should be aware that your entire comment including your personal identifying information, may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Dated: February 2, 2010.

**Susan D. Haseltine,**

*Associate Director for Biology, U.S. Geological Survey.*

[FR Doc. 2010–3334 Filed 2–19–10; 8:45 am]

**BILLING CODE 4311–AM–P**

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## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[LLWO270000–L63500000.PPN0000; OMB Control Number 1004–0058]**

### Information Collection; Timber Export Reporting and Substitution Determination

**AGENCY:** Bureau of Land Management.

**ACTION:** 30-day Notice and Request for Comments.

**SUMMARY:** The Bureau of Land Management (BLM) has submitted an information collection request to the Office of Management and Budget (OMB) for a 3-year extension of OMB Control Number 1004–0058 under the Paperwork Reduction Act. The respondents are individuals and corporations who provide information to the BLM in support of applications which pertain to timber export reporting and substitution determination requirements.

**DATES:** The OMB is required to respond to this information collection request within 60 days but may respond after 30 days. Therefore, written comments should be received on or before March 24, 2010 in order to be assured of consideration.

**ADDRESSES:** You may submit comments directly to the Desk Officer for the Department of the Interior (OMB #1004–0058), Office of Management and Budget, Office of Information and Regulatory Affairs, fax 202–395–5806, or by electronic mail at *oira_docket@omb.eop.gov*. Please mail a copy of your comments to: Bureau Information Collection Clearance Officer (WO–630), Department of the Interior, 1849 C Street, NW., Mail Stop 401 LS, Washington, DC 20240. You may also send a copy of your comments by electronic mail to *jean_sonneman@blm.gov.*

**FOR FURTHER INFORMATION CONTACT:** Scott Lieurance, Bureau of Land Management, Chief, Division of Forestry, at (202) 912–7246. Persons who use a telecommunication device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) on 1–800–877–8339, 24 hours a day, seven days a week, to contact Mr. Lieurance.

**SUPPLEMENTARY INFORMATION:**

*Title:* Timber Export Reporting and Substitution Determination (43 CFR 5420).

*OMB Number:* 1004–0058.

*Forms:* 5450–17 (Export Determination), and 5460–17 (Substitution Determination).

*Abstract:* The Bureau of Land Management proposes to extend the currently approved collections of information, which enables the agency to govern the compliance of Federal timber purchase with timber export restrictions. Also to determine whether or not there was a substitution of Federal timber for exported private timber.

*60-Day Notice:* On August 20, 2009, the BLM published a 60-day notice (74 FR 42090) requesting comments on the proposed information collection. The comment period ended on October 19, 2009. We did not receive any comments from the public in response to this notice or unsolicited comments from respondents covered under these regulations.

*Current Action:* This proposal is being submitted to extend the expiration date of February 28, 2010.

*Type of Review:* 3-year extension.

*Affected Public:* Individuals and corporations.

*Obligation to Respond:* Required to obtain or retain benefits.

*Annual Responses:* 2.

*Annual Burden Hours:* 2.

There is no filing fee associated with each of these information collections. The BLM requests comments on the following subjects:

1. Whether the collection of information is necessary for the proper functioning of the BLM, including whether the information will have practical utility;

2. The accuracy of the BLM's estimate of the burden of collecting the information, including the validity of the methodology and assumptions used;

3. The quality, utility and clarity of the information to be collected; and

4. How to minimize the information collection burden on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other forms of information technology.

Please send comments to the addresses listed under **ADDRESSES**. Please refer to OMB control number 1004–0058 in your correspondence. Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

**Jean Sonneman,**

*Acting Information Collection Clearance Officer.*

[FR Doc. 2010–3349 Filed 2–19–10; 8:45 am]

**BILLING CODE 4310–84–P**

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[CACA 47740, LLCAD07000, L51030000.FX0000, LVRAB109AA01]**

### Notice of Availability of the Draft Environmental Impact Statement/Staff Assessment for the Stirling Energy Systems Solar Two Project and Possible California Desert Conservation Area Plan Amendment

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of Availability.

**SUMMARY:** In accordance with the National Environmental Policy Act (NEPA) of 1969, as amended, and the Federal Land Policy and Management Act (FLPMA) of 1976, as amended, the Bureau of Land Management (BLM) and the California Energy Commission (CEC) have prepared a Draft Environmental Impact Statement (EIS), Draft California Desert Conservation Area (CDCA) Plan Amendment, and Staff Assessment (SA) as a joint environmental analysis document for the Stirling Energy Systems (SES) Solar Two Project and by this notice are announcing the opening of the comment period.

**DATES:** To ensure that comments will be considered, the BLM must receive written comments on the Draft EIS/SA within 90 days following the date the Environmental Protection Agency publishes its Notice of Availability in the **Federal Register**. The BLM will announce future meetings or hearings and any other public involvement activities at least 15 days in advance through public notices, media releases, and/or mailings.

**ADDRESSES:** You may submit comments related to the SES Solar Two Project by any of the following methods:

- *Web site: http://www.energy.ca.gov/sitingcases/solartwo/index.html.*
- *E-mail: Cmeyer@energy.state.ca.us.*
- *Fax:* (818) 597–8001.
- *Mail or other delivery service:* Christopher Meyer, Project Manager, Siting, Transmission and Environmental Protection Division, California Energy Commission, 1516 Ninth Street, MS–15, Sacramento, California, 95814.

Copies of the SES Solar Two Draft EIS/SA are available from the CEC at the above address and in the BLM El Centro Field Office, 1661 S. 4th Street, El Centro, California, 92243.

**FOR FURTHER INFORMATION CONTACT:** For further information contact Jim Stobaugh, BLM Project Manager, by telephone at (775) 861–6478; through mail at Bureau of Land Management, P.O. Box 12000, Reno, Nevada 89520; or by e-mail at *Jim_Stobaugh@blm.gov.*

**SUPPLEMENTARY INFORMATION:** SES has submitted an application to the BLM for development of the proposed SES Solar Two Project, a concentrated solar electrical generating facility capable of generating 750 megawatts of renewable power. The entire project encompasses approximately 6,144 acres of BLM-managed lands. The project site is in Imperial County, California, approximately four miles east of Ocotillo and 14 miles west of El Centro. Generally, the site is bounded on the north by the San Diego Metropolitan Transit System/San Diego & Arizona Eastern Railway and on the south by Interstate 8. The eastern boundary is approximately 1.5 miles west of Dunaway Road and the western boundary is the westerly section line in Section 22 in Township 16 South, Range 12 East. An additional 110-acre construction area is proposed east of Dunaway Road.

SES proposes to use SunCatcher technology on the site. A SunCatcher is a 25-kilowatt solar dish designed to automatically track the sun and collect and focus solar energy onto a power conversion unit (PCU), which generates electricity. The system consists of a 38-foot high by 40-foot wide solar concentrator in a dish structure that supports an array of curved glass mirror facets. These mirrors collect and concentrate solar energy onto the solar receiver of the PCU.

The project also includes an electrical transmission line, water supply pipeline, and an access road. A new 230-kilovolt (kV) substation would be constructed in approximately the center of the project site near a main services complex that is also part of the proposal. The substation would be connected to the existing San Diego Gas and Electric Imperial Valley Substation by about a 10.3-mile long, double-circuit 230 kV transmission line. Approximately 7.6 miles of this new line would be outside the project area but is included in the analysis. The transmission line would require the use of approximately 92 acres.

The BLM's purpose and need for the Solar Two project is to respond to SES' application under Title V of FLPMA (43 U.S.C. 1761) for a right-of-way (ROW) grant to construct, operate, and decommission a solar thermal facility on public lands in compliance with FLPMA, BLM ROW regulations, and other applicable Federal laws. The BLM will decide whether to approve, approve with modification, or deny a ROW grant to SES for the proposed Solar Two project. The BLM will also consider amending the CDCA Plan in this analysis. The CDCA Plan (1980, as amended), while recognizing the potential compatibility of solar generation facilities on public lands, requires that all sites associated with power generation or transmission not identified in that plan be considered through the plan amendment process. If the BLM decides to grant a ROW, the BLM would also amend the CDCA Plan as required.

In the draft EIS analysis, the BLM's proposed action is to authorize the SES Solar Two project and approve a CDCA Plan amendment in response to the application received from SES. In addition to the proposed action, the BLM is analyzing the following action alternatives:

- Authorize the proposed action;
- Authorize a smaller 300 MW alternative and amend the CDCA Plan;
- Authorize the project as described in the Drainage Avoidance #1 alternative that may reduce impacts to primary water drainages of the U.S. and amend the CDCA Plan; and
- Authorize the project as described in the more restrictive Drainage Avoidance #2 alternative that may substantially reduce impacts in eastern and western high flow water drainages of the U.S. and amend the CDCA Plan.

As required under the California Environmental Quality Act (CEQA) and NEPA, the EIS analyzes three no action alternatives:

- Deny the application and not amend the CDCA Plan;
- Deny the project but amend the CDCA Plan to allow other solar energy power generation projects on the project site; and
- Deny the project and amend the CDCA Plan to prohibit solar energy power generation projects on the project site.

The BLM will take into consideration the provisions of the Energy Policy Act of 2005 and Secretarial Orders 3283 *Enhancing Renewable Energy Development on the Public Lands* and 3285 *Renewable Energy Development by the Department of the Interior* in responding to the SES application.

The BLM has entered into a Memorandum of Understanding (MOU) with the CEC to conduct a joint environmental review of solar thermal projects that are proposed on Federal land managed by the BLM with the CEC as the lead agency preparing the environmental documents. The BLM and CEC have agreed through the MOU to conduct joint environmental review of the project in a single combined NEPA/CEQA process and document. In

addition, the BLM and the U.S. Army Corps of Engineers (Corps) entered into an MOU to formalize the Corps as a Federal cooperating agency in developing the EIS. The BLM and CEC, in coordination with the Corps, have prepared the Draft EIS/SA evaluating the potential impacts of the proposed Solar Two Project on air quality, biological resources, cultural resources, water resources, geological resources and hazards, land use, noise, paleontological resources, public health, socioeconomics, soils, traffic and transportation, visual resources, and other resources. The Corps requirements under the Clean Water Act (CWA), Section 404(b)(1) Guidelines are to identify and authorize only the Least Environmentally Damaging Practicable Alternative which maximizes avoidance and minimization of impacts to aquatic resources of the U.S. The Corps and the applicant are working with the BLM and CEC to identify the project proposal that would reasonably comply with the Corps' requirements under the CWA and 404(b)(1) Guidelines. The applicant has applied to the Department of Energy (DOE) for a loan guarantee under Title XVII of the Energy Policy Act of 2005, as amended by Section 406 of the American Recovery and Reinvestment Act of 2009, Public Law 111–5. Should the DOE decide to enter into negotiation of a possible loan guarantee with the applicant, the DOE would become a cooperating agency in developing the final EIS. A Notice of Intent to Prepare an EIS/SA and Proposed Land Use Plan Amendment for the Proposed SES Solar Two Project in Imperial County, California was published October 17, 2008 (see 73 FR 61902). The BLM held two public scoping meetings in El Centro, California, on November 24 and December 18, 2008. The formal scoping period ended January 2, 2009.

Please note that public comments will be available for public review and disclosure at the above address during regular business hours (8 a.m. to 4 p.m.), Monday through Friday, except holidays.

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

**Authority:** 40 CFR 1506.6; 40 CFR 1506.10; and 43 CFR 1610.2.

**Vickie Weed,**

*Field Manager, El Centro Field Office.*

[FR Doc. 2010–3443 Filed 2–19–10; 8:45 am]

BILLING CODE 4310–40–P

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

**[FWS–R2–ES–2010–N016; 20124–1113–0000–C2]**

### Endangered and Threatened Wildlife and Plants; Rio Grande Silvery Minnow (Hybognathus amarus) Recovery Plan, First Revision

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of document availability: revised recovery plan.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service), announce the availability of the Rio Grande Silvery Minnow (*Hybognathus amarus*) Recovery Plan, First Revision. The Rio Grande silvery minnow was listed as endangered in 1994, its first recovery plan was approved in 1999, and critical habitat was designated in 2003.

**ADDRESSES:** An electronic copy of the recovery plan can be obtained from our website at *http://www.fws.gov/southwest/es/Library/*. Copies of the recovery plan are also available by request. To obtain a copy, contact Jennifer Bachus by U.S. mail at U.S. Fish and Wildlife Service, New Mexico Ecological Services Field Office, 2105 Osuna Road, New Mexico 87113; by phone at (505) 761–4714; or by e-mail at *Jennifer_Bachus@fws.gov.*

**FOR FURTHER INFORMATION CONTACT:** Jennifer Bachus (see **ADDRESSES**).

**SUPPLEMENTARY INFORMATION:**

#### Background

The Rio Grande silvery minnow was listed as federally endangered in 1994 (July 20, 1994; 59 FR 36988) and critical habitat was designated in 2003 (February 19, 2003; 68 FR 8087). The species was extirpated from about 93 percent of its historical range, currently persisting in only one 280-kilometer (km) (174-mile (mi)) reach of the Rio Grande River in New Mexico, downstream of Cochiti Dam to the headwaters of Elephant Butte Reservoir. In December 2008, silvery minnows were introduced into the Rio Grande River near Big Bend, Texas, as a nonessential, experimental population under section 10(j) of the ESA (December 8, 2008; 73 FR 74357).

Throughout much of its historic range, the decline of the Rio Grande silvery minnow is attributed primarily to destruction and modification of its habitat due to dewatering and diversion of water, water impoundment, and modification of the river (channelization). Competition and predation by introduced non-native species, water quality degradation, and other factors also have contributed to its decline.

The Endangered Species Act of 1973 (Act), as amended (16 U.S.C. 1531 *et seq.*), requires the development of recovery plans for listed species, unless such a plan would not promote the conservation of a particular species. Recovery plans help guide the recovery effort by describing actions considered necessary for the conservation of the species, establishing criteria for downlisting or delisting, and estimating time and costs for implementing the recovery measures. The recovery criteria form the basis from which to gauge the species' recovery and subsequent risk of extinction.

The Rio Grande Silvery Minnow Recovery Plan includes updated scientific information about the species and provides criteria and actions needed to downlist and delist the species. We may consider downlisting the Rio Grande silvery minnow from endangered to threatened when three populations (including a stable middle Rio Grande population and at least two additional populations that are self-sustaining) have been established within the historical range of the species and have been maintained for at least five years, as well as habitat sufficient to support three such populations. We may consider delisting the species when three self-sustaining populations have been established within the historical range of the species and have been maintained for at least 10 years, as well as habitat sufficient to support three such populations. The revised recovery criteria provide objective measures by which populations of silvery minnow is determined to be self-sustaining.

The Rio Grande Silvery Minnow Recovery Plan also describes actions needed to recover the Rio Grande silvery minnow. These include developing a thorough knowledge of the Rio Grande silvery minnow's life history, ecology, and behavior, and the current status of its habitat. It is also necessary to restore, protect, and alter habitats as necessary to alleviate threats to the Rio Grande silvery minnow, to ensure the survival of the species in its current habitat, and to reestablish the species in suitable habitats within its historical range. By implementation and

maintaining an adaptive management program, appropriate research and management activities will be implemented in a timely manner to achieve recovery of the Rio Grande silvery minnow. Lastly, recovery actions also include designing and implementing public awareness and education programs about this species.

Section 4(f) of the Act requires that we provide public notice and an opportunity for public review and comment during recovery plan development. In fulfillment of this requirement, we made the draft revision of the recovery plan for Rio Grande silvery minnow available for public comment from January 18, 2007, through April 18, 2007 (January 18, 2007; 72 FR 2301). We also conducted peer review at this time. Revised recovery criteria were developed in response to public and peer review comments on the original draft plan. We released these revised criteria for a second round of public comment from April 9, 2009, through May 26, 2009 (April 9, 2009; 74 FR 16232). We also conducted additional peer review. After consideration of comments received during both public and peer review comment periods, the recovery plan has been updated and finalized.

**Authority:** The authority for this action is section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: January 15, 2010.

**Benjamin N. Tuggle,**

*Regional Director, Region 2.*

[FR Doc. 2010–3343 Filed 2–19–10; 8:45 am]

**BILLING CODE 4310–55–P**

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[LLCONO3400 L17110000.AL0000]**

### Notice of Establishment of the Dominguez-Escalante National Conservation Area Advisory Council (Colorado)

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice.

**SUMMARY:** This notice is published in accordance with Section 9(a)(2) of the Federal Advisory Committee Act of 1972. Notice is hereby given that the Secretary of the Interior (Secretary) has established the Bureau of Land Management's Dominguez-Escalante National Conservation Area Advisory Council.

**FOR FURTHER INFORMATION CONTACT:** Allison Sandoval, Legislative Affairs and Correspondence (600), Bureau of Land Management, 1620 L Street, NW., MS–LS–401, Washington, DC 20036, telephone (202) 912–7434.

**SUPPLEMENTARY INFORMATION:** The purpose of the Council is to provide advice to the Secretary with respect to the preparation and implementation of the management plan for the long term protection and management of the Dominguez-Escalante National Conservation Area.

**Certification Statement**

I hereby certify that the establishment of the Dominguez-Escalante National Conservation Area Advisory Council is necessary and in the public interest in connection with the Secretary of the Interior's responsibilities to manage the lands, resources, and facilities administered by the Bureau of Land Management.

Dated: February 5, 2010.

**Ken Salazar,**

*Secretary of the Interior.*

[FR Doc. 2010–3388 Filed 2–19–10; 8:45 am]

**BILLING CODE 4310–JB–P**

## DEPARTMENT OF JUSTICE

### Notice of Lodging of Consent Decree Pursuant to the Clean Water Act

Notice is hereby given that on January 19, 2010, a proposed Consent Decree in *United States* v. *Magellan Pipeline Company LP,* No. 10–CV–28–CVE–FHM, was lodged with the United States Court for the Northern District of Oklahoma.

In this action, the United States sought the penalties pursuant to Section 311 of the Clean Water Act, 33 U.S.C. 1321 against Magellan Pipeline Company, LP. The Complaint alleges that a discharge of gasoline occurred in Oologah, Oklahoma on January 5, 2008 from a pipeline owned and operated by Defendant Magellan. Pursuant to the proposed Consent Decree, the Settling Defendants will pay to the United States a civil penalty of $418,000 for the discharge. The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and either e-mailed to *pubcomment-ees.enrd@usdoj.gov* or mailed to P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States* v. *Magellan Pipeline Company,* (N.D. Okla.) No. 10–CV–28–CVE–FHM, D.J. Ref. 90–5–1–1–09674.

During the public comment period, the Consent Decree may be examined at the Office of the United States Attorney, Northern District of Oklahoma, 110 W. 7th Street, Suite 300, Tulsa, OK 74119. The Consent Decree may also be examined on the following Department of Justice Web site, *http://www.usdoj.gov/enrd/Consent_Decrees.html.* A copy of the Consent Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $3.75 (25 cents per page reproduction cost) payable to the U.S. Treasury.

**Maureen Katz,**

*Assistant Section Chief.*

[FR Doc. 2010–3318 Filed 2–19–10; 8:45 am]

**BILLING CODE 4410–15–P**

## DEPARTMENT OF JUSTICE

### Notice of Lodging of Consent Decree Under the Comprehensive Environmental Response, Compensation, and Liability Act

Notice is hereby given that on January 29, 2010, a proposed consent decree in *United States* v. *Reading Company,* Civil Action No. 10–413 was lodged with the United States District Court for the Eastern District of Pennsylvania.

In this action the United States sought reimbursement of response costs incurred in response to the release or threatened release of hazardous substances at the Modena Yard site in Chester County, Pennsylvania. The consent decree resolves the defendants' liability for the response costs specified in the appendix to the consent decree in exchange for payment of $93,295.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the consent decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and either e-mailed to *pubcomment-ees.enrd@usdoj.gov* or mailed to P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States* v. *Reading Company,* D.J. Ref. 90–11–3–08567/3.

The consent decree may be examined at U.S. EPA Region 3, 1650 Arch Street, Philadelphia, Pennsylvania. During the public comment period, the consent decree, may also be examined on the following Department of Justice Web site, *http://www.usdoj.gov/enrd/Consent_Decrees.html.* A copy of the consent decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $34 (25 cents per page reproduction cost) payable to the U.S. Treasury or, if by e-mail or fax, forward a check in that amount to the Consent Decree Library at the stated address. In requesting a copy exclusive of exhibits and defendants' signatures, please enclose a check in the amount of $5.25 (25 cents per page reproduction cost) payable to the U.S. Treasury.

**Maureen Katz,**

*Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.*

[FR Doc. 2010–3301 Filed 2–19–10; 8:45 am]

**BILLING CODE 4410–15–P**

## DEPARTMENT OF JUSTICE

### Notice of Lodging of Material Modification to Consent Decree under the Clean Air Act

Pursuant to Department of Justice policy, notice is hereby given that, on February 4, 2010, a proposed First Material Modification to Consent Decree ("First Decree Modification") in *United States, et al.* v. *Bunge North America, Inc., et al.,* Civil Action No. 2:06–cv–02209–MPM–DGB (C.D. Ill.) was lodged with the United States District Court for the Central District of Illinois. The original Consent Decree in this matter, entered on January 16, 2007, addressed alleged violations of the Clean Air Act, 42 U.S.C. 7401–7671q, and its implementing regulations at 12 soybean and corn processing facilities owned and operated by Bunge North America, Inc. and several affiliated entities (collectively referred to herein as "Bunge"). The First Decree Modification identifies additional facility improvements that Bunge has made to reduce solvent losses from soybean extraction operations at its Cairo, Illinois and Destrehan, Louisiana facilities and it imposes associated requirements, including revised emission limits that would be added to Bunge's Clean Air Act operating permit for the Destrehan, Louisiana facility. The First Decree Modification also substitutes new emission reduction requirements at Bunge's Cairo, Illinois, Decatur, Indiana, and Delphos, Ohio facilities. More specifically: (1) A new emission limit for a boiler at the Cairo, Illinois facility would require Bunge to reduce sulfur dioxide emissions from that facility; and (2) Bunge would reduce air pollutant emissions and wastewater discharges at its Delphos, Ohio and Decatur, Indiana facilities by installing new equipment to capture and recycle the vast majority of the hot water that is condensed from its use of steam so that it will be re-used as steam in the facility's extraction system, rather than being discharged as wastewater.

The Department of Justice will receive comments relating to the First Decree Modification for a period of thirty (30) days from the date of this publication. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and mailed either electronically to *pubcomment-ees.enrd@usdoj.gov* or in hard copy to P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611. Comments should refer to *United States, et al.* v. *Bunge North America, Inc., et al.,* Civil Action No. 2:06–cv–02209–MPM–DGB (C.D. Ill.) and D.J. Ref. No. 90–5–2–1–07950.

The First Decree Modification may be examined at: (1) The offices of the United States Attorney, 201 South Vine, Suite 226, Urbana, Illinois; and (2) the offices of the U.S. Environmental Protection Agency, 77 West Jackson Boulevard, 14th Floor, Chicago, Illinois. During the public comment period, the First Decree Modification may also be examined on the following Department of Justice Web site: *http://www.usdoj.gov/enrd/Consent_Decrees.html.* A copy of the First Decree Modification may also be obtained by mail from the Department of Justice Consent Decree Library, P.O. Box 7611, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $4.50 (18 pages at 25 cents per page reproduction cost) payable to the U.S. Treasury.

**Maureen M. Katz,**

*Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.*

[FR Doc. 2010–3300 Filed 2–19–10; 8:45 am]

**BILLING CODE 4410–15–P**

## DEPARTMENT OF JUSTICE

### Notice of Lodging of Proposed Consent Decree Under the Federal Water Pollution Control Act

Notice is hereby given that on February 16, 2010, a proposed Consent Decree was filed with the United States District Court for the District of Nebraska in *United States et al.* v. *City of West Point, et al.,* No. 08–00293 (D. Neb.). The proposed Consent Decree entered into by the United States, the State of Nebraska, Mark Peckham, and Peckham, Inc. (f/k/a West Point Dairy Products, Inc.), resolves the United States' and State of Nebraska's claims against Mark Peckham and Peckham, Inc. ("Defendants") under the pre-treatment requirements of the Federal Water Pollution Control Act (Clean Water Act), 40 CFR part 403 and 33 U.S.C. 1311, 1317, related to their discharges to the Publicly Owned Treatment Works in West Point, Nebraska. Under the terms of the Consent Decree, the Defendants shall pay a civil penalty to the United States of $175,000 and a civil penalty to the State of $175,000.

The Department of Justice will receive comments relating to the proposed Consent Decree for a period of thirty (30) days from the date of this publication. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and either emailed to *pubcomment-ees.enrd@usdoj.gov* or mailed to P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States et al.* v. *City of West Point, et al.,* DJ Ref. No. 90–5–1–1–09326.

The proposed Agreement may be examined at the Office of the United States Attorney for the District of Nebraska, 487 Federal Building, 100 Centennial Mall North, Lincoln, NE 68508, and at the Environmental Protection Agency, Region 7, 901 N. 5th St., Kansas City, KS 66101. During the public comment period, the proposed Agreement may also be examined on the following Department of Justice Web site, *http://www.usdoj.gov/enrd/Consent_Decrees.html.* A copy of the proposed Agreement may also be

obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $5.00 (25 cents per page reproduction cost) payable to the U.S. Treasury.

**Maureen Katz,**

*Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.*

[FR Doc. 2010–3299 Filed 2–19–10; 8:45 am]

**BILLING CODE 4410–15–P**

## DEPARTMENT OF JUSTICE

### Antitrust Division

### Notice Pursuant to the National Cooperative Research and Production Act of 1993—Joint Venture Under TIP Award Number: 70NANB10H012

Notice is hereby given that, on January 14, 2010, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 5 4301 *et seq.* ("the Act"), the Joint Venture under TIP Award Number: 70NANB10H012 ("JVTIP70NANB10H012") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties to the venture and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Pursuant to Section 6(b) of the Act, the identities of the parties to the venture are: Pixelligent Technologies, LLC, College Park, MD; and Brewer Science, Inc., Rolla, MO. The general area of JVTIP70NANE10H012's planned activity is to develop new processes and technologies to scale up the production of high-quality nanocomposites, nanocrystals dispersed in polymers, to create materials with enhanced performance and new functionality that cannot be provided by polymers or traditional composites.

**Patricia A. Brink,**

*Deputy Director of Operations, Antitrust Division.*

[FR Doc. 2010–3093 Filed 2–19–10; 8:45 am]

**BILLING CODE 4410–11–M**

## DEPARTMENT OF JUSTICE

### Antitrust Division

### Notice Pursuant to the National Cooperative Research and Production Act of 1993—Joint Venture Under Tip Award No. 70NANB10H018

Notice is hereby given that, on January 11, 2010, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), the Joint Venture under TIP Award No. 70NANB10H018 ("JV TIP H018") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties to the venture and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Pursuant to Section 6(b) of the Act, the identities of the parties to the venture are: Rensselaer Polytechnic Institute, Troy, NY and Geocomp Corporation, Boxborough, MA. The general area of JV TIP H018's planned activity is the development of a new health assessment framework, ranging from a satellite-based radar system to local sensor arrays to monitor and ensure the safety of levees and other distributed systems of a flood-control infrastructure.

**Patricia A. Brink,**

*Deputy Director of Operations, Antitrust Division.*

[FR Doc. 2010–3089 Filed 2–19–10; 8:45 am]

**BILLING CODE 4410–11–M**

## NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

### Founding Fathers Advisory Committee

**AGENCY:** National Archives and Records Administration.

**ACTION:** Notice of Establishment of a NARA Advisory Committee, Pursuant to the Federal Advisory Committee Act, 5 U.S.C. Appendix 2.

**SUMMARY:** The Archivist of the United States has determined that the establishment of the Founding Fathers Advisory Committee is necessary and is in the public interest in connection with the Presidential Historical Records Preservation Act of 2008. This committee will comply with the provisions of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2.)

**FOR FURTHER INFORMATION CONTACT:** Mary Ann Hadyka, 301–837–1782.

**SUPPLEMENTARY INFORMATION:** This Committee shall advise the Archivist of the United States on the progress of the Founding Fathers editorial projects funded by the National Historical Publications and Records Commission, a part of the National Archives. Its purview includes, but is not limited to, advising and making recommendations to the Archivist on issues related to the goals and completion of the projects, their funding sources, and their performance and productivity.

Dated: February 17, 2010.

**Mary Ann Hadyka,**

*Committee Management Officer.*

[FR Doc. 2010–3488 Filed 2–19–10; 8:45 am]

**BILLING CODE 7515–01–P**

## NUCLEAR REGULATORY COMMISSION

**[Docket No. 50–341; NRC–2010–0051]**

### Davis-Besse Nuclear Power Station; Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF–3 issued to FirstEnergy Nuclear Operating Company (the licensee) for operation of the Davis-Besse Nuclear Power Station, Unit No. 1 (DBNPS) located in Oak Harbor, Ohio.

The proposed amendment would support application of optimized weld overlays or full structural weld overlays. Applying these weld overlays on the reactor coolant pump suction and discharge nozzle dissimilar metal welds requires an update to the DBNPS leak-before-break (LBB) evaluation.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in Title 10 of the *Code of Federal Regulations* (10 CFR), § 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1)

involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The applicable accident is a Large Break Loss of Coolant Accident (LBLOCA). Since the application of [optimized weld overlays] OWOLs or [full structural weld overlays] FSWOLs will enhance the integrity of welds and the reactor coolant system, the probability of a previously evaluated accident is not increased. The consequences of a LBLOCA have been previously evaluated and found to be acceptable. Application of OWOLs or FSWOLs to the existing welds will cause no change to the dose analysis associated with a LBLOCA.

Therefore, the leak-before-break (LBB) evaluation update does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The LBB evaluation update will allow application of OWOLs or FSWOLs to mitigate potential primary water stress corrosion cracking (PWSCC) of the existing welds. These welds provide a primary pressure boundary function. This request does not change the function of the welds, or the way the plant is operated; it supports the application of OWOLs or FSWOLs that will enhance the ability of the welds to perform the pressure boundary function.

Therefore, the proposed LBB update does not create the possibility of a new or different kind of accident from any-accident previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

Margin of safety is related to the ability of the fission product barriers to perform their design functions during and following accident conditions. These barriers include the fuel cladding, the reactor coolant system, and the containment. This request does not involve a change to the fuel cladding or the containment. This amendment request updates the LBB evaluation to account for the application of OWOLs or FSWOLs to the existing reactor coolant pump suction and discharge nozzle dissimilar metal welds for the Davis-Besse Nuclear Power Station. The effect of applying a weld overlay repair has been evaluated with respect to the LBB evaluation at these locations. This evaluation addresses mitigation of PWSCC in these welds and allows the application of a PWSCC resistant weld overlay that has the added benefit of producing compressive stresses on the inner portion of the existing welds. Acceptable residual stresses for purposes of satisfying this requirement are those which, following the application of OWOLs or FSWOLs with Alloy 52/52M weld metal, provide a PWSCC resistant barrier and also result in reduced stresses on the inner portion of the welds. Acceptable residual stresses are those which, after application of the weld overlay, are substantially reduced on the inner portion of the nozzle susceptible material at operating temperatures, pressures, and loads. In addition, the compressive stresses which exist in the interior of the dissimilar metal weld are increased to the point where the PWSCC of an existing flaw may be arrested. The crack growth analyses resulting from these through-thickness residual stresses ensure that any PWSCC flaws would be acceptable within the inspection interval of the dissimilar metal weld. The effect of the adverse morphology on leakage due to PWSCC cracking was also evaluated. The effect of the application of the weld overlay is to increase the critical flaw size, resulting in additional margin between the critical flawsize and the leakage flaw size. Although the longer flow path and considerations of crack morphology for the Alloy 82/182 weld location reduces leakage somewhat for a given through-wall flaw, the larger critical flaw size following application of the weld overlay allows for increased leakage margin. The evaluation described above demonstrates that these welds will perform as originally intended and that the adverse effects of PWSCC will be mitigated.

Therefore, the proposed LBB update does not involve a significant reduction in a margin of safety. Based on the above, FENOC concludes that the proposed amendment does not involve a significant hazards consideration under the standards set forth in 10 CFR 50.92(c), and, accordingly, a finding of "no significant hazards consideration" is justified.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of 60 days after the date of publication of this notice. The Commission may issue the license amendment before expiration of the 60-day period provided that its final determination is that the amendment involves no significant hazards consideration. In addition, the Commission may issue the amendment prior to the expiration of the 30-day comment period should circumstances change during the 30-day comment period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility. Should the Commission take action prior to the expiration of either the comment period or the notice period, it will publish in the **Federal Register** a notice of issuance. Should the Commission make a final No Significant Hazards Consideration Determination, any hearing will take place after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rulemaking and Directives Branch (RDB), TWB–05–B01M, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be faxed to the RDB at 301–492–3446. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, Public File Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland.

Within 60 days after the date of publication of this notice, any person(s) whose interest may be affected by this action may file a request for a hearing and a petition to intervene with respect to issuance of the amendment to the subject facility operating license. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested person(s) should consult a current copy of 10 CFR 2.309, which is available at the Commission's PDR, located at One White Flint North, Public File Area O1F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/doc-collections/cfr/*. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or a presiding officer designated by the Commission or by the Chief Administrative Judge of the Atomic Safety and Licensing Board Panel, will rule on the request and/or

petition; and the Secretary or the Chief Administrative Judge of the Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.309, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following general requirements: (1) The name, address and telephone number of the requestor or petitioner; (2) the nature of the requestor's/petitioner's right under the Act to be made a party to the proceeding; (3) the nature and extent of the requestor's/petitioner's property, financial, or other interest in the proceeding; and (4) the possible effect of any decision or order which may be entered in the proceeding on the requestor's/petitioner's interest. The petition must also identify the specific contentions which the requestor/petitioner seeks to have litigated at the proceeding.

Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the requestor/petitioner shall provide a brief explanation of the bases for the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The requestor/petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. The petition must include sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A requestor/petitioner who fails to satisfy these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held. If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment. If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

All documents filed in NRC adjudicatory proceedings, including a request for hearing, a petition for leave to intervene, any motion or other document filed in the proceeding prior to the submission of a request for hearing or petition to intervene, and documents filed by interested governmental entities participating under 10 CFR 2.315(c), must be filed in accordance with the NRC E-Filing rule (72 FR 49139, August 28, 2007). The E-Filing process requires participants to submit and serve all adjudicatory documents over the internet, or in some cases to mail copies on electronic storage media. Participants may not submit paper copies of their filings unless they seek an exemption in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least ten (10) days prior to the filing deadline, the participant should contact the Office of the Secretary by e-mail at *hearing.docket@nrc.gov*, or by telephone at (301) 415–1677, to request (1) a digital ID certificate, which allows the participant (or its counsel or representative) to digitally sign documents and access the E-Submittal server for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a request or petition for hearing (even in instances in which the participant, or its counsel or representative, already holds an NRC-issued digital ID certificate). Based upon this information, the Secretary will establish an electronic docket for the hearing in this proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals/apply-certificates.html.* System requirements for accessing the E-Submittal server are detailed in NRC's "Guidance for Electronic Submission," which is available on the agency's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.* Participants may attempt to use other software not listed on the Web site, but should note that the NRC's E-Filing system does not support unlisted software, and the NRC Meta System Help Desk will not be able to offer assistance in using unlisted software.

If a participant is electronically submitting a document to the NRC in accordance with the E-Filing rule, the participant must file the document using the NRC's online, Web-based submission form. In order to serve documents through EIE, users will be required to install a Web browser plug-in from the NRC Web site. Further information on the Web-based submission form, including the installation of the Web browser plug-in, is available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.*

Once a participant has obtained a digital ID certificate and a docket has been created, the participant can then submit a request for hearing or petition for leave to intervene. Submissions should be in Portable Document Format (PDF) in accordance with NRC guidance available on the NRC public Web site at *http://www.nrc.gov/site-help/e-submittals.html.* A filing is considered complete at the time the documents are submitted through the NRC's E-Filing system. To be timely, an electronic filing must be submitted to the E-Filing system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an e-mail notice confirming receipt of the document. The E-Filing system also distributes an e-mail notice that provides access to the document to the NRC Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the documents on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before a hearing request/petition to intervene is filed so that they can obtain access to the document via the E-Filing system.

A person filing electronically using the agency's adjudicatory E-Filing system may seek assistance by contacting the NRC Meta System Help Desk through the "Contact Us" link located on the NRC Web site at *http://www.nrc.gov/site-help/e-submittals.html,* by e-mail at *MSHD.Resource@nrc.gov,* or by a toll-

free call at (866) 672–7640. The NRC Meta System Help Desk is available between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday, excluding government holidays.

Participants who believe that they have a good cause for not submitting documents electronically must file an exemption request, in accordance with 10 CFR 2.302(g), with their initial paper filing requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852, Attention: Rulemaking and Adjudications Staff. Participants filing a document in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service. A presiding officer, having granted an exemption request from using E-Filing, may require a participant or party to use E-Filing if the presiding officer subsequently determines that the reason for granting the exemption from use of E-Filing no longer exists.

Documents submitted in adjudicatory proceedings will appear in NRC's electronic hearing docket which is available to the public at *http://ehd.nrc.gov/EHD_Proceeding/home.asp,* unless excluded pursuant to an order of the Commission, or the presiding officer. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or home phone numbers in their filings, unless an NRC regulation or other law requires submission of such information. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their submission.

Petitions for leave to intervene must be filed no later than 60 days from the date of publication of this notice. Non-timely filings will not be entertained absent a determination by the presiding officer that the petition or request should be granted or the contentions should be admitted, based on a balancing of the factors specified in 10 CFR 2.309(c)(1)(i)–(viii).

For further details with respect to this license amendment application, see the application for amendment dated [date], which is available for public inspection at the Commission's PDR, located at One White Flint North, File Public Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html.* Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC PDR Reference staff by telephone at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr.resource@nrc.gov.*

Attorney for licensee: David W. Jenkins, Attorney, FirstEnergy Corporation, Mail Stop A–GO–15, 76 South Main Street, Akron, OH 44308.

Dated at Rockville, Maryland, this 16th day of February 2010.

For the Nuclear Regulatory Commission.

**Michael Mahoney,**

*Project Manager, Plant Licensing Branch III–2, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.*

[FR Doc. 2010–3370 Filed 2–19–10; 8:45 am]

**BILLING CODE 7590–01–P**

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## NUCLEAR REGULATORY COMMISSION

**[Docket No. 030–36492; NRC–2010–0057]**

## Notice of Environmental Assessment Related to the Issuance of a License Amendment to Byproduct Material License No. 12–32489–01, for the Unrestricted Release of a Former Facility for Department of the Army, Great Lakes, IL

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Issuance of Environmental Assessment and Finding of No Significant Impact for license amendment.

**FOR FURTHER INFORMATION CONTACT:** Katie Streit, Health Physicist, Materials Control, ISFSI, and Decommissioning Branch, Division of Nuclear Materials Safety, Region III, U.S. Nuclear Regulatory Commission, 2443 Warrenville Road, Lisle, Illinois 60532; Telephone: (630) 829–9621; fax number: (630) 515–1259; or by e-mail at *Katherine.Streit@nrc.gov.*

**SUPPLEMENTARY INFORMATION:**

### I. Introduction

The U.S. Nuclear Regulatory Commission (NRC) is considering the issuance of an amendment to terminate NRC Byproduct Materials License No. 12–32489–01, which is held by Department of the Army, (the licensee) U.S. Army Dental Research Detachment. The issuance of the amendment would approve the licensee's September 29, 2009, request (ML092730395) to release for unrestricted use its building located at 310B, B Street, Building 1–H, Great Lakes, Illinois (the Facility).

The NRC has prepared an Environmental Assessment (EA) in support of this proposed action in accordance with the requirements of Title 10, Code of Federal Regulations (CFR), Part 51 (10 CFR 51). Based on the EA, the NRC has concluded that a Finding of No Significant Impact (FONSI) is appropriate with respect to the proposed action. The amendment will be issued to the licensee following the publication of this FONSI and EA in the **Federal Register**.

### II. Environmental Assessment

*Identification of Proposed Action*

The proposed action would approve the licensee's September 29, 2009, license amendment request, resulting in the release of the Facility for unrestricted use consistent with the provisions of 10 CFR Part 20, Subpart E. The licensee was issued License No. 12–32489–01 on April 9, 2004, pursuant to 10 CFR Part 30 and was amended once on November 7, 2005. The Facility is a 400 square foot research laboratory located in the basement. The license authorized the use of unsealed Hydrogen-3 and Carbon-14 for use during in-vitro research labeling activities. However, through review of license file documents, inspection reports, and the amendment request, it was confirmed that Hydrogen-3 was the only licensed material used in the facility.

The licensee permanently ceased licensed activities at the Facility in September 2009 and initiated a final status survey of the facility. The licensee was not required to submit a decommissioning plan to NRC because worker cleanup activities and surveys are consistent with those approved for routine operations. The licensee submitted a Historical Site Assessment and Final Status survey dated September 29, 2009 (ML092730395) to the NRC which demonstrated that the Facility meets the criteria in Subpart E of 10 CFR Part 20 for unrestricted use.

*Need for the Proposed Action*

The licensee has ceased conducting license activities at the Facility, and seeks the unrestricted use of the Facility.

*Environmental Impacts of the Proposed Actions*

The licensee's historical review of past research activities determined that Hydrogen-3 was the only radionuclide used in the Facility. The final status survey of the Facility was performed during September 2009. The final status survey results were attached to the Licensee's amendment request dated September 29, 2009 (ML092730395). The NRC evaluated the licensee's compliance with the radiological criteria for unrestricted use as specified in 10 CFR 20.1402 by using the screening approach described in NUREG–1757, "Consolidated Decommissioning Guidance," Volume 1. The NRC NUREG specifies radionuclide-specific Derived Concentration Guideline Levels (DCGLs), developed by the NRC, which comply with the dose criterion in 10 CFR 20.1402. The DCGLs define the maximum amount of residual radioactivity on surfaces that will satisfy the NRC requirements in Subpart E of 10 CFR Part 20 for unrestricted use. The Licensee's final status survey results were well below these DCGLs and are in compliance with the As Low as Reasonably Achievable (ALARA) requirement of 10 CFR 20.1402. The NRC thus finds that the Licensee's final status survey results are acceptable.

Based on its review, the staff has determined that the affected environment and any environmental impacts associated with the proposed action are bounded by the impacts evaluated by the "Generic Environmental Impact Statement in Support of Rulemaking on Radiological Criteria for License Termination of NRC-Licensed Nuclear Facilities" (NUREG–1496) Volumes 1–3 (ML042310492, ML042320379, and ML042330385). The staff finds there were no significant environmental impacts from the use of radioactive material at the Facility.

The NRC staff reviewed the docket file records and the final status survey report to identify any non-radiological hazards that may have impacted the environment surrounding the Facility. No such hazards or impacts to the environment were identified. The NRC has identified no other radiological or non-radiological activities in the area that could result in cumulative environmental impacts.

The NRC staff finds that the proposed release of the Facility for unrestricted use is in compliance with 10 CFR 20.1402. Based on its review, the staff considered the impact of the residual radioactivity at the Facility and concluded that the proposed action will not have a significant effect on the quality of the environment.

*Environmental Impacts of the Alternatives to the Proposed Action*

Due to the largely administrative nature of the proposed action, its environmental impacts are small. Therefore, the only alternative the staff considered is the no-action alternative, under which the staff would leave things as they are by simply denying the amendment request. This no-action alternative is not feasible because it conflicts with 10 CFR 30.36(d) requiring that decommissioning of byproduct material facilities be completed and approved by the NRC after licensed activities cease. The NRC's analysis of the licensee's final status survey data confirmed that the Facility meets the requirements of 10 CFR 20.1402 for unrestricted use. Additionally, denying the amendment request would result in no change in current environmental impacts. The environmental impacts of the proposed action and the no-action alternative are therefore similar, and the no-action alternative is accordingly not further considered.

*Agencies and Persons Consulted*

NRC provided a draft of this Environmental Assessment to the Illinois Emergency Management Agency (IEMA) for review on December 28, 2009. IEMA had no comments or questions.

*Conclusion*

The NRC staff has concluded that the proposed action is consistent with the NRC's unrestricted use criteria specified in 10 CFR 20.1402. Because the proposed action will not significantly impact the quality of the human environment, the NRC staff concludes that the proposed action is the preferred alternative.

## III. Finding of No Significant Impact

The NRC staff has prepared this EA in support of the proposed action. On the basis of this EA, the NRC finds that there are no significant environmental impacts from the proposed action, and that preparation of an environmental impact statement is not warranted. Accordingly, the NRC has determined that a Finding of No Significant Impact is appropriate.

## IV. Further Information

Documents related to this action, including the application for license amendment and supporting documentation, are available electronically at the NRC's Electronic Reading Room at *http://www.nrc.gov/reading-rm/adams.html.* From this site, you can access the NRC's image files of NRC's public documents. If you do not have access to ADAMS, or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room (PDR) Reference staff at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr.resource@nrc.gov.* The documents related to this action are listed below, along with their ADAMS accession numbers.

1. Department of the Army License Termination Request dated September 29, 2009 (ADAMS Accession No. ML092730395).
2. Title 10 Code of Federal Regulations, Part 20, Subpart E, "Radiological Criteria for License Termination."
3. Title 10 Code of Federal Regulations, Part 51, "Environmental Protection Regulations for Domestic licensing and Related Regulatory Function."
3. NUREG–1757, Consolidated Decommissioning Guidance.

These documents may also be viewed electronically on the public computers located at the NRC's PDR, O1F21, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852. The PDR reproduction contractor will copy documents for a fee.

Dated at Lisle, Illinois, this 11th day of February 2010.

For the Nuclear Regulatory Commission.

**Christine A. Lipa,**

*Chief, Materials Control, ISFSI, and Decommissioning Branch, Division of Nuclear Materials Safety, Region III.*

[FR Doc. 2010–3353 Filed 2–19–10; 8:45 am]

BILLING CODE 7590–01–P

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## NUCLEAR REGULATORY COMMISSION

### Advisory Committee on Reactor Safeguards (ACRS) Meeting of the Subcommittee on Advanced Boiling Water Reactor (ABWR)

The ACRS Subcommittee on ABWR will hold a meeting on March 2, 2010, at 11545 Rockville Pike, Rockville, Maryland, Room T2 B3.

The meeting will be open to public attendance, with the exception of a portion that may be closed to protect information that is proprietary to South

Texas Project (STP), pursuant to 5 U.S.C. 552b(c)(4).

The agenda for the subject meeting shall be as follows:

*March 2, 2010, 8:30 a.m.–5 p.m.*

The Subcommittee will review selected chapters (1, 4, 11, 12, 15 and 18) of the Safety Evaluation Report with Open Items associated with the STP Combined License Application. The Subcommittee will gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the Full Committee.

Members of the public desiring to provide oral statements and/or written comments should notify the Designated Federal Official (DFO), Maitri Banerjee (*Telephone:* 301–415–6973, *E-mail: Maitri.Banerjee@nrc.gov*) five days prior to the meeting, if possible, so that appropriate arrangements can be made. Thirty-five hard copies of each presentation or handout should be provided to the DFO thirty minutes before the meeting. In addition, one electronic copy of each presentation should be e-mailed to the DFO one day before the meeting. If an electronic copy cannot be provided within this timeframe, presenters should provide the DFO with a CD containing each presentation at least thirty minutes before the meeting. Electronic recordings will be permitted only during those portions of the meeting that are open to the public. Detailed procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on October 14, 2009 (74 FR 58268–58269).

Detailed meeting agendas and meeting transcripts are available on the NRC Web site at *http://www.nrc.gov/reading-rm/doc-collections/acrs.* Information regarding topics to be discussed, changes to the agenda, whether the meeting has been canceled or rescheduled, and the time allotted to present oral statements can be obtained from the Web site cited above or by contacting the identified DFO. Moreover, in view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with these references if such rescheduling would result in major inconvenience.

Dated: February 12, 2010.

**Antonio F. Dias,**

*Chief Reactor Safety Branch B, Advisory Committee on Reactor Safeguards.*

[FR Doc. 2010–3348 Filed 2–19–10; 8:45 am]

**BILLING CODE 7590–01–P**

## NUCLEAR REGULATORY COMMISSION

### Advisory Committee on Reactor Safeguards (ACRS); Meeting of the ACRS Subcommittee on EPR; Notice of Meeting

The ACRS U.S. Evolutionary Power Reactor (EPR) Subcommittee will hold a meeting on March 3, 2010, at 11545 Rockville Pike, T2–B3, Rockville, Maryland.

The entire meeting will be open to public attendance, with the exception of a portion that may be closed to protect information that is proprietary to AREVA NP, pursuant to 5 U.S.C. 552b(c)(4).

The proposed agenda for the subject meeting shall be as follows:

*Wednesday, March 3, 2010—8:30 a.m.–5 p.m.*

The Subcommittee will review selected chapters (Chapters 4 and 5) of the Safety Evaluation Report with Open Items associated with the U.S. EPR Design Certification Document Review. The Subcommittee will gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the Full Committee.

Members of the public desiring to provide oral statements and/or written comments should notify the Designated Federal Official (DFO), Mr. Derek Widmayer (Telephone 301–415–7366, E-mail: *Derek.Widmayer@nrc.gov*) five days prior to the meeting, if possible, so that appropriate arrangements can be made. Thirty-five hard copies of each presentation or handout should be provided to the DFO thirty minutes before the meeting. In addition, one electronic copy of each presentation should be e-mailed to the DFO one day before the meeting. If an electronic copy cannot be provided within this timeframe, presenters should provide the DFO with a CD containing each presentation at least thirty minutes before the meeting. Electronic recordings will be permitted. Detailed procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on October 14, 2009 (74 FR 58268–58269).

Detailed meeting agendas and meeting transcripts are available on the NRC Web site at *http://www.nrc.gov/reading-rm/doc-collections/acrs.* Information regarding topics to be discussed, changes to the agenda, whether the meeting has been canceled or rescheduled, and the time allotted to present oral statements can be obtained from the Web site cited above or by contacting the identified DFO. Moreover, in view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with these references if such rescheduling would result in major inconvenience.

Dated: February 12, 2010.

**Antonio F. Dias,**

*Chief, Reactor Safety Branch B, Advisory Committee on Reactor Safeguards.*

[FR Doc. 2010–3345 Filed 2–19–10; 8:45 am]

**BILLING CODE 7590–01–P**

## NUCLEAR REGULATORY COMMISSION

### Advisory Committee on Reactor Safeguards (ACRS); Meeting of the Subcommittee on Plant Operations and Fire Protection; Notice of Meeting

The ACRS Subcommittee on Plant Operations and Fire Protection will hold a meeting on March 3, 2010, at 11545 Rockville Pike, Rockville, Maryland, Room T2 B1.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

March 3, 2010—3 p.m.–5 p.m.

The Subcommittee will review the status of the Watts Bar Unit 2 Operating License Application review. The Subcommittee will gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the Full Committee.

Members of the public desiring to provide oral statements and/or written comments should notify the Designated Federal Official (DFO), Maitri Banerjee (Telephone: 301–415–6973, E-mail: *Maitri.Banerjee@nrc.gov*) five days prior to the meeting, if possible, so that appropriate arrangements can be made. Thirty-five hard copies of each presentation or handout should be provided to the DFO thirty minutes before the meeting. In addition, one electronic copy of each presentation should be emailed to the DFO one day before the meeting. If an electronic copy cannot be provided within this timeframe, presenters should provide the DFO with a CD containing each presentation at least thirty minutes before the meeting. Electronic recordings will be permitted only during those portions of the meeting that are open to the public. Detailed procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** October 14, 2009 (74 FR 58268–58269).

Detailed meeting agendas and meeting transcripts are available on the NRC Web site at *http://www.nrc.gov/reading-rm/doc-collections/acrs*. Information regarding topics to be discussed, changes to the agenda, whether the meeting has been canceled or rescheduled, and the time allotted to present oral statements can be obtained from the Web site cited above or by contacting the identified DFO. Moreover, in view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with these references if such rescheduling would result in major inconvenience.

Dated: February 12, 2010.

**Antonio F. Dias,**

*Chief, Reactor Safety Branch B, Advisory Committee on Reactor Safeguards.*

[FR Doc. 2010–3339 Filed 2–19–10; 8:45 am]

**BILLING CODE 7590–01–P**

## NUCLEAR REGULATORY COMMISSION

### Advisory Committee on Reactor Safeguards (ACRS); Meeting of the Subcommittee on Power Uprates; Notice of Meeting

The ACRS Subcommittee on Power Uprates will hold a meeting on March 3, 2010, at 11545 Rockville Pike, Rockville, Maryland, Room T2 B1.

The entire meeting will be open to public attendance, with the exception of a portion that may be closed to protect information that is proprietary to General Electric (GE), pursuant to 5 U.S.C. 552b(c)(4).

The agenda for the subject meeting shall be as follows:

Wednesday, March 3, 2010—8:30 a.m.–3 p.m.

The Subcommittee will review Supplement 3 to Topical Report NEDC–33173P–A, "Applicability of GE Methods to Expanded Domains." This supplement extends the methods to GNF–2 fuel design. The Subcommittee will gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the Full Committee.

Members of the public desiring to provide oral statements and/or written comments should notify the Designated Federal Official (DFO), Zena Abdullahi (Telephone: 301–415–8716, E-mail: *Zena.Abdullahi@nrc.gov*) five days prior to the meeting, if possible, so that appropriate arrangements can be made. Thirty-five hard copies of each presentation or handout should be provided to the DFO thirty minutes before the meeting. In addition, one electronic copy of each presentation should be e-mailed to the DFO one day before the meeting. If an electronic copy cannot be provided within this timeframe, presenters should provide the DFO with a CD containing each presentation at least thirty minutes before the meeting. Electronic recordings will be permitted only during those portions of the meeting that are open to the public. Detailed procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on October 14, 2009 (74 FR 58268–58269).

Detailed meeting agendas and meeting transcripts are available on the NRC Web site at *http://www.nrc.gov/reading-rm/doc-collections/acrs*. Information regarding topics to be discussed, changes to the agenda, whether the meeting has been canceled or rescheduled, and the time allotted to present oral statements can be obtained from the Web site cited above or by contacting the identified DFO. Moreover, in view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with these references if such rescheduling would result in major inconvenience.

Dated: February 12, 2010.

**Antonio F. Dias,**

*Chief, Reactor Safety Branch B, Advisory Committee on Reactor Safeguards.*

[FR Doc. 2010–3366 Filed 2–19–10; 8:45 am]

**BILLING CODE 7590–01–P**

## NUCLEAR REGULATORY COMMISSION

### Advisory Committee on Reactor Safeguards (ACRS); Planning and Procedures Subcommittee Meeting; Notice of Meeting

The ACRS Planning and Procedures Subcommittee will hold a meeting on March 3, 2010, Room T2–B1, at 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance, with the exception of a portion that may be closed pursuant to 5 U.S.C. 552b (c)(2) and (6) to discuss organizational and personnel matters that relate solely to the internal personnel rules and practices of the ACRS, and information the release of which would constitute a clearly unwarranted invasion of personal privacy.

The agenda for the subject meeting shall be as follows:

*Wednesday, March 3, 2010, 12 p.m.–1 p.m.*

The Subcommittee will discuss proposed ACRS activities and related matters. The Subcommittee will gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Members of the public desiring to provide oral statements and/or written comments should notify the Designated Federal Officer (DFO), Mr. Peter Wen, (Telephone: 301–415–2832, E-mail: *Peter.Wen@nrc.gov*) five days prior to the meeting, if possible, so that appropriate arrangements can be made. Electronic recordings will be permitted only during those portions of the meeting that are open to the public. Detailed procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on October 14, 2009 (74 FR 52829–52830).

Detailed meeting agendas and meeting transcripts are available on the NRC Web site at *http://www.nrc.gov/reading-rm/doc-collections/acrs*. Information regarding topics to be discussed, changes to the agenda, whether the meeting has been canceled or rescheduled, and the time allotted to present oral statements can be obtained by contacting the DFO. Moreover, in view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with the DFO if such rescheduling would result in major inconvenience.

Dated: February 12, 2010.

**Antonio F. Dias,**

*Chief, Reactor Safety Branch B, Advisory Committee on Reactor Safeguards.*

[FR Doc. 2010–3350 Filed 2–19–10; 8:45 am]

**BILLING CODE 7590–01–P**

## POSTAL REGULATORY COMMISSION

**[Docket Nos. MC2010–18, CP2010–21 and CP2010–22; Order No. 407]**

### New Postal Product

**AGENCY:** Postal Regulatory Commission.

**ACTION:** Notice.

**SUMMARY:** This notice informs the public that the Postal Service has filed a request to add International Business Reply Service Competitive Contract 2 to the Competitive Product List, along with two related contracts. It also addresses procedural steps associated with these

filings, including an opportunity for public comment.

**DATES:** Comments are due: February 22, 2010.

**ADDRESSES:** Submit comments elecrtonically via the Commission's Filing Online system at *www.http://prc.gov.* Commenters who cannot submit their views eletronically should contact the person identified in "FOR FURTHER INFORMATION CONTACT:" for information about alternatives to electronic filing.

**FOR FURTHER INFORMATION CONTACT:** Stephen L. Sharfman, General Counsel, at 202–789–6820 or *stephen.sharfman@prc.gov.*

**SUPPLEMENTARY INFORMATION:** *Regulatory History,* 74 FR 7648 (February 19, 2009).

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## I. Introduction

On February 9, 2010, the Postal Service filed a notice announcing that it has entered into two additional International Business Reply Service (IBRS) Contracts.[1] Additionally, the Postal Service filed a formal request pursuant to 39 U.S.C. 3642 and 39 CFR 3020.30 *et seq.* to add IBRS Competitive Contract 2 to the Competitive Product List.[2] The Postal Service asserts that the new IBRS Competitive Contract 2 product is a competitive product "not of general applicability" within the meaning of 39 U.S.C. 3632(b)(3). *Id.* The Request has been assigned Docket No. MC2010–18.

The Postal Service contemporaneously filed two contracts related to the proposed new product pursuant to 39 U.S.C. 3632(b)(3) and 39 CFR 3015.5. The contracts have been assigned Docket Nos. CP2010–21 and CP2010–22.

The Postal Service uses IBRS contracts for customers that sell lightweight articles to foreign consumers and desire to offer their customers a way to return the articles to the United States for recycling, refurbishment, repair, or value-added processing. *Id.* at 3.

*The instant contracts.* The Postal Service filed the instant contracts pursuant to 39 CFR 3015.5. In addition, the Postal Service contends that the contract is in accordance with Order No. 290.[3] The term of each contract is 1 year from the date the Postal Service notifies the customer that all necessary regulatory approvals have been received. The Postal Service states the instant contracts are to replace the expiring contracts in Docket Nos. MC2009–14 and CP2009–20.[4] *Id.* at 3–4. The Postal Service notes that the current contracts expire on February 28, 2010.[5]

In support of its Request, the Postal Service filed the following attachments:

1. Attachment 1—a statement of supporting justification as required by 39 CFR 3020.32;
2. Attachments 2–A and 2–B—redacted copies of the contracts;
3. Attachments 3–A and 3–B—redacted copies of the certified statements required by 39 CFR 3015.5(c)(2);
4. Attachment 4—Governors' Decision No. 08–24 which establishes prices and classifications for the IBRS Contracts product and includes Mail Classification Schedule language for IBRS contracts, formulas for pricing along with an analysis, certification of the Governors vote, and certification of compliance with 39 U.S.C.3633(a); and
5. Attachment 5—an application for non-public treatment of materials to maintain the contracts and supporting documents under seal.

Substantively, the Request seeks to add International Business Reply Service Competitive Contract 2 to the Competitive Product List. *Id.* at 1.

In the statement of supporting justification, Jo Ann Miller, former Director, Global Business Development, asserts that the services to be provided under the contracts will cover their attributable costs, make a positive contribution to institutional costs, and increase contribution toward the requisite 5.5 percent of total institutional costs charged to competitive products. *Id.,* Attachment 1. Thus, Ms. Miller contends there will be no issue of subsidization of competitive products by market dominant products as a result of these contracts. *Id.*

*Functional equivalency.* The Postal Service asserts that the two contracts have generally similar cost and market characteristics as previous IBRS contracts. However, because it requests that the instant contracts be deemed the new baseline contracts for the IBRS Competitive Contract 2 product, the Postal Service considers the appropriate analysis to be the comparison of the new contracts' cost attributes and market characteristics with one another. *Id.* at 3. The Postal Service indicates that the instant contracts differ from one another basically only in the customer identity. *Id.* The Postal Service represents that prices and classifications "not of general applicability" for IBRS contracts were established by Governors' Decision No. 08–24 filed in Docket Nos. MC2009–14 and CP2009–20. It also identifies the instant contracts as fitting within the Mail Classification Schedule language for IBRS contracts as included as an attachment to Governors' Decision No. 08–24. *Id.* at 2.

The Request addresses reasons why IBRS Competitive Contract 2 should be added to the Competitive Product List and fits within the Mail Classification Schedule language for the IBRS contracts. *Id.* at 5. The Postal Service also explains that a redacted version of the supporting financial documentation is included with this filing as a separate Excel file. *Id.* at 3.

The Postal Service asserts that the instant contracts are in compliance with 39 U.S.C. 3633, are functionally equivalent to one another, fit within the IBRS Mail Classification Schedule language, will serve as the new baseline contracts for the proposed product, and should be grouped together under a single product. *Id.* at 6. It requests that the instant contracts be included within the IBRS Competitive Contract 2 product. *Id.*

## II. Notice of Filing

The Commission establishes Docket Nos. MC2010–18, CP2010–21 and CP2010–22 for consideration of matters identified in the Postal Service's Request.

The Commission appoints Paul L. Harrington to serve as Public Representative in these dockets.

*Comments.* Interested persons may submit comments on whether the Postal Service's filings in the captioned dockets are consistent with the policies of 39 U.S.C. 3632, 3633 or 3642 and 39 CFR part 3015 and 39 CFR 3020 subpart B. Comments are due no later than February 22, 2010. The public portions of these filings can be accessed via the Commission's Web site *(http://www.prc.gov).*

[1] Notice of the United States Postal Service of Filing Two Functionally Equivalent IBRS Competitive Contracts and Request to Establish Successor Instruments as Baseline International Business Reply Service Competitive Contract 2, February 9, 2010 (Request).

[2] *Id.* at 1. The Postal Service states that it is not currently proposing to remove IBRS Contract 1 from the Competitive Product List because the agreement in Docket No. CP2009–17 remains in place. *Id.* at 2, n.5.

[3] *See* Docket No. CP2009–50, Order Granting Clarification and Adding Global Expedited Package Services 2 to the Competitive Product List, August 28, 2009 (Order No. 290).

[4] Docket Nos. MC2009–14 and CP2009–20, Request of the United States Postal Service to Add International Business Reply Service Contracts to the Competitive Products List, and Notice of Filing (Under Seal) Contract and Enabling Governors' Decision, December 24, 2008.

[5] The Postal Service states it is their intent that the new contracts will begin on March 1, 2010. *Id.* at 4.

**III. Ordering Paragraphs**

*It is ordered:*

1. The Commission establishes Docket Nos. MC2010–18, CP2010–21 and CP2010–22 for consideration of the matters raised in these dockets.

2. Pursuant to 39 U.S.C. 505, Paul L. Harrington is appointed to serve as officer of the Commission (Public Representative) to represent the interests of the general public in these proceedings.

3. Comments by interested persons in these proceedings are due no later than February 22, 2010.

4. The Secretary shall arrange for publication of this order in the **Federal Register**.

By the Commission.

**Shoshana M. Grove,**

*Secretary.*

[FR Doc. 2010–3293 Filed 2–19–10; 8:45 am]

**BILLING CODE 7710–FW–S**

## SMALL BUSINESS ADMINISTRATION

**[Disaster Declaration #12027 and #12028]**

### Florida Disaster #FL–00050

**AGENCY:** U.S. Small Business Administration.

**ACTION:** Notice.

**SUMMARY:** This is a notice of an Administrative declaration of a disaster for the State of Florida dated 02/04/2010.

*Incident:* Tornadoes, severe storms, and flooding.

*Incident Period:* 01/21/2010.

*Effective Date:* 02/04/2010.

*Physical Loan Application Deadline Date:* 04/05/2010.

*Economic Injury (EIDL) Loan Application Deadline Date:* 11/04/2010.

**ADDRESSES:** Submit completed loan applications to: U.S. Small Business Administration, Processing And Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

**FOR FURTHER INFORMATION CONTACT:** A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that as a result of the Administrator's disaster declaration, applications for disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

*Primary Counties:* Bradford.

*Contiguous Counties:*

Florida: Alachua, Baker, Clay, Putnam, Union.

*The Interest Rates are:*

| | Percent |
|---|---|
| *For Physical Damage:* | |
| Homeowners with Credit Available Elsewhere | 5.250 |
| Homeowners without Credit Available Elsewhere | 2.625 |
| Businesses with Credit Available Elsewhere | 6.000 |
| Businesses without Credit Available Elsewhere | 4.000 |
| Non-Profit Organizations with Credit Available Elsewhere | 3.625 |
| Non-Profit Organizations without Credit Available Elsewhere | 3.000 |
| *For Economic Injury:* | |
| Businesses & Small Agricultural Cooperatives Without Credit Available Elsewhere | 4.000 |
| Non-Profit Organizations without Credit Available Elsewhere | 3.000 |

The number assigned to this disaster for physical damage is 12027 C and for economic injury is 12028 0.

The State which received an EIDL Declaration # is Florida.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

Dated: February 4, 2010.

**Karen G. Mills,**

*Administrator.*

[FR Doc. 2010–3311 Filed 2–19–10; 8:45 am]

**BILLING CODE 8025–01–P**

## SMALL BUSINESS ADMINISTRATION

**[Disaster Declaration #12034 and #12035]**

### Arkansas Disaster #AR–00042

**AGENCY:** U.S. Small Business Administration.

**ACTION:** Notice.

**SUMMARY:** This is a Notice of the Presidential declaration of a major disaster for Public Assistance Only for the State of Arkansas (FEMA—1872—DR), dated 02/04/2010.

*Incident:* Severe Storms and Flooding.

*Incident Period:* 12/23/2009 through 01/02/2010.

*Effective Date:* 02/04/2010.

*Physical Loan Application Deadline Date:* 04/05/2010.

*Economic Injury (EIDL) Loan Application Deadline Date:* 11/04/2010.

**ADDRESSES:** Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

**FOR FURTHER INFORMATION CONTACT:** A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that as a result of the President's major disaster declaration on 02/04/2010, Private Non-Profit organizations that provide essential services of governmental nature may file disaster loan applications at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

*Primary Counties:*

Bradley, Calhoun, Clark, Clay, Cleveland, Craighead, Dallas, Drew, Grant, Greene, Hempstead, Jackson, Jefferson, Lafayette, Lincoln, Lonoke, Miller, Monroe, Nevada, Ouachita, Poinsett, Prairie, White, Woodruff.

*The Interest Rates are:*

| | Percent |
|---|---|
| *For Physical Damage:* | |
| Non-Profit Organizations With Credit Available Elsewhere | 3.625 |
| Non-Profit Organizations Without Credit Available Elsewhere | 3.000 |
| *For Economic Injury:* | |
| Non-Profit Organizations Without Credit Available Elsewhere | 3.000 |

The number assigned to this disaster for physical damage is 12034B and for economic injury is 12035B.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

**James E. Rivera,**

*Associate Administrator for Disaster Assistance.*

[FR Doc. 2010–3313 Filed 2–19–10; 8:45 am]

**BILLING CODE 8025–01–P**

## SMALL BUSINESS ADMINISTRATION

**[Disaster Declaration #12036 and #12037]**

### New Jersey Disaster #NJ–00013

**AGENCY:** U.S. Small Business Administration.

**ACTION:** Notice.

**SUMMARY:** This is a Notice of the Presidential declaration of a major disaster for Public Assistance Only for the State of New Jersey (FEMA–1873–DR), dated 02/05/2010.

*Incident:* Snowstorm.

*Incident Period:* 12/19/2009 through 12/20/2009.

*Effective Date:* 02/05/2010.

*Physical Loan Application Deadline Date:* 04/06/2010.

*Economic Injury (EIDL) Loan Application Deadline Date:* 11/05/2010.

**ADDRESSES:** Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

**FOR FURTHER INFORMATION CONTACT:** A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that as a result of the President's major disaster declaration on 02/05/2010, Private Non-Profit organizations that provide essential services of governmental nature may file disaster loan applications at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

*Primary Counties:* Atlantic, Burlington, Camden, Cumberland, Gloucester, Ocean, Salem.

*The Interest Rates are:*

| | Percent |
|---|---|
| *For Physical Damage:* | |
| *Non-Profit Organizations With Credit Available Elsewhere* ... | 3.625 |
| *Non-Profit Organizations With Credit Available Elsewhere* ... | 3.000 |
| *For Economic Injury:* | |
| *Non-Profit Organizations With Credit Available Elsewhere* ... | 3.000 |

The number assigned to this disaster for physical damage is 12036B and for economic injury is 12037B.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

**James E. Rivera,**

*Associate Administrator for Disaster Assistance.*

[FR Doc. 2010–3315 Filed 2–19–10; 8:45 am]

**BILLING CODE 8025–01–P**

## SMALL BUSINESS ADMINISTRATION

**[Disaster Declaration #12031 and #12032]**

### Arkansas Disaster #AR–00040

**AGENCY:** U.S. Small Business Administration.

**ACTION:** Notice.

**SUMMARY:** This is a notice of an Administrative declaration of a disaster for the State of Arkansas dated 02/10/2010.

*Incident:* Severe Storms and Flooding.

*Incident Period:* 12/23/2009 through 01/02/2010.

*Effective Date:* 02/10/2010.

*Physical Loan Application Deadline Date:* 04/12/2010.

*Economic Injury (EIDL) Loan Application Deadline Date:* 11/10/2010.

**ADDRESSES:** Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

**FOR FURTHER INFORMATION CONTACT:** A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that as a result of the Administrator's disaster declaration, applications for disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

*Primary Counties:*

Pulaski, White.

*Contiguous Counties:*

Arkansas: Cleburne, Faulkner, Grant, Independence, Jackson, Jefferson, Lonoke, Perry, Prairie, Saline, Woodruff.

*The Interest Rates are:*

| | Percent |
|---|---|
| *For Physical Damage:* | |
| Homeowners With Credit Available Elsewhere ..... | 5.125 |
| Homeowners Without Credit Available Elsewhere ..... | 2.562 |
| Businesses With Credit Available Elsewhere ..... | 6.000 |
| Businesses Without Credit Available Elsewhere ..... | 4.000 |
| Non-Profit Organizations With Credit Available Elsewhere ... | 3.625 |
| Non-Profit Organizations Without Credit Available Elsewhere ..... | 3.000 |
| *For Economic Injury:* | |
| Businesses & Small Agricultural Cooperatives Without Credit Available Elsewhere ..... | 4.000 |
| Non-Profit Organizations Without Credit Available Elsewhere ..... | 3.000 |

The number assigned to this disaster for physical damage is 12031 B and for economic injury is 12032 0.

The State which received an EIDL Declaration # is Arkansas.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

Dated: February 10, 2010.

**Karen G. Mills,**

*Administrator.*

[FR Doc. 2010–3314 Filed 2–19–10; 8:45 am]

**BILLING CODE 8025–01–P**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. IC–29129; 812–13570]**

### iShares Trust, et al.; Notice of Application

February 16, 2010.

**AGENCY:** Securities and Exchange Commission ("Commission").

**ACTION:** Notice of application to amend a prior order under section 12(d)(1)(J) of the Investment Company Act of 1940 ("Act") for an exemption from sections 12(d)(1)(A) and (B) of the Act.

**SUMMARY OF APPLICATION:** Applicants request an order ("Order") to amend an existing order that permits certain registered open-end management investment companies ("Investing Management Companies") and unit investment trusts ("Investing UITs," collectively with Investing Management Companies, "Investing Funds") to acquire shares of other registered open-end management investment companies and unit investment trusts ("UITs") that operate as exchange-traded funds ("ETFs") and are outside the same group of investment companies as the Investing Funds ("Original Order").[1] The Order would modify certain conditions of the Original Order to permit: (a) Investing Management Companies that are subadvised by an investment adviser to such ETFs (or an affiliated person of the investment adviser) to acquire shares of the ETFs, and (b) Investing Funds to acquire shares of a series of iShares Trust that carries out its investment strategies by investing in a wholly owned subsidiary.

**APPLICANTS:** iShares Trust ("Trust"), iShares, Inc. ("Corporation"), BlackRock Fund Advisors ("BFA"), BlackRock Advisors, LLC, BlackRock Capital Management, Inc., BlackRock Institutional Management Corporation, BlackRock Financial Management, Inc., BlackRock International Limited, and BlackRock Investment Management, LLC (collectively with BFA, "BlackRock Advisers").

**DATES:** *Filing Dates:* The application was filed on August 29, 2008 and amended on February 27, 2009, October 14, 2009,

[1] iShares Trust, *et al.,* Investment Company Act Release Nos. 25969 (Mar. 21, 2003) (notice) and 26006 (Apr. 15, 2003) (order).

and January 25, 2010. Applicants have agreed to file an amendment during the notice period, the substance of which is reflected in this notice.

**HEARING OR NOTIFICATION OF HEARING:** An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. March 9, 2010, and should be accompanied by proof of service on applicants, in the form of an affidavit, or for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

**ADDRESSES:** Secretary, U.S. Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090; Applicants: Trust and Corporation, c/o State Street Bank and Trust Company, 200 Clarendon Street, Boston, MA 02116; BFA, 400 Howard Street, San Francisco, CA 94105; BlackRock Advisors, LLC, BlackRock Capital Management, Inc., and BlackRock Institutional Management Corporation, 100 Bellevue Parkway, Wilmington, DE 19809; BlackRock Financial Management, Inc., 55 East 52nd Street, New York, NY 10055; BlackRock International Limited, 40 Torpichen Street, Edinburgh EH3 8JB, United Kingdom; BlackRock Investment Management, LLC, 800 Scudders Mill Road, Plainsboro, NJ 08536.

**FOR FURTHER INFORMATION, CONTACT:** Courtney S. Thornton, Senior Counsel, at (202) 551–6812, or Mary Kay Frech, Branch Chief, at (202) 551–6821 (Division of Investment Management, Office of Investment Company Regulation).

**SUPPLEMENTARY INFORMATION:** The following is a summary of the application. The complete application may be obtained via the Commission's Web site by searching for the file number, or for an applicant using the Company name box, at *http://www.sec.gov/search/search.htm,* or by calling (202) 551–8090.

## Applicants' Representations

1. The Trust is a Delaware statutory trust registered under the Act as an open-end management investment company. The Corporation is a Maryland corporation registered under the Act as an open-end management investment company. Each of the Trust and the Corporation is organized as a series fund with multiple series that operate as ETFs.

2. BFA is a California corporation registered as an investment adviser under the Investment Advisers Act of 1940 ("Advisers Act") and serves as investment adviser to each series of the Trust and the Corporation. Each of BlackRock Advisors, LLC (a Delaware limited liability company), BlackRock Capital Management, Inc. (a Delaware corporation), BlackRock Institutional Management Corporation (a Delaware corporation), BlackRock Financial Management, Inc. (a Delaware corporation), BlackRock International Limited (a United Kingdom corporation), and BlackRock Investment Management, LLC (a Delaware limited liability company) is registered under the Advisers Act. Each BlackRock Adviser is an indirect subsidiary of BlackRock, Inc.

3. Applicants request an Order under section 12(d)(1)(J) of the Act to amend the Original Order to exempt certain transactions involving the Trust and the Corporation from sections 12(d)(1)(A) and 12(d)(1)(B) of the Act. Specifically, applicants seek to expand the type of Investing Funds that may invest in series of the Trust or the Corporation beyond the limits of section 12(d)(1)(A) and (B) to include registered management investment companies or series thereof that are subadvised (as provided in section 2(a)(20)(B) of the Act) by BFA, a BlackRock Adviser, or any investment adviser that controls, is controlled by or under common control with a BlackRock Adviser ("BlackRock Adviser Affiliate") but are not part of the same "group of investment companies" as the Trust or the Corporation within the meaning of section 12(d)(1)(G)(ii) of the Act (each a "BlackRock Subadvised Fund").[2] Applicants request that the relief from section 12(d)(1)(B) apply to the Trust, the Corporation, and each open-end management investment company or UIT (or separate series thereof, as applicable) registered under the Act that operates as an ETF, is currently or subsequently a part of the same group of investment companies as the Trust or the Corporation, and is advised or sponsored by a BlackRock Adviser or a BlackRock Adviser Affiliate,[3] as well as any broker-dealer registered under the Securities Exchange Act of 1934 ("Broker") selling shares of an iShares Fund to an Investing Fund.

4. Applicants also seek to permit Investing Funds (including BlackRock Subadvised Funds) to acquire shares of the iShares S&P India Nifty 50 Index Fund ("India Fund") and other iShares Funds that operate in a manner substantially similar to the India Fund ("Future Funds") in reliance on the Order. The India Fund is an iShares Fund that carries out its investment strategies by investing in a wholly owned subsidiary in the Republic of Mauritius ("India Subsidiary") in excess of the limits contained in section 12(d)(1)(A) of the Act in reliance on certain no-action positions of the staff of the Commission.[4] The India Fund operates through the India Subsidiary (both of which are advised by BFA) in order to take advantage of favorable tax treatment by the Indian government pursuant to a current taxation treaty between India and Mauritius. Specifically, the India Fund invests substantially all of its assets in the India Subsidiary, which, in turn, invests at least 80% of its assets in securities that comprise the S&P CNX Nifty Index ("Underlying Index") and depositary receipts representing securities of the Underlying Index. The India Fund operates, and any Future Fund will operate, pursuant to the terms and conditions required under the Prior Orders (as defined below) received by one or more of the applicants that permit certain iShares Funds to operate as ETFs.[5]

[2] An Investing Management Company will be advised by an investment adviser within the meaning of section 2(a)(20)(A) of the Act ("Advisor") and may be advised by one or more other investment advisers within the meaning of section 2(a)(20)(B)) of the Act (each, a "Subadviser"). An Investing Trust will have a sponsor ("Sponsor") and a trustee ("Trustee").

[3] Such open-end ETFs are referred to herein as "Open-end iShares Funds"; such UIT ETFs are referred to herein as "UIT iShares Funds." Open-end iShares Funds and UIT iShares Funds are collectively referred to as "iShares Funds." An "iShares Fund Affiliate" is any investment adviser, sponsor, promoter, or principal underwriter of an iShares Fund, and any person controlling, controlled by, or under common control with any of those entities.

[4] *See, e.g.,* South Asia Portfolio, SEC No-Action Letter (Mar. 12, 1997).

[5] Barclays Global Fund Advisors, *et al.,* Investment Company Act Release No. 25622 (Jun. 25, 2002), as subsequently amended by iShares Trust, *et al.,* Investment Company Act Release No. 26006 (Apr. 15, 2003), Barclays Global Fund Advisors, *et al.,* Investment Company Act Release No. 26175 (Sep. 8, 2003), and Barclays Global Fund Advisors, *et al.,* Investment Company Act Release No. 27417 (Jun. 23, 2006) (as amended, the "Prior Fixed Income Order"). Barclays Global Fund Advisors, *et al.,* Investment Company Act Release No. 24452 (May 12, 2000), iShares Trust, *et al.,* Investment Company Act Release No. 25111 (Aug. 15, 2001), and iShares, Inc., *et al.,* Investment Company Act Release No. 25215 (Oct. 18, 2001), each order as amended by iShares, Inc., *et al.,* Investment Company Act Release No. 25623 (Jun. 25, 2002), iShares Trust, *et al.,* Investment

5. In addition to extending the exemptive relief granted in the Original Order, the Order would replace certain conditions in the Original Order with the amended and restated conditions set out below to reflect the possibility of a BlackRock Adviser or a BlackRock Adviser Affiliate serving as a Subadviser to a BlackRock Subadvised Fund, to permit Investing Funds to acquire shares of the India Fund and any Future Fund, and to update the conditions in certain other respects.

6. For example, condition 1 would amend condition 1 of the Original Order by specifying that neither the members of an Investing Fund's Advisory Group [6] nor the members of an Investing Fund's Subadvisory Group [7] will control, individually or in the aggregate, an iShares Fund within the meaning of section 2(a)(9) of the Act. Amended condition 1 would not apply to the Investing Fund's Subadvisory Group with respect to an iShares Fund for which the Investing Fund's Subadviser, or a person controlling, controlled by, or under common control with the Investing Fund's Subadviser, acts as the investment adviser within the meaning of section 2(a)(20) of the Act of an Open-end iShares Fund or as the sponsor of a UIT iShares Fund.

7. In addition, condition 4 would amend condition 4 of the Original Order by requiring the evaluation by the board of directors/trustees of an Open-end iShares Fund ("Board") of any consideration paid by the Open-end iShares Fund to an Investing Fund or an investment adviser, sponsor, promoter or principal underwriter of the Investing Fund, or any person controlling, controlled by, or under common control with any of those entities (each, an "Investing Fund Affiliate") in connection with any services or transactions, except for any services or transactions between an Open-end iShares Fund and its investment adviser(s), or any person controlling, controlled by, or under common control with such investment adviser(s).

8. The Order would amend condition 6 to reflect the possibility of a BlackRock Adviser or a BlackRock Adviser Affiliate serving as Subadviser to a BlackRock Subadvised Fund by providing that no Investing Fund or Investing Fund Affiliate (except to the extent the Investing Fund Affiliate is acting in its capacity as an investment adviser to an Open-end iShares Fund or sponsor to a UIT iShares Fund) will cause an iShares Fund to purchase a security in any offering of securities during the existence of an underwriting or selling syndicate of which a principal underwriter is an Underwriting Affiliate (as defined below) (an "Affiliated Underwriting").[8]

9. The Order would amend condition 12 to permit Investing Funds to purchase shares of the India Fund by providing that no iShares Fund in which an Investing Fund will invest pursuant to the Order will acquire securities of any other investment company or company relying on section 3(c)(1) or 3(c)(7) of the Act in excess of the limits contained in section 12(d)(1)(A) of the Act, other than the India Subsidiary or any similar wholly owned subsidiary of a Future Fund, and except to the extent permitted by rule 12d1–1 under the Act or an exemptive order that allows the iShares Fund to purchase shares of a money market fund for short term cash management purposes.

10. Applicants state that the iShares Funds will operate in a manner identical to the operation of the iShares Funds under the Original Order, except as specifically noted by applicants, and will comply with all of the terms, provisions, and conditions of the Original Order, as amended by the present application.[9] Applicants believe that the requested relief continues to meet the necessary exemptive standards.

**Applicants' Legal Analysis**

1. Section 12(d)(1)(A) of the Act prohibits a registered investment company from acquiring shares of an investment company if the securities represent more than 3% of the total outstanding voting stock of the acquired company, more than 5% of the total assets of the acquiring company, or, together with the securities of any other investment companies, more than 10% of the total assets of the acquiring company. Section 12(d)(1)(B) of the Act prohibits a registered open-end investment company, its principal underwriter, or any Broker from selling its shares to another investment company if the sale will cause the acquiring company to own more than 3% of the acquired company's voting stock, or if the sale will cause more than 10% of the acquired company's voting stock to be owned by investment companies generally.

2. Section 12(d)(1)(J) of the Act provides that the Commission may exempt any person, security, or transaction, or any class or classes of persons, securities or transactions, from any provision of section 12(d)(1) if the exemption is consistent with the public interest and the protection of investors. Applicants seek an exemption under section 12(d)(1)(J) to permit (a) the Investing Funds, including the BlackRock Subadvised Funds, to acquire shares of the iShares Funds, (b) the Investing Funds to acquire shares of the India Fund and any Future Fund, and (c) the iShares Funds, any principal underwriter for the iShares Funds, and any Broker to sell shares of the iShares Funds, including shares of the India Fund, to the Investing Funds beyond the limits set forth in sections 12(d)(1)(A) and (B).

Company Act Release No. 26006 (Apr. 15, 2003), and Barclays Global Fund Advisors, Investment Company Act Release No. 26626 (Oct. 5, 2004) (collectively and as amended, "Prior Foreign Equity Orders"). Barclays Global Fund Advisors, *et al.,* Investment Company Act Release No. 24451 (May 12, 2000), as amended by iShares, Inc., *et al.,* Investment Company Act Release No. 25623 (Jun. 25, 2002) and iShares Trust, *et al.,* Investment Company Act Release No. 26006 (Apr. 15, 2003) (as amended, "Prior Domestic Equity Order"). The Prior Fixed Income Order, Prior Foreign Equity Orders, and Prior Domestic Equity Order were amended by Barclays Global Fund Advisors, *et al.,* Investment Company Act Release No. 27661 (Jan. 17, 2007) (collectively, the "Prior Orders").

[6] An Investing Fund's Advisory Group is defined as an Advisor, Sponsor, any person controlling, controlled by, or under common control with an Advisor or Sponsor, and any investment company and any issuer that would be an investment company but for sections 3(c)(1) or 3(c)(7) of the Act that is advised by an Advisor or sponsored by a Sponsor, or any person controlling, controlled by, or under common control with an Advisor or Sponsor.

[7] An Investing Fund's Subadvisory Group is defined as a Subadviser, any person controlling, controlled by, or under common control with a Subadviser, and any investment company and any issuer that would be an investment company but for sections 3(c)(1) or 3(c)(7) of the Act (or portion of such investment company or issuer) advised or sponsored by a Subadviser or any person controlling, controlled by, or under common control with a Subadviser.

[8] An "Underwriting Affiliate" is a principal underwriter in any underwriting or selling syndicate that is an officer, director, member of an advisory board, investment adviser, investment subadviser, employee or sponsor of the Investing Fund, or a person of which any such officer, director, member of an advisory board, investment adviser, investment subadviser, employee or sponsor is an affiliated person. An Underwriting Affiliate does not include any person whose relationship to the iShares Fund is covered by section 10(f) of the Act.

[9] The Original Order also grants exemptive relief from section 17(a) of the Act to permit certain transactions involving the Trust and the Corporation and Investing Funds. Applicants are not requesting any further exemptive relief from section 17(a) in this application and do not seek to amend the portion of the Original Order that relates to the relief granted from section 17(a). As a result, the Order will not permit a BlackRock Subadvised Fund that might be deemed to be an affiliated person of an iShares Fund, or an affiliated person of such a person, because it is subadvised by a BlackRock Adviser or a BlackRock Adviser Affiliate, to engage in a transaction with an iShares Fund that is prohibited by section 17(a). The Original Order will continue to provide an exemption from section 17(a) for transactions involving an Investing Fund that is not a BlackRock Subadvised Fund and the India Fund.

3. Applicants state that the proposed arrangements and conditions will adequately address the policy concerns underlying sections 12(d)(1)(A) and (B), which include concerns about undue influence by a fund of funds over underlying funds, excessive layering of fees, and overly complex fund structures. Accordingly, for the reasons set forth in the application and in the application for the Original Order, applicants believe that the requested exemptions are consistent with the public interest and the protection of investors.

**Applicants' Conditions**

Applicants agree that any Order granting the requested relief will be subject to the following conditions, which will supersede the conditions to the Original Order:

1. The members of an Investing Fund's Advisory Group will not control (individually or in the aggregate) an iShares Fund within the meaning of section 2(a)(9) of the Act. The members of an Investing Fund's Subadvisory Group will not control (individually or in the aggregate) an iShares Fund within the meaning of section 2(a)(9) of the Act. If, as a result of a decrease in the outstanding voting securities of an iShares Fund, an Investing Fund's Advisory Group or an Investing Fund's Subadvisory Group, each in the aggregate, becomes a holder of more than 25 percent of the outstanding voting securities of an iShares Fund, it will vote its shares of the iShares Fund in the same proportion as the vote of all other holders of the iShares Fund's shares. This condition does not apply to the Investing Fund's Subadvisory Group with respect to an iShares Fund for which the Investing Fund's Subadviser, or a person controlling, controlled by, or under common control with the Investing Fund's Subadviser, acts as the investment adviser within the meaning of section 2(a)(20)(A) of the Act (in the case of an Open-end iShares Fund) or as the sponsor (in the case of a UIT iShares Fund) of the iShares Fund.

2. An Investing Fund or Investing Fund Affiliate will not cause any existing or potential investment by the Investing Fund in an iShares Fund to influence the terms of any services or transactions between the Investing Fund or Investing Fund Affiliate and the iShares Fund or iShares Fund Affiliate.

3. The board of directors or trustees of an Investing Management Company, including a majority of the disinterested directors or trustees, will adopt procedures reasonably designed to assure that the Investing Management Company's Advisor(s) and Subadviser(s), if applicable, are conducting the investment program of the Investing Management Company without taking into account any consideration received by the Investing Management Company or an Investing Fund Affiliate from an iShares Fund or an iShares Fund Affiliate in connection with any services or transactions.

4. Once an investment by an Investing Fund in the securities of an Open-end iShares Fund exceeds the limits in section 12(d)(1)(A)(i) of the Act, the Board, including a majority of the disinterested Board members, will determine that any consideration paid by an Open-end iShares Fund to an Investing Fund or an Investing Fund Affiliate in connection with any services or transactions: (i) Is fair and reasonable in relation to the nature and quality of the services and benefits received by the Open-end iShares Fund; (ii) is within the range of consideration that the Open-end iShares Fund would be required to pay to another unaffiliated entity in connection with the same services or transactions; and (iii) does not involve overreaching on the part of any person concerned. This condition does not apply with respect to any services or transactions between an Open-end iShares Fund and its investment adviser(s), or any person controlling, controlled by, or under common control with such investment adviser(s).

5. The Advisor, Trustee or Sponsor, as applicable, will waive fees otherwise payable to it by the Investing Fund in an amount at least equal to any compensation (including fees received pursuant to any plan adopted by an Open-end iShares Fund under rule 12b–1 under the Act) received from an iShares Fund by the Advisor, Trustee or Sponsor, or an affiliated person of the Advisor, Trustee, or Sponsor, other than any advisory fees paid to the Advisor, Trustee or Sponsor, or its affiliated person by the iShares Fund, in connection with any investment by the Investing Fund in the iShares Fund. Any Subadviser will waive fees otherwise payable to the Subadviser, directly or indirectly, by the Investing Management Company in an amount at least equal to any compensation received from an iShares Fund by the Subadviser, or an affiliated person of the Subadviser, other than any advisory fees paid to the Subadviser or its affiliated person by the iShares Fund, in connection with any investment by the Investing Management Company in the iShares Fund made at the direction of the Subadviser. In the event that the Subadviser waives fees, the benefit of the waiver will be passed through to the Investing Management Company.

6. No Investing Fund or Investing Fund Affiliate (except to the extent the Investing Fund Affiliate is acting in its capacity as an investment adviser to an Open-end iShares Fund or sponsor to a UIT iShares Fund) will cause an iShares Fund to purchase a security in any Affiliated Underwriting.

7. The Board, including a majority of the disinterested Board members, will adopt procedures reasonably designed to monitor any purchases of securities by an Open-end iShares Fund in an Affiliated Underwriting once an investment by an Investing Fund in the securities of an Open-end iShares Fund exceeds the limit of section 12(d)(1)(A)(i) of the Act, including any purchases made directly from an Underwriting Affiliate. The Board will review these purchases periodically, but no less frequently than annually, to determine whether the purchases were influenced by the investment by the Investing Fund in an Open-end iShares Fund. The Board will consider, among other things: (i) Whether or not the purchases were consistent with the investment objectives and policies of the Open-end iShares Fund; (ii) how the performance of securities purchased in an Affiliated Underwriting compares to the performance of comparable securities purchased during a comparable period of time in underwritings other than Affiliated Underwritings or to a benchmark such as a comparable market index; and (iii) whether the amount of securities purchased by the Open-end iShares Fund in Affiliated Underwritings and the amount purchased directly from an Underwriting Affiliate have changed significantly from prior years. The Board will take any appropriate actions based on its review, including, if appropriate, the institution of procedures designed to assure that purchases of securities in Affiliated Underwritings are in the best interest of shareholders.

8. Each Open-end iShares Fund will maintain and preserve permanently in an easily accessible place a written copy of the procedures described in the preceding condition, and any modifications to such procedures, and will maintain and preserve for a period of not less than six years from the end of the fiscal year in which any purchase in an Affiliated Underwriting occurred, the first two years in an easily accessible place, a written record of each purchase of securities in Affiliated Underwritings once an investment by an Investing Fund in the securities of the Open-end iShares Fund exceeds the limit of

section 12(d)(1)(A)(i) of the Act, setting forth from whom the securities were acquired, the identity of the underwriting syndicate's members, the terms of the purchase, and the information or materials upon which the Board's determinations were made.

9. Before investing in an iShares Fund in excess of the limits in section 12(d)(1)(A), each Investing Fund and the iShares Fund will execute an agreement stating, without limitation, that their respective board of directors or trustees and their respective investment advisers, or their respective sponsors or trustees, as applicable, understand the terms and conditions of the order, and agree to fulfill their responsibilities under the order. At the time of its investment in shares of an Open-end iShares Fund in excess of the limit in section 12(d)(1)(A)(i), an Investing Fund will notify the Open-end iShares Fund of the investment. At such time, the Investing Fund will also transmit to the Open-end iShares Fund a list of the names of each Investing Fund Affiliate and Underwriting Affiliate. The Investing Fund will notify the Open-end iShares Fund of any changes to the list of the names as soon as reasonably practicable after a change occurs. The iShares Fund and the Investing Fund will maintain and preserve a copy of the order, the agreement, and, in the case of an Open-end iShares Fund, the list with any updated information for the duration of the investment and for a period of not less than six years thereafter, the first two years in an easily accessible place.

10. Before approving any advisory contract under section 15 of the Act, the board of directors or trustees of each Investing Management Company, including a majority of the disinterested directors or trustees, will find that the advisory fees charged under such contract are based on services provided that will be in addition to, rather than duplicative of, the services provided under any advisory contracts of any Open-end iShares Fund in which the Investing Management Company may invest. These findings and their basis will be recorded fully in the minute books of the appropriate Investing Management Company.

11. Any sales charges and/or service fees charged with respect to shares of an Investing Fund will not exceed the limits applicable to a fund of funds as set forth in NASD Conduct Rule 2830.

12. No iShares Fund in which an Investing Fund will invest pursuant to the Order will acquire securities of any other investment company or company relying on section 3(c)(1) or 3(c)(7) of the Act in excess of the limits contained in section 12(d)(1)(A) of the Act, other than the India Subsidiary or any similar wholly-owned subsidiary, and except to the extent permitted by rule 12d1–1 under the Act or an exemptive order that allows the iShares Fund to purchase shares of a money market fund for short-term cash management purposes.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. 2010–3333 Filed 2–19–10; 8:45 am]

**BILLING CODE 8011–01–P**

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–61507; File No. SR–DTC–2010–03]**

## Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing of Proposed Rule Change To Eliminate the Option To Receive a Physical Certificate From DTC for Unsponsored American Depositary Receipts That Are Part of the Fast Automated Securities Transfer Program

February 5, 2010.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b–4 thereunder [2] notice is hereby given that on January 19, 2010, The Depository Trust Company ("DTC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared primarily by DTC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

The purpose of this proposed rule change is to eliminate the option to receive a physical certificate from DTC for unsponsored American Depositary Receipts ("ADRs") that are a part of DTC's Fast Automated Securities Transfer Program ("FAST").

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, DTC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. DTC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.[3]

*(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

An ADR is a security that trades in the United States but represents a specified number of shares in a foreign corporation. ADRs are issued in the U.S. by depositary banks. An ADR issuance is "unsponsored" when there is no formal agreement between the depositary bank(s) issuing the shares and the foreign company whose underlying shares are the basis for the ADR. Because there is no agreement between the issuer and a specific depositary, more than one depositary can be involved in the issuance and cancellation of the ADR in an unsponsored program. Unsponsored ADRs trade in the over-the-counter market.

Currently, in order to deposit an unsponsored ADR at DTC, a depositary bank that is also a DTC participant will have its transfer agent create a certificate for the new issue ADR, which is then deposited at DTC by the depositary bank. In an effort to eliminate some of the risks and costs related to the processing of securities certificates,[4] DTC recently made unsponsored ADRs eligible for DTC's Fast Automated Securities Transfer Program ("FAST").[5]

DTC's withdrawal-by-transfer ("WT") service allows participants to instruct DTC to have securities assets which are held in the participant's DTC account reregistered in the name of the

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The Commission has modified the text of the summaries prepared by DTC.

[4] The costs and risks associated with physical certificates include, among other things, those associated with safekeeping, transfer, shipping, messengers, and insurance costs.

[5] FAST was designed to eliminate some of the risks and costs related to the creation, movement, processing, and storage of securities certificates. Under the FAST Program, FAST transfer agents hold FAST eligible securities in the name of Cede & Co. in custody and for the benefit of DTC. As additional securities are deposited or withdrawn from DTC, the FAST transfer agents adjust the size of DTC's position as appropriate and electronically confirm these changes with DTC. For more information relating to FAST, see Securities Exchange Act Release Nos. 13342 (March 8, 1977) [File No. SR–DTC–76–3]; 14997 (July 26, 1978) [File No. SR–DTC–78–11]; 21401 (October 16, 1984) [File No. SR–DTC–84–8]; 31941 (March 3, 1993) [SR–DTC–92–15]; and 46956 (December 6, 2002) [File No. SR–DTC–2002–15].

participant, an investor, or a third party. Upon receipt of a WT instruction from a participant, DTC either sends a certificate to the transfer agent for reregistration in the name of the person or entity identified in the WT instruction or instructs the transfer agent to debit DTC's FAST position and to issue securities in the name of the person or entity identified in the WT instruction.

As part of DTC's response to an industry effort to reduce the number of securities certificates in the U.S. market (sometimes referred to as "dematerialization"),[6] DTC initiated a program of steadily increasing its fees for WTs and other withdrawals to create strong disincentives for the use of physical certificates. Consistent with that program, DTC is now proposing to eliminate a participant's ability to use the WT service to have physical certificates issued for unsponsored ADRs that are a part of the FAST Program. DTC believes that this modification of its WT service reaffirms its goals of reducing the number of securities certificates in the U.S. markets. DTC participants will continue to have the ability to request a physical certificate directly from the transfer agent by using the DWAC process.[7]

The proposed rule change is consistent with the requirements of the Securities Exchange Act of 1934, as amended ("Act"), and the rules and regulations thereunder because it modifies a DTC service in order to reduce the use of physical certificates and the inherent risks associated with the use of physical certificates and as such facilitates the prompt and accurate clearance and settlement of securities.

*(B) Self-Regulatory Organization's Statement on Burden on Competition*

DTC does not believe that the proposed rule change would impose any burden on competition.

*(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others*

Written comments relating to the proposed rule change have not been solicited or received. DTC will notify the Commission of any written comments received by DTC.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Within thirty-five days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form *(http://www.sec.gov/rules/sro.shtml)* or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–DTC–2010–03 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–DTC–2010–03. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site *(http://www.sec.gov/rules/sro.shtml)*. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Section, 100 F Street, NE., Washington, DC 20549–1090, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filings will also be available for inspection and copying at the principal office of DTC and on DTC's Web site at *http://www.dtcc.com/downloads/legal/rule_filings/2010/dtc/2010-03.pdf*. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–DTC–2010–03 and should be submitted on or before March 15, 2010.

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.[8]

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. 2010–3329 Filed 2–19–10; 8:45 am]

**BILLING CODE 8011–01–P**

[6] For more information on dematerialization, see Securities Exchange Act Release No. 49405 (March 11, 2004), 69 FR 12922 (March 18, 2004) ([File No. S7–13–04]).

[7] DWAC is a method of electronically transferring shares between a DTC Participant and the transfer agent for the shares. For more information about the DWAC service, see Securities Exchange Act Release No. 30283 (January 23, 1992), 56 FR 59307 (November 18, 1991) (SR–DTC–91–16) (order granting approval of the DWAC service).

[8] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–61515; File No. SR–NASDAQ–2010–014]**

## Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Modify Fees for Members Using the NASDAQ Market Center and To Correct a Typographical Error in Rule 7018

February 12, 2010.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 26, 2010, The NASDAQ Stock Market LLC ("NASDAQ") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by NASDAQ. Pursuant to Section 19(b)(3)(A)(ii) of the Act[3] and Rule 19b–4(f)(2) thereunder,[4] NASDAQ has designated this proposal as establishing or changing a due, fee, or other charge, which renders the proposed rule change effective upon filing. The Commission is publishing this notice to solicit comments on the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

[4] 17 CFR 240.19b–4(f)(2).

proposed rule change from interested persons.

**I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change**

NASDAQ proposes to modify pricing for NASDAQ members using the NASDAQ Market Center, and to correct a typographical error in Rule 7018.[5] NASDAQ will implement the proposed change to Rule 7018(b) on February 1, 2010, and will implement the remainder of the filing immediately upon filing. The text of the proposed rule change is available at *http://nasdaqomx.cchwallstreet.com/*, at NASDAQ's principal office, and at the Commission's Public Reference Room.

**II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, NASDAQ included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NASDAQ has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

NASDAQ is modifying its fee structure for securities that execute at prices below $1. For these securities, NASDAQ currently charges members accessing liquidity a fee equal to 0.1% (10 basis points) of the total transaction cost and provides no credit to members providing liquidity. Under the new fee structure, members accessing liquidity will be charged 0.3% (30 basis points) of the total transaction cost, and members providing liquidity will be provided a credit equal to 0.2% (20 basis points) of the total transaction cost. The change is intended to provide a competitive response to another trading venue that has adopted a similar "maker-taker" pricing structure for securities priced below $1.[6] The proposal is consistent with the provisions of Rule 610 under Regulation NMS[7] that govern access fees.

NASDAQ is also proposing to correct a typographical error in Rule 7018. In SR–NASDAQ–2009–072,[8] NASDAQ submitted a proposed rule change to make clerical changes designed to streamline and simplify Rule 7018. As stated in the "Purpose" section of NASDAQ's Form 19b–4 filing, "[n]one of the clerical changes will modify any fee assessed or credit earned for trading on the NASDAQ Market Center." However, due to a typographical error, Exhibit 5 introduced inaccuracies into the provisions of the rule describing the fees for orders in securities listed on the New York Stock Exchange ("NYSE") that are routed to other venues without attempting to execute in NASDAQ for the full size of the order prior to routing. This portion of the fee schedule had previously been divided between sections governing fees for orders in NYSE-listed securities executed at NYSE and fees for orders executed at other venues. Both sections had included catch-all provisions governing "other" orders that did not fit into more defined categories of routed orders; these catch-all provisions apply specifically to directed orders that are not designated as intermarket sweep orders (*i.e.,* immediate-or-cancel orders that are directed to route to a venue specified by the member, and that may be executed by the receiving venue only if its quotation is at the national best bid or offer). In the case of such orders routed to NYSE, the fee is either $0.0020 per share executed, or $0.0019 per share executed for members with an average daily volume through the Nasdaq Market Center in all securities during the month of more than 35 million shares of liquidity provided. In the case of such orders routed to other venues, the fee is $0.0035 per share executed. However, language describing the fee for routing to other venues was inadvertently deleted, while language describing the fee for routing to NYSE was moved but without language that had formerly limited its applicability to orders sent to NYSE. Accordingly, a reader of the amended rule may conclude that the fee of $0.0020 or $0.0019 per share executed is applicable to "other" orders routed to venues other than NYSE.

As noted above, however, the filing that introduced this error in Rule 7018 stated that it was not modifying any fees or credits, and in fact, was filed as a "stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule" under SEC Rule 19b–4(f)(1)[9] rather than a fee change under SEC Rule 19b–4(f)(2).[10] Moreover, NASDAQ's intent not to modify fees through SR–NASDAQ–2009–072 was reflected in the Commission's notice of the filing on the SEC Web site[11] and in the **Federal Register,**[12] and the applicable fees have been accurately described in the pricing schedule that appears on NASDAQ's Web site.[13] Accordingly, this filing corrects the typographical error. NASDAQ has been billing members in accordance with the correct fees since the effective date of SR–NASDAQ–2009–072 on July 24, 2009, and accordingly believes that all of its members are cognizant of the correct fee. However, because this filing is immediately effective and therefore cannot take effect retroactively, NASDAQ is also submitting a filing for notice and comment under Section 19(b)(2) of the Act to seek Commission approval for charging the correct fee during the period from July 24, 2009 through January 25, 2010.[14] Finally, NASDAQ is making non-substantive changes to Rule 7018 to reflect clearly that the category of "other" fees is, with respect to all types of securities, a charge for directed orders where the fees are not described by other provisions of Rule 7018. NASDAQ believes that this change will enhance the clarity of the rule.

2. Statutory Basis

NASDAQ believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[15] in general, and with Section 6(b)(4) of the Act,[16] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system which NASDAQ operates or controls. NASDAQ is adapting the "maker-taker" pricing model that is prevalent across most U.S. transaction venues for securities priced at $1 or higher and applying it securities priced below $1. This change is a competitive response to

[5] The Commission notes that the "typographical error in Rule 7018" is more accurately characterized as a drafting error by Nasdaq that resulted in the omission and misplacement of rule language.

[6] *See http://www.directedge.com/SubscriberInfo/FeeSchedule.aspx.*

[7] 17 CFR 242.610.

[8] Securities Exchange Act Release No. 60430 (August 4, 2009), 74 FR 40279 (August 11, 2009) (SR–NASDAQ–2009–072).

[9] 17 CFR 240.19b–4(f)(1).

[10] 17 CFR 240.19b–4(f)(2).

[11] *See http://www.sec.gov/rules/sro/nasdaq/2009/34-60430.pdf.*

[12] *See* Securities Exchange Act Release No. 60430 (August 4, 2009), 74 FR 40279 (August 11, 2009) (SR–NASDAQ–2009–072).

[13] *See http://www.nasdaqtrader.com/Trader.aspx?id=PriceListTrading2.*

[14] SR–NASDAQ–2010–015 (January 26, 2010).

[15] 15 U.S.C. 78f.

[16] 15 U.S.C. 78f(b)(4).

another trading venue that has already introduced this pricing model for low-priced securities. The change will result in a fee increase for firms when they access liquidity in these securities and a fee reduction for firms when they provide liquidity in these stocks. NASDAQ is also correcting a typographical error in Rule 7018.

The impact of the changes upon the net fees paid by a particular market participant will depend upon a number of variables, including the prices of the market participant's quotes and orders relative to the national best bid and offer (*i.e.,* its propensity to add or remove liquidity) and the extent to which it trades in low-priced securities. NASDAQ notes that it operates in a highly competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive. NASDAQ believes that the change will further enhance the competitiveness of its fees in comparison with those charged by other venues, and that its fees are reasonable and equitably allocated to members on the basis of whether they opt to direct orders to NASDAQ.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

NASDAQ does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

Written comments were neither solicited nor received.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act [17] and subparagraph (f)(2) of Rule 19b–4 thereunder.[18] At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

[17] 15 U.S.C. 78s(b)(3)(a)(ii).

[18] 17 CFR 240.19b–4(f)(2).

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–NASDAQ–2010–014 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASDAQ–2010–014. This file number should be included on the subject line if e-mail is used.

To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml).* Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal offices of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASDAQ–2010–014, and should be submitted on or before March 15, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[19]

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. 2010–3332 Filed 2–19–10; 8:45 am]

**BILLING CODE 8011–01–P**

[19] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–61512; File No. SR–NYSEArca–2010–05]**

## Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending Its Fee Schedule

February 12, 2010.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (the "Act") [2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on January 28, 2010, NYSE Arca, Inc. ("NYSE Arca" or the "Exchange") through its wholly-owned subsidiary NYSE Arca Equities, Inc. ("NYSE Arca Equities"), filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. NYSE Arca filed the proposal pursuant to Section 19(b)(3)(A) [4] of the Act and Rule 19b–4(f)(2) [5] thereunder. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

**I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

The Exchange proposes to amend its Schedule of Fees and Charges for Exchange Services (the "Schedule"). While changes to the Schedule pursuant to this proposal will be effective upon filing, the changes will become operative on February 1, 2010. The text of the proposed rule change is available on the Exchange's Web site at *http://www.nyse.com*, on the Commission's Web site at *http://www.sec.gov*, at the Exchange, and at the Commission's Public Reference Room. A copy of this filing is available on the Exchange's Web site at *http://www.nyse.com*, at the Exchange's principal office and at the Commission's Public Reference Room.

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] 15 U.S.C. 78s(b)(3)(A).

[5] 17 CFR 240.19b–4(f)(2).

## II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change*

1. Purpose

The Exchange proposes to make multiple changes to its fee schedule effective February 1, 2010. A more detailed description of the proposed changes follows.

Super Tier:

The Exchange proposes to introduce a new Super Tier. For ETP Holders and Market Makers with an average daily share volume ("ADV") per month of more than 70 million shares added and more than 120 million total shares (added, removed, and routed) in all U.S. securities, the pricing structure for trading in Tape A and Tape C securities will be a rebate of $0.0030 per share for adding liquidity and a fee of $0.0028 per share for removing liquidity. All other fees within the Super Tier will match the Tier 1 rates effective on February 1, 2010.

*Tier 1:*

The Exchange also proposes changes to the Tier 1 rates and volume levels. Currently Tier 1 rates are applied to ETP Holders and Market Makers that provide liquidity on the Exchange with an ADV per month of greater than 25 million shares and transact a total ADV per month of greater than 80 million shares (includes both adding and removing). Under this proposal, Tier 1 rates will be applied to ETP Holders and Market Makers that provide liquidity on the Exchange with an ADV per month of greater than 60 million shares. The Exchange proposes to eliminate the total share requirement.

Currently, the rebate for adding liquidity in Tape A and Tape C securities in Tier 1 is set at $0.0027 per share, and the fee for removing liquidity is set at $0.0027 per share. Under this proposal the rebate for adding liquidity in Tape A and Tape C securities will be $0.0029 per share and the fee for removing liquidity will be $0.0029 per share. The Exchange also proposes to change the rebate for PO and PO+ orders routed to Amex that provide liquidity to the NYSE Amex Book to $0.0015 (currently $0.0030 per share). All other Tier 1 rates remain the same.

*Tier 2:*

The Exchange also proposes changes to the Tier 2 rates and volume levels. Currently Tier 2 rates are applied to ETP Holders and Market Makers that provide liquidity on the Exchange with an ADV per month of greater than 15 million shares and transact a total ADV per month of greater than 50 million shares. Under this proposal, Tier 2 rates will be applied to ETP Holders and Market Makers that provide liquidity on the Exchange with an ADV per month of greater than 25 million shares. The Exchange proposes to eliminate the total share requirement.

Currently, the rebate for adding liquidity in Tape A and Tape C securities in Tier 2 is set at $0.0026 per share, and the fee for removing liquidity is set at $0.0028 per share. Under this proposal the rebate for adding liquidity in Tape A and Tape C securities will be $0.0029 per share and the fee for removing liquidity will be $0.0030 per share. The Exchange also proposes to change the fee for orders routed to away markets other than the NYSE in Tape A and Tape C securities to $0.0030 (currently $0.0029 per share). The Exchange is also changing the rebate for PO and PO+ orders routed to Amex that provide liquidity to the NYSE Amex Book to $0.0015 (currently $0.0030 per share). All other Tier 2 rates remain the same.

*Provide Tier:*

The Exchange proposes to remove the current Provide Tier from the Schedule.

*Basic Rates:*

Finally, the Exchange proposes to change the Basic Rate pricing. Currently, the rebate for adding liquidity in Tape A and Tape C securities is set at $0.0023 per share, and the fee for removing liquidity is set at $0.0030 per share. Under this proposal the rebate for adding liquidity in Tape A and Tape C securities will be $0.0021 per share and the fee for removing liquidity will remain $0.0030 per share. The Exchange also proposes to change the rebate for PO and PO+ orders routed to Amex that provide liquidity to the NYSE Amex Book to $0.0015 (currently $0.0030 per share). All other Basic Rates will remain the same.

The proposed changes to the Schedule are part of the Exchange's continued effort to attract and enhance participation on the Exchange, by offering attractive rates and rebates with volume-based incentives. The Exchange believes the proposed fees are reasonable and equitable in that they apply uniformly to all ETP Holders. The proposed changes will become operative on February 1, 2010.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Securities Exchange Act of 1934 (the "Act"),[6] in general, and Section 6(b)(4) of the Act,[7] in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among its members and other persons using its facilities. The proposed changes to the Schedule are part of the Exchange's continued effort to attract and enhance participation on the Exchange, by offering attractive rates and rebates with volume-based incentives. The proposed changes to the Schedule are equitable in that they apply uniformly to all Users.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

No written comments were solicited or received with respect to the proposed rule change.

## III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A)[8] of the Act and subparagraph (f)(2) of Rule 19b–4[9] thereunder, because it establishes a due, fee, or other charge imposed by NYSE Arca on its members.

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(4).

[8] 15 U.S.C. 78s(b)(3)(A).

[9] 17 CFR 240.19b–4(f)(2).

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–NYSEArca–2010–05 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEArca–2010–05. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEArca–2010–05 and should be submitted on or before March 15, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. 2010–3331 Filed 2–19–10; 8:45 am]

**BILLING CODE 8011–01–P**

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–61508; File No. SR–BATS–2010–001]**

## Self-Regulatory Organizations; BATS Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Related to Fees for Use of BATS Exchange, Inc.

February 5, 2010.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 29, 2010, BATS Exchange, Inc. (the "Exchange" or "BATS") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. BATS has designated the proposed rule change as one establishing or changing a member due, fee, or other charge imposed by the Exchange under Section 19(b)(3)(A)(ii) of the Act[3] and Rule 19b–4(f)(2) thereunder,[4] which renders the proposed rule change effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to modify its fee schedule applicable to Members[5] of the Exchange pursuant to BATS Rules 15.1(a) and (c). While changes to the fee schedule pursuant to this proposal will be effective upon filing, the changes will become operative on February 1, 2010.

The text of the proposed rule change is available at the Exchange's Web site at *http://www.batstrading.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

[10] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

[4] 17 CFR 240.19b–4(f)(2).

[5] A Member is any registered broker or dealer that has been admitted to membership in the Exchange.

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant parts of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

The Exchange proposes to modify its fee schedule applicable to use of the Exchange effective February 1, 2010, in order to (i) implement a fee of 0.10% of the total dollar value for trades that remove liquidity in securities priced below $1.00; (ii) increase the fee charged by the Exchange for its "CYCLE" and "RECYCLE" routing strategies from $0.0026 per share to $0.0027 per share; and (iii) amend the fees for certain destination specific routing options to continue to offer a "one under" pricing model.

(i) Charge for Removing Liquidity in Securities Priced Below $1.00

The Exchange has not previously charged Members for transactions that remove liquidity from or add liquidity to the Exchange's book in securities priced below $1.00. The Exchange proposes to begin charging 0.10% of the total dollar value of the execution for any security (all Tapes) priced under $1.00 that removes liquidity from the Exchange's book. The Exchange is not proposing to provide a liquidity rebate in such securities at this time. The Exchange believes that a nominal fee is warranted for securities priced below $1.00 for various reasons, including that such transactions inevitably contribute to the overall infrastructure costs incurred by the Exchange.

(ii) Increase in Routing Fees for "CYCLE" and "RECYCLE" Routing

Based on increased fees at various market centers to remove liquidity, the Exchange proposes to modify the fee charged by the Exchange for its "CYCLE" and "RECYCLE" routing strategies from $0.0026 per share to $0.0027 per share. To be consistent with this change, the Exchange proposes to

charge 0.27%, rather than 0.26%, of the total dollar value of the execution for any security (all Tapes) priced under $1.00 per share that is routed away from the Exchange through CYCLE or RECYCLE.

(iii) One Under Pricing for Destination Specific Orders

The Exchange has previously provided a discounted price fee for Destination Specific Orders routed to certain of the largest market centers measured by volume (NYSE, NYSE Arca and NASDAQ), which, in each instance has been $0.0001 less per share for orders routed to such market centers by the Exchange than such market centers currently charge for removing liquidity (referred to by the Exchange as "One Under" pricing). Based on changes in pricing at such market centers, BATS is proposing various changes to its prices for Destination Specific Orders to align its fees so they are $0.0001 less per share for orders routed to such market centers as of February 1, 2010. Specifically, because NYSE Arca has eliminated the distinction in its fees between Tape A, B, and C securities the Exchange proposes to eliminate that same distinction for BATS + NYSE Arca Destination Specific Orders. Thus, the Exchange proposes to normalize the fee charged for BATS + NYSE ARCA Destination Specific Orders executed at NYSE Arca at $0.0027 per share, which fee is a reduction for Tape A and C securities from $0.0029 per share. Also, the Exchange proposes to continue to charge $0.0029 per share for BATS + NASDAQ Destination Specific Orders executed at NASDAQ in Tape A and C securities, but to reduce the fee to $0.0027 per share for BATS + NASDAQ Destination Specific Orders executed at NASDAQ in Tape B securities. Each of the changes described above will result in the Exchange charging $0.0001 less per share for orders routed to certain market centers as Destination Specific Orders.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of Section 6 of the Act.[6] Specifically, the Exchange believes that the proposed rule change is consistent with Section 6(b)(4) of the Act,[7] in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and other persons using any facility or system which the Exchange operates or controls. The Exchange notes that it operates in a highly competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive. The Exchange believes that its fees and credits are competitive with those charged by other venues and that the various changes it has proposed to reduce its fees will benefit Members due to the obvious economic savings Members will receive. For those proposed changes that will result in increased fees charged to Members, such as the charge for trades that remove liquidity in securities below $1.00 and the increased fee for CYCLE and RECYCLE routing, the Exchange believes that any additional revenue it receives will allow the Exchange to devote additional capital to its operations, which may, in turn, benefit Members of the Exchange. Finally, the Exchange believes that the proposed rates are equitable in that they apply uniformly to all Members.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change imposes any burden on competition.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others*

No written comments were solicited or received.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The foregoing proposed rule change has been designated as a fee change pursuant to Section 19(b)(3)(A)(ii) of the Act[8] and Rule 19b–4(f)(2) thereunder,[9] because it establishes or changes a due fee or other charge imposed on members by the Exchange. Accordingly, the proposal is effective upon filing with the Commission.

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File No. SR–BATS–2010–001 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File No. SR–BATS–2010–001. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission,[10] all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule changes between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 pm. Copies of such filing also will be available for inspection and copying at the principal office of BATS. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–BATS–2010–001 and should be submitted on or before March 15, 2010.

[6] 15 U.S.C. 78f.

[7] 15 U.S.C. 78f(b)(4).

[8] 15 U.S.C. 78s(b)(3)(A)(ii).

[9] 17 CFR 240.19b–4(f)(2).

[10] The text of the proposed rule change is available on the Commission's Web site at *http://www.sec.gov/rules/sro.shtml.*

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. 2010–3330 Filed 2–19–10; 8:45 am]

**BILLING CODE 8011–01–P**

## SOCIAL SECURITY ADMINISTRATION

### Agency Information Collection Activities: Emergency Request

The Social Security Administration (SSA) publishes a list of information collection packages requiring clearance by the Office of Management and Budget (OMB) in compliance with Public Law (Pub. L.) 104–13, the Paperwork Reduction Act of 1995, effective October 1, 1995. This notice includes a new form for which we are requesting emergency OMB clearance.

SSA is soliciting comments on the accuracy of the agency's burden estimate; the need for the information; its practical utility; ways to enhance its quality, utility, and clarity; and ways to minimize burden on respondents, including the use of automated collection techniques or other forms of information technology. Mail, e-mail, or fax your comments and recommendations on the information collection to the OMB Desk Officer and the SSA Reports Clearance Officer to the following addresses or fax numbers.

(OMB) Office of Management and Budget, Attn: Desk Officer for SSA, Fax: 202–395–6974, E-mail address: *OIRA_Submission@omb.eop.gov.*

(SSA) Social Security Administration, DCBFM, Attn: Reports Clearance Officer, 1340 Annex Building, 6401 Security Blvd., Baltimore, MD 21235, Fax: 410–965–8783, E-mail address: *OPLM.RCO@ssa.gov.*

SSA submitted the information collection below to OMB for Emergency Clearance. SSA is requesting Emergency Clearance from OMB no later than March 1, 2010. Individuals can obtain copies of the collection instrument by calling the SSA Reports Clearance Officer or by writing to the above e-mail address.

**Request for Accommodation in Communication Method—0960–NEW.**

*Background*

In a recent legal action, *American Council of the Blind, et al.* v. *Michael Astrue and Social Security Administration* (No. C 05–04696 WHA (N.D. Cal.)), class plaintiffs representing blind or visually impaired Social Security applicants, beneficiaries, recipients, and representative payees challenged the adequacy of the modes of communication used by SSA in its notices and other communications. Prior to the district court's order of October 20, 2009, in *American Council of the Blind,* SSA had offered three modes of communications for blind and visually impaired Social Security beneficiaries: (1) A standard print notice by first-class mail; (2) a standard print notice by first-class mail with a follow-up telephone call; and (3) certified mail. In *American Council of the Blind,* the district court required SSA to begin offering two new modes of communication to blind or visually impaired applicants, beneficiaries, recipients, and representative payees: Braille and Microsoft Word files (on data compact discs).

*Current Information Collection*

In accordance with the court order, beginning January 1, 2010, affected parties can call a designated SSA number and tell the agency which of the following five methods of communication they want the agency to use for their notices and other communications: (1) Standard print notice by first-class mail, (2) standard print mail with a follow-up telephone call, (3) certified mail, (4) Braille, or (5) Microsoft Word. This call did not require OMB clearance.

However, there may be respondents who want SSA to use another communication method. SSA has created form SSA–9000, the Request for Accommodation in Communication Method, for these situations. This form will ask respondents to describe the type of accommodation they want, to disclose the condition they have that necessitates the need for a different type of accommodation, and to explain why none of the five methods described above are sufficient for their needs.

Since we must make this form available shortly due to court-ordered deadlines, we are requesting emergency clearance. The respondents are Social Security applicants, beneficiaries, recipients, and representative payees who are blind or visually impaired and are asking SSA to send them notices and other communications in an alternative method besides the five modalities described in this Notice.

*Type of Request:* Emergency clearance of a new information collection.

| Method of information collection | Number of respondents | Response time (minutes) | Burden (hours) |
|---|---|---|---|
| Personal interview (over the phone or in-person) | 2,000 | 10 | 333 |
| Form (taken or mailed from field office) | 500 | 15 | 125 |
| | 2,500 | ..... | 458 |

Dated: February 16, 2010.

**Faye Lipsky,**

*Acting Reports Clearance Officer, Social Security Administration.*

[FR Doc. 2010–3304 Filed 2–19–10; 8:45 am]

**BILLING CODE 4191–02–P**

## SOCIAL SECURITY ADMINISTRATION

**[Docket No. SSA 2010–0006]**

### Privacy Act of 1974, as Amended; Computer Matching Program (SSA/Department of Veterans Affairs/Veterans Benefits Administration (VA/VBA))—Match Number 1309

**AGENCY:** Social Security Administration (SSA).

**ACTION:** Notice of a renewal of an existing computer matching program that is scheduled to expire on April 1, 2010.

**SUMMARY:** In accordance with the provisions of the Privacy Act, as amended, this notice announces a renewal of an existing computer matching program that we are currently conducting with VA/VBA.

**DATES:** We will file a report of the subject matching program with the

[11] 17 CFR 200.30–3(a)(12).

Committee on Homeland Security and Governmental Affairs of the Senate; the Committee on Oversight and Government Reform of the House of Representatives, and the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB). The matching program will be effective as indicated below.

**ADDRESSES:** Interested parties may comment on this notice by either telefaxing to (410) 965–0201 or writing to the Deputy Commissioner for Budget, Finance and Management, 800 Altmeyer Building, 6401 Security Boulevard, Baltimore, MD 21235–6401. All comments received will be available for public inspection at this address.

**FOR FURTHER INFORMATION CONTACT:** The Deputy Commissioner for Budget, Finance and Management as shown above.

**SUPPLEMENTARY INFORMATION:**

**A. General**

The Computer Matching and Privacy Protection Act of 1988 (Public Law (Pub. L.) 100–503), amended the Privacy Act (5 U.S.C. 552a) by describing the conditions under which computer matching involving the Federal government could be performed and adding certain protections for persons applying for, and receiving, Federal benefits. Section 7201of the Omnibus Budget Reconciliation Act of 1990 (Pub. L. 101–508) further amended the Privacy Act regarding protections for such persons.

The Privacy Act, as amended, regulates the use of computer matching by Federal agencies when records in a system of records are matched with other Federal, State, or local government records. It requires Federal agencies involved in computer matching programs to:

(1) Negotiate written agreements with the other agency or agencies participating in the matching programs;

(2) Obtain the approval of the matching agreement by the Data Integrity Boards (DIB) of the participating Federal agencies;

(3) Publish notice of the computer matching program in the **Federal Register;**

(4) Furnish detailed reports about matching programs to Congress and OMB;

(5) Notify applicants and beneficiaries that their records are subject to matching; and

(6) Verify match findings before reducing, suspending, terminating, or denying a person's benefits or payments.

**B. SSA Computer Matches Subject to the Privacy Act**

We have taken action to ensure that all of our computer matching programs comply with the requirements of the Privacy Act, as amended.

Dated: February 16, 2010.

**Michael G. Gallagher,**

*Deputy Commissioner for Budget, Finance and Management.*

**Notice of Computer Matching Program, SSA With the Department of Veterans Affairs/Veterans Benefits Administration (VA/VBA)**

*A. Participating Agencies*

SSA and VA/VBA.

*B. Purpose of the Matching Program*

The purpose of this matching program is to set forth the terms and conditions under which VA will provide us with VA compensation and pension payment data. This disclosure will provide us with information necessary to verify a person's self-certification of eligibility for prescription drug subsidy assistance under section 1860D–14 of the Social Security Act (Act) (42 U.S.C. 1395w–114). This disclosure will also identify those eligible for Medicare Savings Programs and subsidized Medicare prescription drug coverage, which will enable us to implement a Medicare outreach program mandated by section 1144 of Title XI of the Act.

*C. Authority for Conducting the Matching Program*

The legal authority for us to conduct this matching activity is section 1860D–14(a)(3) (42 U.S.C. 1395w–114) and section 1144(a)(1) and (b)(1) (42 U.S.C. 1320b–14) of the Act.

The legal authority for VA to disclose information for this match is 42 U.S.C. 1383(f).

*D. Categories of Records and Persons Covered by the Matching Program*

VA will provide us with electronic files containing compensation and pension payment data from its system of records (SOR) identified as "Compensation, Pension, Education, and Vocational Rehabilitation and Employment Records-VA (58 VA 21/22/28)," first published at 74 FR 29275 (June 19, 2009). We will match VA data with our SOR 60–0321, our Medicare Database.

*E. Inclusive Dates of the Matching Program*

The matching program will become effective no sooner than 40 days after notice of the matching program is sent to Congress and OMB, or 30 days after publication of this notice in the **Federal Register,** whichever date is later. The matching program will continue for 18 months from the effective date and may be extended for an additional 12 months thereafter, if certain conditions are met.

[FR Doc. 2010–3382 Filed 2–19–10; 8:45 am]

BILLING CODE 4191–02–P

## DEPARTMENT OF STATE

**[PUBLIC NOTICE 6901]**

**Culturally Significant Objects Imported for Exhibition Determinations: "Otto Dix"**

**SUMMARY:** Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.;* 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236 of October 19, 1999, as amended, and Delegation of Authority No. 257 of April 15, 2003 [68 FR 19875], I hereby determine that the objects to be included in the exhibition "Otto Dix," imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners or custodians. I also determine that the exhibition or display of the exhibit objects at the Neue Galerie, New York, New York, from on or about March 11, 2010, until on or about August 10, 2010, and at possible additional exhibitions or venues yet to be determined, is in the national interest. I have ordered that Public Notice of these Determinations be published in the **Federal Register**.

**FOR FURTHER INFORMATION CONTACT:** For further information, including a list of the exhibit objects, contact Paul W. Manning, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202–632–6469). The mailing address is U.S. Department of State, SA–5, L/PD, Fifth Floor (Suite 5H03), Washington, DC 20522–0505.

Dated: February 17, 2010.

**Maura M. Pally,**

*Deputy Assistant Secretary for Professional and Cultural Exchanges, Bureau of Educational and Cultural Affairs, Department of State.*

[FR Doc. 2010–3412 Filed 2–19–10; 8:45 am]

BILLING CODE 4710–05–P

## DEPARTMENT OF STATE

**[Public Notice 6900]**

### Termination of Ineligible Status and Statutory Debarment Pursuant to Section 38(g)(4) of the Arms Export Control Act and Section 127.7 of the International Traffic in Arms Regulations for ITT Corporation

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given that the Department of State has terminated the ineligible status and statutory debarment of ITT Corporation, pursuant to section 38(g)(4) of the Arms Export Control Act (AECA) (22 U.S.C. 2778) and section 127.7 of the International Traffic in Arms Regulations (ITAR).

**DATES:** *Effective Date:* February 4, 2010.

**FOR FURTHER INFORMATION CONTACT:** Lisa V. Studtmann, Director, Office of Defense Trade Controls Compliance, Directorate of Defense Trade Controls, Bureau of Political-Military Affairs, Department of State (202) 663–2477.

**SUPPLEMENTARY INFORMATION:** Section 38(g)(4) of the AECA and section 127.11 of the ITAR prohibit the issuance of export licenses or other approvals to persons if those persons, or any party to the export, have been convicted of violating the AECA and certain other U.S. criminal statutes enumerated at section 38(g)(1) of the AECA and section 120.27 of the ITAR. Such individuals are considered ineligible in accordance with section 120.1 of the ITAR. Also, persons convicted of violating the AECA are subject to statutory debarment under section 127.7 of the ITAR.

In March 2007, ITT Corporation pleaded guilty to violating the AECA (U.S. District Court, Western District of Virginia, Case #7:07–cr–00022–sgw). Based on this plea, ITT Corporation was ineligible in accordance with section 120.1 of the ITAR and was statutorily debarred pursuant to section 127.7 of the ITAR. After a full review of the circumstances, finding that appropriate steps were taken to mitigate any law enforcement concerns, the Department decided to except out all ITT business units but the culpable ITT entity responsible for the violations resulting in the aforementioned plea, ITT-Night Vision Division. ITT-Night Vision Division was thus prohibited from participating directly or indirectly in exports of defense articles and defense services. Notice of debarment was published in the **Federal Register** (72 Federal Register 18310, April 11, 2007). Subsequently, in December 2007 ITT Corporation entered into a consent agreement with the State Department which detailed penalties and remedial compliance measures to be completed in order to be considered for reinstatement following a minimum period of one year debarment.

In accordance with section 38(g)(4) of the AECA and section 127.7 of the ITAR, the ineligible status and statutory debarment may be terminated after consultation with other appropriate U.S. agencies, after a thorough review of the circumstances surrounding the conviction, and a finding that appropriate steps have been taken to mitigate any law enforcement concerns. The Department of State has reviewed the circumstances and consulted with other appropriate U.S. agencies, and has determined that ITT Corporation has taken appropriate steps to address the causes of the violations and to mitigate any law enforcement concerns. Therefore, in accordance with section 38(g)(4) of the AECA and section 127.7 of the ITAR, ITT Corporation is no longer ineligible and the statutory debarment is rescinded, effective February 4, 2010.

Dated: February 4, 2010.

**Andrew J. Shapiro,**

*Assistant Secretary, Bureau of Political-Military Affairs, Department of State.*

[FR Doc. 2010–3413 Filed 2–19–10; 8:45 am]

BILLING CODE 4710–25–P

## DEPARTMENT OF TRANSPORTATION

### Saint Lawrence Seaway Development Corporation

### Advisory Board; Notice of Meeting

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App. I), notice is hereby given of a meeting of the Advisory Board of the Saint Lawrence Seaway Development Corporation (SLSDC), to be held from 10:30 a.m. to 11:30 a.m. (EDT) on Friday, March 5, 2010, via conference call at the Corporation's Administration Headquarters, Suite W32–300, 1200 New Jersey Avenue, SE., Washington, DC. The agenda for this meeting will be as follows: Opening Remarks; Consideration of Minutes of Past Meeting; Quarterly Report; Old and New Business; Closing Discussion; Adjournment.

Attendance at the meeting is open to the interested public but limited to the space available. With the approval of the Administrator, members of the public may present oral statements at the meeting. Persons wishing further information should contact, not later than Monday, March 1, 2010, Anita K. Blackman, Chief of Staff, Saint Lawrence Seaway Development Corporation, 1200 New Jersey Avenue, SE., Washington, DC 20590; 202–366–0091.

Any member of the public may present a written statement to the Advisory Board at any time.

Issued at Washington, DC, on February 8, 2010.

**Collister Johnson, Jr.,**

*Administrator.*

[FR Doc. 2010–3307 Filed 2–19–10; 8:45 am]

BILLING CODE 4910–61–P

## DEPARTMENT OF THE TREASURY

### Submission for OMB Review; Comment Request

February 16, 2010.

The Department of Treasury will submit the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13, on or after the publication date of this notice. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 11000, 1750 Pennsylvania Avenue, NW., Washington, DC 20220.

**DATES:** Written comments should be received on or before March 24, 2010 to be assured of consideration.

**Bureau of Public Debt (BPD)**

*OMB Number:* 1535–0114.

*Type of Review:* Reinstatement without change of a previously approved collection.

*Title:* Release.

*Form:* PDF–2001.

*Description:* Used by the owner, co-owner, or other person entitled to ratify payment of savings bonds/notes and release the United States of America from any liability.

*Respondents:* Individuals or Households.

*Estimated Total Burden Hours:* 20 hours.

*Clearance Officer:* Bruce Sharpe, (304) 480–8150. Bureau of the Public Debt, 200 Third Street, Parkersburg, West Virginia 26106.

*OMB Reviewer:* Shagufta Ahmed, (202) 395–7873. Office of Management and Budget, Room 10235, New

Executive Office Building, Washington, DC 20503.

**Celina Elphage,**

*Treasury PRA Clearance Officer.*

[FR Doc. 2010–3308 Filed 2–19–10; 8:45 am]

**BILLING CODE 4810–39–P**

## DEPARTMENT OF THE TREASURY

### Office of the Comptroller of the Currency

### Agency Information Collection Activities: Submission for OMB Review; Comment Request

**AGENCY:** Office of the Comptroller of the Currency (OCC), Treasury.

**ACTION:** Notice and request for comment.

**SUMMARY:** The OCC, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on a continuing information collection, as required by the Paperwork Reduction Act of 1995. An agency may not conduct or sponsor, and a respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number. Currently, the OCC is soliciting comment concerning its renewal of an information collection titled, "Municipal Securities Dealers and Government Securities Brokers and Dealers Registration and Withdrawal." The OCC also is giving notice that it has sent the collection to OMB for review.

**DATES:** You should submit written comments by March 24, 2010.

**ADDRESSES:** Communications Division, Office of the Comptroller of the Currency, Mailstop 2–3, Attention: 1557–0184, 250 E Street, SW., Washington, DC 20219. In addition, comments may be sent by fax to (202) 874–5274, or by electronic mail to *regs.comments@occ.treas.gov.* You can inspect and photocopy comments at the OCC, 250 E Street, SW., Washington, DC 20219. For security reasons, the OCC requires that visitors make an appointment to inspect comments. You may do so by calling (202) 874–4700. Upon arrival, visitors will be required to present valid government-issued photo identification and to submit to security screening in order to inspect and photocopy comments.

Additionally, you should send a copy of your comments to OCC Desk Officer, 1557–0184, by mail to U.S. Office of Management and Budget, 725 17th Street, NW., #10235, Washington, DC 20503, or by fax to (202) 395–6974.

**FOR FURTHER INFORMATION CONTACT:** You can request additional information from or a copy of the collection from Mary H. Gottlieb, Clearance Officer, (202) 874–5090, Legislative and Regulatory Activities Division (1557–0184), Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219.

**SUPPLEMENTARY INFORMATION:** The OCC is proposing to extend OMB approval of the following information collection:

*Title:* Municipal Securities Dealers and Government Securities Brokers and Dealers Registration and Withdrawal.

*OMB Control No.:* 1557–0184.

*Form Numbers:* MSD, MSDW, MSD–4, MSD–5, G–FIN, G–FINW.

*Abstract:* This information collection is required to satisfy the requirements of the Securities Act Amendments of 1975 [1] and the Government Securities Act of 1986,[2] which require that any national bank that acts as a government securities broker/dealer or a municipal securities dealer notify the OCC of its broker/dealer activities. The OCC uses this information to determine which national banks are government and municipal securities broker/dealers and to monitor entry into and exit from government and municipal securities broker/dealer activities by institutions and registered persons. The OCC also uses the information in planning bank examinations.

*Type of Review:* Extension without change of a currently approved collection.

*Affected Public:* Businesses or other for-profit; individuals.

*Estimated Number of Respondents:* 26.

*Estimated Total Annual Responses:* 920.

*Frequency of Response:* On occasion.

*Estimated Total Annual Burden:* 867 hours.

The OCC issued a 60-day **Federal Register** notice on November 30, 2009. 74 FR 62634. No comments were received. Comments continue to be invited on:

(a) Whether the collection of information is necessary for the proper performance of the functions of the OCC, including whether the information has practical utility;

(b) The accuracy of the OCC's estimate of the information collection burden;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected;

(d) Ways to minimize the burden of the collection on respondents, including through the use of automated collection techniques or other forms of information technology; and

(e) Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: February 16, 2010.

**Michele Meyer,**

*Assistant Director, Legislative & Regulatory Activities Division, Office of the Comptroller of the Currency.*

[FR Doc. 2010–3375 Filed 2–19–10; 8:45 am]

**BILLING CODE 4810–33–P**

[1] 15 U.S.C. 78a–80b–17.

[2] 15 U.S.C. 78o–5.

## DEPARTMENT OF VETERANS AFFAIRS

### Privacy Act of 1974; System of Records

**AGENCY:** Department of Veterans Affairs (VA).

**ACTION:** Notice of establishment of new system of records.

**SUMMARY:** The Privacy Act of 1974 (5 United States Code 552(e)(4)) requires that all agencies publish in the **Federal Register** a notice of the existence and character of their systems of records. Notice is hereby given that the Department of Veterans Affairs is establishing a new system of records entitled "Veterans Health Administration Leadership and Workforce Development—VA" (161VA10A2).

**DATES:** Comments on this new system of records must be received no later than March 24, 2010. If no public comment is received, the new system will become effective March 24, 2010.

**ADDRESSES:** Written comments may be submitted through *http://www.Regulations.gov;* by mail or hand-delivery to Director, Regulations Management (02Reg), Department of Veterans Affairs, 810 Vermont Avenue, NW., Room 1068, Washington, DC 20420; or by fax to (202) 273–9026. Comments received will be available for public inspection in the Office of Regulation Policy and Management, Room 1063B, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday (except holidays). Please call (202) 461–4902 (this is not a toll-free number) for an appointment. In addition, during the comment period, comments may be viewed online through the Federal Docket Management System (FDMS) at *http://www.Regulations.gov.*

**FOR FURTHER INFORMATION CONTACT:** Diana Rogers, Department of Veterans Affairs, Veterans Health Administration High Performance Development Model

(HPDM) Program Office, 55 North Robinson Avenue, Oklahoma City, Oklahoma 73102; telephone (405) 552–4336.

**SUPPLEMENTARY INFORMATION:**

## I. Description of Proposed Systems of Records

Veterans Health Administration Leadership and Workforce Development (VHALWD) is a data repository that stores data gathered from the Canteen Service, Veterans Health Administration Central Office, Veterans Integrated Service Networks and facility coordinators.

## II. Proposed Routine Use Disclosures of Data in the System

To the extent that records contained in the system include information protected by 38 U.S.C. 7332, *i.e.,* medical treatment information related to drug abuse, alcoholism or alcohol abuse, sickle cell anemia or infection with the human immunodeficiency virus, that information cannot be disclosed under a routine use unless there is also specific statutory authority permitting disclosure.

We are proposing to establish the following Routine Use disclosures of information maintained in the system:

1. The record of an individual who is covered by a system of records may be disclosed to a Member of Congress, or a staff person acting for the Member, when the Member or staff person requests the record on behalf of and at the written request of the individual.

VA must be able to provide information about individuals to adequately respond to inquiries from Members of Congress at the request of constituents who have sought their assistance.

2. Disclosure may be made to the National Archives and Records Administration (NARA) and the General Services Administration (GSA) in records management inspections conducted under authority of Title 44, Chapter 29, of the United States Code (U.S.C.).

NARA and GSA are responsible for management of old records no longer actively used, but which may be appropriate for preservation, and for the physical maintenance of the Federal government's records. VA must be able to provide the records to NARA and GSA in order to determine the proper disposition of such records.

3. VA may disclose information from this system of records to the Department of Justice (DoJ), either on VA's initiative or in response to DoJ's request for the information, after either VA or DoJ determines that such information is relevant to DoJ's representation of the United States or any of its components in legal proceedings before a court or adjudicative body, provided that, in each case, the agency also determines prior to disclosure that release of the records to DoJ is a use of the information contained in the records that is compatible with the purpose for which VA collected the records. VA, on its own initiative, may disclose records in this system of records in legal proceedings before a court or administrative body after determining that the disclosure of the records to the court or administrative body is a use of the information contained in the records that is compatible with the purpose for which VA collected the records.

VA must be able to provide information to DoJ in litigation where the United States or any of its components is involved or has an interest. A determination would be made in each instance that under the circumstances involved, the purpose is compatible with the purpose for which VA collected the information. This routine use is distinct from the authority to disclose records in response to a court order under subsection (b)(11) of the Privacy Act, 5 U.S.C. 552(b)(11), or any other provision of subsection (b), in accordance with the court's analysis in *Doe* v. *DiGenova,* 779 F.2d 74, 78–84 (DC Cir. 1985) and *Doe* v. *Stephens,* 851 F.2d 1457, 1465–67 (DC Cir. 1988).

4. Disclosure of relevant information may be made to individuals, organizations, private or public agencies, or other entities with whom VA has a contract or agreement or where there is a subcontract to perform such services as VA may deem practicable for the purposes of laws administered by VA, in order for the contractor or subcontractor to perform the services of the contract or agreement. This routine use, which also applies to agreements that do not qualify as contracts defined by Federal procurement laws and regulations, is consistent with OMB guidance in OMB Circular A–130, App. I, paragraph 5a(1)(b) that agencies promulgate routine uses to address disclosure of Privacy Act-protected information to contractors in order to perform the services contracts for the agency.

5. VA may disclose on its own initiative any information in the system, except the names and home addresses of veterans and their dependents, that is relevant to a suspected or reasonably imminent violation of the law whether civil, criminal, or regulatory in nature and whether arising by general or program statute or by regulation, rule, or order issued pursuant thereto, to a Federal, state, local, tribal, or foreign agency charged with the responsibility of investigating or prosecuting such violation, or charged with enforcing or implementing the statute, regulation, rule, or order. VA may also disclose on its own initiative the names and addresses of veterans and their dependents to a Federal agency charged with the responsibility of investigating or prosecuting civil, criminal, or regulatory violations of law, or charged with enforcing or implementing the statute, regulation, or order issued pursuant thereto.

VA must be able to provide on its own initiative information that pertains to a violation of laws to law enforcement authorities in order for them to investigate and enforce those laws. Under 38 U.S.C. 5701(a) and (f), VA may only disclose the names and addresses of veterans and their dependents to Federal entities with law enforcement responsibilities. This is distinct from the authority to disclose records in response to a qualifying request from a law enforcement entity, as authorized by Privacy Act subsection 5 U.S.C. 552a(b)(7).

6. Disclosure to other Federal agencies may be made to assist such agencies in preventing and detecting possible fraud or abuse by individuals in their operations and programs.

This routine use permits disclosures by the Department to report a suspected incident of identity theft and provide information or documentation related to or in support of the reported incident.

7. VA may, on its own initiative, disclose any information or records to appropriate agencies, entities, and persons when (1) VA suspects or has confirmed that the integrity or confidentiality of information in the system of records has been compromised; (2) the Department has determined that as a result of the suspected or confirmed compromise, there is a risk of embarrassment or harm to the reputations of the record subjects, harm to economic or property interests, identity theft or fraud, or harm to the security, confidentiality, or integrity of this system or other systems or programs (whether maintained by the Department or another agency or entity) that rely upon the potentially compromised information; and (3) the disclosure is to agencies, entities, or persons whom VA determines are reasonably necessary to assist or carry out the Department's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm. This routine use permits disclosures by the Department to respond to a suspected or confirmed

data breach, including the conduct of any risk analysis or provision of credit protection services as provided in 38 U.S.C. 5724, as the terms are defined in 38 U.S.C. 5727.

## III. Compatibility of the Proposed Routine Uses

The Privacy Act permits VA to disclose information about individuals without their consent for a routine use when the information will be used for a purpose that is compatible with the purpose for which we collected the information. In all of the routine use disclosures described above, the recipient of the information will use the information in connection with a matter relating to one of VA's programs, will use the information to provide a benefit to VA, or disclosure is required by law.

The notice of intent to publish and an advance copy of the system notice have been sent to the appropriate Congressional committees and to the Director of the Office of Management and Budget (OMB) as required by 5 U.S.C. 552a(r) (Privacy Act) and guidelines issued by OMB (65 FR 77677), December 12, 2000.

Approved: January 26, 2010.

**John R. Gingrich,**

*Chief of Staff, Department of Veterans Affairs.*

**161VA10A2**

**SYSTEM NAME:**

Veterans Health Administration Leadership and Workforce Development—VA.

**SYSTEM LOCATION:**

Records are maintained at the North Little Rock Campus, 2200 Fort Roots Drive, Little Rock, Arkansas 72114.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

The records include information from and concerning Veterans Affairs Central Office, Veterans Health Administration, Veterans Health Administration Canteen, Veterans Health Administration Central Office, Veterans Benefits Administration and National Cemetery Administration personnel.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

The records may include information related to: people, work groups, workforce, funding, leadership classes, personal development plans, supervisory levels, mentor and coach roles and certifications, High Performance Development Model, senior executive information and recruitment, human resources automation, positions, organizations, and locations of Veterans Health Administration top management positions. Central Office and Veterans Integrated Systems Network managers and staff, facility directors, associate directors, chiefs of staff, and other senior clinical and administrative field managers' positions are included. The Veterans Health Administration Executive Management Program consists of the functions that fall under the purview of the Veterans Health Administration Executive Resources Board and the Veterans Health Administration Performance Review Board. Their functions include executive development, recruitment and placement; organizational analysis; succession planning; and performance assessment and recognition. The method used to collect this information is a proprietary system using relational technology. Information from this database is joined and expanded with information from the Veterans Health Administration executive program processes *i.e.,* organization, vacancies, recruitment efforts, performance, etc. This combination of information is used in the administration of the Executive Resources Board and Performance Review Board functions. The sharing and development of information involving executives and organizations provides an effective means for accomplishing the Executive Resources Board and Performance Review Board objectives.

The following modules are in Veterans Health Administration Leadership and Workforce Development: Veterans Health Administration Leadership and Workforce Development Home, Performance, Workgroups, Veterans Affairs National Database for Interns, Student Educational Experience Program, High Performance Development Model Funding, Executive Career Field Career Development Plan On-Line Application, Technical Career Field Preceptor On-Line Application, Career Development Plans, Workforce Planning, Class and Program Management (includes: Graduate Healthcare Administration Training Program, School at Work, Leadership Effectiveness Accountability Development, Technical Career Field, Executive Career Field Candidate Development Program, Senior Executive Service Candidate Development programs, Ethics, Professional Development Plans, Supervisory Training, Open Season (Veterans Health Administration Executive Recruitment), WebHR (Web-based Human Resource module), and Mentor Coach Certification). Veterans Health Administration Leadership and Workforce Development data contains:

1. Employee data.
- Employee legal name
- Social security number
- Veteran's preference
- Vietnam Era veteran
- Retirement plan
- Tenure
- Universal personal identification number
- Universal user name
- Sex
- Supervisory status
- Supervisory training status
- Work contact information
- Facility
- Network Identification
- Home contact information
- Home of record contact information
- Assigned facility/organization
- Pay plan
- Pay grade
- Step
- Retirement eligibility
- Union membership
- Leave balances
- Program
- Credentials
- Grievance
- Disciplinary actions
- Third-party and other employee actions

2. Employee position data.
- Veterans Health Administration Leadership and Workforce Development position titles
- High Performance Development Management ratings
- Position requestor contact data
- Legal authority
- Competitive Level
- Fair Labor Standards Act category
- Drug testing position indicator
- Citizenship/Residency status
- English language proficiency
- Announcement status
- Vacancy status
- Date job opened
- Days to open
- Days to issue certificate
- Date job closed
- Job type/Occupation series/Grade
- Pay plan
- Work schedule
- Appropriation code
- Cost center
- Date candidates referred
- Date nomination received
- Date to Executive Resources Board
- Date credentials complete
- Date recruitment received
- Position start and end dates
- Appointment start and end dates
- Position location
  - Location complexity rating
- Position reporting official
- Position status
  - Supervisory

- ○ Bargaining unit
- ○ Senior executive pay band
- Level of supervisory responsibility
- Date of offer
- Position status change
- Reason for change
- Position authorization data
- Announcement tracking data (location and dates of actions)
- Area of consideration
- Number of applicants (internal, external, not qualified)
- Number interviewed
- Applicant outcome and notification
- Selecting official
- Re-announcement
- Position cancelations
- Date fingerprinted
- Background check data
- Physician Comp Panel and Standards Board data

3. Bonus data.

- Executive/Senior Executive Service
  - ○ Pay band and band max pay
  - ○ Proposed pay adjustment
  - ○ Proposed rating
  - ○ Approved rating
  - ○ Approved bonus pay
  - ○ Actual pay
  - ○ Rank award
- Type
- Previous year nomination and award amount
- Current year nomination
  - ○ Bonus pool total
  - ○ Local bonus funding amount
  - ○ Form Uploads
- Appraisal
- High level reviews
- Comments
- Bonus justification
- Rank award nominations
- Non-Executive (each Fiscal Year)
  - ○ Rating
  - ○ Award amount
  - ○ Pay adjustment (Yes/No)

4. Workgroups & Organizations.

- Just under 100 codes—not job occupation series codes—code developed for the All Employee Survey
- Agency selection
  - ○ Veterans Affairs
  - ○ Veterans Health Administration
  - ○ National Cemetery
- Agency networks
- Agency organizations
- Formal and informal name
- Organization type
- Network
- Physical location
- Duty Code
- Complexity Level
- Station number
- Workgroup supervisory designations
- Workgroup coordinator assignment
- Workgroup coordinator contact info

5. Development Plans.

- Uploaded text document
  - ○ Document filled from template
  - ○ Free text employee documentation

6. Funding.

- Program funding
- Program funds available
- Reimbursement type
- Appropriation code
- Fiscal contact name and phone
- Amount per employee
- Fund control point
- Requested average salary
- Approved funds
- Withdrawn funds
- Date funding sent
- Approval funding comments
- Approved Full Time Equivalents dollars
- Cost center

7. Career Programs.

- Program Eligibility criteria
- Program waiver
- Program employee applied
- Class title
- Program/Class year
- School name and state
- Major
- Anticipated graduation date
- Application status
- Employment history
- Education history
- Competency data (application questions and answers)
- Applicant endorsers
- Class administrator assignments
- Employee list per class
- Program completion status
- Requested number of student hires
- Requested funding for student salary
- Student work schedule
- Number Full Time Equivalents requested

8. Workforce Planning—Annual Corporate Office & Veterans Integrated Service Networks.

- Planning team members
- Strategic direction
- Historical analysis
  - ○ Employee reason to leave
  - ○ Equal employment opportunity category of employee
- Projected workforce-rational and issues
- Recruitment & Retention programs used
- Leadership programs/activities and participation
- Workplace morale assessment
- Work plan comments

9. Mentor Information.

- Mentor status
- Core training
  - ○ Courses
  - ○ Date and location
  - ○ Training instructors
  - ○ Training history
- Certification level
- Practical experience hours and event

10. Perseus Survey Software.

- Employee legal name
- Last 4 social security number
- Veterans Integrated Service Networks
- Facility/Office
- Work Setting (Section/Division/Campus/Product Line/Service/Department)
- Occupation
- Identification of supervisory chain of command
- Identification of peer and subordinate relationships
- Demographic information
  - ○ Gender
  - ○ Age
  - ○ Race/National Origin
  - ○ Tenure
  - ○ Grade Level
- Data Input in Response to survey questions (questionnaires which cover the following types of topics as an example)
  - ○ Assessment Inventories, such as 360 Assessments, WES/MBI Instruments
  - ○ Customer Satisfaction surveys/evaluations (High Performance Development Model, Health Care Retention and Recruitment Office, National Center for Organizational Development, Delegated Examining Units, Workforce Management and Consulting Office)
  - ○ Organizational assessment instruments such as Civility, Respect and Engagement in the Workplace Evaluation, Veterans Administration Nursing Outcomes Database Registered Nursing survey, Education Inventories, Center for Faith Based and Community Initiatives Communications survey, Aggressive Behavior Prevention Survey, Integrated Ethics Workbook, Methicillin Resistant Staphylococcus Aureus, Office of Personal Management All Employee Survey, Exit/Entrance Surveys, Organizational Climate Assessment Program surveys, surveys for specific facilities/offices
  - ○ Program Assessments/Proficiency surveys such as Technical Career Field Return on Investment survey, Supervisory Training Pre/Post Test surveys, Human Resource Proficiency Tracking survey
  - ○ Professional Assessment surveys such as Executive Career Field Candidate/Mentor questionnaires, Acting Director/Senior Executive Service applicant assessments

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

Title 38, United States Code, section 501a.

**PURPOSE(S):**

The records and information may be used for the management of Veterans

Health Administration executive and senior executive employees and employees in national programs for performance appraisal and bonus award entries, bonus and appraisal documentation storage, Rank Award and type given, supervisory training status and employee position management. Reports for workforce succession planning and analysis, Veterans Health Administration supervisory training status and course grade, bonus award dollar amounts per executive and non-executive employee used by Performance Review Boards. Human resource position creation, and fill actions, employee action and assignment tracking data is collected for business processing and analysis.

Workgroups are developed for survey use and data collection. Data that is entered and stored can be extracted from the database and used for other applications.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

To the extent that records contained in the system include information protected by 45 Code of Federal Regulations. Parts 160 and 164, such as individually identifiable health information, and 38 United States Code 7332, such as medical treatment information related to drug abuse, alcoholism or alcohol abuse, sickle cell anemia or infection with the human immunodeficiency virus, that information cannot be disclosed under a routine use unless there is also specific statutory authority in 38 United States Code 7332 and regulatory authority in 45 Code of Federal Regulations Parts 160 and 164 permitting disclosure.

1. The record of an individual who is covered by a system of records may be disclosed to a Member of Congress, or a staff person acting for the Member, when the Member or staff person requests the record on behalf of and at the written request of the individual.

2. Disclosure may be made to the National Archives and Records Administration (NARA) and the General Services Administration (GSA) in records management inspections conducted under authority of Title 44, Chapter 29, of the United States Code (U.S.C.).

3. VA may disclose information from this system of records to the Department of Justice (DoJ), either on VA's initiative or in response to DoJ's request for the information, after either VA or DoJ determines that such information is relevant to DoJ's representation of the United States or any of its components in legal proceedings before a court or adjudicative body, provided that, in each case, the agency also determines prior to disclosure that release of the records to DoJ is a use of the information contained in the records that is compatible with the purpose for which VA collected the records. VA, on its own initiative, may disclose records in this system of records in legal proceedings before a court or administrative body after determining that the disclosure of the records to the court or administrative body is a use of the information contained in the records that is compatible with the purpose for which VA collected the records.

4. Disclosure of relevant information may be made to individuals, organizations, private or public agencies, or other entities with whom VA has a contract or agreement or where there is a subcontract to perform such services as VA may deem practicable for the purposes of laws administered by VA, in order for the contractor or subcontractor to perform the services of the contract or agreement.

5. VA may disclose on its own initiative any information in the system, except the names and home addresses of veterans and their dependents, that is relevant to a suspected or reasonably imminent violation of the law whether civil, criminal, or regulatory in nature and whether arising by general or program statute or by regulation, rule, or order issued pursuant thereto, to a Federal, state, local, tribal, or foreign agency charged with the responsibility of investigating or prosecuting such violation, or charged with enforcing or implementing the statute, regulation, rule, or order. VA may also disclose on its own initiative the names and addresses of veterans and their dependents to a Federal agency charged with the responsibility of investigating or prosecuting civil, criminal, or regulatory violations of law, or charged with enforcing or implementing the statute, regulation, or order issued pursuant thereto.

6. Disclosure to other Federal agencies may be made to assist such agencies in preventing and detecting possible fraud or abuse by individuals in their operations and programs.

7. VA may, on its own initiative, disclose any information or records to appropriate agencies, entities, and persons when (1) VA suspects or has confirmed that the integrity or confidentiality of information in the system of records has been compromised; (2) the Department has determined that as a result of the suspected or confirmed compromise, there is a risk of embarrassment or harm to the reputations of the record subjects, harm to economic or property interests, identity theft or fraud, or harm to the security, confidentiality, or integrity of this system or other systems or programs (whether maintained by the Department or another agency or entity) that rely upon the potentially compromised information; and (3) the disclosure is to agencies, entities, or persons whom VA determines are reasonably necessary to assist or carry out the Department's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm. This routine use permits disclosures by the Department to respond to a suspected or confirmed data breach, including the conduct of any risk analysis or provision of credit protection services as provided in 38 U.S.C. 5724, as the terms are defined in 38 U.S.C. 5727.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**

**STORAGE:**

Records are maintained on the HPDM1 Server and backup server in Little Rock, Arkansas.

**RETRIEVABILITY:**

Records are retrieved by name, social security number, position number or other assigned identifiers of the individuals on whom they are maintained.

**SAFEGUARDS:**

1. Access to Veterans Affairs working and storage areas is restricted to Veterans Affairs employees on a "need-to-know" basis; strict control measures are enforced to ensure that disclosure to these individuals is also based on this same principle. Generally, Veterans Affairs file areas are locked after normal duty hours and the facilities are protected from outside access by the Federal Protective Service or other security personnel.

2. Access to computer rooms at health care facilities is generally limited by appropriate locking devices and restricted to authorized Veterans Affairs employees and vendor personnel. Automatic Data Processing peripheral devices are placed in secure areas. Access to information stored on automated storage media at other Veterans Affairs locations is controlled by individually unique passwords/codes. Employees are limited to only that information in the file which is needed in the performance of their official duties.

3. Access to the Little Rock Campus Servers is restricted to Center employees, Federal Protective Service

and other security personnel. Access to computer rooms is restricted to authorized operational personnel through electronic scanning and locking devices. All other persons gaining access to computer rooms are escorted after identity verification and log entry to track person, date, time in, and time out of the room. Information stored in the computer may be accessed by authorized Veterans Affairs employees at remote locations including Veterans Affairs health care facilities, Information Systems Centers, Veterans Affairs Central Office, and Veteran Integrated Service Networks. Access is controlled by secure individually unique system authentication.

**RETENTION AND DISPOSAL:**

Paper records and information maintained and disposed of in accordance with records disposition authority approved by the Archivist of the United States.

**SYSTEM MANAGER(S) AND ADDRESS:**

Official responsible for policies and procedures; Office of Workforce Management & Consulting Office (10A2), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420. Officials maintaining the system; Diana Rogers of the High Performance Development Model National Program Office located at 55 North Robinson Avenue, Suite 1033, Oklahoma City, OK 73102.

**NOTIFICATION PROCEDURE:**

Individuals who wish to determine whether this system of records contains information about them should contact the Veterans Affairs facility location at which they are or were employed. Inquiries should include the person's full name, social security number, dates of employment, date(s) of contact, and return address.

**RECORD ACCESS PROCEDURE:**

Individuals seeking information regarding access to and contesting of records in this system may write, call or visit the Veterans Affairs facility location where they are or were employed or made contact.

**CONTESTING RECORD PROCEDURES:**

(*See* Record Access Procedures above.)

**RECORD SOURCE CATEGORIES:**

Information in this system of records is provided by Veterans Administration's employees associated to Veterans Affairs medical centers, Corporate Offices, National Cemetery Administration, Canteen Service and Veterans Health Administration corporate offices, Veterans Integrated Service Network and facilities.

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Federal Register

Monday,
February 22, 2010

# Part II

# Federal Reserve System

## 12 CFR Parts 226 and 227

## Truth in Lending; Unfair or Deceptive Acts or Practices; Final Rules

**FEDERAL RESERVE SYSTEM**

**12 CFR Part 226**

**[Regulation Z; Docket No. R–1370]**

## Truth in Lending

**AGENCY:** Board of Governors of the Federal Reserve System.

**ACTION:** Final rule.

**SUMMARY:** The Board is amending Regulation Z, which implements the Truth in Lending Act, and the staff commentary to the regulation in order to implement provisions of the Credit Card Accountability Responsibility and Disclosure Act of 2009 that are effective on February 22, 2010. The rule establishes a number of new substantive and disclosure requirements to establish fair and transparent practices pertaining to open-end consumer credit plans, including credit card accounts. In particular, the rule limits the application of increased rates to existing credit card balances, requires credit card issuers to consider a consumer's ability to make the required payments, establishes special requirements for extensions of credit to consumers who are under the age of 21, and limits the assessment of fees for exceeding the credit limit on a credit card account.

**DATES:** *Effective date.* The rule is effective February 22, 2010.

*Mandatory compliance dates.* The mandatory compliance date for the portion of § 226.5(a)(2)(iii) regarding use of the term "fixed" and for §§ 226.5(b)(2)(ii), 226.7(b)(11), 226.7(b)(12), 226.7(b)(13), 226.9(c)(2) (except for 226.9(c)(2)(iv)(D)), 226.9(e), 226.9(g) (except for 226.9(g)(3)(ii)), 226.9(h), 226.10, 226.11(c), 226.16(f), and §§ 226.51–226.58 is February 22, 2010. The mandatory compliance date for all other provisions of this final rule is July 1, 2010.

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

**SUPPLEMENTARY INFORMATION:**

### I. Background and Implementation of the Credit Card Act

*January 2009 Regulation Z and FTC Act Rules*

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

On May 5, 2009, the Board published proposed clarifications and technical amendments to the January 2009 Regulation Z Rule (May 2009 Regulation Z Proposed Clarifications) in the **Federal Register**. *See* 74 FR 20784. The Board, the OTS, and the NCUA (collectively, the Agencies) concurrently published proposed clarifications and technical amendments to the January 2009 FTC Act Rule. *See* 74 FR 20804 (May 2009 FTC Act Rule Proposed Clarifications). In both cases, as stated in the **Federal Register**, these proposals were intended to clarify and facilitate compliance with the consumer protections contained in the January 2009 final rules and not to reconsider the need for—or the extent of—those protections. The comment period on both of these proposed sets of amendments ended on June 4, 2009.

*The Credit Card Act*

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

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

As is discussed further in the supplementary information to § 226.5(b)(2), on November 6, 2009, TILA Section 163 was further amended by the Credit CARD Technical Corrections Act of 2009 (Technical Corrections Act), which narrowed the application of the requirement regarding the time consumers receive to pay to credit card accounts. Public Law 111–93, 123 Stat. 2998 (Nov. 6, 2009). The Board is as adopting amendments to § 226.5(b)(2) to conform to the requirements of TILA Section 163 as amended by the Technical Corrections Act.

*Implementation of Credit Card Act*

On July 22, 2009, the Board published an interim final rule to implement those provisions of the Credit Card Act that became effective on August 20, 2009 (July 2009 Regulation Z Interim Final Rule). *See* 74 FR 36077. As discussed in the supplementary information to the July 2009 Regulation Z Interim Final

Rule, the Board is implementing the provisions of the Credit Card Act in stages, consistent with the statutory timeline established by Congress. Accordingly, the interim final rule implemented those provisions of the statute that became effective August 20, 2009, primarily addressing change-in-terms notice requirements and the amount of time that consumers have to make payments. The Board issued rules in interim final form based on its determination that, given the short implementation period established by the Credit Card Act and the fact that similar rules were already the subject of notice-and-comment rulemaking, it would be impracticable and unnecessary to issue a proposal for public comment followed by a final rule. The Board solicited comment on the interim final rule; the comment period ended on September 21, 2009. The Board has considered comments on the interim final rule in connection with this rule.

On October 21, 2009 the Board published a proposed rule in the **Federal Register** to implement the provisions of the Credit Card Act that become effective February 22, 2010 (October 2009 Regulation Z Proposal). 74 FR 54124. The comment period on the October 2009 Regulation Z Proposal closed on November 20, 2009. The Board received approximately 150 comments in response to the proposed rule, including comments from credit card issuers, trade associations, consumer groups, individual consumers, and a member of Congress. As discussed in more detail elsewhere in this supplementary information, the Board has considered comments received on the October 2009 Regulation Z Proposal in adopting this final rule.

The Board is separately considering the two remaining provisions under the Credit Card Act regarding reasonable and proportional penalty fees and charges and the re-evaluation of rate increases, and intends to finalize implementing regulations upon notice and after giving the public an opportunity to comment.

To the extent appropriate, the Board has used its January 2009 rules and the underlying rationale as the basis for its rulemakings under the Credit Card Act. This final rule incorporates in substance those portions of the Board's January 2009 Regulation Z Rule that are unaffected by the Credit Card Act, except as specifically noted in V. Section-by-Section Analysis. Because the requirements of the Board's January 2009 Regulation Z and FTC Act Rules are incorporated in this rule, the Board is publishing elsewhere in this **Federal Register** two notices withdrawing the January 2009 Regulation Z Rule and its January 2009 FTC Act Rule.

*Provisions of January 2009 Regulation Z Rule Applicable to HELOCs*

The final rule incorporates several sections of the January 2009 Regulation Z Rule that are applicable only to home-equity lines of credit subject to the requirements of § 226.5b (HELOCs). In particular, the final rule includes new §§ 226.6(a), 226.7(a) and 226.9(c)(1), which are identical to the analogous provisions adopted in the January 2009 Regulation Z Rule. These sections, as discussed in the supplementary information to the January 2009 Regulation Z Rule, are intended to preserve the existing requirements of Regulation Z for home-equity lines of credit until the Board's ongoing review of the rules that apply to HELOCs is completed. On August 26, 2009, the Board published proposed revisions to those portions of Regulation Z affecting HELOCs in the **Federal Register.** *See* 74 FR 43428 (August 2009 Regulation Z HELOC Proposal). This final rule is not intended to amend or otherwise affect the August 2009 Regulation Z HELOC Proposal. However, the Board believes that these sections are necessary to give HELOC creditors clear guidance on how to comply with Regulation Z after the effective date of this rule but prior to the effective date of the forthcoming final rules directly addressing HELOCs.

Finally, the Board has incorporated in the regulatory text and commentary for §§ 226.1, 226.2, and 226.3 several changes that were adopted in the Board's recent rulemaking pertaining to private education loans. *See* 74 FR 41194 (August 14, 2009) for further discussion of these changes.

*Effective Date and Mandatory Compliance Dates*

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

For consistency with the Credit Card Act, the Board is making the effective date for the final rule February 22, 2010. However, in the October 2009 Regulation Z Proposal, the Board solicited comment on whether compliance should be mandatory on February 22, 2010 for the provisions of the January 2009 Regulation Z Rule that are not directly affected by the Credit Card Act.

Many industry commenters urged the Board to retain the original July 1, 2010 mandatory compliance date for amendments to Regulation Z that are not specifically required by the Credit Card Act. These commenters noted that there would be significant operational issues associated with accelerating the effective date for all of the revisions contained in the January 2009 Regulation Z Rule that are not specific requirements of the Credit Card Act. Commenters noted that they have already allocated resources and planned for a July 1, 2010 mandatory compliance date for the January 2009 Regulation Z Rule and that it would be unworkable, if not impossible, to comply with all of the requirements of this final rule by February 22, 2010. The Board notes that this final rule is being issued less than two months prior to the February 22, 2010 effective date of the majority of the Credit Card Act requirements, and that an acceleration of the mandatory compliance date for provisions originally adopted in the January 2009 Regulation Z Rule that are not directly impacted by the Credit Card Act would be extremely burdensome for creditors. For some creditors, it may be impossible to implement these provisions by February 22, 2010. Accordingly, the Board is generally retaining a July 1, 2010 mandatory compliance date for those provisions originally adopted in the January 2009 Regulation Z Rule that are not requirements of the Credit Card Act.[1]

Accordingly, as discussed further in VI. Mandatory Compliance Dates, the mandatory compliance date for the portion of § 226.5(a)(2)(iii) regarding use of the term "fixed" and for §§ 226.5(b)(2)(ii), 226.7(b)(11), 226.7(b)(12), 226.7(b)(13), 226.9(c)(2) (except for 226.9(c)(2)(iv)(D)), 226.9(e), 226.9(g) (except for 226.9(g)(3)(ii)), 226.9(h), 226.10, 226.11(c), 226.16(f),

[1] The Board notes that the provisions regarding advance notice of changes in terms and rate increases set forth in § 226.9(c)(2) and (g) apply to all open-end (not home-secured) plans. The Credit Card Act's requirements regarding advance notice of changes in terms and rate increases, as implemented in this final rule, apply only to credit card accounts under an open-end (not home-secured) consumer credit plan. In order to have one consistent rule for all open-end (not home-secured) plans, compliance with the requirements of § 226.9(c)(2) and (g) (except for specific formatting requirements) is mandatory for all open-end (not home-secured) plans on February 22, 2010.

and §§ 226.51–226.58 is February 22, 2010. The mandatory compliance date for all other provisions of this final rule is July 1, 2010.

## II. Summary of Major Revisions

### *A. Increases in Annual Percentage Rates*

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

*New transactions.* The final rule implements the Credit Card Act's prohibition on increasing an annual percentage rate during the first year after an account is opened. After the first year, the final rule provides that a card issuer is permitted to increase the annual percentage rates that apply to new transactions so long as the issuer provides the consumer with 45 days advance notice of the increase.

### *B. Evaluation of Consumer's Ability To Pay*

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

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

Based on comments received and further analysis, the final rule adopts these aspects of the proposal. In addition, the final rule provides that—if the applicable minimum payment formula includes fees and accrued interest—the estimated minimum payment must include mandatory fees and must include interest charges calculated using the annual percentage rate that will apply after any promotional or other temporary rate expires.

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

Based on comments received and further analysis, the final rule adopts these aspects of the proposal. In addition, when evaluating a consumer's ability to pay, the final rule requires issuers to consider the ratio of debt obligations to income, the ratio of debt obligations to assets, or the income the consumer will have after paying debt obligations (*i.e.,* residual income). Furthermore, the final rule provides that it would be unreasonable for an issuer not to review any information about a consumer's income, assets, or current obligations, or to issue a credit card to a consumer who does not have any income or assets. Finally, in order to provide flexibility regarding consideration of income or assets, the final rule permits issuers to make a reasonable estimate of the consumer's income or assets based on empirically derived, demonstrably and statistically sound models.

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

### *C. Marketing to Students*

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

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

*Disclosure and reporting requirements.* The final rule also implements the provisions of the Credit Card Act requiring institutions of higher education to publicly disclose agreements with credit card issuers regarding the marketing of credit cards. The final rule states that an institution may comply with this requirement by,

for example, posting the agreement on its Web site or by making the agreement available upon request.

In addition, the final rule implements the provisions of the Credit Card Act requiring card issuers to make annual reports to the Board regarding any business, marketing, or promotional agreements between the issuer and an institution of higher education (or an affiliated organization) regarding the issuance of credit cards to students at that institution. The first report must provide information regarding the 2009 calendar year and must be submitted to the Board by February 22, 2010.[2]

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

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

The final rule applies these requirements to all consumers (including existing accountholders) if the issuer imposes a fee or charge for paying an over-the-limit transaction. Thus, after February 22, 2010, issuers are prohibited from assessing any over-the-limit fees or charges on an account until the consumer consents to the payment of transactions that exceed the credit limit.

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

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

*E. Payment Allocation*

When different rates apply to different balances on a credit card account, the Board's January 2009 FTC Act Rule required banks to allocate payments in excess of the minimum first to the balance with the highest rate or pro rata among the balances. The Credit Card Act contains a similar provision, except that excess payments must always be allocated first to the balance with the highest rate. In addition, the Credit Card Act provided that, when a balance on an account is subject to a deferred interest or similar program, excess payments must be allocated first to that balance during the last two billing cycles of the deferred interest period so that the consumer can pay the balance in full and avoid deferred interest charges.

The final rule mirrors the statutory requirements. However, in order to provide consumers who utilize deferred interest programs with an additional means of avoiding deferred interest charges, the final rule also permits issuers to allocate excess payments in the manner requested by the consumer at any point during a deferred interest period. This exception allows issuers to retain existing programs that permit consumers to, for example, pay off a deferred interest balance in installments over the course of the deferred interest period. However, this provision applies only when a balance on an account is subject to a deferred interest or similar program.

*F. Timely Settlement of Estates*

The Credit Card Act directs the Board to prescribe regulations requiring credit card issuers to establish procedures ensuring that any administrator of an estate can resolve the outstanding credit card balance of a deceased accountholder in a timely manner. The proposed rule would have imposed two specific requirements designed to enable administrators to determine the amount of and pay a deceased consumer's balance in a timely manner.

First, upon request by the administrator, the issuer would have been required to disclose the amount of the balance in a timely manner. The final rule adopts this requirement. Second, once an administrator has requested the account balance, the proposed rule would have prohibited the issuer from imposing additional fees and charges on the account so that the amount of the balance does not increase while the administrator is arranging for payment. However, because the Board was concerned that a permanent moratorium on fees and interest charges could be unduly burdensome, the proposal solicited comment on whether a particular period of time would generally be sufficient to enable an administrator to arrange for payment.

Based on comments received and further analysis, the Board believes that it would not be appropriate to permanently prohibit the accrual of interest on a credit card account once an administrator requests the account balance because interest will continue to accrue on other types of credit accounts that are part of the estate. Instead, the final rule provides that—if the administrator pays the balance stated by the issuer in full within 30 days—the issuer must waive any additional interest charges. However, the final rule retains the proposed prohibition on the imposition of additional fees so that the account is not, for example, assessed late payment fees or annual fees while the administrator is settling the estate.

*G. On-Line Disclosure of Credit Card Agreements*

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

[2] Technical specifications for these submissions are set forth in Attachment I to this **Federal Register** notice.

The final rule adopts the proposed requirement that issuers post on their Web sites or otherwise make available their credit card agreements with current cardholders. In addition, consistent with the Credit Card Act, the final rule generally requires that—no later than February 22, 2010—issuers submit to the Board for posting on its Web site all credit card agreements offered to the public as of December 31, 2009. Subsequent submissions are due on August 2, 2010 and on a quarterly basis thereafter.[3]

However, the final rule also adopts certain exceptions to this submission requirement. First, the final rule adopts the proposed de minimis exception for issuers with fewer than 10,000 open credit card accounts. Because the overwhelming majority of credit card accounts are held by issuers that have more than 10,000 open accounts, the information provided through the Board's Web site would still reflect virtually all of the terms available to consumers. Similarly, based on comments received and further analysis, the final rule provides that issuers are not required to submit agreements for private label plans offered on behalf of a single merchant or a group of affiliated merchants or for plans that are offered in order to test a new credit card product so long as the plan involves no more than 10,000 credit card accounts.

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

*G. Additional Provisions*

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

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

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

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

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

## III. Statutory Authority

*General Rulemaking Authority*

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

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

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

*Authority To Issue Final Rule With an Effective Date of February 22, 2010*

Because the provisions of the Credit Card Act implemented by this final rule are effective on February 22, 2010,[4] this final rule is also effective on February 22, 2010 (except as otherwise provided). The Administrative Procedure Act (5 U.S.C. 551 *et seq.*) (APA) generally requires that rules be published not less than 30 days before their effective date. *See* 15 U.S.C. 553(d). However, the APA provides an exception when "otherwise provided by the agency for good cause found and published with the rule." *Id.* § 553(d)(3). Although the Board is issuing this final rule more than 30 days before February 22, 2010, it is unclear whether it will be published in the **Federal Register** more than 30 days before that date.[5] Accordingly, the Board finds that good cause exists to publish the final rule less than 30 days before the effective date.

[3] Technical specifications for these submissions are set forth in Attachment I to this **Federal Register** notice.

[4] *See* Credit Card Act § 3.

[5] The date on which the Board's notice is published in the **Federal Register** depends on a number of variables that are outside the Board's control, including the number and size of other notices submitted to the **Federal Register** prior to the Board's notice.

Similarly, although 12 U.S.C. 4802(b)(1) generally requires that new regulations and amendments to existing regulations take effect on the first day of the calendar quarter which begins on or after the date on which the regulations are published in final form (in this case, April 1, 2010), the Board has determined that—in light of the statutory effective date—there is good cause for making this final rule effective on February 22, 2010. *See* 12 U.S.C. 4802(b)(1)(A) (providing an exception to the general requirement when "the agency determines, for good cause published with the regulation, that the regulations should become effective before such time"). Furthermore, the Board believes that providing creditors with guidance regarding compliance before April 1, 2010 is consistent with 12 U.S.C. 4802(b)(1)(C), which provides an exception to the general requirement when "the regulation is required to take effect on a date other than the date determined under [12 U.S.C. 4802(b)(1)] pursuant to any other Act of Congress."

Finally, TILA Section 105(d) provides that any regulation of the Board (or any amendment or interpretation thereof) requiring any disclosure which differs from the disclosures previously required by Chapters 1, 4, or 5 of TILA (or by any regulation of the Board promulgated thereunder) shall have an effective date no earlier than "that October 1 which follows by at least six months the date of promulgation." However, even assuming that TILA Section 105(d) applies to this final rule, the Board believes that the specific provision in Section 3 of the Credit Card Act governing effective dates overrides the general provision in TILA Section 105(d).

## IV. Applicability of Provisions

While several provisions under the Credit Card Act apply to all open-end credit, others apply only to certain types of open-end credit, such as credit card accounts under open-end consumer credit plans. As a result, the Board understands that some additional clarification may be helpful as to which provisions of the Credit Card Act as implemented in Regulation Z are applicable to which types of open-end credit products. In order to clarify the scope of the revisions to Regulation Z, the Board is providing the below table, which summarizes the applicability of each of the major revisions to Regulation Z.[6]

| Provision | Applicability |
|---|---|
| § 226.5(a)(2)(iii) | All open-end (not home-secured) consumer credit plans. |
| § 226.5(b)(2)(ii)(A) | Credit card accounts under an open-end (not home-secured) consumer credit plan. |
| § 226.5(b)(2)(ii)(B) | All open-end consumer credit plans. |
| § 226.7(b)(11) | Credit card accounts under an open-end (not home-secured) consumer credit plan. |
| § 226.7(b)(12) | Credit card accounts under an open-end (not home-secured) consumer credit plan. |
| § 226.7(b)(14) | All open-end (not home-secured) consumer credit plans. |
| § 226.9(c)(2) | All open-end (not home-secured) consumer credit plans. |
| § 226.9(e) | Credit or charge card accounts subject to § 226.5a. |
| § 226.9(g) | All open-end (not home-secured) consumer credit plans. |
| § 226.9(h) | Credit card accounts under an open-end (not home-secured) consumer credit plan. |
| § 226.10(b)(2)(ii) | All open-end consumer credit plans. |
| § 226.10(b)(3) | Credit card accounts under an open-end (not home-secured) consumer credit plan. |
| § 226.10(d) | All open-end consumer credit plans. |
| § 226.10(e) | Credit card accounts under an open-end (not home-secured) consumer credit plan. |
| § 226.10(f) | Credit card accounts under an open-end (not home-secured) consumer credit plan. |
| § 226.11(c) | Credit card accounts under an open-end (not home-secured) consumer credit plan. |
| § 226.16(f) | All open-end consumer credit plans. |
| § 226.16(h) | All open-end (not home-secured) consumer credit plans. |
| § 226.51 | Credit card accounts under an open-end (not home-secured) consumer credit plan. |
| § 226.52 | Credit card accounts under an open-end (not home-secured) consumer credit plan. |
| § 226.53 | Credit card accounts under an open-end (not home-secured) consumer credit plan. |
| § 226.54 | Credit card accounts under an open-end (not home-secured) consumer credit plan. |
| § 226.55 | Credit card accounts under an open-end (not home-secured) consumer credit plan. |
| § 226.56 | Credit card accounts under an open-end (not home-secured) consumer credit plan. |
| § 226.57 | Credit card accounts under an open-end (not home-secured) consumer credit plan, except that § 226.57(c) applies to all open-end consumer credit plans. |
| § 226.58 | Credit card accounts under an open-end (not home-secured) consumer credit plan. |

## V. Section-by-Section Analysis

*Section 226.2 Definitions and Rules of Construction*

2(a) Definitions

2(a)(15) Credit Card

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

The Board noted that the exclusion of credit cards that access a home-equity plan subject to § 226.5b was consistent

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

with the approach adopted by the Board in the July 2009 Regulation Z Interim Final Rule. *See* 74 FR 36083. Specifically, in the interim final rule, the Board used its authority under TILA Section 105(a) and § 2 of the Credit Card Act to interpret the term "credit card account under an open-end consumer credit plan" in new TILA Section 127(i) to exclude home-equity lines of credit subject to § 226.5b, even if those lines could be accessed by a credit card. Instead, the Board applied the disclosure requirements in current § 226.9(c)(2)(i) and (g)(1) to "credit card accounts under an open-end (not home-secured) consumer credit plan." *See* 74 FR 36094–36095. For consistency with the interim final rule, the Board proposed to generally use its authority under TILA Section 105(a) and § 2 of the Credit Card Act to apply the same interpretation to other provisions of the Credit Card Act that apply to a "credit card account under an open end consumer credit plan." *See, e.g.,* revised TILA § 127(j), (k), (l), (n); revised TILA § 171; new TILA §§ 140A, 148, 149, 172.[7] The Board noted that this interpretation was also consistent with the Board's historical treatment of HELOC accounts accessible by a credit card under TILA; for example, the credit and charge card application and solicitation disclosure requirements under § 226.5a expressly do not apply to home-equity plans accessible by a credit card that are subject to § 226.5b. *See* current § 226.5a(a)(3); revised § 226.5a(a)(5)(i), 74 FR 5403. The Board has issued the August 2009 Regulation Z HELOC Proposal to address changes to Regulation Z that it believes are necessary and appropriate for HELOCs and will consider any appropriate revisions to the requirements for HELOCs in connection with that review. Commenters generally supported this exclusion, which is adopted in the final rule.

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

Instead, Regulation E (Electronic Fund Transfers) generally governs debit cards that access overdraft lines of credit. *See* 12 CFR part 205. For example, Regulation E generally governs the issuance of debit cards that access an overdraft line of credit, although Regulation Z's issuance provisions apply to the addition of a credit feature (such as an overdraft line) to a debit card. *See* 12 CFR 205.12(a)(1)(ii) and (a)(2)(i). Similarly, when a transaction that debits a checking or other asset account also draws on an overdraft line of credit, Regulation Z treats the extension of credit as incident to an electronic fund transfer and the error resolution provisions in Regulation E generally govern the transaction. *See* 12 CFR 205.12 comment 12(a)–1.i.[8]

Consistent with this approach, the Board believes that debit cards that access overdraft lines of credit should not be subject to the regulations implementing the provisions of the Credit Card Act that apply to "credit card accounts under an open end consumer credit plan." As discussed in the January 2009 Regulation Z Rule, the Board understands that overdraft lines of credit are not in wide use.[9] Furthermore, as a general matter, the Board understands that creditors do not generally engage in the practices addressed in the relevant provisions of the Credit Card Act with respect to overdraft lines of credit. For example, as discussed in the January 2009 Regulation Z Rule, overdraft lines of credit are not typically promoted as—or used for—long-term extensions of credit. *See* 74 FR 5331. Therefore, because proposed § 226.9(c)(2) would require a creditor to provide 45 days' notice before increasing an annual percentage rate for an overdraft line of credit, a creditor is unlikely to engage in the practices prohibited by revised TILA Section 171 with respect to the application of increased rates to existing balances. Similarly, because creditors generally do not apply different rates to different balances or provide grace periods with respect to overdraft lines of credit, the provisions in proposed §§ 226.53 and 226.54 would not provide any meaningful protection. Accordingly, the Board proposed to use its authority under TILA Section 105(a) and § 2 of the Credit Card Act to create an exception for debit cards that access an overdraft line of credit.

Commenters generally supported this exclusion, which is adopted in the final rule. Several industry commenters also requested that the Board exclude lines of credit accessed by a debit card that can be used only at automated teller machines and lines of credit accessed solely by account numbers. These commenters argued that—like overdraft lines of credit accessed by a debit card—these products are not "traditional" credit cards and that creditors may be less willing to provide these products if they are required to comply with the provisions of the Credit Card Act. They also noted that the Board has excluded these products from the disclosure requirements for credit and charge cards in § 226.5a and the definition of "consumer credit card account" in the January 2009 FTC Act Rule. *See* § 226.5a(a)(5); 12 CFR 227.21(c), 74 FR 5560.

The Board believes that, as a general matter, Congress intended the Credit Card Act to apply broadly to products that meet the definition of a credit card. As discussed above, the Board's exclusion of HELOCs and overdraft lines of credit accessed by cards is based on the Board's determination that alternative forms of regulation exist that are better suited to protecting consumers from harm with respect to those products. No such alternative exists for lines of credit accessed solely by account numbers. Similarly, although the protections in Regulation E generally apply when a debit card is used at an automated teller machine to credit a deposit account with funds obtained from a line of credit,[10]

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

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

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

[10] 12 CFR 205.3(a) (stating that Regulation E "applies to any electronic fund transfer that authorizes a financial institution to debit or credit a consumer's account").

Regulation E generally does not apply when a debit card is used at an automated teller machine to obtain cash from the line of credit. Furthermore, because it appears that both type of credit lines are more likely to be used for long-term extensions of credit than overdraft lines, consumers are more likely to experience substantial harm if—for example—an increased annual percentage rate is applied to an outstanding balance.[11] Thus, the Board does not believe that an exclusion is warranted for lines of credit accessed by a debit card that can be used only at automated teller machines or lines of credit accessed solely by account numbers.

Finally, the Board notes that the revisions to 226.2(a)(15) are not intended to alter the scope or coverage of provisions of Regulation Z that refer generally to credit cards or open-end credit rather than the new defined term "credit card account under an open-end (not home-secured) consumer credit plan."

*Section 226.5 General Disclosure Requirements*

5(a) Form of Disclosures

5(a)(2) Terminology

New TILA Section 127(m) (15) U.S.C. 1637(m)), as added by Section 103 of the Credit Card Act, states that with respect to the terms of any credit card account under an open-end consumer credit plan, the term "fixed," when appearing in conjunction with a reference to the APR or interest rate applicable to such account, may only be used to refer to an APR or interest rate that will not change or vary for any reason over the period specified clearly and conspicuously in the terms of the account. In the January 2009 Regulation Z Rule, the Board had adopted §§ 226.5(a)(2)(iii) and 226.16(f) to restrict the use of the term "fixed," or any similar term, to describe a rate disclosed in certain required disclosures and in advertisements only to instances when that rate would not increase until the expiration of a specified time period. If no time period is specified, then the term "fixed," or any similar term, may not be used to describe the rate unless the rate will not increase while the plan is open. As discussed in the October 2009 Regulation Z Proposal, the Board believes that §§ 226.5(a)(2)(iii) and 226.16(f), as adopted in the January 2009 Regulation Z Rule, would be consistent with new TILA Section 127(m). Sections 226.5(a)(2)(iii) and 226.16(f) were therefore republished in the October 2009 Regulation Z Proposal to implement TILA Section 127(m). The Board did not receive any comments on §§ 226.5(a)(2)(iii) and 226.16(f), and they are adopted as proposed.

5(b) Time of Disclosures

5(b)(1) Account-Opening Disclosures

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

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

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

However, the comment is not intended to permit card issuers to circumvent the disclosure requirements in § 226.9(c)(2) by treating a change in terms as the opening of a new account. Accordingly, the comment further states that whether a substitution or replacement results in the opening of a new account or a change in the terms of an existing account for purposes of the disclosure requirements in §§ 226.6(b) and 226.9(c)(2) is determined in light of all the relevant facts and circumstances.

The comment provides the following list of relevant facts and circumstances: (1) Whether the card issuer provides the consumer with a new credit card; (2) whether the card issuer provides the consumer with a new account number; (3) whether the account provides new features or benefits after the substitution or replacement (such as rewards on purchases); (4) whether the account can be used to conduct transactions at a greater or lesser number of merchants after the substitution or replacement; (5) whether the card issuer implemented the substitution or replacement on an individualized basis; and (6) whether the account becomes a different type of open-end plan after the substitution or replacement (such as when a charge card is replaced by a credit card). The comment states that, when most of these facts and circumstances are present, the substitution or replacement likely constitutes the opening of a new account for which § 226.6(b) disclosures are appropriate. However, the comment also states that, when few of these facts and circumstances are present, the substitution or replacement likely constitutes a change in the terms of an existing account for which § 226.9(c)(2) disclosures are appropriate.[12]

In the October 2009 Regulation Z Proposal, the Board solicited comment on whether additional facts and circumstances were relevant. The Board also solicited comment on alternative approaches to determining whether a substitution or replacement results in the opening of a new account or a change in the terms of an existing account for purposes of the disclosure requirements in §§ 226.6(b) and 226.9(c)(2).

On the one hand, consumer groups commenters stated that the Board's proposed approach was not sufficiently restrictive. They argued that § 226.9(c)(2) should apply whenever a

[11] Commenters that supported an exclusion for lines of credit accessed by a debit card that can be used only at automated teller machines noted that—unlike most credit cards—the debit card cannot access the line of credit for purchases at point of sale. However, it appears that consumers can use the debit card to obtain extensions of credit either in the form of cash or a transfer of funds to a deposit account.

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

credit card account is substituted or replaced with another credit card account so that consumers will always receive 45 days' notice before any significant new terms take effect. However, the Board is concerned that this strict approach may not be beneficial to consumers overall. As discussed above, when an existing cardholder has requested new features or benefits, the cardholder generally will not want to wait 45 days to receive those features or benefits. Although a card issuer could provide the new features or benefits immediately, it may not be willing to do so if it cannot simultaneously compensate for the additional features or benefits by, for example, charging a higher annual percentage rate on new transactions or adding an annual fee.

On the other hand, industry commenters stated that the Board's proposed approach was overly restrictive. They argued that § 226.6(b) should apply whenever the substitution or replacement was requested by the consumer so that the new terms can be applied immediately. However, the Board has generally declined to provide a consumer request exception to the 45-day notice requirement in § 226.9(c)(2) because of the difficulty of defining by regulation the circumstances under which a consumer is deemed to have requested a change versus the circumstances in which the change is "suggested" by the card issuer. *See* revised § 226.9(c)(2)(i). Thus, the Board does not believe that the determination of whether §§ 226.6(b) or 226.9(c)(2) applies should turn solely on whether a consumer has requested the replacement or substitution.

For the foregoing reasons, the Board believes that the proposed standard provides the appropriate degree of flexibility insofar as it states that whether §§ 226.6(b) or 226.9(c)(c)(2) applies is determined in light of the relevant facts and circumstances. However, in response to requests from commenters, the Board has clarified some of the listed facts and circumstances. Specifically, the Board has added the substitution or replacement of a retail card with a cobranded general purpose credit card as an example of a circumstance in which an account can be used to conduct transactions at a greater or lesser number of merchants after the substitution or replacement. Similarly, the Board has added a substitution or replacement in response to a consumer's request as an example of a substitution or replacement on an individualized basis. Finally, the Board has clarified that, notwithstanding the listed facts and circumstances, a card issuer that replaces a credit card or provides a new account number because the consumer has reported the card stolen or because the account appears to have been used for unauthorized transactions is not required to provide a notice under § 226.6(b) or 226.9(c)(2) unless the card issuer has changed a term of the account that is subject to §§ 226.6(b) or 226.9(c)(2).

5(b)(2) Periodic Statements

As amended by the Credit Card Act in May 2009, TILA Section 163 generally prohibited a creditor from treating a payment as late or imposing additional finance charges unless the creditor mailed or delivered the periodic statement at least 21 days before the payment due date and the expiration of any period within which any credit extended may be repaid without incurring a finance charge (*i.e.,* a "grace period"). *See* Credit Card Act § 106(b)(1). Unlike most of the Credit Card Act's provisions, the amendments to Section 163 applied to all open-end consumer credit plans rather than just credit card accounts.[13] The Board's July 2009 Regulation Z Interim Final Rule implemented the amendments to TILA Section 163 by revising § 226.5(b)(2)(ii) and the accompanying official staff commentary. Both the statutory amendments and the interim final rule became effective on August 22, 2009. *See* Credit Card Act § 106(b)(2).

However, in November 2009, the Credit CARD Technical Corrections Act of 2009 (Technical Corrections Act) further amended TILA Section 163, narrowing application the requirement that statements be mailed or delivered at least 21 days before the payment due date to credit card accounts. Public Law 111–93, 123 Stat. 2998 (Nov. 6, 2009).[14] Accordingly, the Board adopts § 226.5(b)(2)(ii) and its commentary in this final rule with revisions implementing the Technical Corrections Act and clarifying aspects of the July 2009 interim final rule in response to comments.

5(b)(2)(ii) Mailing or Delivery

Prior to the Credit Card Act, TILA Section 163 required creditors to send periodic statements at least 14 days before the expiration of the grace period (if any), unless prevented from doing so by an act of God, war, natural disaster, strike, or other excusable or justifiable cause (as determined under regulations of the Board). 15 U.S.C. 1666b. The Board's Regulation Z, however, applied the 14-day requirement even when the consumer did not receive a grace period. Specifically, § 226.5(b)(2)(ii) required that creditors mail or deliver periodic statements 14 days before the date by which payment was due for purposes of avoiding not only finance charges as a result of the loss of a grace period but also any charges other than finance charges (such as late fees). *See also* comment 5(b)(2)(ii)–1.

In the January 2009 FTC Act Rule, the Board and the other Agencies prohibited institutions from treating payments on consumer credit card accounts as late for any purpose unless the institution provided a reasonable amount of time for consumers to make payment. *See* 12 CFR 227.22(a), 74 FR 5560; *see also* 74 FR 5508–5512.[15] This rule included a safe harbor for institutions that adopted reasonable procedures designed to ensure that periodic statements specifying the payment due date were mailed or delivered to consumers at least 21 days before the payment due date. *See* 12 CFR 227.22(b)(2), 74 FR 5560. The 21-day safe harbor was intended to allow seven days for the periodic statement to reach the consumer by mail, seven days for the consumer to review their statement and make payment, and seven days for that payment to reach the institution by mail. However, to avoid any potential conflict with the 14-day requirement in TILA Section 163(a), the rule expressly stated that it would not apply to any grace period provided by an institution. *See* 12 CFR 227.22(c), 74 FR 5560.

The Credit Card Act's amendments to TILA Section 163 codified aspects of the Board's § 226.5(b)(2)(ii) as well as the provision in the January 2009 FTC Act Rule regarding the mailing or delivery of periodic statements. Specifically, like the Board's § 226.5(b)(2)(ii), amended TILA Section 163 applies the mailing or delivery requirement to both the expiration of the grace period and the payment due date. In addition, similar to the January 2009 FTC Act Rule,

[13] Specifically, while most provisions in the Credit Card Act apply to "credit card account[s] under an open end consumer credit plan" (*e.g.,* § 101(a)), the May 2009 amendments to TILA Section 163 applied to all "open end consumer credit plan[s]."

[14] As discussed below, the Technical Corrections Act did not alter the requirement in amended TILA Section 163 that all open-end consumer credit plans generally mail or deliver periodic statements at least 21 days before the date on which any grace period expires.

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

amended TILA Section 163 adopts 21 days as the appropriate time period between the date on which the statement is mailed or delivered to the consumer and the date on which the consumer's payment must be received by the creditor to avoid adverse consequences.

Rather than establishing an absolute requirement that periodic statements be mailed or delivered 21 days in advance of the payment due date, amended TILA Section 163(a) codifies the same standard adopted by the Board and the other Agencies in the January 2009 FTC Act Rule, which requires creditors to adopt "reasonable procedures designed to ensure" that statements are mailed or delivered at least 21 days before the payment due date. Notably, however, the 21-day requirement for grace periods in amended TILA Section 163(b) does not include similar language regarding "reasonable procedures." Because the payment due date generally coincides with the expiration of the grace period, the Board believes that it will facilitate compliance to apply a single standard to both circumstances. The "reasonable procedures" standard recognizes that, for issuers mailing hundreds of thousands of periodic statements each month, it would be difficult if not impossible to know whether a specific statement is mailed or delivered on a specific date. Furthermore, applying different standards could encourage creditors to establish a payment due date that is different from the date on which the grace period expires, which could lead to consumer confusion.

Accordingly, the Board's interim final rule amended § 226.5(b)(2)(ii) to require that creditors adopt reasonable procedures designed to ensure that periodic statements are mailed or delivered at least 21 days before the payment due date *and* the expiration of the grace period. In doing so, the Board relied on its authority under TILA Section 105(a) to make adjustments that are necessary or proper to effectuate the purposes of TILA and to facilitate compliance therewith. *See* 15 U.S.C. 1604(a).

For clarity, the interim final rule also amended § 226.5(b)(2)(ii) to define "grace period" as "a period within which any credit extended may be repaid without incurring a finance charge due to a periodic interest rate." This definition is consistent with the definition of grace period adopted by the Board in its January 2009 Regulation Z Rule. *See* §§ 226.5a(b)(5), 226.6(b)(2)(v), 74 FR 5404, 5407; *see also* 74 FR 5291–5294, 5310.

Finally, the Credit Card Act removed prior TILA Section 163(b), which stated that the 14-day mailing requirement does not apply "in any case where a creditor has been prevented, delayed, or hindered in making timely mailing or delivery of [the] periodic statement within the time period specified * * * because of an act of God, war, natural disaster, strike, or other excusable or justifiable cause, as determined under regulations of the Board." 15 U.S.C. 1666b(b). The Board believes that the Credit Card Act's removal of this language is consistent with the adoption of a "reasonable procedures" standard insofar as a creditor's procedures for responding to any of the situations listed in prior TILA Section 163(b) will now be evaluated for reasonableness. Accordingly, the interim final rule removed the language implementing prior TILA Section 163(b) from footnote 10 to § 226.5(b)(2)(ii).[16]

Commenters generally supported the interim final rule, with one notable exception. Credit unions and community bank commenters strongly opposed the interim final rule on the grounds that requiring creditors to mail or deliver periodic statements at least 21 days before the payment due date with respect to open-end consumer credit plans other than credit card accounts was unnecessary and unduly burdensome. In particular, these commenters noted that the requirement disproportionately impacted credit unions, which frequently provide open-end products with multiple due dates during a month (such as bi-weekly due dates that correspond to the dates on which the consumer is paid) as well as consolidated periodic statements for multiple open-end products with different due dates. These commenters argued that applying the 21-day requirement to these products would significantly increase costs by requiring multiple periodic statements or cause creditors to cease offering such products altogether. However, these commenters noted that the requirement that statements be provided at least 21 days before the expiration of a grace period was not problematic because these products do not provide a grace period.

The Technical Corrections Act addressed these concerns by narrowing the application of the 21-day requirement in TILA Section 163(a) to credit cards. However, open-end consumer credit plans that provide a grace period remain subject to the 21-day requirement in Section 163(b). The final rule revises § 226.5(b)(2)(ii) consistent with the Technical Corrections Act. Specifically, because the Technical Corrections Act amended TILA Section 163 to apply different requirements to different types of open-end credit accounts, the Board has reorganized § 226.5(b)(2)(ii) into § 226.5(b)(2)(ii)(A) and § 226.5(b)(2)(ii)(B). This reorganization does not reflect any substantive revision of the interim final rule beyond those changes necessary to implement the Technical Corrections Act.

5(b)(2)(ii)(A) Payment Due Date

Section 226.5(b)(2)(ii)(A)(*1*) provides that, for consumer credit card accounts under an open-end (not home-secured) consumer credit plan, a card issuer must adopt reasonable procedures designed to ensure that periodic statements are mailed or delivered at least 21 days prior to the payment due date. Furthermore, § 226.5(b)(2)(ii)(A)(*2*) provides that the card issuer must also adopt reasonable procedures designed to ensure that a required minimum periodic payment received by the card issuer within 21 days after mailing or delivery of the periodic statement disclosing the due date for that payment is not treated as late for any purpose.

For clarity and consistency, § 226.5(b)(2)(ii)(A)(*1*) provides that a periodic statement generally must be mailed or delivered at least 21 days before the payment due date disclosed pursuant to § 226.7(b)(11)(i)(A). As discussed in greater detail below, § 226.7(b)(11)(i)(A) implements the Credit Card Act's requirement that periodic statements for credit card accounts disclose a payment due date. *See* amended TILA Section 127(b)(12)(A).[17] The Board believes that—like the mailing or delivery requirements for periodic statements in the January 2009 FTC Act Rule—the Credit Card Act's amendments to TILA Section 163 are intended to ensure that consumers have a reasonable amount of time to make payment after receiving their periodic statements. For that reason, the Board believes that it is important to ensure that the payment due date disclosed pursuant to § 226.7(b)(11)(i)(A) is consistent with requirements of § 226.5(b)(2)(ii)(A). If creditors were permitted to disclose a payment due date on the periodic statement that was less than 21 days

[16] The Board notes that the October 2009 Regulation Z Proposal erroneously included this language in § 226.5(b)(2)(iii). The final rule corrects this error.

[17] Although the 21-day requirement in amended TILA Section 163(a) is specifically tied to provision of a periodic statement that "includ[es] the information required by [TILA] section 127(b)]," the July 2009 interim final rule did not cross-reference the due date disclosure because that disclosure was not scheduled to go into effect until February 22, 2010.

after mailing or delivery of the periodic statement, consumers could be misled into believing that they have less time to pay than provided under TILA Section 163 and § 226.5(b)(2)(ii)(A).

The interim final rule adopted a new comment 5(b)(2)(ii)–1, which clarifies that, under the "reasonable procedures" standard, a creditor is not required to determine the specific date on which periodic statements are mailed or delivered to each individual consumer. Instead, a creditor complies with § 226.5(b)(2)(ii) if it has adopted reasonable procedures designed to ensure that periodic statements are mailed or delivered to consumers no later than a certain number of days after the closing date of the billing cycle and adds that number of days to the 21-day period required by § 226.5(b)(2)(ii) when determining the payment due date and the date on which any grace period expires. For example, if a creditor has adopted reasonable procedures designed to ensure that periodic statements are mailed or delivered to consumers no later than three days after the closing date of the billing cycle, the payment due date and the date on which any grace period expires must be no less than 24 days after the closing date of the billing cycle. The final rule retains this comment with revisions to reflect the reorganization of § 226.5(b)(2)(ii).[18]

The interim final rule also adopted a new comment 5(b)(2)(ii)–2, which clarifies that treating a payment as late for any purpose includes increasing the annual percentage rate as a penalty, reporting the consumer as delinquent to a credit reporting agency, or assessing a late fee or any other fee based on the consumer's failure to make a payment within a specified amount of time or by a specified date.[19] Several commenters requested that the Board narrow or expand this language to clarify that certain activities are included or excluded. The current language is consistent with the Board's intent that the prohibition on treating a payment as late for purpose be broadly construed and that the list of examples be illustrative rather than exhaustive. Nevertheless, in order to provide additional clarity, the final rule amends comment 5(b)(2)(ii)–2 to provide two additional examples of activities that constitute treating a payment as late for purposes of § 226.5(b)(2)(ii)(A)(*2*): terminating benefits (such as rewards on purchases) and initiating collection activities. However, the provision of additional examples should not be construed as a determination by the Board that other activities would not constitute treating a payment as late for any purpose.

In the October 2009 Regulation Z Proposal, the Board proposed to amend other aspects of comment 5(b)(2)(ii)–2. In particular, the Board proposed to clarify that the prohibition in § 226.5(b)(2)(ii) on treating a payment as late for any purpose or collecting finance or other charges applies only during the 21-day period following mailing or delivery of the periodic statement stating the due date for that payment. Thus, if a creditor does not receive a payment within 21 days of mailing or delivery of the periodic statement, the prohibition does not apply and the creditor may, for example, impose a late payment fee. Commenters generally supported this clarification. Accordingly, the Board has adopted this guidance—with additional clarifications—in the final rule. In addition, for consistency with the reorganization of § 226.5(b)(2)(ii), the Board has moved the guidance regarding grace periods to comment 5(b)(2)(ii)–3.

5(b)(2)(ii)(B) Grace Period Expiration Date

Section 226.5(b)(2)(ii)(B)(*1*) provides that, for open-end consumer credit plans, a creditor must adopt reasonable procedures designed to ensure that periodic statements are mailed or delivered at least 21 days prior to the date on which any grace period expires. Furthermore, § 226.5(b)(2)(ii)(B)(*2*) provides that the creditor must also adopt reasonable procedures designed to ensure that the creditor does not impose finance charges as a result of the loss of a grace period if a payment that satisfies the terms of the grace period is received by the creditor within 21 days after mailing or delivery of the periodic statement. Finally, the interim final rule's definition of "grace period" has been moved to § 226.5(b)(2)(ii)(B)(*3*) without any substantive change.

The interim final rule adopted comment 5(b)(2)(ii)–3, which clarified that, for purposes of § 226.5(b)(2)(ii), "payment due date" generally excluded courtesy periods following the contractual due date during which a consumer could make payment without incurring a late payment fee. This comment was intended to address open-end consumer credit plans other than credit cards and therefore is not necessary in light of the Technical Corrections Act.[20] Accordingly, the guidance in current comment 5(b)(2)(ii)–3 has been replaced with guidance regarding application of the grace period requirements in § 226.5(b)(2)(ii)(B). Specifically, this comment incorporates current comment 5(b)(2)(ii)–4, which clarifies that the definition of "grace period" in § 226.5(b)(2)(ii) does not include a deferred interest or similar promotional program under which the consumer is not obligated to pay interest that accrues on a balance if that balance is paid in full prior to the expiration of a specified period of time. The comment also clarifies that courtesy periods following the payment due date during which a late payment fee will not be assessed are not grace periods for purposes of § 226.5(b)(2)(ii)(B) and provides a cross-reference to comments 7(b)(11)–1 and –2 for additional guidance regarding such periods.

Comment 5(b)(2)(ii)–3 also clarifies the applicability of § 226.5(b)(2)(ii)(B). Specifically, it states that § 226.5(b)(2)(ii)(B) applies if an account is eligible for a grace period when the periodic statement is mailed or delivered. It further states that § 226.5(b)(2)(ii)(B) does not require the creditor to provide a grace period or prohibit the creditor from placing limitations and conditions on a grace period to the extent consistent with § 226.5(b)(2)(ii)(B) and § 226.54. Finally, it states that the prohibition in § 226.5(b)(2)(ii)(B)(*2*) applies only during the 21-day period following mailing or delivery of the periodic statement and applies only when the creditor receives a payment that satisfies the terms of the grace period within that 21-day period. An illustrative example is provided.

[18] The Board and the other Agencies adopted a similar comment in the January 2009 FTC Act Rule. *See* 12 CFR 227.22 comment 22(b)–1, 74 FR 5511, 5561. The interim final rule deleted prior comment 5(b)(2)(ii)–1 because it referred to the 14-day rule for grace periods and was therefore no longer consistent with § 226.5(b)(2)(ii). In doing so, the Board concluded that, to the extent that the comment clarified that § 226.5(b)(2)(ii) applied in circumstances where the consumer is not eligible or ceases to be eligible for a grace period, it was no longer necessary because that requirement was reflected in amended § 226.5(b)(2)(ii) and elsewhere in the amended commentary.

[19] The Board and the other Agencies adopted a similar comment in the January 2009 FTC Act Rule. *See* 12 CFR 227.22 comment 22(a)–1, 74 FR 5510, 5561. The interim final rule deleted prior comment 5(b)(2)(ii)–2, which clarified that the emergency circumstances exception in prior footnote 10 does not extend to the failure to provide a periodic statement because of computer malfunction. As discussed above, prior footnote 10 was based on prior TILA Section 163(b), which has been repealed.

[20] Furthermore, similar guidance is provided in comments 7(b)(11)–1 and –2, which the Board is adopting in this final rule (as discussed below). The Board initially adopted comments 7(b)(11)–1 and –2 in the January 2009 Regulation Z Rule. *See* 74 FR 5478. However, because this commentary was not yet effective, the July 2009 Regulation Z Interim Final Rule provided similar guidance in current comment 5(b)(2)(ii)–3.

As noted above, current comment 5(b)(2)(ii)–4 has been incorporated into comment 5(b)(2)(ii)–3. In its place, the Board has adopted guidance to address confusion regarding the interaction between the payment due date disclosure in proposed § 226.7(b)(11)(i)(A) and the 21-day requirements in § 226.5(b)(2)(ii) with respect to charge card accounts and charged-off accounts. Charge cards are typically products where outstanding balances cannot be carried over from one billing cycle to the next and are payable when the periodic statement is received. *See* § 226.5a(b)(7). Therefore, the contractual payment due date for a charge card account is the date on which the consumer receives the periodic statement (although charge card issuers generally request that the consumer make payment by some later date). *See* comment 5a(b)(7)–1. Similarly, when an account is over 180 days past due and has been placed in charged off status, full payment is due immediately.

However, as discussed below, the Board has concluded that it would not be appropriate to apply the payment due date disclosure in § 226.7(b)(11)(i)(A) to periodic statements provided solely for charge card accounts or periodic statements provided for charged-off accounts where full payment of the entire account balance is due immediately. In addition, a card issuer could not comply with the requirement to mail or deliver the periodic statement 21 days before the payment due date if the payment due date is the date that the consumer receives the statement. Accordingly, comment 5(b)(2)(ii)–4 clarifies that, because the payment due date disclosure in § 226.7(b)(11)(i)(A) does not apply to periodic statements provided solely for charge card accounts or periodic statements provided for charged-off accounts where full payment of the entire account balance is due immediately, § 226.5(b)(2)(ii)(A)(*1*) does not apply to the mailing or delivery of periodic statements provided solely for such accounts.

Comment 5(b)(2)(ii)–4 further clarifies that, with respect to charge card accounts, § 226.5(b)(2)(ii)(A)(*2*) nevertheless requires the card issuer to have reasonable procedures designed to ensure that a payment is not treated as late for any purpose during the 21-day period following mailing or delivery of that statement. Thus, notwithstanding the contractual due date, consumers with charge card accounts must receive at least 21 days to make payment without penalty.

With respect to charged-off accounts, comment 5(b)(2)(ii)–4 clarifies that, as discussed above with respect to comment 5(b)(2)(ii)–2, a card issuer is only prohibited from treating a payment as late during the 21-day period following mailing or delivery of the periodic statement stating the due date for that payment. Thus, because a charged-off account will generally have several past due payments, the card issuer may continue to treat those payments as late during the 21-day period for new payments.

Comment 5(b)(2)(ii)–4 also clarifies the application of the grace period requirements in § 226.5(b)(2)(ii)(B) to charge card and charged-off accounts. Specifically, the comment states that § 226.5(b)(2)(ii)(B) does not apply to charge card accounts because, for purposes of § 226.5(b)(2)(ii)(B), a grace period is a period within which any credit extended may be repaid without incurring a finance charge due to a periodic interest rate and, consistent with § 226.2(a)(15)(iii), charge card accounts do not impose a finance charge based on a periodic rate. Similarly, the comment states that § 226.5(b)(2)(ii)(B) does not apply to charged-off accounts where full payment of the entire account balance is due immediately because such accounts do not provide a grace period.

The final rule does not alter current comment 5(b)(2)(ii)–5, which provides that, when a consumer initiates a request, the creditor may permit, but may not require, the consumer to pick up periodic statements. Finally, the Board has adopted the proposed revisions to comment 5(b)(2)(ii)–6, which amend the cross-reference to reflect the restructuring of the commentary to § 226.7.

*Section 226.5a Credit and Charge Card Applications and Solicitations*

5a(b) Required Disclosures

5a(b)(1) Annual Percentage Rate

The Board republished proposed comment 5a(b)(1)–9 in the October 2009 Regulation Z Proposal, which was originally published in the May 2009 Regulation Z Proposed Clarifications. The comment clarified that an issuer offering a deferred interest or similar plan may not disclose a rate as 0% due to the possibility that the consumer may not be obligated for interest pursuant to a deferred interest or similar transaction. The Board did not receive any comments opposing this provision, and the comment is adopted as proposed. The Board notes that comment 5a(b)(1)–9 would apply to account opening disclosures pursuant to comment 6(b)(1)–1.

5a(b)(5) Grace Period

Sections 226.5a(b)(5) and 6(b)(2)(v) require that creditors disclose, among other things, any conditions on the availability of a grace period. As discussed below with respect to § 226.54, the Credit Card Act provides that, when a consumer pays some but not all of the balance subject to a grace period prior to expiration of the grace period, the card issuer is prohibited from imposing finance charges on the portion of the balance paid. Industry commenters requested that the Board clarify that §§ 226.5a(b)(5) and 6(b)(2)(v) do not require card issuers to disclose this limitation.

In the January 2009 Regulation Z Rule, the Board provided the following model language for the disclosures required by §§ 226.5a(b)(5) and 6(b)(2)(v): "Your due date is at least 25 days after the close of each billing cycle. We will not charge you any interest on purchases if you pay your entire balance by the due date each month." *See, e.g.,* App. G–10(B).[21] This language was developed through extensive consumer testing. However, the Board has not been able to conduct additional consumer testing with respect to disclosure of the limitations on the imposition of finance charges in § 226.54. Accordingly, the Board is concerned that the inclusion of language attempting to describe those limitations could reduce the effectiveness of the disclosure.

Furthermore, the Board does not believe that such a disclosure is necessary insofar as the model language accurately states that a consumer generally will not be charged any interest on purchases if the entire purchase balance is paid by the due date. Thus, although § 226.54 limits the imposition of finance charges if the consumer pays less than the entire balance, the model language achieves its intended purpose of explaining succinctly how a consumer can avoid all interest charges.

Accordingly, the Board has created new comments 5a(b)(5)–4 and 6(b)(2)(v)–4, which clarify that §§ 226.5a(b)(5) and 6(b)(2)(v) do not require card issuers to disclose the limitations on the imposition of finance charges in § 226.54. For additional clarity, the Board also states in a new comment 7(b)(8)–3 that a card issuer is

[21] The model forms in Appendix G–17(B) and (C) also state: "We will begin charging interest on cash advances and balance transfers on the transaction date."

not required to include this disclosure when disclosing the date by which or the time period within which the new balance or any portion of the new balance must be paid to avoid additional finance charges pursuant to § 226.7(b)(8).

*Section 226.6 Account-Opening Disclosures*

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

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

Section 226.6(b)(2)(i) sets forth disclosure requirements for rates that apply to open-end (not home-secured) accounts. Under the January 2009 Regulation Z Rule, creditors generally must disclose the specific APRs that will apply to the account in the table provided at account opening. The Board, however, provided a limited exception to this rule where the APRs that creditors may charge vary by state for accounts opened at the point of sale. *See* § 226.6(b)(2)(i)(E). Pursuant to that exception, creditors imposing APRs that vary by state and providing the disclosures required by § 226.6(b) in person at the time an 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.

In the May 2009 Regulation Z Proposed Clarifications, the Board proposed to provide similar flexibility to the disclosure of APRs at the point of sale when rates vary based on the consumer's creditworthiness. Thus, the Board proposed to amend § 226.6(b)(2)(i)(E) to state that creditors providing the disclosures required by § 226.6(b) in person at the time an 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 or depends on the consumer's creditworthiness, as applicable, and refers the consumer to an 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 separate document provided with the account-opening table.

The Board noted in the supplementary information to the proposed clarifications that if creditors are not given additional flexibility, some consumers could be disadvantaged because creditors may provide a single rate for all consumers rather than varying the rate, with some consumers receiving lower rates than would be offered under a single-rate plan. Thus, without the proposed change, some consumers may be harmed by receiving higher rates. Moreover, the Board noted its understanding that the operational changes necessary to provide the specific APR applicable to the consumer's account in the table at point of sale when that rate depends on the consumer's creditworthiness may be too burdensome and increase creditors' risk of inadvertent noncompliance. Currently, creditors that establish open-end plans at point of sale provide account-opening disclosures at point of sale before the first transaction, with a reference to the APR in a separate document provided with the account agreement, and commonly provide a second, additional set of disclosures which reflect the actual APR for the account when, for example, a credit card is sent to the consumer.

Industry commenters generally supported the proposed clarification, for the reasons stated by the Board in the supplementary information to the May 2009 Regulation Z Proposed Clarifications. Consumer group commenters opposed the proposed clarification. However, the Board notes that the consumer group comments were premised on consumer groups' understanding that the clarification would require disclosure of the actual rate that will apply to the consumer's account only at a later point of time, subsequent to when the other account-opening disclosures are provided at point of sale. The Board notes that the proposed clarification would require the disclosure of the specific APR that will apply to the consumer's account at the same time that other account-opening disclosures are provided at point of sale. The clarification would, however, provide creditors with the flexibility to disclose the specific APR on a separate page or document than the tabular disclosure.

The Board is adopting the clarification to § 226.6(b)(2)(i)(E) as proposed. The Board believes that permitting creditors to provide the specific APR information outside of the table at point of sale, with the expectation that consumers will also receive a second set of disclosures with the specific APR applicable to the consumer properly formatted in the account-opening table at a later time, strikes the appropriate balance between the burden on creditors and the need to disclose to consumers the specific APR applicable to the consumer's account in the account-opening table provided at point of sale. Under the final rule, the consumer must receive a disclosure of the actual APR that applies to the account at the point of sale, but that rate could be provided in a separate document.

6(b)(2)(v) Grace Period

See discussion regarding § 226.5a(b)(5).

6(b)(4) Disclosure of Rates for Open-End (Not Home-Secured) Plans

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

Section 226.6(b)(4)(ii) as adopted in the January 2009 Regulation Z Rule sets forth the rules for variable-rate disclosures at account-opening, including accuracy requirements for the disclosed rate. The accuracy standard as adopted provides that a disclosed rate is accurate if it is in effect as of a "specified date" within 30 days before the disclosures are provided. *See* § 226.6(b)(4)(ii)(G).

Currently, creditors generally update rate disclosures provided at point of sale only when the rates have changed. The Board understands that some confusion has arisen as to whether the new rule as adopted literally requires that the account-opening disclosure specify a date as of which the rate was accurate, and that this date must be within 30 days of when the disclosures are given. Such a requirement could pose operational challenges for disclosures provided at point of sale as it would require creditors to reprint disclosures periodically, even if the variable rate has not changed since the last time the disclosures were printed.

The Board did not intend such a result. Requiring creditors to update rate disclosures to specify a date within the past 30 days would impose a burden on creditors with no corresponding benefit to consumers, where the disclosed rate is still accurate within the last 30 days before the disclosures are provided. Accordingly, the Board proposed in May 2009 to revise the rule to clarify that a variable rate is accurate if it is a rate as of a specified date and this rate was in effect within the last 30 days before the disclosures are provided. No

significant issues were raised by commenters on this clarification, which is adopted as proposed.

The Board is adopting one additional amendment to § 226.6(b)(4)(ii), to provide flexibility when variable rates are disclosed at point of sale. The Board understands that one consequence of the Credit Card Act's amendments regarding repricing of accounts, as implemented in § 226.55 of this final rule, is that private label and retail card issuers may be more likely to impose variable, rather than non-variable, rates when opening new accounts. The Board further understands that account-opening disclosures provided at point of sale are often pre-printed, which presents particular operational difficulties when those disclosures must be replaced at a large number of retail locations. As discussed above, the general accuracy standard for variable rates disclosed at account opening is that a variable rate is accurate if it is a rate as of a specified date and this rate was in effect within the last 30 days before the disclosures are provided. The Board notes that for a creditor establishing new open-end accounts at point of sale, this could mean that the disclosures at each retail location must be replaced each month, if the creditor's variable rate changes in accordance with an index value each month.

For reasons similar to those discussed above in the supplementary information to § 226.6(b)(2)(i)(E), the Board believes that additional flexibility is appropriate for issuers providing account-opening disclosures at point of sale when the rate being disclosed is a variable rate. The Board believes that permitting issuers to provide a variable rate in the table that is in effect within 90 days before the disclosures are provided, accompanied by a separate disclosure of a variable rate in effect within the last 30 days will strike the balance between operational burden on creditors and ensuring that consumers receive clear and timely disclosures of the terms that apply to their accounts.

Accordingly, the Board is adopting a new § 226.6(b)(4)(ii)(H), which states that creditors imposing annual percentage rates that vary according to an index that is not under the creditor's control that provide the disclosures required by § 226.6(b) in person at the time an open-end (not home-secured) plan is established in connection with financing the purchase of goods or services may disclose in the table a rate, or range of rates to the extent permitted by § 226.6(b)(2)(i)(E), that was in effect within the last 90 days before the disclosures are provided, along with a reference directing the consumer to the account agreement or other disclosure provided with the account-opening table where an annual percentage rate applicable to the consumer's account in effect within the last 30 days before the disclosures are provided is disclosed.

*Section 226.7 Periodic Statement*

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

7(b)(8) Grace Period

See discussion regarding § 226.5a(b)(5).

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

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

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

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

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

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

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

The Credit Card Act amended TILA Section 127(b)(12) to apply the due date and the late payment disclosures only to creditors offering a credit card account under an open-end consumer credit plan. Consistent with newly-revised TILA Section 127(b)(12), in the October 2009 Regulation Z Proposal, the Board proposed to amend § 226.7(b)(11) to require the due date and the late payment disclosures only for a "credit card account under an open-end (not home-secured) consumer credit plan," as that term would have been defined under proposed § 226.2(a)(15)(ii). Based on the proposed definition of "credit card account under an open-end (not home-secured) consumer credit plan," the due date and the late payment disclosures would not have applied to (1) open-end credit plans that are not credit card accounts such as general purpose lines of credit that are not accessed by a credit card; (2) HELOC

accounts subject to § 226.5b even if they are accessed by a credit card device; and (3) overdraft lines of credit even if they are accessed by a debit card. In addition, as discussed in more detail below, under proposed § 226.7(b)(11)(ii), the Board also proposed to exempt charge card accounts from the late payment disclosure requirements.

In response to the October 2009 Regulation Z Proposal, several consumer groups encouraged the Board to use its authority under Section 105(a) of TILA to require the payment due date and late payment disclosures for all open-end credit, not just "credit card accounts under an open-end (not home-secured) consumer credit plan."

However, the final rule applies the payment due date and late payment disclosures only to credit card accounts under an open-end (not home-secured) consumer credit plan, as that term is defined in § 226.2(a)(15)(ii). Thus, the due date and the late payment disclosures would not apply to (1) open-end credit plans that are not credit card accounts such as general purpose lines of credit that are not accessed by a credit card; (2) HELOC accounts subject to § 226.5b even if they are accessed by a credit card device; and (3) overdraft lines of credit even if they are accessed by a debit card. In addition, as discussed in more detail below, under § 226.7(b)(11)(ii), the final rule also exempts charge card accounts and charged-off accounts from the payment due date and late payment disclosure requirements.

1. *HELOC accounts.* In the August 2009 Regulation Z HELOC Proposal, the Board did not propose to use its authority in TILA Section 105(a) to apply the due date and late payment disclosures to HELOC accounts subject to § 226.5b, even if they are accessed by a credit card device. In the supplemental information to the August 2009 Regulation Z HELOC Proposal, the Board stated its belief that the payment due date and late payment disclosures are not needed for HELOC accounts to effectuate the purposes of TILA. The consequences to a consumer of not making the minimum payment by the payment due date are less severe for HELOC accounts than for unsecured credit cards. Unlike with unsecured credit cards, creditors offering HELOC accounts subject to 226.5b typically do not impose a late-payment fee until 10–15 days after the payment is due. In addition, as proposed in the August 2009 Regulation Z HELOC Proposal, creditors offering HELOC accounts would be restricted from terminating and accelerating the account, permanently suspending the account or reducing the credit line, or imposing penalty rates or penalty fees (except for the contractual late-payment fee) for a consumer's failure to pay the minimum payment due on the account, unless the payment is more than 30 days late. For unsecured credit cards, under the Credit Card Act, after the first year an account is opened, unsecured credit card issuers may increase rates and fees on new transactions for a late payment, even if the consumer is only one day late in making the minimum payment. Unlike with unsecured credit cards, as proposed in the August 2009 Regulation HELOC Proposal, even after the first year that the account is open, creditors offering HELOC accounts subject to § 226.5b could not impose penalty rates or penalty fees (except for a contractual late-payment fee) on new transactions for a consumer's failure to pay the minimum payment on the account, unless the consumer's payment is more than 30 days late. For these reasons, the final rule does not extend the payment due date and late payment disclosures to HELOC accounts subject to § 226.5b, even if they are accessed by a credit card device.

2. *Overdraft lines of credit and other general purpose credit lines.* For several reasons, the Board also does not use its authority in TILA Section 105(a) to apply the due date and late payment disclosures to overdraft lines of credit (even if they are accessed by a debit card) and general purpose credit lines that are not accessed by a credit card. First, these lines of credit are not in wide use. The 2007 Survey of Consumer Finances data indicates that few families—1.7 percent—had a balance on lines of credit other than a home-equity line or credit card at the time of the interview. (By comparison, 73 percent of families had a credit card, and 60.3 percent of these families had a credit card balance at the time of the interview.) [22] Second, the Board is concerned that the operational costs of requiring creditors to comply with the payment due date and late payment disclosure requirements for overdraft lines of credit and other general purpose lines of credit may cause some institutions to no longer provide these products as accommodations to consumers, to the detriment of consumers who currently use these products. For these reasons, the final rule does not extend the payment due date and late payment disclosure requirements to overdraft lines of credit and other general purpose credit lines.

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

Under the October 2009 Regulation Z Proposal, a charge card issuer would have been required to disclose the payment due date on the periodic statement that was the same day each month. However, under proposed § 226.7(b)(11)(ii), a charge card issuer would not have been required to disclose on the periodic statement the late payment disclosures, namely any late payment fee or penalty APR that could be triggered by a late payment. The Board noted that, as discussed above, the late payment disclosure requirements are not specifically enumerated in TILA Section 103(f) to apply to charge card issuers. In addition, the Board 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. Therefore, the Board concluded that 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.

An industry commenter noted that charge cards should also be exempt from the requirement in new TILA Section 127(o) that the payment due date be the same day each month because that requirement, like the late payment disclosure requirements in revised TILA Section 127(b)(12), is not specifically enumerated in TILA Section 103(f) as applying to charge card issuers. Historically, however, the Board has generally used its authority under TILA Section 105(a) to apply the same requirements to credit and charge cards.

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

*See* § 226.2(a)(15); comment 2(a)(15)–3. The Board has taken a similar approach with respect to implementation of the Credit Card Act. *See* § 226.2(a)(15)(ii). Nevertheless, in these circumstances, the Board believes that it would not be appropriate to apply the requirements in TILA Section 127(b)(12) and (o) to periodic statements provided solely for charge card accounts.

Charge card accounts generally require that the consumer pay the full balance upon receipt of the periodic statement. *See* comment 2(a)(15)–3. In practice, however, the Board understands that charge card issuers generally request that consumers make payment by some later date. *See* comment 5a(b)(7)–1. As discussed below, proposed comments 7(b)(11)–1 and –2 clarify that the payment due date disclosed pursuant to § 226.7(b)(11)(i)(A) must be the date on which the consumer is legally obligated to make payment, even if the contract or state law provides that a late payment fee cannot be assessed until some later date. Thus, proposed § 226.7(b)(11)(i)(A) would have required a charge card issuer to disclose that payment was due immediately upon receipt of the periodic statement. As discussed above with respect to § 226.5(b)(2)(ii), the Board believes that such a disclosure would be unnecessarily confusing for consumers and would prevent a charge card issuer from complying with the requirement that periodic statements be mailed or delivered 21 days before the payment due date. Instead, the Board believes that it is appropriate to amend proposed § 226.7(b)(11)(ii)(A) to exempt charge card periodic statements from the requirements of § 226.7(b)(11)(i).

However, as discussed above, charge card issuers are still prohibited by § 226.5(b)(2)(ii)(A)(*2*) from treating a payment as late for any purpose during the 21-day period following mailing or delivery of the periodic statement. Furthermore, § 226.7(b)(11)(ii) makes clear the exemption is for periodic statements provided solely for charge card accounts; periodic statements provided for credit card accounts with a charge card feature and revolving feature must comply with the due date and late payment disclosure provisions as to the revolving feature. The Board is also retaining comment app. G–9 (which was adopted in the January 2009 Regulation Z Rule). Comment app. G–9 explains that creditors offering card accounts with a charge card feature and a revolving feature may revise disclosures, such as the late payment disclosures and the repayment disclosures discussed in the section-by-section analysis to § 226.7(b)(12) below, to make clear the feature to which the disclosures apply.

4. *Charged-off accounts.* In response to the October 2009 Regulation Z Proposal, one commenter requested that credit card issuers not be required to provide the payment due date and late payment disclosures for charged-off accounts since, on those accounts, consumers are over 180 days late, the accounts have been placed in charge-off status, and full payment is due immediately. The final rule provides that the payment due date and late payment disclosures do not apply to a charged-off account where full payment of the entire account balance is due immediately. *See* § 226.7(b)(11)(ii)(B). In these cases, it would be impossible for card issuers to ensure that the payment due date is the same day each month because the payment is due immediately upon receipt of the periodic statement, and issuers cannot control which day the periodic statement will be received. In addition, the late payment disclosures are not likely to be meaningful to consumers because consumers are likely aware of any penalties for late payment when an account is 180 days late.

5. *Lines of credit accessed solely by account numbers.* In response to the October 2009 Regulation Z Proposal, one commenter requested that the Board provide an exemption from the due date and late payment disclosures for lines of credit accessed solely by account numbers. This commenter believed that this exemption would simplify compliance issues, especially for smaller retailers offering in-house revolving open-end accounts, in view of some case law indicating that a reusable account number could constitute a "credit card." The final rule does not contain a specific exemption from the payment due date and late payment disclosure requirements for lines of credit accessed solely by account numbers. The Board believes that consumers that use these lines of credit (to the extent they are considered credit card accounts) would benefit from the due date and late payment disclosures.

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

In addition, the Board proposed several other revisions to § 226.7(b)(11) in order to implement new TILA Section 127(o), which requires that the payment due date for a credit card account under an open-end (not home-secured) consumer credit plan be the same day each month. In addition to requiring that the due date disclosed be the same day each month, in order to implement new TILA Section 127(o), the Board proposed to require that the due date disclosure be provided regardless of whether a late payment fee or penalty rate could be imposed and proposed to require that the due date be disclosed for charge card accounts, although charge card issuers would not be required to provide the late payment disclosures set forth in proposed § 226.7(b)(11)(i)(B). The final rule retains this provision with one modification. For the reasons discussed above, the final rule amends proposed § 226.7(b)(11)(ii) to provide that the due date and late payment disclosure requirements do not apply to periodic statements provided solely for charge card accounts or to periodic statements provided for charged-off accounts where payment of the entire account balance is due immediately.

1. *Courtesy periods.* In the January 2009 Regulation Z Rule, § 226.7(b)(11) interpreted the due date to be a date that is required by the legal obligation. Comment 7(b)(11)–1 clarified that creditors need not disclose informal "courtesy periods" not part of the legal obligation that creditors may observe for a short period after the stated due date before a late payment fee is imposed, to account for minor delays in payments such as mail delays. In the October 2009 Regulation Z Proposal, the Board proposed to retain comment 7(b)(11)–1 with technical revisions to refer to card issuers, rather than creditors, consistent with the proposal to limit the due date and late payment disclosures to a "credit card account under an open-end (not home-secured) consumer credit plan," as that term would have been defined in proposed § 226.2(a)(15)(ii). The Board received no comments on this provision. The final rule adopts comment 7(b)(11)–1 as proposed.

2. *Assessment of late fees.* Under TILA Section 127(b)(12), as revised by the Credit Card Act, a card issuer must disclose on periodic statements the

payment due date or, if different, the earliest date on which the late payment fee may be charged. Some state laws require that a certain number of days must elapse following a due date before a late payment fee may be imposed. Under such a state law, the later date arguably would be required to be disclosed on periodic statements.

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

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

For these reasons, notwithstanding TILA Section 127(b)(12) (as revised by the Credit Card Act), in the October 2009 Regulation Z Proposal, the Board proposed to continue to require card issuers to disclose the due date under the terms of the legal obligation, and not a later date, such as when creditors are restricted by state or other law from imposing a late payment fee unless a payment is late for a certain number of days following the due date.

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

The Board did not receive any comments on this aspect of the October 2009 Regulation Z Proposal. For the reasons described above, comment 7(b)(11)–2 is adopted as proposed. The Board adopts this exception to the TILA requirement to disclose the later date pursuant to the Board's authority under TILA Section 105(a) to make adjustments that are necessary to effectuate the purposes of TILA. 15 U.S.C. 1604(a).

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

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

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

Several industry commenters requested that the Board permit creditors to set a due date that is the last day of each month, even though the last day of the month will fall on a different numerical date in some months. Other industry commenters stated that the rule should permit due dates that are the 29th or 30th of each month, noting that February is the only month that has fewer than 30 days. One commenter noted that there could be customer service problems with the rule as proposed, especially if a consumer requests a payment due date that is the last day of the month. The Board believes that the intent of new TILA Section 127(o) is that a consumer's due date be predictable and generally not change from month to month. However, comment 7(b)(11)–6 has been revised from the proposal to provide that a

consumer's due date may be the last day of the month, notwithstanding the fact that this will not be the same numerical date for each month. The Board believes that consumers can generally understand what the last day of the month will be, and that this clarification effectuates the intent of new TILA Section 127(o) that consumer's due date be predictable from month to month.

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

The Board received only one comment on proposed comment 7(b)(11)(i)–7, which is adopted as proposed. One industry commenter stated that the guidance that the due date may be adjusted from time to time, but must be the same thereafter is overly restrictive. This commenter stated that consumers should be able to choose their desired due date. The Board believes that comment 7(b)(11)(i)–7 does permit sufficient flexibility for card issuers to permit consumers to change their due dates from time to time. However, the Board believes that clarification that the due date must generally be the same each month is necessary to effectuate the purposes of new TILA Section 127(o) and to provide predictability to consumers regarding their payment due dates.

Regulation Z's definition of "billing cycle" in § 226.2(a)(4) contemplates that the interval between the days or dates of regular periodic statements must be equal and no longer than a quarter of a year. Therefore, some creditors may have billing cycles that are two or three months in duration. The Board proposed comment 7(b)(11)–8 to clarify that new § 226.7(b)(11)(i) does not prohibit billing cycles that are two or three months, provided that the due date for each billing cycle is on the same numerical date of each month. The Board received no comments on comment 7(b)(11)–8, which is adopted as proposed.

Finally, the Board proposed comment 7(b)(11)–9 to clarify the relationship between §§ 226.7(b)(11)(i) and 226.10(d). As discussed elsewhere in this supplementary information, § 226.10(d) provides that if the payment due date is a day on which the creditor does not receive or accept payments by mail, the creditor is generally required to treat a payment received the next business day as timely. It is likely that, from time to time, a due date that is the same numerical date each month as required by § 226.7(b)(11)(i) may fall on a date on which the creditor does not accept or receive mailed payments, such as a holiday or weekend. Proposed comment 7(b)(11)–9 clarified that in such circumstances the creditor must disclose the due date according to the legal obligation between the parties, not the date as of which the creditor is permitted to treat the payment as late. For example, if the consumer's due date is the 4th of every month, a card issuer may not accept or receive payments by mail on Thursday, July 4. Pursuant to § 226.10(d), the creditor may not treat a mailed payment received on the following business day, Friday, July 5, as late for any purpose. The creditor must nonetheless, however, disclose July 4 as the due date on the periodic statement and may not disclose a July 5 due date.

Two industry commenters objected to proposed comment 7(b)(11)–9 and stated that creditors should be permitted to disclose the next business day as the due date if the regular due date falls on a weekend or holiday on which they do not receive or accept payments by mail. One commenter noted that this proposed requirement could create operational difficulties, because some creditors' systems do not process payments as timely if the payment is received after the posted due date on the periodic statement. The commenter stated that this would require some creditors to apply back-end due diligence to ensure that they are not inadvertently creating penalties, which can pose a significant burden on creditors.

The Board is adopting comment 7(b)(11)–9 as proposed. The Board believes that the purpose of TILA Section 127(o) is to promote consistency and predictability regarding a consumer's due date. The Board believes that predictability is not promoted by permitting creditors to disclose different numerical dates during months where the consumer's payment due date falls, for example, on a weekend or holiday when the card issuer does not receive or accept payments by mail. This is consistent with the approach that the Board has taken with regard to payment due dates in comments 7(b)(11)–1 and –2, where the due date disclosed is required to reflect the legal obligation between the parties, not any courtesy period offered by the creditor or required by state or other law.

*Late payment fee and penalty APR.* In the January 2009 Regulation Z Rule, the Board adopted § 226.7(b)(11) to require creditors offering open-end (not home-secured) credit plans that charge a fee or impose a penalty rate for paying late to disclose on the periodic statement the amount of any late payment fee and any penalty APR that could be triggered by a late payment (in addition to the payment due date discussed above). Consistent with TILA Section 127(b)(12), as revised by the Credit Card Act, proposed § 226.7(b)(11) would have continued to require that a card issuer disclose any late payment fee and any penalty APR that may be imposed on the account as a result of a late payment, in addition to the payment due date discussed above. No comments were received on this aspect of the proposal. The final rule adopts this provision as proposed.

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

In response to the October 2009 Regulation Z Proposal, one commenter suggested that consumers would benefit from disclosure of the issuer's policy on late fee and penalty APRs on each periodic statement, whether or not the cardholder could trigger such consequences by making a late payment with respect to a particular billing period. The final rule retains comment 7(b)(11)–3 as proposed. The Board believes that issuers should be given the flexibility to tailor the late payment disclosure to the activity on the consumer's account, which will likely make the disclosure more useful to consumers.

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

In response to the October 2009 Regulation Z Proposal, one industry commenter requested that the Board allow credit card issuers to disclose a range of rates or a highest rate for a card program where different penalty APRs apply to different accounts in the program. According to the commenter, different penalty APRs may apply to consumers' accounts within the same card program because some consumers in a program may not have received a change in terms for a program (possibly because the account was not active at the time of the change), or the consumer may have opted out of a change in terms related to an increase in the penalty APR. The commenter indicates that some systems do not have the operational capability to tailor the periodic statement warning message as a variable message and include the precise penalty APR that applies to each account. The commenter believed that there is no detriment to a consumer in allowing a more generic warning message because the intent of the warning message is to give consumers notice that paying late can have serious consequences. Section 226.7(b)(11)(i)(B) and comment 7(b)(11)–4 are adopted as proposed. The Board did not amend these provisions to allow card issuers to disclose to a consumer a range of rates or highest rate for a card program, where those rates do not apply to a consumer's account. The Board is mindful of compliance costs associated with customizing the disclosure to reflect terms applicable to a consumer's account; however, the Board believes the purposes of TILA would not be served if a consumer received a late-payment disclosure for a penalty APR that exceeded, perhaps substantially, the penalty APR the consumer could be assessed under the terms of the legal obligation of the account. For that reason, § 226.7(b)(11)(i)(B) and comment 7(b)(11)–4 provide that ranges or the highest fee or penalty APR must be those applicable to the consumer's account. Accordingly, a creditor may state a range or highest penalty APR only if all penalty APRs in that range or the highest penalty APR would be permitted to be imposed on the consumer's account under the terms of the consumer's account.

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

In response to the October 2009 Regulation Z Proposal, one commenter suggested that the Board revise comment 7(b)(11)–5 to provide that if the highest APR has previously been triggered on an account, a creditor must modify the language of the late payment disclosure to indicate that the penalty APR has been increased due to previous late payment. The final rule adopts comment 7(b)(11)–5 as proposed. To ease compliance burdens, the Board believes that it is appropriate to provide flexibility to card issuers in providing the late payment disclosure when the highest penalty APR has previously been triggered on the account. The Board notes that consumers will receive advance notice under § 226.9(g) when a penalty APR is being imposed on the consumer's account. In cases where the highest penalty APR has been imposed, the Board does not believe that allowing the late payment disclosures to continue to include the amount of the penalty APR and the warning that the rate may be imposed for an untimely payment is likely to confuse consumers.

7(b)(12) Repayment Disclosures

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

Alternatively, the Bankruptcy Act provided that a creditor may use a toll-free telephone number to provide the actual number of months that it will take consumers to repay their outstanding balances ("actual repayment disclosure") instead of providing an

estimate based on the Board-created table. A creditor that does so would not need to include a hypothetical example on its periodic statements, but must disclose the warning statement and the toll-free telephone number on its periodic statements. 15 U.S.C. 1637(b)(11)(J)–(K).

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

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

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

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

As discussed in more detail below, in the October 2009 Regulation Z Proposal, the Board proposed to revise § 226.7(b)(12) to implement Section 201 of the Credit Card Act.

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

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

The Board adopts this rule pursuant to its exception and exemption authorities under TILA Section 105. Section 105(a) authorizes the Board to make exceptions to TILA to effectuate the statute's purposes, which include facilitating consumers' ability to compare credit terms and helping consumers avoid the uninformed use of credit. *See* 15 U.S.C. 1601(a), 1604(a). Section 105(f) authorizes the Board to

exempt any class of transactions from coverage under any part of TILA if the Board determines that coverage under that part does not provide a meaningful benefit to consumers in the form of useful information or protection. *See* 15 U.S.C. 1604(f)(1). The Board must make this determination in light of specific factors. *See* 15 U.S.C. 1604(f)(2). These factors are (1) the amount of the loan and whether the disclosure provides a benefit to consumers who are parties to the transaction involving a loan of such amount; (2) the extent to which the requirement complicates, hinders, or makes more expensive the credit process; (3) the status of the borrower, including any related financial arrangements of the borrower, the financial sophistication of the borrower relative to the type of transaction, and the importance to the borrower of the credit, related supporting property, and coverage under TILA; (4) whether the loan is secured by the principal residence of the borrower; and (5) whether the exemption would undermine the goal of consumer protection.

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

1. *HELOC accounts.* In the August 2009 Regulation Z HELOC Proposal, the Board proposed that the repayment disclosures required by TILA Section 127(b)(11), as amended by the Credit Card Act, not apply to HELOC accounts, including HELOC accounts that can be accessed by a credit card device. *See* 74 FR 43428. The Board proposed this rule pursuant to its exception and exemption authorities under TILA Section 105(a) and 105(f), as discussed above. In the supplementary information to the August 2009 Regulation Z HELOC Proposal, the Board stated its belief that the minimum payment disclosures in the Credit Card Act would be of limited benefit to consumers for HELOC accounts and are not necessary to effectuate the purposes of TILA. First, the Board understands that most HELOCs have a fixed repayment period. Under the August 2009 Regulation Z HELOC Proposal, in proposed § 226.5b(c)(9)(i), creditors offering HELOCs subject to § 226.5b would be required to disclose the length of the plan, the length of the draw period and the length of any repayment period in the disclosures that must be given within three business days after application (but not later than account opening). In addition, this information also must be disclosed at account opening under proposed § 226.6(a)(2)(v)(A), as set forth in the August 2009 Regulation Z HELOC Proposal. Thus, for a HELOC account with a fixed repayment period, a consumer could learn from those disclosures the amount of time it would take to repay the HELOC account if the consumer only makes required minimum payments. The cost to creditors of providing this information a second time, including the costs to reprogram periodic statement systems, appears not to be justified by the limited benefit to consumers.

In addition, in the supplementary information to the August 2009 Regulation Z HELOC Proposal, the Board stated its belief that the disclosure about total cost to the consumer of paying the outstanding balance in full (if the consumer pays only the required minimum monthly payments and if no further advances are made) would not be useful to consumers for HELOC accounts because of the nature of consumers' use of HELOC accounts. The Board understands that HELOC consumers tend to use HELOC accounts for larger transactions that they can finance at a lower interest rate than is offered on unsecured credit cards, and intend to repay these transactions over the life of the HELOC account. By contrast, consumers tend to use unsecured credit cards to engage in a significant number of small dollar transactions per billing cycle, and may not intend to finance these transactions for many years. The Board also understands that HELOC consumers often will not have the ability to repay the balances on the HELOC account at the end of each billing cycle, or even within a few years. To illustrate, the Board's 2007 Survey of Consumer Finances data indicates that the median balance on HELOCs (for families that had a balance at the time of the interview) was $24,000, while the median balance on credit cards (for families that had a balance at the time of the interview) was $3,000.[23]

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

For all these reasons, the final rule exempts HELOC accounts (even when they are accessed by a credit card account) from the repayment disclosure requirements set forth in TILA Section 127(b)(11), as revised by the Credit Card Act.

2. *Overdraft lines of credit and other general purpose credit lines.* The final rule also exempts overdraft lines of credit (even if they are accessed by a debit card) and general purpose credit lines that are not accessed by a credit card from the repayment disclosure requirements set forth in TILA Section 127(b)(11), as revised by the Credit Card Act, for several reasons. 15 U.S.C. 1637(b)(11). First, these lines of credit are not in wide use. The 2007 Survey of Consumer Finances data indicates that few families—1.7 percent—had a balance on lines of credit other than a home-equity line or credit card at the time of the interview. (By comparison, 73 percent of families had a credit card, and 60.3 percent of these families had a credit card balance at the time of the interview.)[24] Second, these lines of credit typically are neither promoted, nor used, as long-term credit options of the kind for which the repayment disclosures are intended. Third, the Board is concerned that the operational costs of requiring creditors to comply with the repayment disclosure requirements for overdraft lines of credit and other general purpose lines of credit may cause some institutions to no longer provide these products as accommodations to consumers, to the detriment of consumers who currently use these products. For these reasons, the Board uses its TILA Section 105(a) and 105(f) authority (as discussed above) to exempt overdraft lines of credit and other general purpose credit lines from the repayment disclosure requirements, because in this context the Board believes the repayment disclosures are not necessary to effectuate the purposes of TILA. 15 U.S.C. 1604(a) and (f).

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

TILA Section 127(b)(11)(A), as amended by the Credit Card Act, requires that a creditor that extends open-end credit must provide the following disclosures on each periodic statement: (1) A "warning" statement indicating that making only the minimum payment will increase the interest the consumer pays and the time it takes to repay the consumer's balance; (2) the number of months that it would take to repay the outstanding balance if

[23] Changes in U.S. Family Finances from 2004 to 2007.

[24] Changes in U.S. Family Finances from 2004 to 2007.

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

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

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

The Board received no comments on this aspect of the proposal. The Board adopts the above warning statement as proposed. The Board tested the warning statement as part of the consumer testing conducted by the Board on credit card disclosures in relation to the January 2009 Regulation Z Rule. Participants in that consumer testing reviewed periodic statement disclosures with the warning statement, and they indicated they understood from this statement that paying only the minimum payment would increase both interest charges and the length of time it would take to pay off a balance.

*Minimum payment disclosures.* TILA Section 127(b)(11)(B)(i) and (ii), as amended by the Credit Card Act, requires that a creditor provide on each periodic statement: (1) The number of months that it would take to pay the entire amount of the outstanding balance, if the consumer pays only the required minimum monthly payments and if no further advances are made; and (2) the total cost to the consumer, including interest and principal payments, of paying that balance in full, if the consumer pays only the required minimum monthly payments and if no further advances are made. 15 U.S.C. 1637(b)(11)(B)(i) and (ii). In the October 2009 Regulation Z Proposal, the Board proposed new § 226.7(b)(12)(i)(B) and (C) to implement these statutory provisions.

1. *Minimum payment repayment estimate.* Under proposed § 226.7(b)(12)(i)(B), if amortization occurs on the account, a credit card issuer generally would have been required to disclose on each periodic statement the minimum payment repayment estimate, as described in proposed Appendix M1 to part 226. As described in more detail in the section-by-section analysis to Appendix M1 to part 226, the minimum payment repayment estimate would be an estimate of the number of months that it would take to pay the entire amount of the outstanding balance shown on the periodic statement, if the consumer pays only the required minimum monthly payments and if no further advances are made.

Proposed § 226.7(b)(12)(i)(B) would have provided that if the minimum payment repayment estimate is less than 2 years, a credit card issuer must disclose the estimate in months. Otherwise, the estimate would be disclosed in years. If the estimate is 2 years or more, the estimate would have been rounded to the nearest whole year, meaning that if the estimate contains a fractional year less than 0.5, the estimate would be rounded down to the nearest whole year. The estimate would have been 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 October 2009 Regulation Z Proposal, several consumer groups commented that the minimum payment repayment estimate should not be rounded to the nearest year if the repayment period is 2 years or more. Instead, the Board should require in those cases that the minimum payment repayment estimate be disclosed in years and months. For example, assume a minimum payment repayment estimate of 209 months. The consumer groups suggest that credit card issuers should be required to disclose the repayment estimate of 209 months as 17 years and 5 months, instead of disclosing this repayment estimate as 17 years which would be required under the rounding rules set forth in the proposal. The consumer groups indicated that six months can be a significant amount of time for some consumers.

As proposed, the final rule in § 226.7(b)(12)(i)(B) provides that if the minimum payment repayment estimate is less than 2 years, a credit card issuer must disclose the estimate in months. Otherwise, the estimate would be disclosed in years. If the estimate is 2 years or more, the estimate would have been rounded to the nearest whole year. The Board adopts this provision of the final rule pursuant to the Board's authority to make adjustments to TILA's requirements to effectuate the statute's purposes, which include facilitating consumers' ability to compare credit terms and helping consumers avoid the uninformed use of credit. *See* 15 U.S.C. 1601(a), 1604(a). The Board believes that disclosing the estimated minimum payment repayment period in years (if the estimated payoff period is 2 years or more) allows consumers to better comprehend longer repayment periods without having to convert the repayment periods themselves from months to years. In consumer testing conducted by the Board on credit card disclosures in relation to the January 2009 Regulation Z Rule, participants reviewed disclosures with estimated minimum payment repayment periods in years, and they indicated they understood the length of time it would take to repay the balance if only minimum payments were made.

Thus, if the minimum payment repayment estimate is 2 years or more, the final rule does not require credit card issuers to disclose the minimum payment repayment estimate in years and months, such as disclosing the minimum payment repayment estimate of 209 months as 17 years and 5 months, instead of disclosing this repayment estimate as 17 years (which is required under the rounding rules set forth in the final rule). The Board recognizes that the minimum payment repayment estimates, as calculated in Appendix M1 to part 226, are estimates, calculated

using a number of assumptions about current and future account terms. The Board believes that disclosing minimum payment repayment estimates that are 2 years or more in years and months might cause consumers to believe that the estimates are more accurate than they really are, especially for longer repayment periods. The Board believes that rounding the minimum payment repayment estimate to the nearest year (if the repayment estimate is 2 years or more) provides consumers with an appropriate estimate of how long it would take to repay the outstanding balance if only minimum payments are made.

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

3. *Disclosure of assumptions used to calculate the minimum payment repayment estimate and the minimum payment total cost estimate.* Under proposed § 226.7(b)(12)(i)(D), a creditor would have been required to provide on the periodic statement the following statements: (1) A statement that the minimum payment repayment estimate and the minimum payment total cost estimate are based on the current outstanding balance shown on the periodic statement; and (2) a statement that the minimum payment repayment estimate and the minimum payment total cost estimate are based on the assumption that only minimum payments are made and no other amounts are added to the balance. The final rule adopts this provision as proposed. The Board believes that this information is needed to help consumers understand the minimum payment repayment estimate and the minimum payment total cost estimate. The final rule does not require issuers to disclose other assumptions used to calculate these estimates. The many assumptions that are necessary to calculate the minimum payment repayment estimate and the minimum payment total cost estimate are complex and unlikely to be meaningful or useful to most consumers.

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

1. *Estimated monthly payment for repayment in 36 months and total cost estimate for repayment in 36 months.* In implementing TILA Section 127(b)(11)(B)(iii), as revised by the Credit Card Act, proposed § 226.7(b)(12)(i)(F) provided that except when the minimum payment repayment estimate disclosed under proposed § 226.7(b)(12)(i)(B) is 3 years or less, a credit card issuer must disclose on each periodic statement the estimated monthly payment for repayment in 36 months and the total cost estimate for repayment in 36 months, as described in proposed Appendix M1 to part 226. As described in more detail in the section-by-section analysis to Appendix M1 to part 226, the proposed estimated monthly payment for repayment in 36 months would have been an estimate of the monthly payment amount that would be required to pay off the outstanding balance shown on the statement within 36 months, assuming the consumer paid the same amount each month for 36 months. Also, as described in Appendix M1 to part 226, the proposed total cost estimate for repayment in 36 months would have been the total dollar amount of the interest and principal that the consumer would pay if he or she made the estimated monthly payment each month for 36 months. Under the proposal, the estimated monthly payment for repayment in 36 months and the total cost estimate for repayment in 36 months would have been rounded to the nearest whole dollar. The final rule adopts these provisions as proposed, except with several additional exceptions to when the 36-month disclosures must be disclosed as discussed below.

2. *Savings estimate for repayment in 36 months.* In addition to the disclosure of the estimated monthly payment for repayment in 36 months and the total cost estimate for repayment in 36 months, proposed § 226.7(b)(12)(i)(F) also would have required that a credit card issuer generally must disclose on each periodic statement the savings estimate for repayment in 36 months, as described in proposed Appendix M1 to part 226. As described in proposed Appendix M1 to part 226, the savings estimate for repayment in 36 months would have been calculated as the difference between the minimum payment total cost estimate and the total cost estimate for repayment in 36 months. Thus, the savings estimate for repayment in 36 months would have represented an estimate of the amount of interest that a consumer would "save" if the consumer repaid the balance shown on the statement in 3 years by making the estimated monthly payment for repayment in 36 months each month, rather than making minimum payments each month. In response to the October 2009 Regulation Z Proposal, one commenter indicated that the Board should not require the savings estimate for repayment in 36 months because this disclosure would not be helpful to consumers. The final rule requires credit card issuers generally to disclose the savings estimate for repayment in 36 months on periodic statements, as proposed. The Board adopts this disclosure requirement pursuant to the Board's authority to make adjustments to TILA's requirements to effectuate the statute's purposes, which include facilitating consumers' ability to compare credit terms and helping consumers avoid the uninformed use of credit. *See* 15 U.S.C. 1601(a), 1604(a). The Board continues to believe that the savings estimate for repayment in 36 months will allow consumers more easily to understand the potential savings of paying the balance shown on the periodic statement in 3 years rather than making minimum payments each month. This potential savings appears to be Congress' purpose in requiring that the total cost for making minimum payments and the total cost for repayment in 36 months be disclosed on the periodic statement. The Board believes that including the savings estimate on the periodic statement allows consumers to comprehend better the potential savings without having to compute this amount themselves from the total cost estimates disclosed on the periodic statement. In consumer testing conducted by the Board on closed-end mortgage disclosures in relation to the

August 2009 Regulation Z Closed-End Credit Proposal, some participants were shown two offers for mortgage loans with different APRs and different totals of payments. In that consumer testing, in comparing the two mortgage loans, participants tended not to calculate for themselves the difference between the total of payments for the two loans (*i.e.,* the potential savings in choosing one loan over another), and use that amount to compare the two loans. Instead, participants tended to disregard the total of payments for both loans, because both totals were large numbers. Given the results of that consumer testing, the Board believes it is important to disclose the savings estimate on the periodic statement to focus consumers' attention explicitly on the potential savings of repaying the balance in 36 months.

3. *Minimum payment repayment estimate disclosed on the periodic statement is three years or less.* Under proposed § 226.7(b)(12)(i)(F), a credit card issuer would not have been required to provide the disclosures related to repayment in 36 months if the minimum payment repayment estimate disclosed under proposed § 226.7(b)(12)(i)(B) was 3 years or less. The Board retains this exemption in the final rule with several technical revisions. The Board adopts this exemption pursuant to the Board's authority exception and exemption authorities under TILA Section 105(a) and (f). The Board has considered the statutory factors carefully, and based on that review, believes that the exemption is appropriate. The Board believes that the estimated monthly payment for repayment in 36 months, and the total cost estimate for repayment in 36 months would not be useful and may be misleading to consumers where based on the minimum payments that would be due on the account, a consumer would be required to repay the outstanding balance in three years or less. For example, assume that based on the minimum payments due on an account, a consumer would repay his or her outstanding balance in two years if the consumer only makes minimum payments and take no additional advances. The consumer under the account terms would not have the option to repay the outstanding balance in 36 months (*i.e.,* 3 years). In this example, disclosure of the estimated monthly payment for repayment in 36 months and the total cost estimate for repayment in 36 months would be misleading, because under the account terms the consumer does not have the option to make the estimated monthly payment each month for 36 months. Requiring that this information be disclosed on the periodic statement when it is might be misleading to consumers would undermine TILA's goal of consumer protection, and could make the credit process more expensive by requiring card issuers to incur costs to address customer confusion about these disclosures.

In the final rule, the provision that exempts credit card issuers from disclosing on the periodic statement the disclosures related to repayment in 36 months if the minimum payment repayment estimate disclosed under § 226.7(b)(12)(i)(B) is 3 years or less has been moved to § 226.7(b)(1)(i)(F)(*2*)(*i*). In addition, the language of this exemption has been revised to clarify that the exemption applies if the minimum payment repayment estimate disclosed on the periodic statement under § 226.7(b)(12)(i)(B) after rounding is 3 years or less. For example, under the final rule, if the minimum payment repayment estimate is 2 years 6 month to 3 years 5 months, issuers would be required to disclose on the periodic statement that it would take 3 years to pay off the balance in full if making only the minimum payment. In these cases, an issuer would not be required to disclose the 36-month disclosures on the periodic statement because the minimum payment repayment estimate disclosed to the consumer on the periodic statement (after rounding) is 3 years or less. Comment 7(b)(12)(i)(F)–1 has been added to clarify these disclosure rules.

4. *Estimated monthly payment for repayment in 36 months is less than the minimum payment for a particular billing cycle.* In response to the October 2009 Regulation Z Proposal, several commenters suggested that card issuer should not be required to disclose the 36-month disclosures in a billing cycle where the minimum payment for that billing cycle is higher than the payment amount that would be disclosed in order to pay off the account in 36 months (*i.e.,* the estimated monthly payment for repayment in 36 months). One commenter indicated that this can occur for credit card programs that use a graduated payment schedule, which require a larger minimum payment in the initial months after a transaction on the account. This may also occur when an account is past due, and the required minimum payment for a particular billing cycle includes the entire past due amount. Commenters were concerned that disclosing an estimated monthly payment for repayment in 36 months in a billing cycle where this estimated payment is lower than the required minimum payment for that billing cycle might be confusing and even deceptive to consumers. A consumer that paid the estimated monthly payment for repayment in 36 months (which is lower than the required minimum payment that billing cycle) could incur a late fee and be subject to other penalties. The Board shares these concerns, and thus, the final rule provides that a card issuer is not required to disclose the 36-month disclosures for any billing cycle where the estimated monthly payment for repayment in 36 months, as described in Appendix M1 to part 226, rounded to the nearest whole dollar that is calculated for a particular billing cycle is less than the minimum payment required for the plan for that billing cycle. *See* § 226.7(b)(12)(i)(F)(*2*)(*ii*). The Board adopts this exemption pursuant to the Board's authority exception and exemption authorities under TILA Section 105(a). The Board has considered the statutory factors carefully, and based on that review, believes that the exemption is appropriate. Requiring that the 36-month disclosures be disclosed on the periodic statement when they might be misleading to consumers would undermine TILA's goal of consumer protection, and could make the credit process more expensive by requiring card issuers to incur costs to address customer confusion about these disclosures.

5. *A billing cycle where an account has both a balance on a revolving feature and on a fixed repayment feature.* In response to the October 2009 Regulation Z Proposal, several commenters raised concerns that the 36-month disclosures could be misleading in a particular billing cycle where an account has both a balance in a revolving feature where the required minimum payments for this feature will not amortize that balance in a fixed amount of time specified in the account agreement and a balance in a fixed repayment feature where the required minimum payment for this fixed repayment feature will amortize that balance in a fixed amount of time specified in the account agreement which is less than 36 months. For example, assume a retail card has several features. One feature is a general revolving feature, where the required minimum payment for this feature does not pay off the balance in a fixed period of time. Another feature allows consumers to make specific types of purchases (such as furniture purchases, or other large purchases), with a required minimum payment that will

pay off the purchase within a fixed period of time as set forth in the account agreement that is less than 36 months, such as one year. Commenters indicated that in many cases, where this type of account has balances on both the revolving feature and fixed repayment feature for a particular billing cycle, the required minimum due may initially be higher than what would be required to repay the entire account balance in 36 equal payments. In addition, calculation of the estimated monthly payment for repayment in 36 months assumes that the entire balance may be repaid in 36 months, while under the account agreement the balance in the fixed repayment feature must be repaid in a shorter timeframe. Based on these concerns, the Board amends the final rule to provide that a card issuer is not required to provide the 36-month disclosures on a periodic statement for a billing cycle where an account has both a balance in a revolving feature where the required minimum payments for this feature will not amortize that balance in a fixed amount of time specified in the account agreement and a balance in a fixed repayment feature where the required minimum payment for this fixed repayment feature will amortize that balance in a fixed amount of time specified in the account agreement which is less than 36 months. *See* § 226.7(b)(12)(i)(F)(*2*)(*iii*). The Board adopts this exemption pursuant to the Board's authority exception and exemption authorities under TILA Section 105(a). The Board has considered the statutory factors carefully, and based on that review, believes that the exemption is appropriate. Requiring that the 36-month disclosures be disclosed on the periodic statement when they might be misleading to consumers would undermine TILA's goal of consumer protection, and could make the credit process more expensive by requiring card issuers to incur costs to address customer confusion about these disclosures.

6. *Disclosure of assumptions used to calculate the 36-month disclosures.* If a card issuer is required to provide the 36-month disclosures, proposed § 226.7(b)(12)(i)(F)(*2*) would have provided that a credit card issuer must disclose as part of those disclosures a statement that the card issuer estimates that the consumer will repay the outstanding balance shown on the periodic statement in 3 years if the consumer pays the estimated monthly payment each month for 3 years. The final rule retains this provision as proposed, except that this provision is moved to § 226.7(b)(12)(i)(F)(*1*)(*ii*). The Board believes that this information is needed to help consumers understand the estimated monthly payment for repayment in 36 months. The final rule does not require issuers to disclose assumptions used to calculate this estimated monthly payment. The many assumptions that are necessary to calculate the estimated monthly payment for repayment in 36 months are complex and unlikely to be meaningful or useful to most consumers.

*Disclosure of extremely long repayment periods.* In response to the October 2009 Regulation Z Proposal, one commenter indicated that it had observed accounts that result in very long repayment periods. This commenter indicated that this situation usually results when the minimum payment requirements are very low in proportion to the APRs on the account. The commenter indicated that these scenarios result most frequently when issuers endeavor to provide temporary relief to consumers during periods of hardship, workout and disasters such as floods. This commenter indicated that requiring issuers to calculate and disclose these long repayment periods would cause compliance problems, because the software program cannot be written to execute an ad infinitum number of cycles. The commenter requested that the Board establish a reasonable maximum number of years for repayment and provide an appropriate statement disclosure message to reflect an account that exceeds the number of years and total costs provided.

With respect to these temporarily reduced minimum payments, the calculation of these long repayment periods often result from assuming that the temporary minimum payment will apply indefinitely. The Board notes that guidance provided in Appendix M1 to part 226 for how to handle temporary minimum payments may reduce the situations in which the calculation of a long repayment period would result. In particular, as discussed in more detail in the section-by-section analysis to Appendix M1 to part 226, Appendix M1 provides that if any promotional terms related to payments apply to a cardholder's account, such as a deferred billing plan where minimum payments are not required for 12 months, credit card issuers may assume no promotional terms apply to the account. In Appendix M1 to part 226, the term "promotional terms" is defined as terms of a cardholder's account that will expire in a fixed period of time, as set forth by the card issuer. Appendix M1 to part 226 clarifies that issuers have two alternatives for handling promotional minimum payments. Under the first alternative, an issuer may disregard the promotional minimum payment during the promotional period, and instead calculate the minimum payment repayment estimate using the standard minimum payment formula that is applicable to the account. For example, assume that a promotional minimum payment of $10 applies to an account for six months, and then after the promotional period expires, the minimum payment is calculated as 2 percent of the outstanding balance on the account or $20 whichever is greater. An issuer may assume during the promotional period that the $10 promotional minimum payment does not apply, and instead calculate the minimum payment disclosures based on the minimum payment formula of 2 percent of the outstanding balance or $20, whichever is greater. The Board notes that allowing issuers to disregard promotional payment terms on accounts where the promotional payment terms apply only for a limited amount of time eases the compliance burden on issuers, without a significant impact on the accuracy of the repayment estimates for consumers.

Under the second alternative, an issuer in calculating the minimum payment repayment estimate during the promotional period may choose not to disregard the promotional minimum payment but instead may calculate the minimum payments as they will be calculated over the duration of the account. In the above example, an issuer could calculate the minimum payment repayment estimate during the promotional period by assuming the $10 promotional minimum payment will apply for the first six months and then assuming the 2 percent or $20 (whichever is greater) minimum payment formula will apply until the balance is repaid. Appendix M1 to part 226 clarifies, however, that in calculating the minimum payment repayment estimate during a promotional period, an issuer may not assume that the promotional minimum payment will apply until the outstanding balance is paid off by making only minimum payments (assuming the repayment estimate is longer than the promotional period). In the above example, the issuer may not calculate the minimum payment repayment estimate during the promotional period by assuming that the $10 promotional minimum payment will apply beyond the six months until the outstanding balance is repaid.

While the Board believes that the above guidance for how to handle temporary minimum payments may reduce the situations in which the calculation of a long repayment period would result, the Board understands that there may still be circumstances where long repayment periods result, because the standard minimum payment is low in comparison to the APR that applies to the account. The final rule does not contain special rules for disclosing extremely long repayment periods, such as allowing credit card issuers to disclose long repayment periods as "over 100 years." As proposed, the final rule requires a credit card issuer to disclose the minimum payment repayment estimate, as described in Appendix M1 to part 226, on the periodic statement even if that repayment period is extremely long, such as over 100 years. The Board believes that it was Congress' intent to require that estimates of the repayment periods be disclosed on periodic statements, even if the repayment periods are extremely long.

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

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

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

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

Nonetheless, for the reasons discussed in more detail below, in the October 2009 Regulation Z Proposal, the Board proposed to make adjustments to the above statutory requirements when negative or no amortization occurs. Specifically, when negative or no amortization occurs, the Board proposed in new § 226.7(b)(12)(ii) to require a credit card issuer to disclose to the consumer on the periodic statement the following information: (1) the following statement: "**Minimum Payment Warning:** Even if you make no more charges using this card, if you make only the minimum payment each month we estimate **you will never pay off the balance shown on this statement** because your payment will be less than the interest charged each month;" (2) the following statement: "If you make more than the minimum payment each period, you will pay less in interest and pay off your balance sooner;" (3) the estimated monthly payment for repayment in 36 months; (4) the fact that the card issuer estimates that the consumer will repay the outstanding balance shown on the periodic statement in 3 years if the consumer pays the estimated monthly payment each month for 3 years; and (5) the toll-free telephone number for obtaining information about credit counseling services. The final rule adopts these disclosures, as proposed, pursuant to the Board's authority under TILA Section 105(a) to make adjustments or exceptions to effectuate the purposes of TILA. 15 U.S.C. 1604(a). When negative or no amortization occurs, the number of months to repay the balance shown on the statement if minimum payments are made and the total cost in interest and principal if the balance is repaid making only minimum payments cannot be calculated because the balance will never be repaid if only minimum payments are made. Under the final rule, these statutory disclosures are replaced with a warning that the consumer will never repay the balance if making minimum payments each month.

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

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

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

The Board has considered each of the statutory factors carefully, and based on that review, believes that the exemption is appropriate. As discussed above, when negative or no amortization occurs, a minimum payment total cost estimate cannot be calculated because the balance shown on the statement will never be repaid if only minimum payments are made. Thus, under the final rule, a credit card issuer would not be required to disclose a minimum payment total cost estimate as described in proposed Appendix M1 to part 226. Because the minimum payment total cost estimate will not be disclosed when

negative or no amortization occurs, the Board does not believe that the total cost estimate for repayment in 36 months would be useful to consumers. The Board believes that the total cost estimate for repayment in 36 months is useful when it can be compared to the minimum payment total cost estimate. Requiring that this information be disclosed on the periodic statement when it is not useful to consumers could distract consumers from more important information on the periodic statement, which could undermine TILA's goal of consumer protection.

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

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

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

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

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

Proposed Sample G–18(C)(2) would have applied when amortization occurs and the 36-month disclosures were not required to be disclosed under proposed § 226.7(b)(12)(i)(F). In this case, as discussed above, a credit card issuer would have been required under proposed § 226.7(b)(12) to disclose on the periodic statement: (1) The warning statement; (2) the minimum payment repayment estimate; (3) the minimum payment total cost estimate; (4) the fact that the minimum payment repayment estimate and the minimum payment total cost estimate are based on the current outstanding balance shown on the periodic statement, and the fact that the minimum payment repayment estimate and the minimum payment total cost estimate are based on the assumption that only minimum payments are made and no other amounts are added to the balance; and (5) the toll-free telephone number for obtaining information about credit counseling services. Sample G–18(C)(2) is adopted as proposed, with technical edits to the heading of the sample form.

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

Proposed Sample G–18(C)(3) would have applied when negative or no amortization occurs. In this case, as discussed above, a credit card issuer would have been required under

proposed § 226.7(b)(12) to disclose on the periodic statement: (1) The following statement: "**Minimum Payment Warning:** Even if you make no more charges using this card, if you make only the minimum payment each month we estimate **you will never pay off the balance shown on this statement** because your payment will be less than the interest charged each month;" (2) the following statement: "If you make more than the minimum payment each period, you will pay less in interest and pay off your balance sooner;" (3) the estimated monthly payment for repayment in 36 months; (4) the fact the card issuer estimates that the consumer will repay the outstanding balance shown on the periodic statement in 3 years if the consumer pays the estimated monthly payment each month for 3 years; and (5) the toll-free telephone number for obtaining information about credit counseling services. Sample G–18(C)(3) is adopted as proposed.

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

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

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

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

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

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

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

Several industry commenters stated that requiring card issuers to provide information regarding credit counseling through a toll-free number would be unduly burdensome, particularly for small institutions that do not currently have automated response systems for providing consumers with information about their accounts over the telephone. These commenters requested that card issuers instead be permitted to refer consumers to the United States Trustee or the Board. However, Section 201(c) of the Credit Card Act explicitly requires that card issuers establish and maintain

a toll-free telephone number for providing information regarding approved credit counseling services. Nevertheless, as discussed below, the Board has made several revisions to proposed § 226.7(b)(12)(iv) in order to reduce the burden of compliance.

In particular, the Board has revised § 226.7(b)(12)(iv)(A) to clarify that card issuers are only required to disclose information regarding approved organizations to the extent available from the United States Trustee or a bankruptcy administrator. The United States Trustee collects the name, street address, telephone number, and Web site address for approved organizations and provides that information to the public through its Web site, organized by state.[25] For states where credit counseling organizations are approved by a bankruptcy administrator pursuant to 11 U.S.C. 111(a)(1), a card issuer can obtain this information from the relevant administrator. Accordingly, as discussed in the proposal, the information that § 226.7(b)(12)(iv) requires a card issuer to provide is readily available to issuers.

The Board has also revised § 226.7(b)(12)(iv)(A) to clarify that the card issuer must provide information regarding approved organizations in, at its option, either the state in which the billing address for the account is located or the state specified by the consumer. Furthermore, although the United States Trustee's Web site also organizes information regarding approved organizations by the language in which the organization can provide credit counseling services, the Board has removed the requirement in proposed § 226.7(b)(12)(iv)(B) that card issuers provide this information upon request. Although consumer group commenters supported the requirement, comments from small institutions argued that Section 201(c) does not expressly require provision of this information and that it would be particularly burdensome for card issuers to do so. Specifically, it would be difficult for a card issuer to use an automated response system to comply with a consumer's request for a particular language without listing each of the nearly thirty languages listed on the United States Trustee's Web site. Instead, a card issuer would have to train its customer service representatives to respond to such requests on an individualized basis. Accordingly, although information regarding approved organizations that provide credit counseling services in languages other than English can be useful to consumers, it appears that the costs associated with providing this information through the toll-free number outweigh the benefits. Instead, as discussed below, the Board has revised the proposed commentary to provide guidance for card issuers on how to handle requests for this type of information (such as by referring the consumer to the United States Trustee's Web site).

The Board has replaced proposed § 226.7(b)(12)(iv)(B) with a requirement that card issuers update information regarding approved organizations at least annually for consistency with the information provided by the United States Trustee or a bankruptcy administrator. This requirement was previously proposed as guidance in comment 7(b)(12)(iv)–2. In connection with that proposed guidance, the Board solicited comment on whether card issuers should be required to update the credit counseling information they provide to consumers more or less frequently. Commenters generally supported an annual requirement, which the Board has adopted. Although one credit counseling organization suggested that card issuers be required to coordinate their verification process with the United States Trustee's review of its approvals, the Board believes such a requirement would unnecessarily complicate the updating process.

Because different credit counseling organizations may provide different services and charge different fees, the Board stated in the proposal that providing information regarding at least three approved organizations would enable consumers to make a choice about the organization that best suits their needs. However, the Board solicited comment on whether card issuers should provide information regarding a different number of approved organizations. In response, commenters generally agreed that the provision of information regarding three approved organizations was appropriate, although some industry commenters argued that card issuers generally have an established relationship with one credit counseling organization and should not be required to disclose information regarding additional organizations. Because the Board believes that consumers should be provided with more than one option for obtaining credit counseling services, the final rule adopts the requirement that card issuers provide information regarding three approved organizations.

In addition, some credit counseling organizations and one city government consumer protection agency requested that the Board require card issuers to disclose information regarding at least one organization that operates in the consumer's local community. However, Section 201(c) of the Credit Card Act does not authorize the Board to impose this type of requirement. In addition, the Board believes that it would be difficult to develop workable standards for determining whether a particular organization operated in a consumer's community. Nevertheless, the Board emphasizes that nothing in § 226.7(b)(12)(iv) should be construed as preventing card issuers from providing information regarding organizations that have been approved by the United States Trustee or a bankruptcy administrator to provide credit counseling services in a consumer's community.

Proposed § 226.7(b)(12)(iv) relied in two respects on the Board's authority under TILA Section 105(a) to make adjustments or exceptions to effectuate the purposes of TILA or to facilitate compliance therewith. *See* 15 U.S.C. 1604(a). First, although revised TILA Section 127(b)(11)(B)(iv) and Section 201(c)(1) of the Credit Card Act refer to the creditors' obligation to provide information about accessing "credit counseling *and* debt management services," proposed § 226.7(b)(12)(iv) only required the creditor to provide information about obtaining credit counseling services.[26] Although credit counseling may include information that assists the consumer in managing his or her debts, 11 U.S.C. 109(h) and 111(a)(1) do not require the United States Trustee or a bankruptcy administrator to approve organizations to provide debt management services. Because Section 201(c) of the Credit Card Act requires that creditors only provide information about organizations approved pursuant to 11 U.S.C. 111(a), the Board does not believe that Congress intended to require creditors to provide information about services that are not subject to that approval process. Accordingly, proposed § 226.7(b)(12)(iv) would not have required card issuers to disclose information about debt management services.

Second, although Section 201(c)(2) of the Credit Card Act refers to credit counseling organizations approved pursuant to 11 U.S.C. 111(a), proposed

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

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

§ 226.7(b)(12)(iv) clarified that creditors may provide information only regarding organizations approved pursuant to 11 U.S.C. 111(a)(1), which addresses the approval process for credit counseling organizations. In contrast, 11 U.S.C. 111(a)(2) addresses a different approval process for instructional courses concerning personal financial management.

Commenters did not object to these adjustments, which are adopted in the final rule. However, the United States Trustee and several credit counseling organizations requested that the Board clarify that the credit counseling services subject to review by the United States Trustee or a bankruptcy administrator are designed for consumers who are considering whether to file for bankruptcy and may not be helpful to consumers who are seeking more general credit counseling services. Based on these comments, the Board has made several revisions to the commentary for § 226.7(b)(12)(iv), which are discussed below.

Proposed comment 7(b)(12)(iv)–1 clarified that, when providing the information required by § 226.7(b)(12)(iv)(A), the card issuer may use the billing address for the account or, at its option, allow the consumer to specify a state. The comment also clarified that a card issuer does not satisfy the requirement to provide information regarding credit counseling agencies approved pursuant to 11 U.S.C. 111(a)(1) by providing information regarding providers that have been approved to offer personal financial management courses pursuant to 11 U.S.C. 111(a)(2). This comment has been revised for consistency with the revisions to § 226.7(b)(12)(iv)(A) but is otherwise adopted as proposed.

Proposed comment 7(b)(12)(iv)–2 clarified that a card issuer complies with the requirements of § 226.7(b)(12)(iv) if it provides the consumer with the information provided by the United States Trustee or a bankruptcy administrator, such as information provided on the Web site operated by the United States Trustee. If, for example, the Web site address for an organization approved by the United States Trustee is not available from the Web site operated by the United States Trustee, a card issuer is not required to provide a Web site address for that organization. However, at least annually, the card issuer must verify and update the information it provides for consistency with the information provided by the United States Trustee or a bankruptcy administrator. These aspects of the proposed comment have been revised for consistency with the revisions to § 226.7(b)(12)(iv) but are otherwise adopted as proposed.

However, because the Board understands that many nonprofit organizations provide credit counseling services under a name that is different than the legal name under which the organization has been approved by the United States Trustee or a bankruptcy administrator, the Board has revised comment 7(b)(12)(iv)–2 to clarify that, if requested by the organization, the card issuer may at its option disclose both the legal name and the name used by the organization. This clarification will reduce the possibility of consumer confusion in these circumstances while still ensuring that consumers can verify that card issuers are referring them to organizations approved by the United States Trustee or a bankruptcy administrator.

In addition, because the contact information provided by the United States Trustee or a bankruptcy administrator relates to pre-bankruptcy credit counseling, the Board has revised comment 7(b)(12)(iv)–2 to clarify that, at the request of an approved organization, a card issuer may at its option provide a street address, telephone number, or Web site address for the organization that is different than the street address, telephone number, or Web site address obtained from the United States Trustee or a bankruptcy administrator. This will enable card issuers to provide contact information that directs consumers to general credit counseling services rather than pre-bankruptcy counseling services. Furthermore, because some approved organizations may not provide general credit counseling services, the Board has revised comment 7(b)(12)(iv)–2 to clarify that, if requested by an approved organization, a card issuer must not provide information regarding that organization through the toll-free number.

As noted above, the Board has also revised the commentary to § 226.7(b)(12)(iv) to provide guidance regarding the handling of requests for information about approved organizations that provide credit counseling services in languages other than English. Specifically, comment 7(b)(12)(iv)–2 states that a card issuer may at its option provide such information through the toll-free number or, in the alternative, may state that such information is available from the Web site operated by the United States Trustee.

Finally, the Board has revised comment 7(b)(12)(iv)–2 to clarify that § 226.7(b)(12)(iv) does not require a card issuer to disclose that credit counseling organizations have been approved by the United States Trustee or a bankruptcy administrator. However, if a card issuer chooses to make such a disclosure, the revised comment clarifies that the card issuer must provide certain additional information in order to prevent consumer confusion. This revision responds to concerns raised by the United States Trustee that, if a consumer is informed that a credit counseling organization has been approved by the United States Trustee, the consumer may incorrectly assume that all credit counseling services provided by that organization are subject to approval by the United States Trustee. Accordingly, the revised comment clarifies that, in these circumstances, a card issuer must disclose the following additional information: (1) The United States Trustee or a bankruptcy administrator has determined that the organization meets the minimum requirements for nonprofit pre-bankruptcy budget and credit counseling; (2) the organization may provide other credit counseling services that have not been reviewed by the United States Trustee or a bankruptcy administrator; and (3) the United States Trustee or the bankruptcy administrator does not endorse or recommend any particular organization.

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

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

credit counseling services. The Board has adopted this comment as proposed.

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

Proposed comment 7(b)(12)(iv)–6 clarified that, when providing the toll-free telephone number on the periodic statement pursuant to § 226.7(b)(12)(iv), a card issuer at its option may also include a reference to a Web site address (in addition to the toll-free telephone number) where its customers may obtain the information required by § 226.7(b)(12)(iv), so long as the information provided on the Web site complies with § 226.7(b)(12)(iv). The Web site address disclosed must take consumers directly to the Web page where information about accessing credit counseling may be obtained. In the alternative, the card issuer may disclose the Web site address for the Web page operated by the United States Trustee where consumers may obtain information about approved credit counseling organizations. This guidance is adopted as proposed. In addition, the Board has revised this comment to clarify that disclosing the United States Trustee's Web site address does not by itself constitute a statement that organizations have been approved by the United States Trustee for purposes of comment 7(b)(12)(iv)–2.

Finally, proposed comment 7(b)(12)(iv)–7 clarified that, if a consumer requests information about credit counseling services, the card issuer may not provide advertisements or marketing materials to the consumer (except for providing the name of the issuer) prior to providing the information required by § 226.7(b)(12)(iv). However, educational materials that do not solicit business are not considered advertisements or marketing materials for this purpose. The comment also provides examples of how the restriction on the provision of advertisements and marketing materials applies in the context of the toll-free number and a Web page. This comment is adopted as proposed.

7(b)(12)(v) Exemptions

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

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

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

*Exemption for charge cards.* In the October 2009 Regulation Z Proposal, the Board proposed to exempt charge cards from the repayment disclosure requirements. Charge cards are used in connection with an account on which outstanding balances cannot be carried from one billing cycle to another and are payable when a periodic statement is received. The Board adopts this exemption as proposed. *See* § 226.7(b)(12)(v)(A). The Board believes that the repayment disclosures would not be useful for consumers with charge card accounts.

*Exemption where cardholders have paid their accounts in full for two consecutive billing cycles.* In proposed § 226.7(b)(v)(B), the Board proposed to provide that a card issuer is not required to include the repayment disclosures on the periodic statement for a particular billing cycle immediately following two consecutive billing cycles in which the consumer paid the entire balance in full, had a zero balance or had a credit balance.

In response to the October 2009 Regulation Z Proposal, several consumer groups argued that this exemption should be deleted. These consumer groups believe that even consumers that pay their credit card accounts in full each month should be provided repayment disclosures because these disclosures will inform those consumers of the disadvantages of changing their payment behavior. These consumer groups believe these repayment disclosures would educate these consumers on the magnitude of the consequences of making only minimum payments and may induce these consumers to encourage their friends and family members not to make only the minimum payment each month on their credit card accounts. On the other hand, several industry commenters requested that the Board broaden this exception to not require repayment disclosures in a particular billing cycle if there is a zero balance or credit balance in the current cycle, regardless of whether this condition existed in the previous cycle.

The final rule retains this exception as proposed. The Board believes the two consecutive billing cycle approach strikes an appropriate balance between benefits to consumers of the repayment disclosures, and compliance burdens on issuers in providing the disclosures. Consumers who might benefit from the repayment disclosures would receive them. Consumers who carry a balance each month would always receive the repayment disclosures, and consumers who pay in full each month would not. Consumers who sometimes pay their bill in full and sometimes do not would receive the repayment disclosures if they do not pay in full two consecutive months (cycles). Also, if a consumer's typical payment behavior changes from paying in full to revolving, the consumer would begin receiving the repayment disclosures after not paying in full one billing cycle, when the disclosures would appear to be useful to the consumer. In addition, credit card issuers typically provide a grace period on new purchases to consumers (that is, creditors do not charge interest to consumers on new purchases) if consumers paid both the current balance and the previous balance in full. Thus, card issuers already currently capture payment history for consumers for two consecutive months (or cycles).

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

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

As discussed in more detail below, the Board notes that this exemption also would apply to a charged-off account where payment of the entire account balance is due immediately. Comment 7(b)(12)(v)–1 is added to provide examples of when this exception would apply.

*Other exemptions.* In response to the October 2009 Regulation Z Proposal, several commenters requested that the Board include several additional exemptions to the repayment disclosures set forth in § 226.7(b)(12). These suggested exemptions are discussed below.

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

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

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

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

In response to the October 2009 Regulation Z Proposal, several consumer groups supported the Board's proposal not to include these two exemptions to the repayment disclosure requirements. On the other hand, several industry commenters indicated that with respect to these fixed repayment plans, consumers are quite sensitive to the repayment term and have selected the specific repayment term for each balance. These commenters suggest that in this context the proposed repayment disclosures are neither relevant nor helpful, and may be confusing if they tend to suggest that the selected repayment term is no longer available.

The final rule does not contain these two exemptions related to fixed repayment periods. As discussed above, when a fixed repayment period is set forth in the account agreement, the estimate of how long it would take to repay the outstanding balance if only minimum payments are made does not appear to provide additional information to consumers that they do not already have in their account agreements. Nonetheless, consumers would not know from the account agreements additional information about the total cost in interest and principal of making minimum payments, and information about repayment of the outstanding balance in 36 months, that is required to be disclosed on the periodic statement under the Credit Card Act. The Board believes this additional information would be helpful to consumers in managing their accounts, even for consumers that have previously selected the fixed repayment period that applies to the account. For example, assume the fixed repayment period set forth in the account agreement is 5 years. On the periodic statement, the consumer would be informed of the total cost of repaying the outstanding balance in 5 years, compared with the monthly payment and the total cost of repaying the outstanding balance in 3 years. In this example, this additional information on the periodic statement could be helpful to the consumer in deciding whether to repay the balance earlier than in 5 years.

2. *Accounts in bankruptcy.* In response to the October 2009 Regulation Z Proposal, one commenter requested that the Board include in the final rule an exemption from the repayment disclosures set forth in § 226.7(b)(12) in connection with sending monthly

periodic statements or informational statements to customers who have filed for bankruptcy. This commenter indicated that it is possible that a debtor's attorney could argue that including the disclosures, such as the minimum payment warning and the minimum payment repayment estimate, on a monthly bankruptcy informational statement is an attempt to collect a debt in violation of the automatic stay imposed by Section 362 of the Bankruptcy Code or the permanent discharge injunction imposed under Section 524 of the Bankruptcy Code.

The Board does not believe that an exemption from the requirement to provide the repayment disclosures with respect to accounts in bankruptcy is needed. The Board notes that under § 226.5(b)(2), a creditor is not required to send a periodic statement under Regulation Z if delinquency collection proceedings have been instituted. Thus, if a consumer files for bankruptcy, creditors are not longer required to provide periodic statements to that consumer under Regulation Z. A creditor could continue to send periodic statements to consumers that have filed for bankruptcy (if permitted by law) without including the repayment disclosures on the periodic statements, because those periodic statements would not be required under Regulation Z and would not need to comply with the requirements of § 226.7.

3. *Charged-off accounts.* In response to the October 2009 Regulation Z Proposal, one industry commenter requested that the Board include in the final rule an exemption from the repayment disclosures for charged off accounts where consumers are 180 days late, the accounts have been placed in charge-off status and full payment is due immediately. The Board does not believe that a specific exemption is needed for charged-off accounts because charged-off accounts would be exempted from the repayment disclosures under another exemption. As discussed above, the final rule contains an exemption under which a card issuer is not required to provide the repayment disclosure requirements for a particular billing cycle where paying the minimum payment due for that billing cycle will pay the outstanding balance on the account for that billing cycle. Comment 7(b)(12)–1 clarifies that this exemption would apply to a charged-off account where payment of the entire account balance is due immediately.

4. *Lines of credit accessed solely by account numbers.* In response to the October 2009 Regulation Z Proposal, one commenter requested that the Board provide an exemption from the repayment disclosures for lines of credit accessed solely by account numbers. This commenter believed that this exemption would simplify compliance issues, especially for smaller retailers offering in-house revolving open-end accounts, in view of some case law indicating that a reusable account number could constitute a "credit card." The final rule does not contain a specific exemption for lines of credit accessed solely by account numbers. The Board believes that consumers that use these lines of credit (to the extent they are considered credit card account) would benefit from the repayment disclosures.

7(b)(13) Format Requirements

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

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

Consistent with TILA Section 127(b)(12), as revised by the Credit Card Act, in the October 2009 Regulation Z Proposal, the Board proposed to retain the requirement in § 226.7(b)(13) that credit card issuers disclose the payment due date on the front side of the first page of the periodic statement. In addition, credit card issuers would have been required to disclose the amount of any late payment fee and penalty APR that could be triggered by a late payment in close proximity to the due date. Also, the due date, late payment fee, penalty APR, ending balance, minimum payment due, and the repayment disclosures required by proposed § 226.7(b)(12) must be grouped together. *See* § 226.7(b)(13). The final rule retains these formatting requirements, as proposed. The Board believes that these format requirements fulfill Congress' intent that the due date and late payment disclosures be grouped together and be disclosed in a conspicuous location on the periodic statement.

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

Under proposed § 226.7(b)(13), the ending balance and the repayment disclosures required under proposed § 226.7(b)(12) must be disclosed closely proximate to the minimum payment due. In addition, proposed § 226.7(b)(13) provided that the repayment disclosures must be grouped together with the due date, late payment fee, penalty APR, ending balance, and minimum payment due, and this information must appear on the front of the first page of the periodic statement.

The final rule retains these formatting requirements, as proposed. The Board believes that these format requirements fulfill Congress' intent that the repayment disclosures be placed in a conspicuous and prominent location on the billing statement.

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

In the October 2009 Regulation Z Proposal, the Board proposed to revise Sample G–18(D), G–18(F) and G–18(G) to incorporate the new format requirements for the repayment disclosures, as shown in proposed Sample G–18(C)(1) and G–18(C)(2). *See* section-by-section analysis to § 226.7(b)(12) for a discussion of these new format requirements. The final rule adopts Sample G–18(D), G–18(F) and G–18(G) as proposed. In addition, as proposed, the final rule deletes Sample G–18(E) (which applies to non-credit card accounts) as unnecessary. The formatting requirements in § 226.7(b)(13) generally are applicable only to credit card issuers because the due date, late payment fee, penalty APR, and repayment disclosures would apply only to a "credit card account under an open-end (not home-secured) consumer credit plan," as that term is defined in § 226.2(a)(15)(ii).

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

In the October 2009 Regulation Z Proposal, the Board republished provisions and amendments related to periodic statement disclosures for deferred interest or similar transactions that were initially proposed in the May 2009 Regulation Z Proposed Clarifications. These included proposed revisions to comment 7(b)–1 and Sample G–18(H) as well as a proposed new § 226.7(b)(14). In addition, a related cross-reference in comment 5(b)(2)(ii)–1 was proposed to be updated.

Specifically, the Board proposed to revise comment 7(b)–1 to require creditors to provide consumers with information regarding deferred interest or similar balances on which interest may be imposed under a deferred interest or similar program, as well as the interest charges accruing during the term of a deferred interest or similar program. The Board also proposed to add a new § 226.7(b)(14) to require creditors to include on a consumer's periodic statement, for two billing cycles immediately preceding the date on which deferred interest or similar transactions must be paid in full in order to avoid the imposition of interest charges, a disclosure that the consumer must pay such transactions in full by that date in order to avoid being obligated for the accrued interest. Moreover, proposed Sample G–18(H) provided model language for making the disclosure required by proposed § 226.7(b)(14), and the Board proposed to require that the language used to make the disclosure under § 226.7(b)(14) be substantially similar to Sample G–18(H).

In general, commenters supported the Board's proposals to require certain periodic statement disclosures for deferred interest and other similar programs. Some industry commenters requested that the Board clarify that programs in which a consumer is not charged interest, whether or not the consumer pays the balance in full by a certain time, are not deferred interest programs that are subject to these periodic statement disclosures. One industry commenter also noted that the Board already proposed such clarification with respect to the advertising requirements for deferred interest and other similar programs. *See* proposed comment 16(h)–1. Accordingly, the Board has amended comment 7(b)–1 to reference the definition of "deferred interest" in § 226.16(h)(2) and associated commentary. The Board has also made technical amendments to comment 7(b)–1 to be consistent with the requirement in § 226.55(b)(1) that a promotional or other temporary rate program that expires after a specified period of time (including a deferred interest or similar program) last for at least six months.

Some consumer group and industry commenters also suggested amendments to the model language in Sample G–18(H). In particular, consumer group commenters suggested that language be added to clarify that minimum payments will not pay off the deferred interest balance. Industry commenters suggested that additional language may clarify for consumers how much they should pay in order to avoid finance charges when there are other balances on the account in addition to the deferred interest balance. The Board believes that the language in Sample G–18(H) sufficiently conveys the idea that in order to avoid interest charges on the deferred interest balance, consumers must pay such balance in full. While the additional language recommended by commenters may provide further information to consumers that may be helpful, each of the clauses suggested by commenters would not necessarily apply to all consumers in all situations. Therefore, the Board is opting not to include such clauses in Sample G–18(H). The Board notes, however, that the regulation does not prohibit creditors from providing these additional disclosures. Indeed, the Board encourages any additional disclosure that may be useful to consumers in avoiding finance charges. In response to these comments, however, the Board is amending § 226.7(b)(14) to require that language used to make the disclosure be similar, instead of substantially similar, to Sample G–18(H) in order to provide creditors with some flexibility.

Proposed § 226.7(b)(14) required the warning language only for the last two billing cycles preceding the billing cycle in which the deferred interest period ends. Consumer group commenters recommended that the disclosure be required on each periodic statement during the deferred interest period. Since § 226.53(b) permits issuers to allow consumers to request that payments in excess of the minimum payment be allocated to deferred interest balances any time during the deferred interest period, as discussed below, the Board believes that the disclosure required under § 226.7(b)(14) would be beneficial for consumers to see on each periodic statement issued during the deferred interest period from the time the deferred interest or similar transaction is reflected on a periodic statement. Section 226.7(b)(14) and comment 7(b)–1 have been amended accordingly.

*Section 226.9 Subsequent Disclosure Requirements*

9(c) Change in Terms

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

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

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

However, this final rule is being issued prior to completion of final rules regarding HELOCs. Therefore, the Board has incorporated § 226.9(c)(1), as adopted in the January 2009 Regulation Z Rule, in this final rule, to give HELOC creditors guidance on how to comply with change-in-terms requirements between the effective date of this rule and the effective date of the forthcoming HELOC rules.

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

Credit Card Act [27]

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

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

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

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

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

As discussed in **I. Background and Implementation of the Credit Card Act**, the Board is implementing the changes contained in the Credit Card Act in a manner consistent with the January 2009 Regulation Z Rule, to the extent permitted under the statute. Accordingly, the Board is retaining those requirements of the January 2009 Regulation Z Rule that are not directly affected by the Credit Card Act concurrently with the promulgation of regulations implementing the provisions of the Credit Card Act effective February 22, 2010.[28] Consistent with this approach, the Board has used § 226.9(c)(2) of the January 2009 Regulation Z Rule as the basis for its regulations to implement the change-in-terms requirements of the Credit Card Act. Section 226.9(c)(2) also is intended, except where noted, to contain requirements that are substantively equivalent to the requirements of the July 2009 Regulation Z Interim Final Rule. Accordingly, the Board is adopting a revised version of § 226.9(c)(2) of the January 2009

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

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

Regulation Z Rule, with several amendments necessary to conform to the new Credit Card Act. This supplementary information focuses on highlighting those aspects in which § 226.9(c)(2) as adopted in this final rule differs from § 226.9(c)(2) of the January 2009 Regulation Z Rule.

*May 2009 Regulation Z Proposed Clarifications*

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

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

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

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

Proposed § 226.9(c)(2) applied to all open-end (not home-secured) credit, consistent with the January 2009 Regulation Z Rule. TILA Section 127(i), as implemented in the July 2009 Regulation Z Interim Final Rule for the period between August 20, 2009 and February 22, 2010, applies only to credit card accounts under an open-end (not home-secured) consumer credit plan. However, the advance notice requirements adopted by the Board in January 2009 apply to all open-end (not home-secured) credit. For consistency with the January 2009 Regulation Z Rule, the proposal accordingly would have applied § 226.9(c)(2) to all open-end (not home-secured) credit. The final rule adopts this approach, which is consistent with the approach the Board adopted in the January 2009 Regulation Z Rule. The Board notes that while the general notice requirements are consistent for credit card accounts and other open-end credit that is not home-secured, there are certain content and other requirements, such as a consumer's right to reject certain changes in terms, that apply only to credit card accounts under an open-end (not home-secured) consumer credit plan. As discussed in more detail in the supplementary information to § 226.9(c)(2)(iv), the regulation applies such requirements only to credit card accounts under an open-end (not home-secured) consumer credit plan.

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

Commenters on the October 2009 Regulation Z Proposal and the May 2009 Regulation Z Proposed Clarifications raised concerns about the 45-day notice requirement causing an undue delay when a consumer requests that his or her account be changed to a different product offered by the creditor, for example to take advantage of a rewards or other program. The Board has addressed these concerns in comment 5(b)(1)(i)–6, discussed above. The Board also believes that the proposed clarification to comment 9(c)(2)(i)–3 is appropriate for those circumstances in which a creditor treats an upgrade of an account as a change-in-terms in accordance with proposed comment 5(b)(1)(i)–6. In addition, the Board continues to believe that it would be difficult to define by regulation the circumstances under which a consumer is deemed to have requested the account upgrade, versus circumstances in which the upgrade is suggested by the creditor. For these reasons, the Board is adopting the substantive guidance in proposed 9(c)(2)(i)–3. However, for clarity, the Board has moved this guidance into a new § 226.9(c)(2)(i)(B) of the regulation rather than including it in the commentary. Comment 9(c)(2)(i)–3, as adopted, contains a cross-reference to comment 5(b)(1)(i)–6.

The Board received a number of additional comments on § 226.9(c)(2), as are discussed below in further detail. However, the Board received no comments on the general approach in § 226.9(c)(2)(i), which is substantively equivalent to the rule the Board adopted in January 2009. Therefore, the Board is adopting § 226.9(c)(2)(i) generally as proposed (redesignated as § 226.9(c)(2)(i)(A)), with one technical amendment to correct a scrivener's error in the proposal.

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

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

Industry commenters generally were supportive of the Board's proposed definition of "significant change in account terms." These commenters believed that the Board's proposed definition provided necessary clarity to creditors in determining for which changes 45 days' advance notice is required, and that it properly focused on changes in those terms that are the most important to consumers.

Consumer group commenters stated that the Board's proposed definition of "significant change in account terms" was overly restrictive, and that 45 days' advance notice should also be required for other types of fees and changes in terms. These commenters specifically noted the addition of security interests or a binding mandatory arbitration provision as changes for which advance notice should be required. In addition, they stated that fees should be permitted to be disclosed orally and immediately prior to their imposition only if they are fees or one-time or time-sensitive services. Consumer groups noted their concerns that the Board's list of "significant changes in account terms" could lead creditors to establish new types of fees that for which 45 days' advance disclosure would not be required.

The Board is adopting § 226.9(c)(2)(ii) generally as proposed. The Board continues to believe, based on its consumer testing, that the list of fees, categories of fees, and other terms required to be disclosed in a tabular format at account-opening includes those terms that are the most important to consumers. The Board notes that consumers will receive notice of any other types of charges imposed as part of the plan prior to their imposition, as required by § 226.5(b)(1)(ii). The Board also believes that TILA Section 127(i) does not require 45 days' advance notice for all changes in terms, because the statute specifically mentions "significant change[s]," and thus by its terms does not apply to all changes.

However, in response to consumer group comments, the Board has added the acquisition of a security interest to the list of significant changes for which 45 days' advance notice is required. The Board believes that if a creditor acquires or will acquire a security interest that was not previously disclosed under § 226.6(b)(5), this constitutes a change of which a consumer should be aware in advance. A consumer may wish to use a different form of financing or to otherwise adjust his or her use of the open-end plan in consideration of such a security interest. Under the final rule, a consumer will receive 45 days' advance notice of this change.

The Board is not adopting a requirement that creditors provide 45 days' advance notice of the addition of, or changes in the terms of, a mandatory arbitration clause. TILA does not address or require disclosures regarding arbitration for open-end credit plans, and Regulation Z's rules applicable to open-end credit have accordingly never addressed arbitration. Furthermore, the Board's regulations generally do not address the remedies for violations of Regulation Z and TILA; rather, the procedures and remedies for violations are addressed in the statute. Accordingly, the Board does not believe it is appropriate at this time to require disclosures regarding mandatory arbitration clauses under Regulation Z.

9(c)(2)(iii) Charges Not Covered by § 226.6(b)(1) and (b)(2)

Proposed § 226.9(c)(2)(iii) set forth the disclosure requirements for changes in terms required to be disclosed under § 226.6(b)(3) that are not significant changes in account terms described in § 226.9(c)(2)(ii). The Board proposed a 45-day notice period only for changes in the terms that are required to be disclosed as a part of the account-opening table under proposed § 226.6(b)(1) and (b)(2) or for increases in the required minimum periodic payment. A different disclosure requirement would apply when a creditor increases any component of a charge, or introduces a new charge, that is imposed as part of the plan under proposed § 226.6(b)(3) but is not required to be disclosed as part of the account-opening summary table under proposed § 226.6(b)(1) and (b)(2). Under those circumstances, the proposal 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. This is consistent with the requirements of both the January 2009 Regulation Z Rule and the July 2009 Regulation Z Interim Final Rule.

One consumer group commenter stated that if the 45-day advance notice requirement does not apply to all undisclosed charges, the Board should require written disclosures of all charges not required to be disclosed in the account-opening table. The Board is not adopting a requirement that notices given pursuant to § 226.9(c)(2)(iii) be in writing. The Board believes that oral disclosure of certain charges on a consumer's open-end (not home-secured) account may, in some circumstances, be more beneficial to a consumer than a written disclosure, because the oral disclosure can be provided at the time that the consumer is considering purchasing an incidental service from the creditor that has an associated charge. In such a case, it would unnecessarily delay the consumer's access to that service to require that a written disclosure be provided.

For the reasons discussed above and in the supplementary information to § 226.9(c)(2)(ii), the Board is adopting § 226.9(c)(2)(iii) as proposed. The Board continues to believe that there are some fees, such as fees for expedited delivery of a replacement card, that it may not be useful to disclose long in advance of when they become relevant to the consumer. For such fees, the Board believes that a more flexible approach, consistent with that adopted in the January 2009 Regulation Z Rule and the July 2009 Regulation Z Interim Final Rule is appropriate. Thus, if a consumer calls to request an expedited replacement card, the consumer could be informed of the amount of the fee in the telephone call in which the consumer requests the card. Otherwise, the consumer would have to wait 45 days from receipt of a change-in-terms

notice to be able to order an expedited replacement card, which would likely negate the benefit to the consumer of receiving the expedited delivery service.

9(c)(2)(iv) Disclosure Requirements

General Content Requirements

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

Proposed § 226.9(c)(2)(iv)(A) generally mirrored the content required under § 226.9(c)(2)(iii) of the January 2009 Regulation Z Rule, except that the Board proposed to require a disclosure regarding any applicable right to opt out of changes under proposed § 226.9(c)(2)(iv)(A)(*3*) only if the change is being made to an open-end (not home-secured) credit plan that is not a credit card account subject to § 226.9(c)(2)(iv)(B). For credit card accounts, as discussed in the supplementary information to §§ 226.9(h) and 226.55, the Credit Card Act imposes independent substantive limitations on rate increases, and generally provides the consumer with a right to reject other significant changes being made to their accounts. A disclosure of this right to reject, when applicable, is required for credit card accounts under proposed § 226.9(c)(2)(iv)(B). Therefore, the Board believed a separate reference to other applicable opt-out rights is unnecessary and may be confusing to consumers, when the notice is given in connection with a change in terms applicable to a credit card account.

The Board received few comments on § 226.9(c)(2)(iv)(A), and it is generally adopted as proposed, except that § 226.9(c)(2)(iv)(A)(*1*) has been amended to refer to security interests being acquired by the creditor, for consistency with § 226.9(c)(2)(ii). The Board is amending comment 9(c)(2)(i)–5, regarding the form of a change in terms notice required for an additional security interest. The comment notes that a creditor must provide a description of the change consistent with § 226.9(c)(2)(iv), but that it may use a copy of the security agreement as the change-in-terms notice. The Board also has made a technical amendment to § 226.9(c)(2)(iv)(A)(*1*) to note that a description, rather than a summary, of any increase in the required minimum periodic payment be disclosed.

Several commenters noted that proposed Sample G–20, which sets forth a sample disclosure for an annual percentage rate increase for a credit card account, erroneously included a reference to the consumer's right to opt out of the change, which is not required by proposed § 226.9(c)(2)(iv)(A)(*3*) for credit card accounts. The reference to opt-out rights has been deleted from Sample G–20 in the final rule.

Consumer groups commented that notices provided in connection with rate increases should set forth the current rate as well as the increased rate that will apply. For the reasons discussed in the supplementary information to the January 2009 Regulation Z Rule, the Board is not adopting a requirement that a change-in-terms notice set forth the current rate or rates. *See* 74 FR 5244, 5347. As noted in that rulemaking, the main purpose of the change-in-terms notice is to inform consumers of the new rates that will apply to their accounts. The Board is concerned that disclosure of each current rate in the change-in-terms notice could contribute to information overload, particularly in light of new restrictions on repricing in § 226.55, which may lead to a consumer's account having multiple protected balances to which different rates apply.

One exception to the repricing rules set forth in § 226.55(b)(3) permits card issuers to increase the rate on new transactions for a credit card account under an open-end (not home-secured) consumer credit plan, provided that the creditor complies with the notice requirements in § 226.9(b), (c), or (g). Under this exception, the increased rate can apply only to transactions that occurred more than 14 days after provision of the applicable notice. One federal banking agency suggested that § 226.9(c) should expressly repeat the 14-day requirement and reference the advance notice exception set forth in § 226.55(b)(3), so that issuers do not have to cross-reference two sections in providing the notice required under § 226.9(c)(2). The Board believes that including an express reference to the 14-day requirement from § 226.55(b)(3) in § 226.9(c)(2) is not necessary. The Board expects that card issuers will be familiar with the substantive requirements regarding rate increases set forth in § 226.55(b)(3), and that a second detailed reference to those requirements in § 226.9(c)(2) therefore would be redundant.

Additional Content Requirements for Credit Card Accounts

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

to credit card issuers in the July 2009 Regulation Z Interim Final Rule.

The Board did not receive any significant comments on the content of disclosures regarding a consumer's right to reject certain significant changes to their account terms. Therefore, the content requirements in § 226.9(c)(2)(iv)(B)(*1*)–(*3*) are adopted as proposed.

The proposal provided that the right to reject does not apply to increases in the required minimum payment, an increase in an annual percentage rate applicable to a consumer's account, a change in the balance computation method applicable to a consumer's account necessary to comply with the new prohibition on use of "two-cycle" balance computation methods in proposed § 226.54, or changes due to the creditor not receiving the consumer's required minimum periodic payment within 60 days after the due date for that payment. The Board is adopting the exceptions to the right to reject as proposed, with one change. For the reasons discussed in the supplementary information to § 226.9(h), the proposed exception for increases in annual percentage rates has been adopted as an exception for all changes in annual percentage rates.

Rate Increases Resulting From Delinquency of More Than 60 Days

As discussed in the supplementary information to § 226.9(g), TILA Section 171(b)(4) requires several additional disclosures to be provided when the annual percentage rate applicable to a credit card account under an open-end consumer credit plan is increased due to the consumer's failure to make a minimum periodic payment within 60 days from the due date for that payment. In those circumstances, the notice must state the reason for the increase and disclose that the increase will cease to apply if the creditor receives six consecutive required minimum periodic payments on or before the payment due date, beginning with the first payment due following the effective date of the increase. The Board proposed in § 226.9(g)(3)(i)(B) to set forth this additional content for rate increases pursuant to the exercise of a penalty pricing provision in the contract; however, the proposal contained no analogous disclosure requirements in § 226.9(c)(2) when the rate increase is made pursuant to a change in terms notice. One issuer commented that § 226.9(c)(2) also should set forth guidance for disclosing the 6-month cure right when a rate is increased via a change-in-terms notice due to a delinquency of more than 60 days. The final rule adopts new § 226.9(c)(2)(iv)(C), which implements the notice requirements contained in amended TILA Section 171(b)(4), as adopted by the Credit Card Act; the substantive requirements of TILA Section 171(b)(4) are discussed in proposed § 226.55(b)(4), as discussed below.

New § 226.9(c)(2)(iv)(C) requires the notice regarding the 6-month cure right to be provided if the change-in-terms notice is disclosing an increase in an annual percentage rate or a fee or charge required to be disclosed under § 226.6(b)(2)(ii), (b)(2)(iii), or (b)(2)(xii) based on the consumer's failure to make a minimum periodic payment within 60 days from the due date for that payment. This differs from § 226.9(g)(3)(i)(B), in that it references fees of a type required to be disclosed under § 226.6(b)(2)(ii), (b)(2)(iii), or (b)(2)(xii). Section 226.9(c)(2) addresses changes in fees and interest rates, while § 226.9(g) applies only to interest rates; therefore, the reference to fees in § 226.9(c)(2)(iv)(C) has been included for conformity with the substantive requirements of § 226.55. The notice is required to state the reason for the increase and that the increase will cease to apply if the creditor receives six consecutive required minimum periodic payments on or before the payment due date, beginning with the first payment due following the effective date of the increase.

Several industry commenters noted that the model forms for the table required to be provided at account opening disclose a cure right that is more advantageous to the consumer than the cure required by § 226.55. In particular, proposed Samples G–17(B) and G–17(C) state that a penalty rate will apply until the consumer makes six consecutive minimum payments when due. In contrast, the substantive right under § 226.55 applies only if the consumer makes the first six consecutive required minimum periodic payments when due, following the effective date of a rate increase due to the consumer's failure to make a required minimum periodic payment within 60 days of the due date. The Board is adopting the disclosure of penalty rates in Samples G–17(B) and G–17(C) as proposed. The Board notes that Samples G–17(B) and G–17(C) set forth two examples of how the disclosures required by § 226.6(b)(1) and (b)(2) can be made, and those samples can be adjusted as applicable to reflect a creditor's actual practices regarding penalty rates. A creditor is still free, under the final rule, to provide that the penalty APR will cease to apply if the consumer makes any six consecutive payments on time, although the substantive right in § 226.55 does not compel a creditor to do so. The Board does not wish to discourage creditors from providing more advantageous penalty pricing triggers than those that are required by the Credit Card Act and § 226.55.

Formatting Requirements

Proposed § 226.9(c)(2)(iv)(C) set forth the formatting requirements that would apply to notices required to be given pursuant to § 226.9(c)(2)(i). The proposed formatting requirements were generally the same as those that the Board adopted in § 226.9(c)(2)(iii) of the January 2009 Regulation Z Rule, except that the reference to the content of the notice included, when applicable, the information about the right to reject that credit card issuers must disclose pursuant to § 226.9(c)(2)(iv)(B). These formatting requirements are not affected by the Credit Card Act, and therefore the Board proposed to adopt them generally as adopted in January 2009. The Board received no significant comment on the formatting requirements, and § 226.9(c)(2)(iv)(D) (renumbered from proposed § 226.9(c)(2)(iv)(C)) is adopted as proposed.

As proposed, the Board is amending Sample G–20 and adding a new Sample G–21 to illustrate how a card issuer may comply with the requirements of § 226.9(c)(2)(iv). The Board is amending references to these samples in § 226.9(c)(2)(iv) and comment 9(c)(2)(iv)–8 accordingly. Sample G–20 is a disclosure of a rate increase applicable to a consumer's credit card account. The sample explains when the new rate will apply to new transactions and to which balances the current rate will continue to apply. Sample G–21 illustrates an increase in the consumer's late payment and returned payment fees, and sets forth the content required in order to disclose the consumer's right to reject those changes.

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

The Board proposed § 226.9(c)(2)(v) to set forth the exceptions to the general change-in-terms notice requirements for open-end (not home-secured) credit. With several exceptions, proposed § 226.9(c)(2)(v) was intended to be substantively equivalent to § 226.9(c)(2)(v) of the July 2009 Regulation Z Interim Final Rule, except that the Board proposed an additional express exception for the extension of a grace period. Proposed § 226.9(c)(2)(v)(A) set forth several exceptions that are in current § 226.9(c), including charges for documentary

evidence, reductions of finance charges, suspension of future credit privileges (except as provided in § 226.9(c)(vi), discussed below), termination of an account or plan, or when the change results from an agreement involving a court proceeding. The Board did not include these changes in the set of "significant changes" giving rise to notice requirements pursuant to new TILA Section 127(i)(2). The Board stated that it believes 45 days' advance notice is not necessary for these changes, which are not of the type that generally result in the imposition of a fee or other charge on a consumer's account that could come as a costly surprise.

The Board received several comments on the exceptions in proposed § 226.9(c)(2)(v)(A) for termination of an account or plan and the suspension of future credit privileges. Consumer groups stated that notice should be required of credit limit decreases or account termination, either contemporaneously with or subsequent to those actions. In addition, one member of Congress stated that 45 days' advance notice should be required prior to account termination.

The Board is retaining the exceptions for account termination and suspension of credit privileges in the final rule. As stated in the proposal, the Board believes that for safety and soundness reasons, issuers generally have a legitimate interest in suspending credit privileges or terminating an account or plan when a consumer's creditworthiness deteriorates, and that 45 days' advance notice of these types of changes therefore would not be appropriate. With regard to the suspension of credit privileges, the Board notes that § 226.9(c)(vi) requires creditors to provide 45 days' advance notice that a consumer's credit limit has been decreased before an over-the-limit fee or penalty rate can be imposed solely for exceeding that newly decreased credit limit. The Board believes that § 226.9(c)(vi) will adequately ensure that consumers receive notice of a decrease in their credit limit prior to any adverse consequences as a result of the consumer exceeding the new credit limit.

Similarly, the Board does not believe that it is necessary to require notices of the termination of an account or the suspension of credit privileges contemporaneously with or immediately following such a termination or suspension. In many cases, consumers will receive subsequent notification of the termination of an account or the suspension of credit privileges pursuant to Regulation B. *See* 12 CFR part 202. The Board acknowledges that Regulation B does not require subsequent notification of the termination of an account or suspension of credit privileges in all cases, for example, when the action affects all or substantially all of a class of the creditor's accounts or is an action relating to an account taken in connection with inactivity, default, or delinquency as to that account. However, the Board believes that the benefit to consumers of requiring such a subsequent notice in all cases would be limited. If a consumer's account is terminated or suspended and the consumer attempts to use the account for new transactions, those transactions will be denied. The Board expects that in such circumstances most consumers would call the card issuer and be notified at that time of the suspension or termination of their account.

Increase in Annual Percentage Rate Upon Expiration of Specified Period of Time

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

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

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

The Board received a large number of comments from retailers and private label card issuers raising concerns about the proposal and regarding the operational difficulties associated with providing the disclosures required by proposed § 226.9(c)(2)(v)(B). Specifically, these commenters stated that issuers should be permitted to provide consumers with a disclosure of an "up to" annual percentage rate, and

not the specific rate that will apply to a consumer's account upon expiration of the promotion. The Board is not adopting this suggestion, for several reasons. First, the Board believes that the appropriate interpretation is that amended TILA Section 127(i)(1) (which cross-references new TILA Section 171(a)(1)) requires disclosure of the actual rate that will apply upon expiration of a temporary rate. Second, the Board believes that a disclosure of a range of rates or "up to" rate will not be as useful for consumers as a disclosure of the specific rate that will apply. The Board is aware that some private label card issuers and retailers permit consumers to make transactions at a promotional rate, even if the consumer's account is currently subject to a penalty rate. In this case, an "up to" rate disclosure would disclose the penalty rate, which would be much higher than the actual rate that will apply upon expiration of the promotion for most consumers. Thus, the disclosure would convey little useful information to a consumer whose account is not subject to the penalty rate.

Other retailers and private label card issuers suggested that the Board permit issuers to provide the required disclosures or a portion of the required disclosures with a receipt or other document. One such commenter stated that these disclosures should be permitted to be given at the conclusion of a transaction. The Board believes that amended TILA Section 127(i)(1) (which cross-references new TILA Section 171(a)(1)) clearly contemplates that the disclosures will be provided prior to commencement of the period during which the temporary rate will be in effect. Therefore, the final rule would not permit a creditor to provide the disclosures after conclusion of a transaction at point of sale.

However, the Board believes that it is appropriate to provide some flexibility for the formatting of notices of temporary rates provided at point of sale. The Board understands that private label and retail card issuers may offer different rates to different consumers based on their creditworthiness and other factors. In addition, some consumers' accounts may be at a penalty rate that differs from the standard rates on the portfolio. Commenters have indicated that there can be significant operational issues associated with ensuring that sales associates provide the correct disclosures to each consumer at point of sale when those consumers' rates vary. In order to address an analogous issue for the disclosures required to be given at account opening, the Board understands that card issuers disclose the rate that will apply to the consumer's account on a separate page which can be printed directly from the receipt terminal, as permitted by § 226.6(b)(2)(i)(E). The Board believes that a similar formatting rule is appropriate for disclosures of temporary rate offers. Accordingly, the Board is adopting a new comment 9(c)(2)(v)–7 which states that card issuers providing the disclosures required by § 226.9(c)(2)(v)(B) in person in connection with financing the purchase of goods or services may, at the creditor's option, disclose the annual percentage rate that would apply after expiration of the period on a separate page or document from the temporary rate and the length of the period, provided that the disclosure of the annual percentage rate that would apply after the expiration of the period is equally prominent to, and is provided at the same time as, the disclosure of the temporary rate and length of the period. The Board believes that this will ensure that consumers receive the disclosures required for a temporary rate offer, and will be aware of the rate that will apply after the temporary rate expires, while alleviating burden on retail and private label credit card issuers.

One industry commenter urged the Board to provide flexibility in the formatting of the promotional rate disclosures under § 226.9(c)(2)(v)(B), noting that any requirement that these disclosures be presented in a tabular format would present significant operational challenges. The Board notes that the proposal did not require that these disclosures be provided in a tabular format, and the final rule similarly does not require that the disclosures under § 226.9(c)(2)(v)(B) be presented in a table.

In the October 2009 Regulation Z Proposal, the Board stated, that for a brief period necessary to update their systems to disclose a single rate, issuers offering a deferred interest or other promotional rate program at point of sale could disclose a range of rates or an "up to" rate rather than a single rate. The Board noted that stating a range of rates or "up to" rate would only be permissible for a brief transition period and that it expected that merchants and creditors would disclose a single rate that will apply when a deferred interest or other promotional rate expires in accordance with § 226.9(c)(2)(v)(B) as soon as possible. The Board expects that all issuers will disclose a single rate by the February 22, 2010 effective date of this final rule. The Board notes that in addition to the exception to § 226.9(c)(2)'s advance notice requirements, provision of the notice pursuant to § 226.9(c)(2)(v)(B) now also is a condition of an exception to the substantive repricing rules in § 226.55(b)(1). Accordingly, the Board believes that it is particularly important that consumers receive notice of the specific rate that will apply upon expiration of a promotion, since the ability to raise the rate upon termination of the program is conditioned on the consumer's receipt of that disclosure.

Several industry commenters stated that the alternative timing rule for telephone purchases in proposed comment 9(c)(2)(v)–5 should apply to all telephone offers of temporary rate reductions. These commenters argued that consumers should not have to wait for written disclosures to be delivered prior to commencement of a temporary reduced rate, because that rate constitutes a beneficial change to the consumer. Several of these commenters indicated that a consumer who accepts a temporary rate offer by telephone should have a subsequent right to reject the offer for 45 days after provision of the written disclosures.

In response to these comments, the Board is adopting a revised comment 9(c)(2)(v)–5, which provides that the timing requirements of § 226.9(c)(2)(v)(B) are deemed to have been met, and written disclosures required by § 226.9(c)(2)(v)(B) may be provided as soon as reasonably practicable after the first transaction subject to a temporary rate, if: (i) The consumer accepts the offer of the temporary rate by telephone; (ii) the creditor permits the consumer to reject the temporary rate offer and have the rate or rates that previously applied to the consumer's balances reinstated for 45 days after the creditor mails or delivers the written disclosures required by § 226.9(c)(2)(v)(B); and (iii) the disclosures required by § 226.9(c)(2)(v)(B) and the consumer's right to reject the offer and have the rate or rates that previously applied to the consumer's account reinstated are disclosed to the consumer as part of the temporary rate offer. The Board believes that consumers who accept a promotional rate offer by telephone expect that the promotional rate will apply immediately upon their acceptance. The Board believes that requiring written disclosures prior to commencement of a temporary rate when offer is made by telephone and the required disclosures are provided orally would unnecessarily delay, in many cases, a benefit to the consumer. However, the Board believes that a consumer should have a right,

subsequent to receiving written disclosures, to change his or her mind and reject the temporary rate offer. The Board believes that comment 9(c)(2)(v)–5, as adopted, ensures that consumers may take immediate advantage of promotions that they believe to be a benefit, while protecting consumers by allowing them to terminate the promotion, with no adverse consequences, upon receipt of written disclosures.

In addition to requesting that the disclosures under § 226.9(c)(2)(v)(B) be permitted to be provided by telephone, other industry commenters stated that these disclosures should be permitted to be provided electronically without regard to the consumer consent and other applicable provisions of the Electronic Signatures in Global and National Commerce Act (E-Sign Act) (15 U.S.C. 7001 *et seq.*). The Board is not providing an exception to the consumer consent requirements under the E-Sign Act at this time. The requirements of the E-Sign Act are implemented in Regulation Z in § 226.36, which states that a creditor is required to obtain a consumer's affirmative consent when providing disclosures related to a transaction. The Board believes that disclosure of a promotional or other temporary rate is a disclosure related to a transaction, and that consumers should only receive the disclosures under § 226.9(c)(2)(v)(B) electronically if they have affirmatively consented to receive disclosures in that form.

Several commenters asked the Board to provide additional clarification regarding the proposed requirement that the disclosures of the length of the period and the rate that will apply after the expiration of the period be disclosed in close proximity and equal prominence to the disclosure of the temporary rate. One card issuer indicated that the Board should require only that the disclosures required by § 226.9(c)(2)(v)(B) be provided in close proximity and equal prominence to the first listing of the promotional rate, analogous to what § 226.16(g) requires for disclosures of promotional rates in advertisements. The Board believes that this clarification is appropriate, and is adopting a new comment 9(c)(2)(v)–6, which states that the disclosures of the rate that will apply after expiration of the period and the length of the period are only required to be provided in close proximity and equal prominence to the first listing of the temporary rate in the disclosures provided to the consumer. The comment further states that for purposes of § 226.9(c)(2)(v)(B), the first statement of the temporary rate is the most prominent listing on the front side of the first page of the disclosure. The comment notes that if the temporary rate does not appear on the front side of the first page of the disclosure, then the first listing of the temporary rate is the most prominent listing of the temporary rate on the subsequent pages of the disclosure. The Board believes that this rule will ensure that consumers notice the disclosure of the rate that will apply after the temporary rate expires, by requiring that it be closely proximate and equally prominent to the most prominent disclosure of the temporary rate, while mitigating burden on issuers to present this disclosure multiple times in the materials provided to the consumer.

One industry commenter stated that there should be an exception analogous to § 226.9(c)(2)(v)(B) for promotional fee offerings. The Board is not adopting such an exception at this time. The Board notes that the exception in amended TILA Section 127(i)(1) (which cross-references new TILA Section 171(a)(1)) refers only to annual percentage rates and not to fees. The Board does not think a similar exception for fees is appropriate or necessary. Fees generally do not apply to a specific balance on the consumer's account, but rather, apply prospectively. Therefore, a creditor could reduce a fee pursuant to the exception in § 226.9(c)(2)(v) for reductions in finance or other charges, without having to provide advance notice of that reduction. The creditor could then increase the fee with prospective application after providing 45 days' advance notice pursuant to § 226.9(c). Nothing in the rule prohibits a creditor from providing notice of the increase in a fee at the same time it temporarily reduces the fee; a creditor could provide information regarding the temporary reduction in the same notice, provided that it is not interspersed with the content required to be disclosed pursuant to § 226.9(c)(2)(iv).

The Board proposed to retain comment 9(c)(2)(v)–6 from the July 2009 Regulation Z Interim Final Rule (redesignated as comment 9(c)(2)(v)–7) to clarify that an issuer offering a deferred interest or similar program may utilize the exception in § 226.9(c)(2)(v)(B). The proposed comment also provides examples of how the required disclosures can be made for deferred interest or similar programs. The Board did not receive any significant comment on the applicability of § 226.9(c)(2)(v)(B) to deferred interest plans, and continues to believe that the application of § 226.9(c)(2)(v)(B) to deferred interest arrangements is consistent with the Credit Card Act. The Board is adopting proposed comment 9(c)(2)(v)–7 (redesignated as comment 9(c)(2)(v)–9), in order to ensure that the final rule does not have unintended adverse consequences for deferred interest promotions. In order to ensure consistent treatment of deferred interest programs, the Board has added a cross-reference to comment 9(c)(2)(v)–9 indicating that for purposes of § 226.9(c)(2)(v)(B) and comment 9(c)(2)(v)–9, "deferred interest" has the same meaning as in § 226.16(h)(2) and associated commentary.

In October 2009, the Board proposed to retain comment 9(c)(2)(v)–5 from the July 2009 Regulation Z Interim Final Rule (redesignated as comment 9(c)(2)(v)–6), which is applicable to the exceptions in both § 226.9(c)(2)(v)(B) and (c)(2)(v)(D), and provides additional clarification regarding the disclosure of variable annual percentage rates. The comment provides that if the creditor is disclosing a variable rate, the notice must also state that the rate may vary and how the rate is determined. The comment sets forth an example of how a creditor may make this disclosure. The Board believes that the fact that a rate is variable is an important piece of information of which consumers should be aware prior to commencement of a deferred interest promotion, a promotional rate, or a stepped rate program. The Board received no comments on proposed comment 9(c)(2)(v)–6 and it is adopted as redesignated comment 9(c)(2)(v)–8.

Increases in Variable Rates

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

days' advance notice is not required for a rate increase that occurs due to adjustments in a variable rate tied to an index beyond the creditor's control, the Board proposed to retain § 226.9(c)(2)(v)(C) of the July 2009 Regulation Z Interim Final Rule.

The Board received no significant comment on § 226.9(c)(2)(v)(C), which is adopted as proposed. The Board notes that, as discussed in the supplementary information to § 226.55(b)(2), it is adopting additional commentary clarifying when an index is deemed to be outside of an issuer's control, in order to address certain practices regarding variable rate "floors" and the adjustment or resetting of variable rates to account for changes in the index. The Board is adopting a new comment 9(c)(2)(v)–11, which cross-references the guidance in comment 55(b)(2)–2.

Exception for Workout or Temporary Hardship Arrangements

In the October 2009 Regulation Z Proposal, the Board proposed to retain § 226.9(c)(2)(v)(D) to implement a statutory exception in amended TILA Section 127(i)(1) (which cross-references new TILA Section 171(b)(3)), for increases in rates or fees or charges due to the completion of, or a consumer's failure to comply with the terms of, a workout or temporary hardship arrangement provided that the annual percentage rate or fee or charge applicable to a category of transactions following the increase does not exceed the rate that applied prior to the commencement of the workout or temporary hardship arrangement. Proposed § 226.9(c)(2)(v)(D) was substantively equivalent to the analogous provision included in the July 2009 Regulation Z Interim Final Rule.

The exception in proposed § 226.9(c)(2)(v)(D) applied both to completion of or failure to comply with a workout arrangement. The proposed exception was conditioned on the creditor's having clearly and conspicuously disclosed, prior to the commencement of the arrangement, the terms of the arrangement (including any such increases due to such completion). The Board notes that the statutory exception applies in the event of either completion of, or failure to comply with, the terms of such a workout or temporary hardship arrangement. This proposed exception generally mirrored the statutory language, except that the Board proposed to require that the disclosures regarding the workout or temporary hardship arrangement be in writing.

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

Several industry commenters stated that creditors should be permitted to provide the disclosures pursuant to § 226.9(c)(2)(v)(D) for workout or temporary hardship arrangements orally with subsequent written confirmation. These commenters noted that oral disclosure of the terms of a workout arrangement would permit creditors to reduce rates and fees as soon as the consumer agrees to the arrangement, but that a requirement that written disclosures be provided in advance could unnecessarily delay commencement of the arrangement. These commenters noted that workout arrangements unequivocally benefit consumers, so there is no consumer protection rationale for delaying relief until a creditor can provide written disclosures. Commenters further noted that the consumers who enter such arrangements are having trouble making the payments on their accounts, and that any delay can be detrimental to the consumer.

The Board notes that amended TILA Section 127(i) (which cross-references TILA Section 171(b)(3)) requires clear and conspicuous disclosure of the terms of a workout or temporary hardship arrangement prior to its commencement, but the statute does not contain an express requirement that these disclosures be in writing. The Board further understands that a delay in commencement of a workout or temporary hardship arrangement can have adverse consequences for a consumer. Therefore, § 226.9(c)(2)(v)(D) of the final rule provides that creditors may provide the disclosure of the terms of the workout or temporary hardship arrangement orally by telephone, provided that the creditor mails or delivers a written disclosure of the terms of the arrangement to the consumer as soon as reasonably practicable after the oral disclosure is provided. The Board notes that a consumer's rate can only be raised, upon completion or failure to comply with the terms of, a workout or temporary hardship arrangement, to the rate that applied prior to commencement of the arrangement. Therefore, the Board believes that consumers will be adequately protected by receiving written disclosures as soon as practicable after oral disclosures are provided.

In addition to requesting that the disclosures under § 226.9(c)(2)(v)(D) be permitted to be provided by telephone, other industry commenters stated that these disclosures should be permitted to be provided electronically without regard to the consumer consent and other applicable provisions of the Electronic Signatures in Global and National Commerce Act (E-Sign Act) (15 U.S.C. 7001 et seq.). The Board is not providing an exception to the consumer consent requirements under the E-Sign Act at this time. The Board believes that disclosure of the terms of a workout or other temporary hardship arrangement is a disclosure related to a transaction, and that consumers should only receive the disclosures under § 226.9(c)(2)(v)(D) electronically if they have affirmatively consented to receive disclosures in that form.

Several industry commenters requested that the Board extend the exception in § 226.9(c)(2)(v)(D) to address the reduction of the consumer's minimum periodic payment as part of a workout or temporary hardship arrangement. The Board understands that a requirement that 45 days' advance notice be given prior to reinstating the prior minimum payment requirements could lead to negative amortization for a period of 45 days or more, when the consumer's rate or rates are increased as a result of the completion of or failure to comply with the terms of, the

workout or temporary hardship arrangement. Therefore, the Board has amended § 226.9(c)(2)(v)(D) and comment 9(c)(2)(v)–10 (proposed as comment 9(c)(2)(v)–8) to provide that increases in the required minimum periodic payment are covered by the exception in § 226.9(c)(2)(v)(D), but that such increases in the minimum payment must be disclosed as part of the terms of the workout or temporary hardship arrangement. As with rate increases, a consumer's required minimum periodic payment can only be increased to the required minimum periodic payment prior to commencement of the workout or temporary hardship arrangement in order to qualify for the exception.

One industry commenter asked the Board to simplify the content requirements for the notice required to be given prior to commencement of a workout or temporary hardship arrangement. The issuer stated that the notice could be confusing for consumers because they may have different annual percentage rates applicable to different categories of transactions, promotional rates in effect, and protected balances under § 226.55. While the Board acknowledges that the disclosure of the various annual percentage rates applicable to a consumer's account could be complex, the Board believes that a consumer should be aware of all of the annual percentage rates and fees that would be applicable upon completion of, or failure to comply with, the workout or temporary hardship arrangement. Therefore, the Board is adopting comment 9(c)(2)(v)–10 (proposed as comment 9(c)(2)(v)–8) generally as proposed, except for the addition of a reference to changes in the required minimum periodic payment, discussed above.

Additional Exceptions

A number of commenters urged the Board to adopt additional exceptions to the requirement to provide 45 days' advance notice of significant changes in account terms. Several industry commenters stated that the Board should provide an exception to the advance notice requirements for rate increases made when the provisions of the Servicemembers Civil Relief Act (SCRA), 50 U.S.C. app. 501 *et seq.,* which in some circumstances requires reductions in consumers' interest rates when they are engaged in military service, cease to apply. These commenters noted that proposed § 226.55 provided an exception to the substantive repricing requirements in these circumstances. However, the Board is not adopting an analogous exception to the notice requirements in § 226.9. The Board believes that consumers formerly engaged in military service should receive advance notice when a higher rate will begin to apply to their accounts. A consumer may not be aware of exactly when the SCRA's protections cease to apply and may choose, in reliance on the notice, to change his or her account usage or utilize another source of financing in order to mitigate the impact of the rate increase.

One industry trade association requested an exception to the 45-day advance notice requirement for termination of a preferential rate for employees. The Board notes that it expressly removed such an exception historically set forth in comment 9(c)–1 in the January 2009 Regulation Z Rule. For the reasons discussed in the supplementary information to the January 2009 Regulation Z Rule, the Board is not restoring that exception in this final rule. *See* 74 FR 5244, 5346.

Finally, one industry commenter requested an exception to the advance notice requirements when a change in terms is favorable to a consumer, such as the extension of a grace period, even if it does not involve a reduction in a finance charge. The commenter noted that, for such changes, an issuer also may not want to provide a right to reject under § 226.9(h), because rejecting the change would be unfavorable to the consumer. While the Board notes that, consistent with the proposal, the final rule creates an exception to the advance notice requirements for extensions of the grace period, the Board is not adopting a more general exception to the advance notice requirements for favorable changes at this time. With the exception of reductions in finance or other charges, the Board believes that it is difficult to articulate criteria for when other types of changes are beneficial to a consumer.

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

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

The Board received no significant comment on § 226.9(c)(2)(vi), which is adopted as proposed. The Board notes that consumer group commenters stated that the final rule should also require disclosure of a credit line decrease either contemporaneously with the decrease or shortly thereafter; for the reasons discussed above in the section-by-section analysis to § 226.9(c)(2)(v), the Board is not adopting such a requirement at this time.

The Board notes that the final rule contains additional protections against a credit line decrease. First, § 226.55 prohibits a card issuer from applying an increased rate, fee, or charge to an existing balance as a result of transactions that exceeded the credit limit. In addition, § 226.56 allows a card issuer to charge a fee for transactions that exceed the credit limit only when the consumer has consented to such transactions.

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

The commentary to § 226.9(c)(2) generally is consistent with the commentary to § 226.9(c)(2) of the January 2009 Regulation Z Rule, except for technical changes or changes discussed below. In addition, as discussed above, the Board is adopting several new comments to § 226.9(c)(2)(v) and has renumbered the remaining commentary accordingly.

In October 2009, the Board proposed to amend comment 9(c)(2)(i)–6 to reference examples in § 226.55 that illustrate how the advance notice requirements in § 226.9(c) relate to the substantive rule regarding rate increases in proposed § 226.55. In the January 2009 Regulation Z Rule, comment 9(c)(2)(i)–6 referred to the commentary to § 226.9(g). Because, as discussed in the supplementary information to

§ 226.55, the Credit Card Act moved the substantive rule regarding rate increases into Regulation Z, the Board believed that it is not necessary to repeat the examples under § 226.9. The Board received no comments on the proposed amendments to comment 9(c)(2)(i)–6, which are adopted as proposed.

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

Relationship Between § 226.9(c)(2) and (b)

In the October 2009 Regulation Z Proposal, the Board republished proposed amendments to § 226.9(c)(2)(v) and comments 9(c)(2)–4 and 9(c)(2)(i)–3 that were part of the May 2009 Regulation Z Proposed Clarifications. Several of the Board's proposed revisions to § 226.9(c)(2)(v) (proposed in May 2009 as § 226.9(c)(2)(iv)) and proposed comment 9(c)(2)–4 were to clarify the relationship between the change-in-terms requirements of § 226.9(c) and the notice provisions of § 226.9(b) that apply when a creditor adds a credit feature or delivers a credit access device for an existing open-end plan. *See* 74 FR 20787 for further discussion of these proposed amendments. Commenters that addressed this aspect of the proposal generally supported these proposed clarifications, which are adopted as proposed.

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

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

*Alternative Delayed Notice*

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

Consumer groups commented that the Board's final rule should permit the alternative delayed disclosure. These commenters believe that the deletion of TILA Section 127(d)(2) was a drafting error, and that the Board should use its authority under TILA Section 105(a) to restore the alternative delayed notice procedure. These commenters stated that restoring § 226.9(e)(2) would benefit both consumers and issuers, because consumers are in their opinion more likely to notice the fee and exercise their right to cancel the card if the fee appears on the periodic statement.

The Board believes that the language of Section 203 of the Credit Card Act, which amended TILA Section 127(d), clearly deletes the statutory basis for the alternative delayed notice. Therefore, the Board does not believe that use of its TILA Section 105(a) authority is appropriate at this time to override this express statutory provision. The final rule deletes § 226.9(e)(2) and renumbers § 226.9(e)(3) as § 226.9(e)(2), as proposed. Similarly, the Board is adopting the technical conforming changes to comments 9(e)–7, 9(e)(2)–1 (currently comment 9(e)(3)–1), and 9(e)(2)–2 (currently comment 9(e)(3)–2), as proposed.

*Terms Amended Since Last Renewal*

As amended by the Credit Card Act, TILA Section 127(d) provides that a card issuer that has changed or amended any term of the account since the last renewal that has not been previously disclosed must provide the renewal disclosure, even if that card issuer does not charge an annual fee, periodic fee, or other fee for renewal of the credit or charge card account. The Board proposed to implement amended TILA Section 127(d) by making corresponding amendments to § 226.9(e)(1). Proposed § 226.9(e)(1) stated, in part, that any card issuer that has changed or amended any term of a cardholder's account required to be disclosed under § 226.6(b)(1) and (b)(2) that has not previously been disclosed to the consumer, shall mail or deliver written notice of the renewal to the cardholder. The Board proposed to use its authority pursuant to TILA Section 105(a) to clarify that the requirement to provide the renewal disclosures due to a change in account terms applies only if the change has not been previously disclosed and is a change of the type

required to be disclosed in the table provided at account opening.

Several industry commenters stated that renewal disclosures should be required only if an annual or other renewal fee is assessed on a consumer's account. However, the Credit Card Act specifically amended TILA Section 127(d) to require renewal disclosures when creditors have changed or amended terms of the account since the last renewal that have not been previously disclosed. The Board therefore believes that a rule requiring renewal disclosures to be given only if an annual or other renewal fee is charged would not effectuate the statutory amendment.

Consumer groups stated that renewal disclosures should be required if any undisclosed change has been made to the account terms since the last renewal, not only if undisclosed changes have been made to terms required to be disclosed pursuant to § 226.6(b)(1) and (b)(2). Consumer groups argued that the language "any term of the account" in amended TILA Section 127(d) contemplates that renewal disclosures will be given if any term has been changed and not previously disclosed, regardless of the type of term. As discussed in the supplementary information to the proposal, the Board considered an interpretation of amended TILA Section 127(d), consistent with consumer group comments, that would have required that the renewal disclosures be provided for all changes in account terms that have not been previously disclosed, including changes that are not required to be disclosed pursuant to § 226.6(b)(1) and (b)(2). Such an interpretation of the statute would require that the renewal disclosures be given even when creditors have made relatively minor changes to the account terms, such as by increasing the amount of a fee to expedite delivery of a credit card. The Board noted that it believes providing a renewal notice in these circumstances would not provide a meaningful benefit to consumers.

The Board also noted that under such an interpretation, the renewal notice would in many cases not disclose the changed term, which would render it of little value to consumers. Amended TILA Section 127(d) requires only that the renewal disclosure contain the information set forth in TILA Sections 127(c)(1)(A) and (c)(4)(A), which are implemented in § 226.5a(b)(1) through (b)(7). These sections require disclosure of key terms of a credit card account including the annual percentage rates applicable to the account, annual or other periodic membership fees, minimum finance charges, transaction charges on purchases, the grace period, balance computation method, and disclosure of similar terms for charge card accounts. The Board notes that the required disclosures all address terms required to be disclosed pursuant to § 226.6(b)(1) and (b)(2). Therefore, if the rule required that the renewal disclosures be provided for any change in terms, such as a change in a fee for expediting delivery of a credit card, the renewal disclosures would not disclose the amount of the changed fee. The Board also notes that charges imposed as part of an open-end (not home-secured) plan that are not required to be disclosed pursuant to § 226.6(b)(1) and (b)(2) are required to be disclosed to consumers prior to their imposition pursuant to § 226.5(b)(1)(ii). Therefore, if a card issuer changed a charge imposed as part of an open-end (not home-secured) plan but had not previously disclosed that change, a consumer would receive disclosure prior to imposition of the charge.

For these reasons, the Board is adopting § 226.9(e)(1) as proposed. The Board believes that § 226.9(e)(1) as adopted strikes the appropriate balance between ensuring that consumers receive notice of important changes to their account terms that have not been previously disclosed and avoiding burden on issuers with little or no corresponding benefit to consumers. In most cases, changes to terms required to be disclosed pursuant to § 226.6(b)(1) and (b)(2) will be required to be disclosed 45 days in advance in accordance with § 226.9(c)(2). However, there are several types of changes to terms required to be disclosed under § 226.6(b)(1) and (b)(2) for which advance notice is not required under § 226.9(c)(2)(v)(1), including reductions in finance and other charges and the extension of a grace period. The Board believes that such changes are generally beneficial to the consumer, and therefore a 45-day advance notice requirement is not appropriate for these changes. However, the Board believes that requiring creditors to send consumers subject to such changes a notice prior to renewal disclosing key terms of their accounts will promote the informed use of credit by consumers. The notice will remind consumers of the key terms of their accounts, including any reduced rates or extended grace periods that apply, when consumers are making a decision as to whether to renew their account and how to use the account in the future.

One industry commenter requested that the Board clarify that disclosing a change in terms on a periodic statement is sufficient to constitute prior disclosure of that change for purposes of § 226.9(e). The Board believes that this generally is appropriate, and has adopted a new comment 9(e)–10 . Comment 9(e)–10 states that clear and conspicuous disclosure of a changed term on a periodic statement provided to a consumer prior to renewal of the consumer's account constitutes prior disclosure of that term for purposes of § 226.9(e)(1). The comment contains a cross-reference to § 226.9(c)(2) for additional timing, content, and formatting requirements that apply to certain changes in terms under that paragraph.

Consumer group commenters urged the Board to require that renewal disclosures be tabular, prominently located, and retainable. The Board is not imposing such a requirement at this time. The Board believes that the general requirements of § 226.5(a), which require that renewal disclosures be clear and conspicuous and in writing, are sufficient to ensure that renewal disclosures are noticeable to consumers.

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

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

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

The Board proposed to adopt § 226.9(g) substantially as adopted in the January 2009 Regulation Z Rule, except as required to be amended for conformity with the Credit Card Act. Proposed § 226.9(g), in combination with amendments to § 226.9(c), implemented the 45-day advance notice requirements for rate increases in new TILA Section 127(i). This approach is consistent with the Board's January 2009 Regulation Z Rule and the July

2009 Regulation Z Interim Final Rule, each of which included change-in-terms notice requirements in § 226.9(c) and increases in rates due to the consumer's default or delinquency or as a penalty for events specified in the account agreement in § 226.9(g). Proposed § 226.9(g)(1) set forth the general rule and stated that for open-end plans other than home-equity plans subject to the requirements of § 226.5b, a creditor must provide a written notice to each consumer who may be affected when a rate is increased due to a delinquency or default or as a penalty for one or more events specified in the account agreement. The Board received no significant comment on the general rule in § 226.9(g)(1), which is adopted as proposed.

9(g)(2) Timing of Written Notice

Proposed paragraph (g)(2) set forth the timing requirements for the notice described in paragraph (g)(1), and stated that the notice must be provided at least 45 days prior to the effective date of the increase. The notice must, however, be provided after the occurrence of the event that gave rise to the rate increase. That is, a creditor must provide the notice after the occurrence of the event or events that trigger a specific impending rate increase and may not send a general notice reminding the consumer of the conditions that may give rise to penalty pricing. For example, a creditor may send a consumer a notice pursuant to § 226.9(g) if the consumer makes a payment that is one day late disclosing a rate increase applicable to new transactions, in accordance with § 226.55. However, a more general notice reminding a consumer who makes timely payments that paying late may trigger imposition of a penalty rate would not be sufficient to meet the requirements of § 226.9(g) if the consumer subsequently makes a late payment. The Board received no significant comment on § 226.9(g)(2), which is adopted as proposed.

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

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

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

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

Unlike § 226.9(g)(3) of the July 2009 Regulation Z Interim Final Rule, the notice proposed under § 226.9(g)(3) would not have required disclose the consumer's right to reject the application of the penalty rate. For the reasons discussed in the supplementary information to § 226.9(h), the Board is not providing a right to reject penalty rate increases in light of the new substantive rule on rate increases in proposed § 226.55. Accordingly, the proposal would not have required disclosure of a right to reject for penalty rate increases.

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

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

One industry commenter stated that § 226.9(g)(3) and Model Form G–23 should be revised to more accurately reflect the balances to which the consumer's cure right applies, when the consumer's rate is increased due to a delinquency of greater than 60 days. As discussed in the supplementary information to § 226.55(b)(4)(ii), the rule requires only that the rate be reduced on transactions that occurred prior to or within 14 days of the notice provided pursuant to § 226.9(c) or (g), when the consumer makes the first six required minimum periodic payments on time following the effective date of a rate increase due to a delinquency of more than 60 days. The Board believes that consumers could be confused by a notice, as proposed, that states only that the rate increase will cease to apply if the consumer, but does not distinguish between outstanding balances and new transactions. Accordingly, the Board has revised § 226.9(g)(3)(i)(B)(*2*) to require disclosure that the increase will cease to apply with respect to transactions that occurred prior to or within 14 days of provision of the notice, if the creditor receives six consecutive required minimum periodic payments on or before the payment due date, beginning with the first payment due following the effective date of the increase. The Board has made a conforming change to Model Form G–23.

The Board received no other significant comment on the disclosure requirements in § 226.9(g)(3) and is otherwise is adopting § 226.9(g)(3) as proposed.

9(g)(4) Exceptions

Proposed § 226.9(g)(4) set forth an exception to the advance notice requirements of § 226.9(g), which is consistent with an analogous exception contained in the January 2009 Regulation Z Rule and July 2009 Regulation Z Interim Final Rule. Proposed § 226.9(g)(4) clarified the relationship between the notice requirements in § 226.9(c)(vi) and (g)(1) when the creditor decreases a consumer's credit limit and under the terms of the credit agreement a penalty rate may be imposed for extensions of credit that exceed the newly decreased credit limit. This exception is substantively equivalent to § 226.9(g)(4)(ii) of the January 2009 Regulation Z Rule. In addition, it is generally equivalent to § 226.9(g)(4)(ii) of the July 2009 Regulation Z Interim Final Rule, except that the proposed exception implemented content requirements analogous to those in proposed § 226.9(g)(3)(i) that pertain to whether the rate applies to outstanding balances or only to new transactions. *See* 74 FR 5355 for additional discussion of this exception. The Board received no comments on this exception, which is adopted as proposed.

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

The Board noted in the supplementary information to the proposal that one respect in which proposed § 226.9(g)(4) differs from the January 2009 Regulation Z Rule is that it did not contain an exception to the 45-day advance notice requirement for penalty rate increases if the consumer's account becomes more than 60 days delinquent prior to the effective date of a rate increase applicable to new transactions, for which a notice pursuant to § 226.9(g) has already been provided.

Industry commenters urged the Board to provide an exception that would permit creditors to send a notice disclosing a rate increase applicable to both a consumer's outstanding balances and new transactions, prior to the consumer's account becoming more than 60 days delinquent. These commenters stated that, as proposed, the rule would require issuers to wait at least 105 days prior to imposing rate increases as a result of the consumer paying more than 60 days late. These commenters also stated that a notice disclosing the consequences that would occur if a consumer paid more than 60 days late would give the consumer the opportunity to avoid the rate increase.

The Board is not adopting an exception that would permit a creditor to send a notice disclosing a rate increase applicable to both a consumer's outstanding balances and new transactions, prior to the consumer's failure to make a minimum payment within 60 days of the due date for that payment. As discussed in the supplementary information to § 226.9(g)(3)(i), amended TILA Section 171(b)(4)(A) requires that specific content be disclosed when a consumer's rate is increased based on a failure to make a minimum payment within 60 days of the due date for that payment. Specifically, TILA Section 171(b)(4)(A) requires the notice to state the reasons for the increase and that the increase will terminate no later than six months from the effective date of the change, provided that the consumer makes the minimum payments on time during that period. The Board believes that the intent of this provision is to create a right for consumers whose rate is increased based on a payment that is more than 60 days late to cure that penalty pricing in order to return to a lower interest rate.

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

The Board believes that many creditors will impose rate increases applicable to new transactions for consumers who make late payments that are 60 or fewer days late. For notices of such rate increases provided pursuant to § 226.9(g), § 226.9(g)(3)(i)(A)(*5*) requires that the notice describe the balances to which the current rate will continue to apply unless the consumer fails to make a minimum periodic payment within 60 days of the due date for that payment. The Board believes that this will result in consumers receiving a notice of the consequences of paying more than 60 days late and, thus, will give consumers an opportunity to avoid a rate increase applicable to outstanding balances.

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

Proposed Changes to Commentary to § 226.9(g)

The commentary to § 226.9(g) generally is consistent with the commentary to § 226.9(g) of the January 2009 Regulation Z Rule, except for technical changes. In addition, the Board has amended comment 9(g)–1 to reference examples in § 226.55 that illustrate how the advance notice requirements in § 226.9(g) relate to the substantive rule regarding rate increases applicable to existing balances. Because, as discussed in the supplementary information to § 226.55, the Credit Card Act placed the substantive rule regarding rate increases into TILA and

Regulation Z, the Board believes that it is not necessary to repeat the examples under § 226.9.

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

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

*Application of Right To Reject to Increases in Annual Percentage Rate*

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

Industry commenters strongly opposed the Board's establishment of a right to reject in the July 2009 Regulation Z Interim Final Rule but supported the revisions in the October 2009 Regulation Z Proposal. Consumer group commenters took the opposite position. In particular, along with a federal banking regulator, consumer group commenters argued that the Board should interpret the "right to cancel" in revised TILA Section 127(i)(3) as providing consumers with the right to reject increases in rates that apply to new transactions. However, the Board does not believe this interpretation would be consistent with the Credit Card Act's provisions regarding rate increases. As discussed in detail below with respect to § 226.55, the Credit Card Act generally prohibits card issuers from applying increased rates to existing balances while generally permitting card issuers to increase the rates that apply to new transactions after providing 45 days' advance notice. Furthermore, by prohibiting card issuers from applying an increased rate to transactions that occur during a 14-day period following provision of the notice of the increase, the Credit Card Act ensures that consumers can generally avoid application of increased rates to new transactions by ceasing to use their accounts after receiving the notice of the increase.

Accordingly, the final rule removes references to rate increases from § 226.9(h) and its commentary. Similarly, because the exception in § 226.9(h)(3)(ii) for transactions that occurred more than fourteen days after provision of the notice was based on revised TILA Section 171(d),[29] that exception has been removed from § 226.9(h) and incorporated into § 226.55. Finally, the Board has redesignated comment 9(h)(3)–1 as comment 9(h)–1 and amended it to clarify that § 226.9(h) does not apply to increases in an annual percentage rate.

As noted above, the Board has also revised § 226.9(c)(2)(iv)(B) to clarify that the right to reject does not apply to *changes* in an annual percentage rate that do not result in an immediate increase in rate (such as changes in the method used to calculate a variable rate or conversion of a variable rate to an equivalent fixed rate). As discussed below, consistent with the requirements in the Credit Card Act, § 226.55 generally prohibits a card issuer from applying any change in an annual percentage rate to an existing balance if that change could result in an increase in rate. *See* commentary to § 226.55(b)(2). However, because the Credit Card Act generally permits card issuers to change the rates that apply to new transactions, it would be inconsistent with the Act to apply the right to reject to such changes. Nevertheless, as with rate increases that apply to new transactions, the consumer will receive 45 days' advance notice of the change and thus can decide whether to continue using the account.

Industry and consumer group commenters also requested that the Board add or remove several exceptions to the right to reject. However, the Board does not believe that further revisions are warranted at this time. In particular, industry commenters argued that the right to reject should not apply when the consumer has consented to the change in terms, when the change is unambiguously in the consumer's favor, or in similar circumstances. As discussed elsewhere in this final rule, the Board believes that it would be difficult to develop workable standards for determining when a change has been requested by the consumer (rather than suggested by the issuer), when a change is unambiguously beneficial to the consumer, and so forth. Furthermore, an exception to the right to reject generally should not be necessary if the consumer has actually requested a change or if a change is clearly advantageous to the consumer.

Industry commenters also argued that the Board should exempt increases in fees from the right to reject if the fee is increased to a pre-disclosed amount after a specified period of time, similar to the exception for temporary rates in § 226.9(c)(2)(v)(B). However, as discussed above, § 226.9(c)(2)(v)(B) implements revised TILA Section 171(b)(1), which applies only to increases in annual percentage rates. The fact that the exceptions in Section 171(b)(3) and (b)(4) expressly apply to increases in rates *and* fees indicates that Congress intentionally excluded fees

[29] *See* 74 FR 36089–36090.

from Section 171(b)(1). Accordingly, the Board does not believe it would be appropriate to exclude increases in fees from the right to reject.

Consumer groups argued that the Board should remove the exception in § 226.9(h)(3) for accounts that are more than 60 days' delinquent. However, this exception is based on revised TILA Section 171(b)(4), which provides that the Credit Card Act's limitations on rate increases do not apply when an account is more than 60 days' past due. Accordingly, the Board believes that it is consistent with the intent of the Credit Card Act to provide card issuers with greater flexibility to adjust the account terms in these circumstances.

Consumer groups also argued that the Board should remove the exception in § 226.9(c)(2)(iv) for increases in the required minimum periodic payment. However, the Board believes that, as a general matter, increases in the required minimum payment can be advantageous for consumers insofar as they can increase repayment of the outstanding balance, which can reduce the cost of borrowing. Indeed, although the Credit Card Act limits issuers' ability to accelerate repayment in circumstances where the issuer cannot apply an increased rate to an existing balance (revised TILA Section 171(c)), the Act also encourages consumers to increase the repayment of credit card balances by requiring card issuers to disclose on the periodic statement the costs associated with making only the minimum payment (revised TILA Section 127(b)(11)). Furthermore, although consumer groups argued that card issuers could raise minimum payments to unaffordable levels in order to force accounts to become more than 60 days' past due (which would allow issuers to apply increased rates to existing balances), it seems unlikely that it would be in card issuers' interests to do so, given the high loss rates associated with accounts that become more than 60 days' delinquent.[30] Thus, the Board does not believe application of the right to reject to increases in the minimum payment is warranted at this time.

Repayment Restrictions

Because the repayment restrictions in § 226.9(h)(2)(iii) are based on revised TILA Section 171(c), the Board believes that those restrictions should be implemented with the rest of revised Section 171 in § 226.55. Section 226.9(h)(2)(iii) implemented new TILA Section 127(i)(4), which expressly incorporated the repayment methods in revised TILA Section 171(c)(2). Because the rest of revised Section 171 would not be effective until February 22, 2010, the July 2009 Regulation Z Interim Final Rule implemented new TILA Section 127(i)(4) by incorporating the repayment restrictions in Section 171(c)(2) into § 226.9(h)(2)(iii). *See* 74 FR 36089. However, the Board believes that—once revised TILA Section 171 becomes effective on February 22, 2010—these repayment restrictions should be moved to § 226.55(c). In addition to being duplicative, implementing revised TILA Section 171(c)'s repayment methods in both § 226.9(h) and § 226.55(c) would create the risk of inconsistency. Furthermore, because these restrictions will generally be of greater importance in the context of rate increases than other significant changes in terms, the Board believes they should be located in proposed § 226.55.

The Board did not receive significant comment on this aspect of the proposal. Accordingly, the final rule moves the provisions and commentary regarding repayment to § 226.55(c)(2) and amends § 226.9(h)(2)(iii) to include a cross-reference to § 226.55(c)(2).

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

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

Additional Revisions to Commentary

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

*Section 226.10 Payments*

Section 226.10, which implements TILA Section 164, currently contains rules regarding the prompt crediting of payments and is entitled "Prompt crediting of payments." 15 U.S.C. 1666c. In October 2009, the Board proposed to implement several new provisions of the Credit Card Act regarding payments in § 226.10, such as requirements regarding the permissibility of certain fees to make expedited payments. Several of these rules do not pertain directly to the prompt crediting of

[30] For example, data submitted to the Board during the comment period for the January 2009 FTC Act Rule indicated that approximately half of all accounts that become two billing cycles' past due (which is roughly equivalent to 60 days' delinquent) charge off during the subsequent twelve months. *See* Federal Reserve Board Docket No. R–1314: Exhibit 5, Table 1a to Comment from Oliver I. Ireland, Morrison Foerster LLP (Aug 7, 2008) (Argus Analysis) (presenting results of analysis by Argus Information & Advisory Services, LLC of historical data for consumer credit card accounts believed to represent approximately 70% of all outstanding consumer credit card balances).

payments, but more generally to the conditions that may be imposed upon payments. Accordingly, the Board proposed to amend the title of § 226.10 to "Payments" to more accurately reflect the content of amended § 226.10. The Board received no comments on this change, which is adopted as proposed.

226.10(b) Specific Requirements for Payments

Cut-Off Times for Payments

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

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

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

In the October 2009 Regulation Z Proposal, the Board proposed to implement amended TILA Section 164 in a revised § 226.10(b)(2)(ii). Proposed § 226.10(b)(2)(ii) stated that a creditor may set reasonable cut-off times for payments to be received by mail, by electronic means, by telephone, and in person, provided that such cut-off times must be no earlier than 5 p.m. on the payment due date at the location specified by the creditor for the receipt of such payments. Creditors would be free to set later cut-off times; however, no cut-off time would be permitted to be earlier than 5 p.m. This paragraph, in accordance with amended TILA Section 164, would apply to payments received by mail, electronic means, telephone, or in person, not only payments received by mail. The Board is adopting § 226.10(b)(2)(ii) generally as proposed.

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

Consumer group commenters indicated that the cut-off time rule for electronic and telephone payments should refer to the consumer's time zone. These commenters believe that it is unfair for consumers to be penalized for making what they believe to be a timely payment based on their own time zone. In contrast, industry commenters stated that it is appropriate for the 5 p.m. cut-off time to be determined by reference to the time zone of the location specified for making payments, including for payments by means other than mail. These commenters specifically noted the operational burden that would be associated with a rule requiring a creditor to process payments differently based on the time zone of the consumer.

The final rule, consistent with the proposal, refers to the time zone of the location specified by the creditor for making payments. The Board believes that the benefit to consumers of a rule that refers to the time zone of the consumer's billing address would not outweigh the operational burden to creditors. As amended by the Credit Card Act, TILA contains a number of protections, including new periodic statement mailing requirements for credit card accounts implemented in § 226.5(b)(2)(ii), to ensure that consumers receive a sufficient period of time to make payments. The Board also notes that there may be consumers who are United States residents, such that Regulation Z would apply pursuant to comment 1(c)–1, but who have billing addresses that are outside of the United States. Thus, if the rule referred to the time zone of the consumer's billing address, a creditor might need to have many different payment processing procedures, including procedures for time zones outside of the United States.

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

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

Other Requirements for Conforming Payments

One industry commenter asked the Board to clarify that an issuer can specify a single address for receiving conforming payments. The Board notes that § 226.10(b)(2)(v) provides "[s]pecifying one particular address for receiving payments" such as a post office box" as an example of a reasonable requirement for payments. Accordingly, the Board believes that no additional clarification is necessary. However, a creditor that specifies a single address for the receipt of conforming payments is still subject to the general requirement in § 226.10(b) that the requirement enable most consumers to make conforming payments.

The commenter further urged the Board to adopt a clarification to comment 10(b)–2, which states that if a creditor promotes electronic payment via its Web site, any payments made via the creditor's Web site are generally conforming payments for purposes of § 226.10(b). The commenter asked the Board to clarify that a creditor may set a cut-off time for payments via its Web site, consistent with the general rule in § 226.10(b). The Board agrees that this clarification is appropriate and has included a reference to the creditor's cut-off time in comment 10(b)–2.

Finally, the Board is adopting a technical revision to § 226.10(b)(4), which addresses nonconforming payments. Section 226.10(b)(4) states that if a creditor specifies, on or with the periodic statement, requirements for the consumer to follow in making payments, but accepts a payment that does not conform to the requirements, the creditor shall credit the payment within five days of receipt. The Board has amended § 226.10(b)(4) to clarify that a creditor may only specify such requirements as are permitted under § 226.10. For example, a creditor may not specify requirements for making payments that would be unreasonable under § 226.10(b)(2), such as a cut-off time for mailed payments of 4:00 p.m., and treat payments received by mail between 4:00 p.m. and 5:00 p.m. as non-conforming payments.

Payments Made at Financial Institution Branches

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

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

Several industry commenters stated that the Board should clarify the relationship between § 226.10(b)(3) and the general rule in § 226.10(b)(2) regarding cut-off times. These commenters indicated that it was unclear whether the Board intended to require that bank branches remain open until 5 p.m. if a card issuer accepts in-person payments at a branch location. The Board did not intend to require branches or offices of financial institutions to remain open until 5 p.m. if in-person credit card payments are accepted at that location. The Board believes that such a rule might discourage financial institutions from accepting in-person payments, to the detriment of consumers. The Board therefore is adopting § 226.10(b)(3)(i) generally as proposed, but has clarified that, notwithstanding § 226.10(b)(2)(ii), a card issuer may impose a cut-off time earlier than 5 p.m. for payments on a credit card account under an open-end (not home-secured) consumer credit plan made in person at a branch or office of a card issuer that is a financial institution, if the close of business of the branch or office is earlier than 5 p.m. For example, if a branch or office of the card issuer closes at 3 p.m., the card issuer must treat in-person payments received at that branch prior to 3 p.m. as received on that date.

Several industry commenters stated that a card issuer should not be required to treat an in-person payment received at a branch or office as conforming, if the issuer does not promote payment at the branch. The Board believes that TILA Section 127(b)(12)(C) requires all card issuers that are financial institutions that accept payments in person at a branch or office to treat those payments as received on the date on which the consumer makes the payment. The Credit Card Act does not distinguish between circumstances where a card issuer promotes in-person payments at branches and circumstances where a card issuer accepts, but does not promote, such payments. The Board believes that the intent of TILA Section 127(b)(12)(C) is to require in-person payments to be treated as received on the same day, which is consistent with consumer expectations. Accordingly, § 226.10(b)(3) does not distinguish between financial institutions that promote in-person payments at a branch and financial institutions that accept, but do not promote, such payments.

Neither the Credit Card Act nor TILA defines "financial institution." In order to give clarity to card issuers, the Board proposed to adopt a definition of "financial institution," for purposes of § 226.10(b)(3), in a new § 226.10(b)(3)(ii). Proposed § 226.10(b)(3)(ii) stated that "financial institution" has the same meaning as "depository institution" as defined in the Federal Deposit Insurance Act (12 U.S.C. 1813(c)).

Industry commenters noted that the Board's proposed definition of "financial institution" excluded credit unions. Consumer groups stated that a broader definition of "financial institution" including entities other than depository institutions, such as retail locations that accept payments on store credit cards for that retailer, would be

appropriate in light of consumer expectations. The Board has revised § 226.10(b)(3)(ii) in the final rule to cover credit unions, because omission of credit unions in the proposal was an unintentional oversight. Section 226.10(b)(3)(ii) of the final rule states that a "financial institution" means a bank, savings association, or credit union. The Board believes that a broader definition of "financial institution" that includes non-depository institutions, such as retail locations, would not be appropriate, because the primary business of such entities is not the provision of financial services. The Board believes that the statute's reference to "financial institutions" contemplates that not all card issuers will be covered by this rule. The Board believes that the definition it is adopting effectuates the purposes of amended TILA Section 127(b)(12) by including all banks, savings associations, and credit unions, while excluding entities such as retailers that should not be considered "financial institutions" for purposes of proposed § 226.10(b)(3).

In October, 2009, the Board proposed a new comment 10(b)–5 to clarify the application of proposed § 226.10(b)(3) for payments made at point of sale. Proposed comment 10(b)–5 stated that if a creditor that is a financial institution issues a credit card that can be used only for transactions with a particular merchant or merchants, and a consumer is able to make a payment on that credit card account at a retail location maintained by such a merchant, that retail location is not considered to be a branch or office of the creditor for purposes of § 226.10(b)(3).

One industry commenter commented in support of proposed comment 10(b)–5, but asked that it be expanded to cover co-branded cards in addition to private label credit cards. This commenter pointed out that as proposed, comment 10(b)–5 applied only to private label credit cards, but the Board's supplementary information referenced co-branded credit cards. Consumer groups indicated that they believe proposed comment 10(b)–5 is contrary to consumer expectations. These commenters further stated that if a bank branch must credit payments as of the date of in-person payment, consumers will come to expect and assume that retail locations that accept credit card payments should do the same. The Board is adopting comment 10(b)–5 generally as proposed, but has expanded the comment to address co-branded credit cards. The Board believes that the intent of TILA Section 127(b)(12) is to apply only to payments made at a branch or office of the creditor, not to payments made at a location maintained by a third party that is not the creditor. TILA Section 127(b)(12) is limited to branches or offices of a card issuer that is a financial institution, and accordingly the Board believes that the statute was not intended to address other types of locations where an in-person payment on a credit card account may be accepted.

Finally, the Board also proposed a new comment 10(b)–6 to clarify what constitutes a payment made "in person" at a branch or office of a financial institution. Proposed comment 10(b)–6 would state that for purposes of § 226.10(b)(3), payments made in person at a branch or office of a financial institution include payments made with the direct assistance of, or to, a branch or office employee, for example a teller at a bank branch. In contrast, the comment would provide that a payment made at the bank branch without the direct assistance of a branch or office employee, for example a payment placed in a branch or office mail slot, is not a payment made in person for purposes of § 226.10(b)(3). The Board believes that this is consistent with consumer expectations that payments made with the assistance of a financial institution employee will be credited immediately, while payments that are placed in a mail slot or other receptacle at the branch or office may require additional processing time. The Board received no significant comment on proposed comment 10(b)–6, and it is adopted as proposed.

One issuer asked the Board to clarify that in-person payments made at a branch or location of a card issuer's affiliate should not be treated as conforming payments, even if the affiliate shares the same logo or trademark as the card issuer. The Board understands that for many large financial institutions, the card issuing entity may be a separate legal entity from the affiliated depository institution or other affiliated entity. In such cases, the card issuing entity is not likely to have branches or offices at which a consumer can make a payment, while the affiliated depository institution or other affiliated entity may have such branches or offices. Therefore, as a practical matter, in many cases a consumer will only be able to make in-person payments on his or her credit card account at an affiliate of the card issuer, not at a branch of the card issuer itself. The Board believes that in such cases, it may not be apparent to consumers that they are in fact making payment at a legal entity different than their card issuer, especially when the affiliates share a logo or have similar names. Therefore, the Board believes that the clarification requested by the commenter is inappropriate. The Board is adopting a new comment 10(b)–7 which states that if an affiliate of a card issuer that is a financial institution shares a name with the card issuer, such as "ABC," and accepts in-person payments on the card issuer's credit card accounts, those payments are subject to the requirements of § 226.10(b)(3).

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

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

The Board proposed to implement new TILA Section 127(o) in an amended § 226.10(d). The general rule in proposed § 226.10(d) would track the statutory language of new TILA Section 127(o) to state that if the due date for payments is a day on which the creditor does not receive or accept payments by mail, the creditor may generally not treat a payment received by any method the next business day as late for any purpose. The Board proposed, however, to provide that if the creditor accepts or receives payments made by a method

other than mail, such as electronic or telephone payments, a due date on which the creditor does not receive or accept payments by mail, it is not required to treat a payment made by that method on the next business day as timely. The Board proposed this clarification using its authority under TILA Section 105(a) to make adjustments necessary to effectuate the purposes of TILA. 15 U.S.C. 1604(a).

Consumer group commenters stated that electronic and telephone payments should not be exempted from the rule for payments made on a due date which is a day on which the creditor does not receive or accept payments by mail. The Board notes that proposed § 226.10(d) did not create a general exemption for electronic or telephone payments, except when the creditor receives or accepts payments by those methods on a day on which it does not accept payments by mail. Under these circumstances, § 226.10(d) requires a creditor to credit a conforming electronic or telephone payment as of the day of receipt, and accordingly the fact that the creditor does not accept mailed payments on that day does not result in any detriment to a consumer who makes his or her payment electronically or by telephone.

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

An industry trade association asked the Board to clarify that § 226.10(d), which prohibits the treatment of a payment as late for any purpose, does not prohibit charging interest for the period between the due date on which the creditor does not accept payments by mail and the following business day. The Board believes, consistent with the approach it took in § 226.5(b)(2)(ii), that charging interest for the period between the due date and the following business day does not constitute treating a payment as late for any purpose, unless the delay results in the loss of a grace period. Accordingly, the Board is adopting new comment 10(d)–2, which cross-references the guidance on "treating a payment as late for any purpose" in comment 5(b)(2)(ii)–2. The comment also expressly states that when an account is not eligible for a grace period, imposing a finance charge due to a periodic interest rate does not constitute treating a payment as late.

One industry commenter asked the Board to clarify the operation of § 226.10(d) if a holiday on which an issuer does not accept payments is on a Friday, but the bank does accept payments by mail on the following Saturday. The Board believes that in this case, Saturday is the next business day for purposes of § 226.10(d). Accordingly, the Board has included a statement in § 226.10(d)(1) indicating that for the purposes of § 226.10(d), the "next business day" means the next day on which the creditor accepts or receives payments by mail.

Another industry commenter stated that the rule should provide that if a creditor receives multiple mail deliveries on the next business day following a due date on which it does not accept mailed payments, only payments in the first delivery should be required to be treated as timely. The Board believes that such a comment would not be appropriate, because if the creditor received or accepted mailed payments on the due date, payments in every mail delivery on that day would be timely, not just those payments received in the first mail delivery. The Board believes that consumers should accordingly have a full business day after a due date on which the creditor does not accept payments by mail in order to make a timely payment.

Finally, as proposed, amended § 226.10(d) applies to all open-end consumer credit plans, not just credit card accounts, even though new TILA Section 127(o) applies only to credit card accounts. The Board received no comments on the applicability of § 226.10(d) to open-end credit plans that are not credit card accounts. The Board believes that it is appropriate to have one consistent rule regarding the treatment of payments when the due date falls on a date on which the creditor does not receive or accept payments by mail. The Board believes that that Regulation Z should treat payments on an open-end plan that is not a credit card account the same as payments on a credit card account. Regardless of the type of open-end plan, if the payment due date is a day on which the creditor does not accept or receive payments by mail, a consumer should not be required to make payments prior to the due date in order for them to be treated as timely. This is consistent with § 226.10(d) of the January 2009 Regulation Z Rule, which set forth one consistent rule for all open-end credit.

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

The Credit Card Act adopted new TILA Section 127(l) which generally prohibits creditors, in connection with a credit card account under an open-end consumer credit plan, from imposing a separate fee to allow a consumer to repay an extension of credit or pay a finance charge, unless the payment involves an expedited service by a customer service representative. 15 U.S.C. 1637(l). In the October 2009 Regulation Z Proposal, the Board proposed to implement TILA Section 127(l) in § 226.10(e), which generally prohibits creditors, in connection with a credit card account under an open-end (not home-secured) consumer credit plan, from imposing a separate fee to allow consumers to make a payment by any method, such as mail, electronic, or telephone payments, unless such payment method involves an expedited service by a customer service representative of the creditor. The final rule adopts new § 226.10(e) as proposed.

*Separate fee.* Proposed comment 10(e)–1 defined "separate fee" as a fee imposed on a consumer for making a single payment to the account. Consumer group commenters suggested that the definition of the term "separate fee" was too narrow and could create a loophole for periodic fees, such as a monthly fee, to allow consumers to make a payment. Consistent with the statutory provision in TILA Section 127(l), the Board believes a separate fee for any payment made to an account is prohibited, with the exception of a payment involving expedited service by a customer service representative. *See* 15 U.S.C. 1604(a). The Board revises proposed comment 10(e)–1 by removing the word "single" in order to clarify that the prohibition on a "separate fee"

applies to any general payment method which does not involve expedited service by a customer service representative and to any payment to an account, regardless of whether the payment involves a single payment transaction or multiple payment transactions. Therefore, the term separate fee includes any fee which may be imposed periodically to allow consumers to make payments. The Board also notes that periodic fees may be prohibited because they do not involve expedited service or a customer service representative. The term separate fee also includes any fee imposed to allow a consumer to make multiple payments to an account, such as automatic monthly payments, if the payments do not involve expedited service by a customer service representative. Accordingly, comment 10(e)–1 is adopted with the clarifying revision.

*Expedited.* The Board proposed comment 10(e)–2 to clarify that the term "expedited" means crediting a payment to the account the same day or, if the payment is received after the creditor's cut-off time, the next business day. In response to the October 2009 Regulation Z Proposal, industry commenters asked the Board to revise guidance on the term "expedited" to include representative-assisted payments that are scheduled to occur on a specific date, *i.e.,* a future date, and then credited or posted immediately on the requested specified date. The Board has not included this interpretation of expedited in the final rule because the Board believes it would be inconsistent with the intent of TILA Section 127(l). Comment 10(e)–2 is adopted as proposed.

*Customer service representative.* Proposed comment 10(e)–3 clarified that expedited service by a live customer service representative of the creditor would be required in order for a creditor to charge a separate fee to allow consumers to make a payment. One commenter requested that the Board clarify that a creditor's customer service representative includes the creditor's agents or service bureau. The Board notes that proposed comment 10(e)–3 already stated that payment service may be provided by an agent of the creditor. Consumer group commenters strongly supported the Board's guidance that a customer service representative does not include automated payment systems, such as a voice response unit or interactive voice response system. Another commenter, however, asked the Board to clarify guidance for payment transactions which involve both an automated system and the assistance of a live customer service representative. Specifically, the commenter noted that some payments systems require an initial consumer contact through an automated system but the payment is ultimately handled by a live customer service representative. The Board acknowledges that some payments transactions may require the use of an automated system for a portion of the transaction, even if a live customer service representative provides assistance. For example, a customer's telephone call may be answered by an automated system before the customer is directed to a live customer service representative, or a customer service representative may direct a customer to an automated system to complete the payment transaction, such as entering personal identification numbers (PINs). The Board notes that a payment made with the assistance of a live representative or agent of the credit, which also requires an automated system for a portion of the transaction, is considered service by a live customer service representative. The Board is amending comment 10(e)–3 in the final rule accordingly.

*Section 226.10(f) Changes by Card Issuer*

The Credit Card Act adopted new TILA Section 164(c), which provides that a card issuer may not impose any late fee or finance charge for a late payment on a credit card account if a card issuer makes "a material change in the mailing address, office, or procedures for handling cardholder payments, and such change causes a material delay in the crediting of a cardholder payment made during the 60-day period following the date on which the change took effect." 15 U.S.C. 1666c(c). The Board is implementing new TILA Section 164(c) in § 226.10(f). Proposed § 226.10(f) prohibited a credit card issuer from imposing any late fee or finance charge for a late payment on a credit card account if a card issuer makes a material change in the address for receiving cardholder payments or procedures for handling cardholder payments, and such change causes a material delay in the crediting of a payment made during the 60-day period following the date on which the change took effect. As discussed in the October 2009 Regulation Z Proposal, the Board modified the language of new TILA Section 164(c) to clarify that the meaning of the term "office" applies only to changes in the address of a branch or office at which payments on a credit card account are accepted. To avoid potential confusion, the Board revises § 226.10(f) to clarify that the prohibition on imposing a late fee or finance charge applies only during the 60-day period following the date on which a material change took effect. The Board adopts § 226.10(f) as proposed with the clarifying revision.

Comment 10(f)–1 clarified that "address for receiving payment" means a mailing address for receiving payment, such as a post office box, or the address of a branch or office at which payments on credit card accounts are accepted. No comments were received on proposed comment 10(f)–1 in particular; however, as discussed below, industry commenters opposed including the closing of a bank branch as an example of a material change in address. *See* comment 10(f)–4.iv. The final rule adopts comment 10(f)–1 as proposed.

The Board also proposed comment 10(f)–2 to provide guidance to creditors in determining whether a change or delay is material. Proposed comment 10(f)–2 clarified that "material change" means any change in address for receiving payment or procedures for handling cardholder payments which causes a material delay in the crediting of a payment. Proposed comment 10(f)–2 further clarified that a "material delay" means any delay in crediting a payment to a consumer's account which would result in a late payment and the imposition of a late fee or finance charge. The final rule adopts comment 10(f)–2 as proposed.

In the October 2009 Regulation Z Proposal, the Board acknowledged that a card issuer may face operational challenges in order to ascertain, for any given change in the address for receiving payment or procedures for handling payments, whether that change did in fact cause a material delay in the crediting of a consumer's payment. Accordingly, proposed comment 10(f)–3 provided card issuers with a safe harbor for complying with the proposed rule. Specifically, a card issuer may elect not to impose a late fee or finance charge on a consumer's account for the 60-day period following a change in address for receiving payment or procedures for handling cardholder payments which could reasonably expected to cause a material delay in crediting of a payment to the consumer's account. The Board solicited comment on other reasonable methods that card issuers may use in complying with proposed § 226.10(f). The Board did not receive any significant comments on the proposed safe harbor or suggestions for alternative reasonable methods which would assist card issuers in compliance.

Despite the lack of comments, the Board believes that a safe harbor based on a "reasonably expected" standard is

appropriate. The safe harbor recognizes the operational difficulty in determining in advance the number of customer accounts affected by a particular change in payment address or procedure and whether that change will cause a late payment. However, upon further consideration, the Board notes that in certain circumstances, a late fee or finance charge may have been improperly imposed because the late payment was subsequently determined to have been caused by a material change in the payment address or procedures. Accordingly, the final rule revises comment 10(f)–3, which is renumbered comment 10(f)–3.i, to clarify that for purposes of § 226.10(f), a late fee or finance charge is not imposed if the fee or charge is waived or removed, or an amount equal to the fee or charge is credited to the account. Furthermore, the Board amends proposed comment 10(f)–3 by adopting comment 10(f)–3.ii, which provides a safe harbor specifically for card issuers with a retail location which accepts payment.

The final rule permits a card issuer to impose a late fee or finance charge for a late payment during the 60-day period following a material change in a retail location which accepts payments, such as closing a retail location or no longer accepting payments at the retail location. However, if a card issuer is notified by a consumer, no later than 60 days after the card issuer transmitted the first periodic statement that reflects the late fee or finance charge for a late payment, that a late payment was caused by such change, the card issuer must waive or remove any late fee or finance charge, or credit an amount equal to any late fee or finance charge, imposed on the account during the 60-day period following the date on which the change took effect. In response to concerns raised by commenters, the Board believes a safe harbor for card issuers which accept payment at retail locations addresses the operational difficulty of determining which consumers are affected by a material change in a retail location or procedures for handling payment at a retail location. Accordingly, the final rule adopts comment 10(f)–3(ii) and provides an example as guidance in new comment 10(f)–4.vi, as discussed below.

Proposed comment 10(f)–4 provided illustrative examples consistent with proposed § 226.10(f), in order to provide additional guidance to creditors. Proposed comment 10(f)–4.i illustrated an example of a change in mailing address which is immaterial. No comments were received on this example, and the final rule adopts comment 10(f)–4.i as proposed. Proposed comment 10(f)–4.ii illustrated an example of a material change in mailing address which would not cause a material delay in crediting a payment. No comments were received on this example, and the final rule adopts comment 10(f)–4.ii as proposed. Proposed comment 10(f)–4.iii illustrated an example of a material change in mailing address which could cause a material delay in crediting a payment. No comments were received on this example, and the final rule adopts comment 10(f)–4.iii as proposed.

Proposed comment 10(f)–4.iv illustrated an example of a permanent closure of a local branch office of a card issuer as a material change in address for receiving payment. Several industry commenters raised concerns about proposed comment 10(f)–4.iv. In particular, industry commenters argued that a branch closing of a bank is not a material change in the address for receiving payment. One industry commenter suggested that a bank branch closing should not be considered as a factor in determining the cause of a late payment. Two commenters noted that national banks and insured depository institutions are required to give 90 days' advance notice related to the branch closing as well as post a notice at the branch location at least 30 days prior to closure. *See* 12 U.S.C. 1831r–1; 12 CFR 5.30(j). Commenters argued that these advance notice requirements provide adequate notice for customers to make alternative arrangements for payment.

Furthermore, industry commenters stated that interpreting a branch closing as a material change, as proposed in comment 10(f)–4.iv, would impose significant operational challenges and costs on banks in order to comply with this provision. Specifically, commenters stated that banks would have difficulty determining which customers "regularly make payments" at particular branches and which late payments were caused by the closing of a bank branch. In addition, commenters asserted that they would be unable to identify customers who are outside the "footprint" of a branch and unsuccessfully attempt to make a payment at the closed branch, such as if the customer is traveling in a different city. Furthermore, one commenter noted that banks can respond to a one-time complaint from a customer impacted by a branch closing.

The Board is adopting comment 10(f)–4.iv, but with clarification and additional guidance based on the comments and the Board's further consideration. In order to ease compliance burden, the final comment clarifies that a card issuer is not required to determine whether a customer "regularly makes payments" at a particular branch. As noted by commenters, certain banks and card issuers may have other regulatory obligations which require the identification of and notification to customers of a local bank branch. The final comment is revised to provide an example of a card issuer which chooses to rely on the safe harbor for the late payments on customer accounts which it reasonably believes may be affected by the branch closure.

Proposed comment 10(f)–4.v illustrated an example of a material change in the procedures for handling cardholder payments. The Board did not receive comments on this example, and the final rule adopts comment 10(f)–4.v as proposed.

The final rule includes new comment 10(f)–4.vi to address circumstances when a card issuer which accepts payment at a retail location makes a material change in procedures for handling cardholder payments the retail location, such as no longer accepting payments in person as a conforming payment. The new example also provides guidance for circumstances when a card issuer is notified by a consumer that a late fee or finance charge for a late payment was caused by a material change. Under these circumstances, a card issuer must waive or remove the late fee or finance charge or credit the customer's account in an amount equal to the fee or charge.

Proposed comment 10(f)–5 clarified that when an account is not eligible for a grace period, imposing a finance charge due to a periodic interest rate does not constitute imposition of a finance charge for a late payment for purposes of § 226.10(f). Notwithstanding the proposed rule, a card issuer may impose a finance charge due to a periodic interest rate in those circumstances. The Board received no significant comment addressing comment 10(f)–5, which is adopted as proposed.

*Section 226.11 Treatment of Credit Balances; Account Termination*

11(c) Timely Settlement of Estate Debts

The Credit Card Act adds new TILA Section 140A and requires that the Board, in consultation with the Federal Trade Commission and each other agency referred to in TILA Section 108(a), to prescribe regulations requiring creditors, with respect to credit card accounts under an open-end consumer credit plan, to establish procedures to ensure that any administrator of an estate can resolve the outstanding credit

balance of a deceased accountholder in a timely manner. 15 U.S.C. 1651. The Board proposed to implement TILA Section 140A in new § 226.11(c).

The final rule generally requires that a card issuer adopt reasonable written procedures designed to ensure that an administrator of an estate of a deceased accountholder can determine the amount of and pay any balance on the account. The final rule also has two specific requirements which effectuate the statute's purpose. First, the final rule requires a card issuer to disclose the amount of the balance on the account in a timely manner upon request by an administrator. The final rule provides a safe harbor of 30 days. Second, the final rule places certain limitations on card issuers regarding fees, annual percentage rates, and interest. Specifically, upon request by an administrator for the balance amount, a card issuer must not impose fees on the account or increase any annual percentage rate, except as provided by the rule. In addition, a card issuer must waive or rebate interest, including trailing or residual interest, for any payment in full received within 30 days of disclosing a timely statement of balance.

Proposed § 226.11(c)(1) set forth the general rule requiring card issuers to adopt reasonable procedures designed to ensure that any administrator of an estate of a deceased accountholder can determine the amount of and pay any balance on the decedent's credit card account in a timely manner. For clarity, the Board proposed to interpret the term "resolve" for purposes of § 226.11(c) to mean determine the amount of and pay any balance on a deceased consumer's account. In addition, in order to ensure that the rule applies consistently to any personal representative of an estate who has the duty to settle any estate debt, the Board proposed to include "executor" in proposed § 226.11(c). The Board stated that TILA Section 140A is intended to apply to any deceased accountholder's estate, regardless of whether an administrator or executor is responsible for the estate. In order to provide further guidance, the Board clarifies that for purposes of § 226.11(c), the term "administrator" of an estate means an administrator, executor, or any personal representative of an estate who is authorized to act on behalf of the estate. Accordingly, the final rule removes the reference to "executor" in § 226.11(c), renumbers proposed comment 11(c)–1 as comment 11(c)–2, and adopts the guidance on "administrator" in new comment 11(c)–1.

As the Board discussed in the October 2009 Regulation Z Proposal, the Board recognized that some card issuers may already have established procedures for the resolution of a deceased accountholder's balance. The Board believes a "reasonable procedures" standard would permit card issuers to retain, to the extent appropriate, procedures which may already be in place, in complying with proposed § 226.11(c), as well as applicable state and federal laws governing probate. Consumer group commenters suggested that the language of the general rule be modified to require that card issuers "have and *follow* reasonable *written* procedures" designed to ensure that an administrator of an estate of a deceased accountholder can determine the amount of and pay any balance on the account in a timely manner. The Board is amending proposed § 226.11(c)(1) to require that the reasonable policies and procedures be written. The Board believes that the suggested change to add the word "follow" is unnecessary because there are references throughout Regulation Z and the Board's other regulations that require reasonable policies and procedures without an explicit instruction that they be followed. In each of these instances, the Board has expected and continues to expect that these policies and procedures will be followed. The final rule adopts § 226.11(c)(1), which has been renumbered § 226.11(c)(1)(i), as amended.

The Board is renumbering proposed § 226.11(c)(2)(ii) as § 226.11(c)(1)(ii) in order to clarify that § 226.11(c) does not apply to the account of a deceased consumer if a joint accountholder remains on the account. Proposed § 226.11(c)(2)(ii) (renumbered as § 226.11(c)(1)(ii)) provided that a card issuer may impose fees and charges on a deceased consumer's account if a joint accountholder remains on the account. Proposed comment 11(c)–3 clarified that a card issuer may impose fees and charges on a deceased consumer's account if a joint accountholder remains on the account but may not impose fees and charges on a deceased consumer's account if only an authorized user remains on the account. Consumer groups argued that the Board should require card issuers to provide documentary proof that another party to the account is a joint accountholder, and not just an authorized user, before continuing to impose fees and charges on a deceased consumer's account. Specifically, consumer groups raised the concern that card issuers may attempt to hold authorized users liable for account balances. The Board notes, however, that authorized users are not liable for the debts of a deceased accountholder or the estate. The final rule adopts proposed § 226.11(c)(2)(ii), which has been renumbered § 226.11(c)(1)(ii), and proposed comment 11(c)–3, which has been renumbered as comment 11(c)–6 for organizational purposes.

Proposed comment 11(c)–1 provided examples of reasonable procedures consistent with proposed § 226.11(c). The final rule adopts proposed comments 11(c)–1.i–iv, which have been renumbered as comments 11(c)–2.i–iv, as proposed. Industry commenters asked the Board to permit card issuers to require evidence, such as written documentation, that an administrator, executor, or personal representative has the authority to act on behalf of the estate. Commenters raised privacy concerns of disclosing financial information to third parties. The Board believes a reasonable procedure for verifying an administrator's status or authority is consistent with § 226.11(c), without significantly increasing administrative burden on an administrator. The Board also believes the benefit of greater privacy protection outweighs the additional burden. Two commenters also requested that the Board permit card issuers to require verification of a customer's death. The Board believes, however, that this requirement is unnecessary. Therefore, in response to comments received, the Board adopts new comment 11(c)–2.v to clarify that card issuers are permitted to establish reasonable procedures requiring verification of an administrator's authority to act on behalf of an estate.

Commenters requested that the Board provide additional guidance regarding the use of designated communication channels, such as a specific toll-free number or mailing address. Industry commenters cited the reduced operational costs and burden associated with requiring administrators to use designated communication channels because specialized training and customer service representatives who handle estate matters could be consolidated. Other commenters recommended that the Board consider additional methods for providing an easily accessible point of contact for estate administrators or family members of deceased accountholders. For example, a card issuer could include contact information regarding deceased accountholders on a dedicated link on a creditor's Web site or on the periodic statement. One commenter suggested a standardized form or format which an administrator may use to register an accountholder as deceased at multiple card issuers. Another commenter argued

that the examples for reasonable procedures should address practical procedures, and not "debt forgiveness." Consumer groups believed the examples in proposed comment 11(c)–1 did not address the failure of creditors to respond to an administrator's inquiries or correspondence. Consumer groups recommended that the Board consider additional procedures, such as acknowledging receipt of an administrator's inquiry, providing details regarding payoff, and providing a payoff receipt. In response to comments received, the Board adopts new comment 11(c)–2.vi and 11(c)–2.vii to provide additional guidance. New comment 11(c)–2.vi clarifies that a card issuer may designate a department, business unit, or communication channel for administrators in order to expedite handling estate matters. New comment 11(c)–2.vii clarifies that a card issuer should be able to direct administrators who call a toll-free number or send mail to a general correspondence address to the appropriate customer service representative, department, business unit, or communication channel.

For organizational purposes, the Board has renumbered proposed § 226.11(c)(3) as § 226.11(c)(2) in the final rule. Proposed § 226.11(c)(3)(i) required a card issuer to disclose the amount of the balance on the account in a timely manner, upon request by the administrator of the estate. The Board believed a timely statement reflecting the deceased accountholder's balance is necessary to assist administrators with the settlement of estate debts. Consumer groups urged the Board not to require a formal request for a statement balance. Instead, card issuers should be required to act in good faith whenever informed of a consumer's death and the presence of an estate administrator. One commenter asked the Board to clarify that the rule does not supplant state probate laws and timelines for the resolution of estates. Specifically, the commenter argued that state probate law accomplishes the goals of the statutory provision and that compliance with state probate requirements should be explicitly stated as a reasonable procedure for the timely settlement of estates. The Board understands that state probate procedures are well-established, and this final rule does not relieve the card issuer of its obligations, such as filing a claim, nor affect a creditor's rights, such as contesting a claim rejection, under state probate laws. The final rule adopts § 226.11(c)(3)(i), which has been renumbered as § 226.11(c)(2)(i), as proposed with technical revisions.

Proposed § 226.11(c)(3)(ii) provided card issuers with a safe harbor for disclosing the balance amount in a timely manner, stating that it would be reasonable for a card issuer to provide the balance on the account within 30 days of receiving a request by the administrator of an estate. The Board believes that 30 days is reasonable to ensure that transactions and charges have been accounted for and calculated and to provide a written statement or confirmation. The Board solicited comment as to whether 30 days provides creditors with sufficient time to provide a statement of the balance on the deceased consumer's account. Industry commenters and consumer groups generally agreed that 30 days is sufficient time to provide a timely statement of balance on an account. One industry commenter, however, expressed concern that 30 days would be insufficient and requested 45–60 days instead to ensure all charges were processed. Based on the comments received, the Board believes 30 days is sufficient for a card issuer to provide a timely statement of the balance amount. The final rule adopts § 226.11(c)(3)(ii), which has been renumbered as § 226.11(c)(2)(ii), as proposed with technical revisions.

Proposed comment 11(c)–4 (renumbered as comment 11(c)–2) clarified that a card issuer may receive a request for the amount of the balance on the account in writing or by telephone call from the administrator of an estate. If a request is made in writing, such as by mail, the request is received when the card issuer receives the correspondence. No significant comments were received on proposed comment 11(c)–4, and it is adopted as proposed with technical revisions and renumbered as comment 11(c)–2 for organizational purposes.

Proposed comment 11(c)–5 (renumbered as comment 11(c)–3) provided guidance to card issuers in complying with the requirement to provide a timely statement of balance. Card issuers may provide the amount of the balance, if any, by a written statement or by telephone. Proposed comment 11(c)–5 also clarified that proposed § 226.11(c)(3) (renumbered as § 226.11(c)(2)) would not preclude a card issuer from providing the balance amount to appropriate persons, other than the administrator of an estate. For example, the Board noted that the proposed rule would not preclude a card issuer, subject to applicable federal and state laws, from providing a spouse or family members who indicate that they will pay the decedent's debts from obtaining a balance amount for that purpose. Proposed comment 11(c)–5 further clarified that proposed § 226.11(c)(3) (renumbered as § 226.11(c)(2)) does not relieve card issuers of the requirements to provide a periodic statement, under § 226.5(b)(2). A periodic statement, under § 226.5(b)(2), may satisfy the requirements of proposed § 226.11(c)(3) (renumbered as § 226.11(c)(2)), if provided within 30 days of notice of the consumer's death. A commenter stated that proposed comment 11(c)–5 should reference the 30-day period following the date of the balance request, and not the notice of the accountholder's death. The final rule revises proposed comment 11(c)–5 to reference the date of the balance request with regard to using a periodic statement to satisfy the requirements of new § 226.11(c)(2) and renumbers proposed comment 11(c)–5 as comment 11(c)–3 for organizational purposes.

Proposed § 226.11(c)(2)(i) (renumbered as § 226.11(c)(3)(i)) prohibited card issuers from imposing fees and charges on a deceased consumer's account upon receiving a request for the amount of any balance from an administrator of an estate. As stated in the October 2009 Regulation Z Proposal, the Board believed that this prohibition is necessary to provide certainty for all parties as to the balance amount and to ensure the timely settlement of estate debts. The Board solicited comment on whether a card issuer should be permitted to resume the imposition of fees and charges if the administrator of an estate has not paid the account balance within a specified period of time. Consumer group commenters opposed resuming fees and charges because settling estates can be time-consuming and an administrator may not have authority to pay the balance for some time. One industry commenter argued that there should be no prohibition against charging fees or interest because it was unreasonable to provide an interest-free loan for an indefinite period of time until an estate has settled. Most industry commenters, however, requested that card issuer be permitted to resume charging fees and interest if the balance on the account has not been paid within a specified time period after the balance request has been made. Most industry commenters stated 30 days was a reasonable time to pay before fees and interest would resume accruing, and two commenters stated 60 days may be reasonable. Two commenters also suggested that after the time to pay had elapsed, a creditor

could be required to provide an updated statement upon subsequent request by an administrator. One government agency suggested that the Board simplify the final rule by determining the amount which can be collected from an estate as the balance on the periodic statement for the billing cycle during which the accountholder died.

The Board is revising proposed § 226.11(c)(2), which has been renumbered as § 226.11(c)(3), based on the comments received and the Board's further consideration. New § 226.11(c)(3)(i) prohibits card issuers from imposing any fee, such as a late fee or annual fee, on a deceased consumer's account upon receiving a request from an administrator of an estate. The Board believes that in order to best effectuate the statute's intent, it is appropriate to limit fees or penalties on a deceased consumer's account which is closed or frozen. For the purposes of § 226.11(c), new § 226.11(c)(3)(i) also prohibits card issuers from increasing the annual percentage rate on an account, and requires card issuers to maintain the applicable interest rate on the date of receiving the request, except as provided by § 226.55(b)(2).

New § 226.11(c)(3)(ii) requires card issuers to waive or rebate trailing or residual interest if the balance disclosed pursuant to § 226.11(c)(2) is paid in full within 30 days after disclosure. A card issuer may continue to accrue interest on the account balance from the date on which a timely statement of balance is provided, however, that interest must be waived or rebated if the card issuer receives payment in full within 30 days. A card issuer is not required to waive or rebate interest if payment in full is not received within 30 days. For example, on March 1, a card issuer receives a request from an administrator for the amount of the balance on a deceased consumer's account. On March 25, the card issuer provides an administrator with a timely statement of balance in response to the administrator's request. If the administrator makes payment in full on April 24, a card issuer must waive or rebate any additional interest that accrued on the balance between March 25 and April 24. However, if a card issuer receives only a partial payment on or before April 24 or receives payment in full after April 24, a card issuer is not required to waive or rebate interest that accrued between March 25 and April 24. The Board believes the requirement to waive or rebate trailing or residual interest, when payment is received within the 30-day period following disclosure of the balance, provides an administrator with certainty as to the amount required to pay the entire account balance and assists administrators in settling the estate. The Board believes a 30-day period is generally sufficient for an administrator to arrange for payment.. The Board notes that if an administrator is unable to pay the card issuer before the 30-day period following the timely statement of balance has elapsed, an administrator is permitted to make subsequent requests for an updated statement of balance. In order to provide additional guidance, the Board is adopting new comment 11(c)–5, which provides an illustrative example.

Proposed comment 11(c)–2 clarified that a card issuer may impose finance charges based on balances for days that precede the date on which the creditor receives a request pursuant to proposed § 226.11(c)(3). No comments were received on proposed comment 11(c)–2, and it is adopted as proposed with technical revision and renumbered as comment 11(c)–4 for organizational purposes.

*Section 226.12 Special Credit Card Provisions*

*Section 226.13 Billing Error Resolution*

Comment 12(b)–3 states that a card issuer must investigate claims in a reasonable manner before imposing liability for an unauthorized use, and sets forth guidance on conducting an investigation of a claim. Comment 13(f)–3 contains similar guidance for a creditor investigating a billing effort. The January 2009 Regulation Z Rule amended both comments to specifically provide that a card issuer (or creditor) may not require a consumer to submit an affidavit or to file a police report as a condition of investigating a claim. In the May 2009 Regulation Z Proposed Clarifications, the Board proposed to clarify that the card issuer (or creditor) could, however, require a consumer's signed statement supporting the alleged claim. Such a signed statement may be necessary to enable the card issuer to provide some form of certification indicating that the cardholder's claim is legitimate, for example, to obtain documentation from a merchant relevant to a claim or to pursue chargeback rights. Accordingly, the Proposed Clarifications would have amended comments 12(b)–3 and 13(f)–3 to reflect the ability of the card issuer (or creditor) to require a consumer signed statement for these types of circumstances.

The Board received one comment in support of the proposed clarification. This industry commenter stated that expressly permitting a signature requirement would facilitate expedited resolutions of error claims. The final rule adopts the clarifications in comments 12(b)–3 and 13(f)–3, as proposed.

*Section 226.16 Advertising*

Although § 226.16 was republished in its entirety, the Board only solicited comment on proposed §§ 226.16(f) and (h), as the other sections of § 226.16 were previously finalized in the January 2009 Regulation Z Rule. Therefore, the Board is only addressing comments received on §§ 226.16(f) and (h).

16(f) Misleading Terms

As discussed in the section-by-section analysis for § 226.5(a)(2)(iii), the Board did not receive any comments regarding § 226.16(f), which is adopted as proposed.

16(h) Deferred Interest or Similar Offers

In the May 2009 Regulation Z Proposed Clarifications, 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). The Board republished this proposal in the October 2009 Regulation Z Proposal. The proposed rules regarding deferred interest would have incorporated many of the same formatting concepts that were previously adopted for promotional rates under § 226.16(g). 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 a prominent location closely proximate to the first statement regarding interest or payments during the deferred interest period. These proposals are discussed in more detail below.

The Board received broad support from both consumer group and industry commenters for its proposal to implement disclosure requirements for advertisements of deferred interest offers. Consumer group commenters, however, believed that the Board should go further and ban "no interest" advertising as deceptive when used in conjunction with an offer that could potentially result in the consumer being charged interest reaching back to the date of purchase. The Board believes that deferred interest plans can provide benefits to consumers who properly

understand how the product is structured. Therefore, the Board believes the appropriate approach to addressing deferred interest offers is to ensure that important information about these offers is provided to consumers through the disclosure requirements proposed in § 226.16(h) instead of banning the term "no interest" in advertisements of deferred interest plans.

16(h)(1) Scope

Similar to the rules applicable to promotional rates under § 226.16(g), the Board proposed that the rules related to deferred interest offers under proposed § 226.16(h) be applicable to any advertisement of such offers for open-end (not home-secured) plans. In addition, the proposed rules applied to promotional materials accompanying applications or solicitations made available by direct mail or electronically, as well as applications or solicitations that are publicly available. The Board did not receive any significant comments to § 226.16(h)(1), which is adopted as proposed.

16(h)(2) Definitions

In the May 2009 Regulation Z Proposed Clarifications, the Board proposed to define "deferred interest" in new § 226.16(h)(2) as finance charges on balances or transactions that a consumer is not obligated to pay if those balances or transactions are paid in full by a specified date. The term would not, however, include finance charges the creditor allows a consumer to avoid in connection with a recurring grace period. Therefore, an advertisement including information on a recurring grace period that could potentially apply each billing period, would not be subject to the additional disclosure requirements under § 226.16(h).

The Board also proposed in comment 16(h)–1 to clarify that deferred interest offers would not include offers that allow a consumer to defer payments during a specified time period, but where the consumer is not obligated under any circumstances for any interest or other finance charges that could be attributable to that period. Furthermore, proposed comment 16(h)–1 specified that deferred interest offers would not include zero percent APR offers where a consumer is not obligated under any circumstances for interest attributable to the time period the zero percent APR was in effect, although such offers may be considered promotional rates under § 226.16(g)(2)(i).

Moreover, the Board proposed to define the "deferred interest period" for purposes of proposed § 226.16(h) as the maximum period from the date the consumer becomes obligated for the balance or transaction until the specified date that the consumer must pay the balance or transaction in full in order to avoid finance charges on such balance or transaction. To clarify the meaning of deferred interest period, the Board proposed comment 16(h)–2 to state that the advertisement need not include the end of an informal "courtesy period" in disclosing the deferred interest period. The Board did not receive any significant comments on the proposed definitions under § 226.16(h)(2) and associated commentary. Consequently, § 226.16(h)(2) and comment 16(h)–2 are adopted as proposed. Comment 16(h)–1 is adopted as proposed with one technical amendment.

16(h)(3) Stating the Deferred Interest Period

*General rule.* The Board proposed § 226.16(h)(3) to require that advertisements of deferred interest or similar plans disclose the deferred interest period clearly and conspicuously in immediate proximity to each statement of a deferred interest triggering term. Proposed § 226.16(h)(3) also required advertisements that use the phrase "no interest" or similar term to describe the possible avoidance of interest obligations under the deferred interest or similar program to state "if paid in full" in a clear and conspicuous manner preceding the disclosure of the deferred interest period. For example, as described in proposed comment 16(h)–7, an advertisement may state "no interest if paid in full within 6 months" or "no interest if paid in full by December 31, 2010." The Board proposed to require these disclosures because of concerns that the statement "no interest," in the absence of additional details about the applicable conditions of the offer may confuse consumers who might not understand that they need to pay their balances in full by a certain date in order to avoid the obligation to pay interest. Commenters supported the Board's proposal, and § 226.16(h)(3) and comment 16(h)–7 are adopted as proposed.

*Immediate proximity.* Proposed comment 16(h)–3 provided guidance on the meaning of "immediate proximity" by establishing a safe harbor for disclosures made in the same phrase. The guidance was identical to the safe harbor adopted previously for promotional rates. *See* comment 16(g)–2. Therefore, if the deferred interest period is disclosed in the same phrase as each statement of a deferred interest triggering term (for example, "no interest if paid in full within 12 months" or "no interest if paid in full by December 1, 2010" the deferred interest period would be deemed to be in immediate proximity to the statement.

Industry commenters were supportive of the Board's approach. Consumer group commenters suggested that the safe harbor require that the deferred interest period be adjacent to or immediately before or after the triggering term instead of in the same phrase. As the Board discussed in adopting a similar safe harbor for promotional rates, the Board believes that advertisers should be provided with some flexibility to make this disclosure. For example, if the deferred interest offer related to the purchase of a specific item, the advertisement might state, "no interest on this refrigerator if paid in full within 6 months." Therefore, the Board is adopting comment 16(h)–3 as proposed.

*Clear and conspicuous standard.* The Board proposed to amend comment 16–2.ii to provide that advertisements clearly and conspicuously disclose the deferred interest period only if the information is equally prominent to each statement of a deferred interest triggering term. Under proposed comment 16–2.ii, if the disclosure of the deferred interest period is the same type size as the statement of the deferred interest triggering term, it would be deemed to be equally prominent.

The Board also proposed to clarify in comment 16–2.ii that the equally prominent standard applies only to written and electronic advertisements. This approach is consistent with the treatment of written and electronic advertisements of promotional rates. The Board also noted that disclosure of the deferred interest period under § 226.16(h)(3) for non-written, non-electronic advertisements, while not required to meet the specific clear and conspicuous standard in comment 16–2.ii would nonetheless be subject to the general clear and conspicuous standard set forth in comment 16–1.

Consumer group commenters recommended that the Board apply the equally prominent standard to all advertisements instead of only to written and electronic advertisements. As the Board discussed in its proposal, 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 set forth in proposed comment 16–2.ii, should apply solely to written and electronic advertisements.

16(h)(4) Stating the Terms of the Deferred Interest Offer

In order to ensure that consumers notice and fully understand certain terms related to a deferred interest offer, the Board proposed that certain disclosures be required to be in a prominent location closely proximate to the first listing of a statement of "no interest," "no payments," or "deferred interest" or similar term regarding interest or payments during the deferred interest period. In particular, the Board proposed to require a statement that if the balance or transaction is not paid within the deferred interest period, interest will be charged from the date the consumer became obligated for the balance or transaction. The Board also proposed to require a statement, if applicable, that interest can also be charged from the date the consumer became obligated for the balance or transaction if the consumer's account is in default prior to the end of the deferred interest period. To facilitate compliance with this provision, the Board proposed model language in Sample G–24 in Appendix G.

*Prominent location closely prominent.* To be consistent with the requirement in § 226.16(g)(4) that terms be in a "prominent location closely proximate to the first listing," the Board proposed guidance in comments 16(h)–4 and 16(h)–5 similar to comments 16(g)–3 and 16(g)–4. As a result, proposed comment 16(h)–4 provided that the information required under proposed § 226.16(h)(4) that is in the same paragraph as the first listing of a statement of "no interest," "no payments, "deferred interest" or similar term regarding interest or payments during the deferred interest period would have been deemed to be in a prominent location closely proximate to the statement. Similar to comment 16(g)–3 for promotional rates, information appearing in a footnote would not be deemed to be in a prominent location closely proximate to the statement.

Some consumer group commenters expressed opposition to the safe harbor for "prominent location closely proximate," and suggested that a disclosure be deemed closely proximate only if it is side-by-side with or immediately under or above the triggering phrase. The Board believes that the safe harbor under proposed comment 16(h)–4 strikes the appropriate balance of ensuring that certain information concerning deferred interest or similar programs is located near the triggering phrase but also providing sufficient flexibility for advertisers. For this reason, and for consistency with a similar safe harbor in comment 16(g)–3 for promotional rates, comment 16(h)–4 is adopted as proposed.

*First listing.* Proposed comment 16(h)–5 further provided that the first listing of a statement of "no interest," "no payments," or deferred interest or similar term regarding interest or payments during the deferred interest period is the most prominent listing of one of these statements on the front side of the first page of the principal promotional document. The proposed comment borrowed the concept of "principal promotional document" from the Federal Trade Commission's definition of the term under its regulations promulgated under the Fair Credit Reporting Act. 16 CFR 642.2(b). Under the proposal, if one of these statements is not listed on the principal promotional document or there is no principal promotional document, the first listing of one of these statements would be deemed to be the most prominent listing of the statement on the front side of the first page of each document containing one of these statements. The Board also proposed that the listing with the largest type size be a safe harbor for determining which listing is the most prominent. In the proposed comment, the Board also noted that consistent with comment 16(c)–1, a catalog or other multiple-page advertisement would have been considered one document for these purposes.

Consumer group commenters suggested that instead of requiring the disclosures required under § 226.16(h)(4) to be closely proximate to the first listing of the triggering term on the principal promotional document, the disclosures should be closely proximate to the first listing of the triggering term on every document in a mailing. The Board believes that the guidance on what constitutes the "first listing" should be the same as the approach taken for comment 16(g)–4 for promotional rates. Therefore, comment 16(h)–5 is adopted as proposed.

*Segregation.* The Board also proposed comment 16(h)–6 to clarify that the information the Board proposed to require under § 226.16(h)(4) would not need to be segregated from other information the advertisement discloses about the deferred interest offer. This may include triggered terms that the advertisement is required to disclose under § 226.16(b). The comment is consistent with the Board's approach on many other required disclosures under Regulation Z. *See* comment 5(a)–2. Moreover, the Board believes flexibility is warranted to allow advertisers to provide other information that may be essential for the consumer to evaluate the offer, such as a minimum purchase amount to qualify for the deferred interest offer. The Board received no comments on proposed comment 16(h)–6, and the comment is adopted as proposed.

*Clear and conspicuous disclosure.* The Board proposed to amend comment 16–2.ii to require equal prominence only for the disclosure of the information required under § 226.16(h)(3). Therefore, disclosures under proposed § 226.16(h)(4) are not required to be equally prominent to the first listing of the deferred interest triggering statement. Consumer group commenters, however, recommended that these disclosures also be required to be equally prominent to the triggering statement. As the Board discussed in the May 2009 Regulation Z Proposed Clarifications, the Board believes that requiring equal prominence to the triggering statement for this information would render an advertisement difficult to read and confusing to consumers due to the amount of information the Board is requiring under § 226.16(h)(4). Therefore, the Board declines to make these suggested amendments to comment 16–2.ii.

*Non-written, non-electronic advertisements.* As discussed above in the section-by-section analysis to § 226.16(h)(1), the requirements of § 226.16(h) apply to all advertisements, including non-written, non-electronic advertisements. To provide advertisers with flexibility, the Board proposed that only written or electronic advertisements be subject to the requirement to place the terms of the offer in a prominent location closely proximate to the first listing of a statement of "no interest," "no payments," or "deferred interest" or similar term regarding interest or payments during the deferred interest period.

As with their comments regarding clear and conspicuous disclosures under § 226.16(h)(3), consumer group commenters suggested that the specific formatting rules under § 226.16(h)(4) should apply to non-written, non-electronic advertisements. Given the difficulty of applying these standards to non-written, non-electronic advertisements and the time and space constraints of such media, the Board believes this exclusion is appropriate. Consequently, for non-written, non-electronic advertisements, the information required under § 226.16(h)(4) must be included in the advertisement, but is not subject to any proximity or formatting requirements

other than the general requirement that information be clear and conspicuous, as contemplated under comment 16–1.

16(h)(5) Envelope Excluded

The Board proposed to exclude envelopes or other enclosures in which an application or solicitation is mailed, or banner advertisements or pop-up advertisements linked to an electronic application or solicitation from the requirements of § 226.16(h)(4). Consumer group commenters objected to the Board's proposal to exempt envelopes, banner advertisements, and pop-up advertisements from these requirements. One industry commenter recommended that the exception in § 226.16(h)(5) should be amended to include the requirements of § 226.16(h)(3).

Given the limited space that envelopes, banner advertisements, and pop-up advertisements have to convey information, the Board believes the burden of providing the information proposed under § 226.16(h)(4) on these types of communications exceeds any benefit. It is the Board's understanding that interested consumers generally look at the contents of an envelope or click on the link in a banner advertisement or pop-up advertisement in order to learn more about the specific terms of an offer instead of relying solely on the information on an envelope, banner advertisement, or pop-up advertisement to become informed about an offer. The Board, however, does not believe the disclosures required by § 226.16(h)(3) are as burdensome as those required by § 226.16(h)(4) and that the exception, should not, therefore, be extended to the disclosures required under § 226.16(h)(3). Thus, § 226.16(h)(5) is adopted as proposed.

Appendix G

As discussed in the supplementary information to §§ 226.7(b)(14) and 226.16(h), the Board proposed to adopt model language for the disclosures required to be given in connection with deferred interest or similar programs in Samples G–18(H) and G–24. Proposed Sample G–24 contained two model clauses, one for use in connection with credit card accounts under an open-end (not home-secured) consumer credit plan, and one for use in connection with other open-end (not home-secured) consumer credit plans. The model clause for credit card issuers reflects the fact that, under those rules, an issuer may only revoke a deferred or waived interest program if the consumer's payment is more than 60 days late. The Board also proposed to add a new comment App. G–12 to clarify which creditors should use each of the model clauses in proposed Sample G–24.

As discussed in the section-by-section analysis to § 226.7(b)(14), the Board is adopting Sample G–18(H) as proposed. Furthermore, the Board did not receive comment on the model language in Sample G–24. Therefore, comment App. G–12 and Sample G–24 are also adopted as proposed.

*Section 226.51 Ability To Pay*

51(a) General Ability To Pay

In the October 2009 Regulation Z Proposal the Board proposed to implement new TILA Section 150, as added by Section 109 of the Credit Card Act, prohibiting a card issuer from opening a credit card account for a consumer, or increasing the credit limit applicable to a credit card account, unless the card issuer considers the consumer's ability to make the required payments under the terms of such account, in new § 226.51(a). 15 U.S.C. 1665e. Proposed § 226.51(a)(1) contained the substance of the rule in TILA Section 150. Proposed § 226.51(a)(2) required card issuers to use a reasonable method for estimating the required payments under § 226.51(a)(1) and provided a safe harbor for such estimation.

51(a)(1) Consideration of Ability To Pay

Proposed § 226.51(a)(1) generally followed the language provided in TILA Section 150 with two clarifying modifications. As detailed in the October 2009 Regulation Z Proposal, the Board proposed to interpret the term "required payments" to mean the required minimum periodic payment since the minimum periodic payment is the amount that a consumer is required to pay each billing cycle under the terms of the contract with the card issuer. In addition, proposed § 226.51(a)(1) provided that the card issuer's consideration of the ability of the consumer to make the required minimum periodic payments must be based on the consumer's income or assets and the consumer's current obligations. Proposed § 226.51(a)(1) also required card issuers to have reasonable policies and procedures in place to consider this information.

While consumer group commenters and some industry commenters agreed that a consideration of ability to pay should include a review of a consumer's income or assets and current obligations, many industry commenters asserted that the Credit Card Act did not compel this interpretation. These commenters stated that there are other factors that they believe are more predictive of a consumer's ability to pay than information on a consumer's income or assets, such as payment history and credit scores. The Board believes that there indeed may be other factors that are useful for card issuers in evaluating a consumer's ability to pay, and for this reason, the Board had proposed comment 51(a)–1 to clarify that card issuers may also consider other factors that are consistent with the Board's Regulation B (12 CFR Part 202). However, the Board still believes a proper evaluation of a consumer's ability to pay must include a review of a consumer's income or assets and obligations in order to give card issuers a more complete picture of a consumer's current financial state. As a result, the Board is adopting § 226.51(a)(1) as § 226.51(a)(1)(i), largely as proposed.

Industry group commenters also detailed challenges with respect to collecting income or asset information directly from consumers in certain contexts. Several commenters expressed concern regarding the lack of privacy for consumers in supplying income or asset information if a consumer applies for a credit card at point-of-sale. These commenters also suggested that requesting consumers to update income or asset information when increasing credit lines also presented several issues, especially at point-of-sale. Unlike a new account opening, there is generally no formal application for a credit line increase. Therefore, card issuers and retailers may need to develop new procedures to obtain this information. For point-of-sale credit line increases, card issuers and retailers believe this will negatively impact the consumer's experience because a consumer may need to take extra steps to complete a sale, which may lead consumers to abandon the purchase. Other commenters noted that requesting consumers to update income or asset information for credit line increases may foster an environment that encourages phishing scams as consumers may be required to distinguish between legitimate requests for updated information from fraudulent requests. Some industry commenters also suggested that the Board provide a de minimis exception for which a card issuer need not consider income or asset information.

Given these concerns, the Board is clarifying in comment 51(a)–4, which the Board is renumbering as comment 51(a)(1)–4 for organizational purposes, that card issuers may obtain income or asset information from several sources, similar to comment 51(a)–5 (renumbered as 51(a)(1)–5) regarding obligations. In addition to collecting this

information from the consumer directly, in connection with either this credit card account or any other financial relationship the card issuer or its affiliates has with the consumer, card issuers may also rely on information from third parties, subject to any applicable restrictions on information sharing. Furthermore, the Board is aware of various models developed to estimate income or assets. The Board believes that empirically derived, demonstrably and statistically sound models that reasonably estimate a consumer's income or assets may provide information as valid as a consumer's statement of income or assets. Therefore, comment 51(a)(1)–4 states that card issuers may use empirically derived, demonstrably and statistically sound models that reasonably estimate a consumer's income or assets.

Moreover, the Board is not providing a de minimis exception for considering a consumer's income or assets. The Board is concerned that any de minimis amount chosen could still have a significant impact on a particular consumer, depending on the consumer's financial state. For example, subprime credit card accounts with relatively "small" credit lines may still be difficult for certain consumers to afford. Suggesting that these card issuers may simply avoid consideration of a consumer's income or assets may be especially harmful for consumers in this market segment.

Consumer group commenters suggested that the Board include more guidance on how card issuers must evaluate a consumer's income or assets and obligations. While consumer group commenters did not recommend a specific debt-to-income ratio or any other particular quantitative measures, they suggested that card issuers be required to consider a debt-to-income ratio and a consumer's disposable income. The Board's proposal required card issuers to have reasonable policies and procedures in place to consider this information. To provide further guidance for card issuers, the Board is adopting a new § 226.51(a)(1)(ii) to state that reasonable policies and procedures to consider a consumer's ability to make the required payments would include a consideration of at least one of the following: The ratio of debt obligations to income; the ratio of debt obligations to assets; or the income the consumer will have after paying debt obligations. Furthermore, § 226.51(a)(1)(ii) provides that it would be unreasonable for a card issuer to not review any information about a consumer's income, assets, or current obligations, or to issue a credit card to a consumer who does not have any income or assets.

Consumer group commenters further suggested that the language be modified to require that card issuers "have and *follow* reasonable *written* policies and procedures" to consider a consumer's ability to pay. The Board is moving the requirement that card issuers establish and maintain reasonable policies and procedures to new § 226.51(a)(1)(ii) and amending the provision to require that the reasonable policies and procedures be written. The Board believes that the suggested change to add the word "follow," however, is unnecessary. There are references throughout Regulation Z and the Board's other regulations that require reasonable policies and procedures without an explicit instruction that they be followed. In each of these instances, the Board has expected and continues to expect that these policies and procedures will be followed. Similarly, the Board has the same expectation with § 226.51(a)(1)(ii).

As noted above, proposed comment 51(a)–1 clarified that card issuers may consider credit reports, credit scores, and any other factor consistent with Regulation B (12 CFR Part 202) in considering a consumer's ability to pay. One industry commenter suggested that the Board amend the comment to include a reference to consumer reports, which include credit reports. The Board is adopting proposed comment 51(a)–1 as comment 51(a)(1)–1 with this suggested change.

Proposed comment 51(a)–2 clarified that in considering a consumer's ability to pay, a card issuer must base the consideration on facts and circumstances known to the card issuer at the time the consumer applies to open the credit card account or when the card issuer considers increasing the credit line on an existing account. This guidance is similar to comment 34(a)(4)–5 addressing a creditor's requirement to consider a consumer's repayment ability for certain closed-end mortgage loans based on facts and circumstances known to the creditor at loan consummation. Several industry commenters asked whether this comment required card issuers to update any income or asset information the card issuer may have on a consumer prior to a credit line increase on an existing account. The Board believes that card issuers should be required to update a consumer's income or asset information, similar to how card issuers generally update information on a consumer's obligations, prior to considering whether to increase a consumer's credit line. This will prevent the card issuer from making an evaluation of a consumer's ability to make the required payments based on stale information. Consistent with the Board's changes to comment 51(a)–4 (adopted as 51(a)(1)–4), as discussed below, card issuers have several options to obtain updated income or asset information. Proposed comment 51(a)–2 is adopted as comment 51(a)(1)–2.

Furthermore, since credit line increases can occur at the request of a consumer or through a unilateral decision by the card issuer, proposed comment 51(a)–3 clarified that § 226.51(a) applies in both situations. Consumer group commenters suggested that credit line increases should only be granted upon the request of a consumer. The Board believes that if a card issuer conducts the proper evaluation prior to a credit line increase, such increases should not be prohibited simply because the consumer did not request the increase. The consumer is still in control as to how much of the credit line to ultimately use. Proposed comment 51(a)–3 is adopted as comment 51(a)(1)–3, with a minor non-substantive wording change.

Proposed comment 51(a)–4 provided examples of assets and income the card issuer may consider in evaluating a consumer's ability to pay. As discussed above, in response to comments on issues related to collecting income or asset information directly from consumers, the Board is amending comment 51(a)–4 (renumbered as 51(a)(1)–4) to provide a parallel comment to comment 51(a)–5 (renumbered as 51(a)(1)–5) regarding obligations. Specifically, the Board is clarifying that card issuers are not obligated to obtain income or asset information directly from a consumer. Card issuers may also obtain this information through third parties as well as empirically derived, demonstrably and statistically sound models that reasonably estimates a consumer's income or assets. The Board believes that, to the extent that card issuers are able to obtain information on a consumer's income or assets through means other than directly from the consumer, card issuers should be provided with flexibility.

The Board also proposed comment 51(a)–5 to clarify that in considering a consumer's current obligations, a card issuer may rely on information provided by the consumer or in a consumer's credit report. Commenters were supportive of this comment, and the comment is adopted as proposed, with one addition. Industry commenters requested that the Board clarify that in evaluating a consumer's current open-

end obligations, card issuers should not be required to assume such obligations are fully utilized. The Board agrees. In contrast to the Board's safe harbor in estimating the minimum payments for the credit account for which the consumer is applying, the card issuer will have information on the consumer's historic utilization rates for other obligations. With respect to the credit account for which the consumer is applying, the card issuer has no information as to how the consumer plans to use the account, and assumption of full utilization is thus appropriate in that context. Moreover, while credit limit information is widely reported in consumer reports, there are still instances where such information is not reported. Furthermore, the Board is concerned that assuming full utilization of all open-end credit lines could result in an anticompetitive environment wherein card issuers raise credit limits on existing accounts in order to prevent a consumer from obtaining any new credit cards. For these reasons, proposed comment 51(a)–5 is amended to provide that in evaluating a consumer's current obligations to determine the consumer's ability to make the required payments, the card issuer need not assume that any credit line is fully utilized. In addition, the comment has been renumbered as comment 51(a)(1)–5.

Several industry commenters requested that the Board clarify that for joint accounts, a card issuer may consider the ability of both applicants or accountholders to make the required payments, instead of considering the ability of each consumer individually. In response, the Board is adopting new comment 51(a)(1)–6 to permit card issuers to consider joint applicants or joint accountholders collectively.

Moreover, as discussed in the October 2009 Regulation Z Proposal, the Board did not propose to require card issuers to verify information before an account is opened or credit line is increased for several reasons. The Board noted that TILA Section 150 does not require verification of a consumer's ability to make required payments and that verification can be burdensome for both consumers and card issuers, especially when accounts are opened at point of sale or by telephone. Furthermore, as discussed in the October 2009 Regulation Z Proposal, the Board stated its belief that because credit card accounts are generally unsecured, card issuers will be motivated to verify information when either the information supplied by the applicant is inconsistent with the data the card issuers already have or obtain on the consumer or when the risk in the amount of the credit line warrants such verification.

Many industry commenters expressed support for the Board's approach to provide card issuers with flexibility to determine instances when verification might be necessary and to refrain from strictly requiring verification or documentation in all instances. In contrast, consumer group commenters opposed this approach, stating that while there is no widespread evidence of income inflation in the credit card market, such problems do occur. One federal financial regulator commenter suggested that verification could be required in certain instances, such as when a consumer does not have a large credit file or when the credit line is large. The Board believes that given the inconvenience to consumers detailed in the October 2009 Regulation Z Proposal in providing documentation and the lack of evidence currently that consumers' incomes have been inflated in the credit card market on a widespread basis, a strict verification should not be required at this time.

51(a)(2) Minimum Periodic Payments

Under proposed § 226.51(a)(2)(i), card issuers would be required to use a reasonable method for estimating the required minimum periodic payments. Proposed § 226.51(a)(2)(ii) provided a safe harbor that card issuers could use to comply with this requirement. Specifically, the proposed safe harbor required the card issuer to assume utilization of the full credit line that the issuer is considering offering to the consumer from the first day of the billing cycle. The proposed safe harbor also required the issuer to use a minimum payment formula employed by the issuer for the product the issuer is considering offering to the consumer or, in the case of an existing account, the minimum payment formula that currently applies to that account. If the applicable minimum payment formula includes interest charges, the proposed safe harbor required the card issuer to estimate those charges using an interest rate that the issuer is considering offering to the consumer for purchases or, in the case of an existing account, the interest rate that currently applies to purchases. Finally, if the applicable minimum payment formula included fees, the proposed safe harbor permitted the card issuer to assume that no fees have been charged to the account.

Consumer group commenters and many industry commenters generally agreed with the Board's approach and proposed safe harbor. A federal financial regulator and an industry commenter stated that the Board's emphasis on the minimum periodic payments was misplaced. The federal financial regulator commenter suggested that instead of considering a consumer's ability to make the minimum periodic payments based on full utilization of the credit line, the commenter recommended that card issuers be required to consider a consumer's ability to pay the entire credit line over a reasonable period of time, such as a year. The Credit Card Act requires evaluation of a consumer's ability to make the "required payments." Unless the terms of the contract provide otherwise, repayment of the balance on a credit card account over one year is not required. As discussed in the October 2009 Regulation Z Proposal, the minimum periodic payment is generally the amount that a consumer is required to pay each billing cycle under the terms of the contract. As a result, the Board believes that requiring card issuers to consider the consumer's ability to make the minimum periodic payment is the most appropriate interpretation of the requirements of the Credit Card Act.

With respect to the Board's proposed safe harbor approach, some industry commenters suggested that the Board permit card issuers to estimate minimum periodic payments based on an average utilization rate for the product offered to the consumer. In the October 2009 Regulation Z Proposal, the Board acknowledged that requiring card issuers to estimate minimum periodic payments based on full utilization of the credit line could have the effect of overstating the consumer's likely required payments. The Board believes, however, that since card issuers may not know how a particular consumer may use the account, and the issuer is qualifying the consumer for a certain credit line, of which the consumer will have full use, an assumption that the entire credit line will be used is a proper way to estimate the consumer's payments under the safe harbor. Furthermore, the Board notes that the regulation requires that a card issuer use a reasonable method to estimate payments, and that § 226.51(a)(2)(ii) merely provides a safe harbor for card issuers to comply with this standard, but that it may not be the only permissible way to comply with § 226.51(a)(2)(i). Section 226.51(a)(2)(ii) is therefore adopted as proposed with one minor clarifying change.

As noted above, the proposed safe harbor under § 226.51(a)(2)(ii) required an issuer to use a minimum payment formula employed by the issuer for the product the issuer is considering

offering to the consumer or, in the case of an existing account, the minimum payment formula that currently applies to that account. The Board is adding new comment 51(a)(2)–1 to clarify that if an account has or may have a promotional program, such as a deferred payment or similar program, where there is no applicable minimum payment formula during the promotional period, the issuer must estimate the required minimum periodic payment based on the minimum payment formula that will apply when the promotion ends.

Proposed § 226.51(a)(2)(ii) also provided that if the applicable minimum payment formula includes interest charges, the proposed safe harbor required the card issuer to estimate those charges using an interest rate that the issuer is considering offering to the consumer for purchases or, in the case of an existing account, the interest rate that currently applies to purchases. The Board is adopting a new comment to clarify this provision. New comment 51(a)(2)–2 provides that if the interest rate for purchases is or may be a promotional rate, the safe harbor requires the issuer to use the post-promotional rate to estimate interest charges.

As discussed in the October 2009 Regulation Z Proposal, the Board's proposed safe harbor further provided that if the minimum payment formula includes fees, the card issuer could assume that no fees have been charged because the Board believed that estimating the amount of fees that a typical consumer might incur could be speculative. Consumer group commenters suggested that the Board amend the safe harbor to require the addition of mandatory fees as such fees are not speculative. The Board agrees. As a result, § 226.51(a)(2)(ii) requires that if a minimum payment formula includes the addition of any mandatory fees, the safe harbor requires the card issuer to assume that such fees are charged. In addition, the Board is adopting a new comment 51(a)(2)–3 to provide guidance as to what types of fees are considered mandatory fees. Specifically, the comment provides that mandatory fees for which a card issuer is required to assume are charged include those fees that a consumer will be required to pay if the account is opened, such as an annual fee.

51(b) Rules Affecting Young Consumers

The Board proposed in the October 2009 Regulation Z Proposal to implement new TILA Sections 127(c)(8) and 127(p), as added by Sections 301 and 303 of the Credit Card Act, respectively, in § 226.51(b). Specifically, proposed § 226.51(b)(1) provided that a card issuer may not open a credit card account under an open-end (not home-secured) consumer credit plan for a consumer less than 21 years old, unless the consumer submits a written application and provides either a signed agreement of a cosigner, guarantor, or joint applicant pursuant to § 226.51(b)(1)(i) or financial information consistent with § 226.51(b)(1)(ii). The Board proposed § 226.51(b)(2) to state that no increase may be made in the amount of credit authorized to be extended under a credit card account for which an individual has assumed joint liability pursuant to proposed § 226.51(b)(1)(i) for debts incurred by the consumer in connection with the account before the consumer attains the age of 21, unless that individual approves in writing, and assumes joint liability for, such increase.

As discussed in the October 2009 Regulation Z Proposal, proposed § 226.51(b) generally followed the statutory language with modifications to resolve ambiguities in the statute and to improve readability and consistency with § 226.51(a). While many of these proposed changes did not generate much comment, certain of the Board's proposed modifications did prompt suggestions from commenters. First, consumer group commenters maintained that the Board's proposed language to limit the scope of § 226.51(b)(1) to credit card accounts only was not consistent with the language in TILA Section 127(c)(8)(A). For all the reasons set forth in the October 2009 Regulation Z Proposal, however, the Board believes that the intent of TILA Section 127(c)(8), read as a whole, was to apply these requirements only to credit card accounts. Furthermore, as discussed in the October 2009 Regulation Z Proposal, limiting the scope of § 226.51(b)(1) to credit card accounts only is consistent with the treatment of the related provision in TILA Section 127(p) regarding credit line increases, which applies solely to credit card accounts. Therefore, § 226.51(b)(1) will apply only to credit card accounts as proposed.

The Board also received comment regarding its proposal to make § 226.51(b) consistent with § 226.51(a) by requiring card issuers to determine whether a consumer under the age of 21, or any cosigner, guarantor, or joint applicant of a consumer under the age of 21, has the means to repay debts incurred by the consumer by evaluating a consumer's ability to make the required payments under § 226.51(a). Therefore, proposed § 226.51(b)(1)(i) and (ii) both referenced § 226.51(a) in discussing the ability of a cosigner, guarantor, or joint applicant to make the minimum payments on the consumer's debts and the consumer's independent ability to make the minimum payments on any obligations arising under the account.

Industry commenters were supportive of the Board's approach. Consumer group commenters, however, recommended that the Board require a more stringent evaluation of a consumer's ability to make the required payments for consumers under the age of 21 than the one required in § 226.51(a). In particular, consumer group commenters suggested, for example, that card issuers be required to only consider income earned from wages or require a higher residual income or lower debt-to-income ratio for consumers less than 21 years old. A state regulatory agency commenter suggested that the Board require card issuers to verify income or asset information stated on an application submitted by a consumer under the age of 21. The Board declines to make the suggested changes. The Board believes that the heightened procedures already set forth in TILA Sections 127(c)(8) and 127(p), as adopted by the Board in § 226.51(b), will provide sufficient protection for consumers less than 21 years old without unnecessarily impinging on their ability to obtain credit and build a credit history. Furthermore, the Board is concerned that the suggested changes could be inconsistent with the Board's Regulation B (12 CFR Part 202). For example, excluding certain income from consideration, such as alimony or child support, could conflict with 12 CFR § 202.6(b)(5).

The Board, however, is amending § 226.51(b)(1) to clarify that, consistent with comments 51(a)(1)–4 and 51(a)(1)–5, card issuers need not obtain financial information directly from the consumer to evaluate the ability of the consumer, cosigner, guarantor, or joint applicant to make the required payments. The Board is also making organizational and other non-substantive changes to § 226.51(b)(1) to improve readability and consistency. Section 226.51(b)(2) is adopted as proposed. The Board notes that for any credit line increase on an account of a consumer under the age of 21, the requirements of § 226.51(b)(2) are in addition to those in § 226.51(a).

In the October 2009 Regulation Z Proposal, the Board also proposed several comments to provide guidance to card issuers in complying with § 226.51(b). Proposed comment 51(b)–1 clarified that § 226.51(b)(1) and (b)(2)

apply only to a consumer who has not attained the age of 21 as of the date of submission of the application under § 226.51(b)(1) or the date the credit line increase is requested by the consumer under § 226.51(b)(2). If no request has been made (for example, for unilateral credit line increases by the card issuer), the provision would apply only to a consumer who has not attained the age of 21 as of the date the credit line increase is considered by the card issuer. Some industry commenters suggested that the Board's final rule provide that the age of the consumer be determined at account opening as opposed to the consumer's age as of the date of submission of the application. The Board notes that TILA Section 127(c)(8)(B) applies to consumers who are under the age of 21 as of the date of submission of the application. Therefore, in compliance with the statutory provision, the Board is adopting comment 51(b)–1 as proposed.

Proposed comment 51(b)–2 addressed the ability of a card issuer to require a cosigner, guarantor, or joint accountholder to assume liability for debts incurred after the consumer has attained the age of 21. Consumer group commenters recommended that the Board require that card issuers obtain separate consent of a cosigner, guarantor, or joint accountholder to assume liability for debts incurred after the consumer has attained the age of 21. The Board believes that requiring separate consent is unnecessary and duplicative as card issuers requiring cosigners, guarantors, or joint accountholders to assume such liability will likely obtain a single consent at the time the account is opened for the cosigner, guarantor, or joint accountholder to assume liability on debt that is incurred before and after the consumer has turned 21. Proposed comment 51(b)–2 is adopted in final.

The Board proposed comment 51(b)–3 to clarify that § 226.51(b)(1) and (b)(2) do not apply to a consumer under the age of 21 who is being added to another person's account as an authorized user and has no liability for debts incurred on the account. The Board did not receive any comment on this provision, and the comment is adopted as proposed.

Proposed comment 51(b)–4 explained how the Electronic Signatures in Global and National Commerce Act (E-Sign Act) (15 U.S.C. 7001 *et seq.*) would govern the submission of electronic applications. TILA Section 127(c)(8) requires a consumer who has not attained the age of 21 to submit a written application, and TILA Section 127(p) requires a cosigner, guarantor, or joint accountholder to consent to a credit line increase in writing. As noted in the October 2009 Regulation Z Proposal, the Board believes that, consistent with the purposes of the E-Sign Act, applications submitted under TILA Section 127(c)(8) and consents under TILA Section 127(p), which must be provided in writing, may also be submitted electronically. *See* 15 U.S.C. 7001(a). Furthermore, since the submission of an application by a consumer or consent to a credit line increase by a cosigner, guarantor, or joint accountholder is not a disclosure *to* a consumer, the Board believes the consumer consent and other requirements necessary to provide consumer disclosures electronically pursuant to the E-Sign Act would not apply. The Board notes, however, that under the E-Sign Act, an electronic record of a contract or other record required to be in writing may be denied legal effect, validity or enforceability if such record is not in a form that is capable of being retained and accurately reproduced for later reference by all parties or persons who are entitled to retain the contract or other record. 15 U.S.C. 7001(e). Consumer group commenters recommended that the Board include this reference in the comment. The Board believes this is unnecessary, and comment 51(b)–4 is adopted as proposed with minor wording changes.

Under proposed comment 51(b)(1)–1, creditors must comply with applicable rules in Regulation B (12 CFR Part 202) in evaluating an application to open a credit card account or credit line increase for a consumer under the age of 21. In the October 2009 Regulation Z Proposal, the Board noted that because age is generally a prohibited basis for any creditor to take into account in any system evaluating the creditworthiness of applicants under Regulation B, the Board believes that Regulation B prohibits card issuers from refusing to consider the application of a consumer solely because the applicant has not attained the age of 21 (assuming the consumer has the legal ability to enter into a contract).

TILA Section 127(c)(8) permits card issuers to open a credit card account for a consumer who has not attained the age of 21 if either of the conditions under TILA Section 127(c)(8)(B) are met. Therefore, the Board believes that a card issuer may choose to evaluate an application of a consumer who is less than 21 years old solely on the basis of the information provided under § 226.51(b)(1)(i). Consequently, the Board believes, a card issuer is not required to accept an application from a consumer less than 21 years old with the signature of a cosigner, guarantor, or joint applicant pursuant to § 226.51(b)(1)(ii), unless refusing such applications would violate Regulation B. For example, if the card issuer permits other applicants of non-business credit card accounts who have attained the age of 21 to provide the signature of a cosigner, guarantor, or joint applicant, the card issuer must provide this option to applicants of non-business credit card accounts who have not attained the age of 21 (assuming the consumer has the legal ability to enter into a contract).

Several industry commenters requested the Board further clarify the interaction between Regulation B and § 226.51(b). Some commenters suggested the Board state that certain provisions of § 226.51(b) override provisions of Regulation B. The Board notes that issuers would not violate Regulation B by virtue of complying with § 226.51(b). Therefore, the Board does not believe it is necessary to state that § 226.51(b) overrides provisions of Regulation B.

Furthermore, many industry commenters asked the Board to permit card issuers, in determining whether consumers under the age of 21 have the "independent" means to repay debts incurred, to consider a consumer's spouse's income. The Board believes that neither Regulation B nor § 226.51(b) compels this interpretation. Pursuant to TILA Section 127(c)(8)(B), card issuers evaluating a consumer under the age of 21 under § 226.51(b)(1)(ii), who is applying as an individual, must consider the consumer's *independent* ability. The Board notes, however, that in evaluating joint accounts, the card issuer may consider the collective ability of the joint applicants or joint accountholders to make the required payments under new comment 51(a)(1)–6, as discussed above. Comment 51(b)(1)–1 is adopted as proposed.

Proposed comment 51(b)(2)–1 provided that the requirement under § 226.51(b)(2) that a cosigner, guarantor, or joint accountholder for a credit card account opened pursuant to § 226.51(b)(1)(ii) must agree in writing to assume liability for a credit line increase does not apply if the cosigner, guarantor or joint accountholder who is at least 21 years old requests the increase. Because the party that must approve the increase is the one that is requesting the increase in this situation, the Board believed that § 226.51(b)(2) would be redundant. An industry commenter requested the Board clarify situations in which this applies. For example, the commenter requested

whether comment 51(b)(2)–1 would apply if a consumer under the age of 21 requests the credit line increase over the telephone, but subsequently passes the telephone to the cosigner, guarantor, or joint accountholder who is at least 21 years old to make the request after being told that they are not sufficiently old enough to do so. The Board believes this approach will be tantamount to an oral approval and would circumvent the protections of § 226.51(b)(2). Consequently, the Board is modifying the proposed comment to clarify that it must be the cosigner, guarantor, or joint accountholder who is at least 21 years old who initiates the request to increase the credit line.

*Section 226.52 Limitations on Fees*

52(a) Limitations During First Year After Account Opening

New TILA Section 127(n)(1) applies "[i]f the terms of a credit card account under an open end consumer credit plan require the payment of any fees (other than any late fee, over-the-limit fee, or fee for a payment returned for insufficient funds) by the consumer in the first year during which the account is opened in an aggregate amount in excess of 25 percent of the total amount of credit authorized under the account when the account is opened." 15 U.S.C. 1637(n)(1). If the 25 percent threshold is met, then "no payment of any fees (other than any late fee, over-the-limit fee, or fee for a payment returned for insufficient funds) may be made from the credit made available under the terms of the account." However, new TILA Section 127(n)(2) provides that Section 127(n) may not be construed as authorizing any imposition or payment of advance fees prohibited by any other provision of law. The Board proposed to implement new TILA Section 127(n) in § 226.52(a).[31]

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

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

In the October 2009 Regulation Z Proposal, the Board discussed two issues of statutory interpretation related to the implementation of new TILA Section 127(n). First, as noted above, new TILA Section 127(n)(1) applies when "the terms of a credit card account * * * *require* the payment of any fees (other than any late fee, over-the-limit fee, or fee for a payment returned for insufficient funds) by the consumer in the first year during which the account is opened in an aggregate amount in excess of 25 percent of the total amount of credit authorized under the account when the account is opened." (Emphasis added.) In the proposal, the Board acknowledged that Congress's use of "require" could be construed to mean that Section 127(n)(1) applies only to fees that are unconditional requirements of the account—in other words, fees that all consumers are required to pay regardless of how the account is used (such as account-opening fees, annual fees, and monthly maintenance fees). However, the Board stated that such a narrow reading would be inconsistent with the words "*any* fees," which indicate that Congress intended the provision to apply to a broader range of fees. Furthermore, the Board expressed concern that categorically excluding fees that are conditional (in other words, fees that consumers are only required to pay in certain circumstances) would enable card issuers to circumvent the 25 percent limit by, for example, requiring consumers to pay fees in order to receive a particular credit limit or to use the account for purchases or other transactions. Finally, the Board noted that new TILA Section 127(n)(1) specifically excludes three fees that are conditional (late payment fees, over-the-limit fees, and fees for a payment returned for insufficient funds), which suggests that Congress otherwise intended Section 127(n)(1) to apply to fees that a consumer is required to pay only in certain circumstances (such as fees for other violations of the account terms or fees for using the account for transactions). In other words, if Congress had intended Section 127(n)(1) to apply only to fees that are unconditional requirements of the account, there would have been no need to specifically exclude conditional fees such as late payment fees. For these reasons, the Board concluded that the best interpretation of new TILA Section 127(n)(1) was to apply the 25 percent limitation to any fee that a consumer is required to pay with respect to the account (unless expressly excluded), even if the requirement only applies in certain circumstances.

Consumer group commenters strongly supported this interpretation of new TILA Section 127(n)(1), while industry commenters strongly disagreed. In particular, institutions that do not issue subprime cards argued that Congress intended Section 127(n) to apply only to fees imposed on subprime cards with low credit limits and that it would be unduly burdensome to require issuers of credit card products with higher limits to comply. However, while new TILA Section 127(n) is titled "Standards Applicable to Initial Issuance of Subprime or 'Fee Harvester' Cards," nothing in the statutory text limits its application to a particular type of credit card. Instead, for the reasons discussed above, it appears that Congress intended

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

Section 127(n) to apply to a broad range of fees regardless of the type of credit card account. Although the practice of charging fees that represent a high percentage of the credit limit is generally limited to subprime cards at present, it appears that Congress intended Section 127(n) to prevent this practice from spreading to other types of credit card products. Accordingly, although the Board understands that complying with Section 127(n) may impose a significant burden on card issuers, the Board does not believe that this burden warrants a different interpretation of Section 127(n).

Second, in the proposal, the Board interpreted new TILA Section 127(n)(1), which provides that, if the 25 percent threshold is met, "no payment of any fees (other than any late fee, over-the-limit fee, or fee for a payment returned for insufficient funds) may be made from the credit made available under the terms of the account." The Board stated that, although this language could be read to require card issuers to determine at account opening the total amount of fees that will be charged during the first year, this did not appear to be Congress's intent because the total amount of fees charged during the first year will depend on how the account is used. For example, most card issuers currently require consumers who use a credit card account for cash advances, balance transfers, or foreign transactions to pay a fee that is equal to a percentage of the transaction. Thus, the total amount of fees charged during the first year will depend on, among other things, the number and amount of cash advances, balance transfers, or foreign transactions. Accordingly, the Board interpreted Section 127(n)(1) to limit the fees charged to a credit card account during the first year to 25 percent of the initial credit limit and to prevent card issuers from collecting additional fees by other means (such as directly from the consumer or by providing a separate credit account). The Board did not receive significant comment on this interpretation, which is adopted in the final rule.

Accordingly, in order to effectuate this purpose and to facilitate compliance, the Board uses its authority under TILA Section 105(a) to implement new TILA Section 127(n) as set forth below.

52(a)(1) General Rule

Proposed § 226.52(a)(1)(i) provided that, if a card issuer charges any fees to a credit card account under an open-end (not home-secured) consumer credit plan during the first year after account opening, those fees must not in total constitute more than 25 percent of the credit limit in effect when the account is opened. Furthermore, in order to prevent card issuers from circumventing proposed § 226.52(a)(1)(i), proposed § 226.52(a)(1)(ii) provided that a card issuer that charges fees to the account during the first year after account opening must not require the consumer to pay any fees in excess of the 25 percent limit with respect to the account during the first year.

Commenters generally supported the proposed rule. However, a federal banking agency requested that the Board clarify the proposed rule, expressing concern that, as proposed, § 226.52(a)(1) could be construed to authorize card issuers to require consumers to pay an unlimited amount of fees so long as the total amount of fees charged to the account did not equal the 25 percent limit. This was not the Board's intent, nor does the Board believe that the proposed rule supports such an interpretation. Nevertheless, in order to avoid any potential uncertainty, the Board has revised § 226.52(a)(1) to provide that, if a card issuer charges any fees to a credit card account under an open-end (not home-secured) consumer credit plan during the first year after the account is opened, the total amount of fees the consumer is required to pay with respect to the account during that year must not exceed 25 percent of the credit limit in effect when the account is opened.

The Board has also reorganized and revised the proposed commentary for consistency with the revisions to § 226.52(a)(1). Comment 52(a)(1)–1 clarifies that § 226.52(a)(1) applies if a card issuer charges any fees to a credit card account during the first year after the account is opened (unless the fees are specifically exempted by § 226.52(a)(2)). Thus, if a card issuer charges a non-exempt fee to the account during the first year after account opening, § 226.52(a)(1) provides that the total amount of non-exempt fees the consumer is required to pay with respect to the account during the first year cannot exceed 25 percent of the credit limit in effect when the account is opened. The comment further clarifies that this 25 percent limit applies to fees that the card issuer charges to the account as well as to fees that the card issuer requires the consumer to pay with respect to the account through other means (such as through a payment from the consumer to the card issuer or from another credit account provided by the card issuer). The comment also provides illustrative examples of the application of § 226.52(a), including the examples previously provided in proposed comments 52(a)(1)(i)–1 and 52(a)(1)(ii)–1.

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

Some industry commenters expressed concern that, because fees are totaled at the end of the billing cycle, there would be circumstances in which their systems would not be able to identify a fee that exceeds the 25 percent limit in time to correct the account before the billing cycle ends (such as when the fee was charged late in the cycle). The Board is concerned that providing additional time will result in fees that exceed the 25 percent limit appearing on consumer's periodic statements. However, in order to facilitate compliance, the Board has revised the proposed comment to require card issuers to waive or remove the excess fee and any associated interest charges within a reasonable amount of time but no later than the end of the billing cycle following the billing cycle during which the fee was charged. For organizational purposes, the Board has also redesignated this comment as 52(a)(1)–2.

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

In addition, in response to comments from consumer groups, the Board has also provided guidance regarding decreases in credit limits during the first year after account opening. Consumer

groups expressed concern that card issuers could evade the 25 percent limitation by, for example, providing a $500 credit limit and charging $125 in fees for the issuance or availability of credit at account opening and then quickly reducing the limit to $200, leaving the consumer with only $75 of available credit. Although there are legitimate reasons for reducing a credit limit during the first year after account opening (such as concerns about fraud), the Board believes that, in these circumstances, it would be inconsistent with the intent of new TILA Section 127(n) to require the consumer to pay (or to allow the issuer to retain) any fees that exceed 25 percent of the reduced limit. Accordingly, proposed comment 52(a)(1)–3 clarifies that, if a card issuer decreases the credit limit during the first year after the account is opened, § 226.52(a)(1) requires the card issuer to waive or remove any fees charged to the account that exceed 25 percent of the reduced credit limit or to credit the account for an amount equal to any fees the consumer was required to pay with respect to the account that exceed 25 percent of the reduced credit limit within a reasonable amount of time but no later than the end of the billing cycle following the billing cycle during which the fee was charged. An example is provided.

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

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

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

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

Commenters generally supported proposed § 226.52(a)(2)(ii) and proposed comments 52(a)(2)–1 and –2. Although one industry commenter suggested that the Board take a broader approach to identifying the fees that fall within the exception in § 226.52(a)(2)(ii), the Board believes that such an approach would be inconsistent with the purposes of TILA Section 127(n). Accordingly, the Board adopts these aspects of the proposal.

Finally, proposed comment 52(a)(2)–3 clarified that a security deposit that is charged to a credit card account is a fee for purposes of § 226.52(a). However, the comment also clarified that § 226.52(a) would not prohibit a card issuer from providing a secured credit card that requires a consumer to provide a cash collateral deposit that is equal to the credit line for the account. Consumer group commenters strongly supported this commentary. However, a federal banking agency requested that the Board clarify that a security deposit is an amount of funds transferred by a consumer to a card issuer at account opening that is pledged as security on the account. The Board has revised the proposed comment to include similar language. Otherwise, comment 52(a)(2)–3 is adopted as proposed.

52(a)(3) Rule of Construction

New TILA Section 127(n)(2) states that "[n]o provision of this subsection may be construed as authorizing any imposition or payment of advance fees otherwise prohibited by any provision of law." 15 U.S.C. 1637(n)(2). The Board proposed to implement this provision in § 226.52(a)(3). As an example of a provision of law limiting the payment of advance fees, proposed comment 52(a)(3)–1 cited 16 CFR 310.4(a)(4), which prohibits any telemarketer or seller from "[r]equesting or receiving payment of any fee or consideration in advance of obtaining a loan or other extension of credit when the seller or telemarketer has guaranteed or represented a high likelihood of success in obtaining or arranging a loan or other extension of credit for a person." The Board did not receive significant comment on either the proposed regulation or the proposed commentary, both of which have been adopted as proposed.

*Section 226.53 Allocation of Payments*

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

As an initial matter, however, the Board interprets amended TILA Section 164(b) to apply to credit card accounts under an open-end (not home-secured) consumer credit plan rather than to all open-end consumer credit plans. Although the requirements in amended TILA Section 164(a) regarding the

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

53(a) General Rule

The Board proposed to implement amended TILA Section 164(b)(1) in § 226.53(a), which stated that, except as provided in § 226.53(b), when a consumer makes a payment in excess of the required minimum periodic payment for a credit card account under an open-end (not home-secured) consumer credit plan, the card issuer must allocate the excess amount first to the balance with the highest annual percentage rate and any remaining portion to the other balances in descending order based on the applicable annual percentage rate. The Board and the other Agencies adopted a similar provision in the January 2009 FTC Act Rule in response to concerns that card issuers were applying consumers' payments in a manner that inappropriately maximized interest charges on credit card accounts with balances at different annual percentage rates. *See* 12 CFR 227.23, 74 FR 5512–5520, 5560. Specifically, most card issuers currently allocate consumers' payments first to the balance with the lowest annual percentage rate, resulting in the accrual of interest at higher rates on other balances (unless all balances are paid in full). Because many card issuers offer different rates for purchases, cash advances, and balance transfers, this practice can result in consumers who do not pay the balance in full each month incurring higher finance charges than they would under any other allocation method.[32] Commenters generally supported § 226.53(a), which is adopted as proposed.

The Board also proposed comment 53–1, which clarified that § 226.53 does not limit or otherwise address the card issuer's ability to determine, consistent with applicable law and regulatory guidance, the amount of the required minimum periodic payment or how that payment is allocated. It further clarified that a card issuer may, but is not required to, allocate the required minimum periodic payment consistent with the requirements in proposed § 226.53 to the extent consistent with other applicable law or regulatory guidance. The Board did not receive any significant comment on this guidance, which is adopted as proposed.

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

Industry commenters generally supported this guidance. However, consumer groups opposed it on the grounds that card issuers could misuse the flexibility to systematically vary the dates on which payments are allocated at the account level in order to generate higher interest charges. The Board agrees that such a practice would be inconsistent with the intent of comment 53–2. Accordingly, the Board has revised this comment to clarify that the day used by the card issuer to determine the applicable annual percentage rates and balances for purposes of § 226.53 generally must be consistent from billing cycle to billing cycle, although the card issuer may adjust this day from time to time.

Proposed comment 53–3 addressed the relationship between the dispute rights in § 226.12(c) and the payment allocation requirements in proposed § 226.53. This comment clarified that, when a consumer has asserted a claim or defense against the card issuer pursuant to § 226.12(c), the card issuer must apply the consumer's payment in a manner that avoids or minimizes any reduction in the amount of that claim or defense. *See* comment 12(c)–4. Based on comments from industry, the Board has revised the proposed comment to clarify that the same requirements apply with respect to amounts subject to billing error disputes under § 226.13. The Board has also added illustrative examples.

Proposed comment 53–4 addressed circumstances in which the same annual percentage rate applies to more than one balance on a credit card account but a different rate applies to at least one other balance on that account. For example, an account could have a $500 cash advance balance at 20%, a $1,000 purchase balance at 15%, and a $2,000 balance also at 15% that was previously at a 5% promotional rate. The comment clarified that, in these circumstances, § 226.53 generally does not require that any particular method be used when allocating among the balances with the same rate and that the card issuer may treat the balances with the same rate as a single balance or separate balances.[33] The Board did not receive any significant comment on this aspect of the guidance, which is adopted as proposed.

However, proposed comment 53–4 also clarified that, when a balance on a credit card account is subject to a deferred interest or similar program that provides that a consumer will not be obligated to pay interest that accrues on the balance if the balance is paid in full prior to the expiration of a specified period of time, that balance must be treated as a balance with an annual percentage rate of zero for purposes of § 226.53 during that period of time rather than a balance with the rate at which interest accrues (the accrual rate).[34] In the proposal, the Board noted

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

[33] An example of how excess payments could be applied in these circumstances is provided in comment 53–5.iv.

[34] For example, if an account has a $1,000 purchase balance and a $2,000 balance that is subject to a deferred interest program that expires on July 1 and a 15% annual percentage rate applies

Continued

that treating the rate as zero is consistent with the nature of deferred interest and similar programs insofar as the consumer will not be obligated to pay any accrued interest if the balance is paid in full prior to expiration. The Board further noted that this approach ensures that excess payments will generally be applied first to balances on which interest is being charged, which will generally result in lower interest charges if the consumer pays the balance in full prior to expiration.

However, the Board also acknowledged that treating the rate on this type of balance as zero could be disadvantageous for consumers in certain circumstances. Specifically, the Board noted that, if the rate for a deferred interest balance is treated as zero during the deferred interest period, consumers who wish to pay off that balance in installments over the course of the program would be prevented from doing so.

In response to the proposal, the Board received a number of comments from industry and consumer groups raising concerns about prohibiting consumers from paying off a deferred interest or similar balance in monthly installments. Accordingly, as discussed below, the Board has revised § 226.53(b) to address those concerns.

Finally, proposed comment 53(a)–1 provided examples of allocating excess payments consistent with proposed § 226.53. The Board has redesignated this comment as 53–5 for organizational purposes and revised the examples for consistency with the revisions to § 226.53(b).[35]

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

The Board proposed to implement amended TILA Section 164(b)(2) in § 226.53(b), which provided that, when a balance on a credit card account under an open-end (not home-secured) consumer credit plan is subject to a deferred interest or similar program, the card issuer must allocate any amount paid by the consumer in excess of the required minimum periodic payment first to that balance during the two billing cycles immediately preceding expiration of the deferred interest period and any remaining portion to any other balances consistent with proposed § 226.53(a). *See* 15 U.S.C. 1666c(b)(2).

The Board and the other Agencies proposed a similar exception to the January 2009 FTC Act Rule's payment allocation provision in the May 2009 proposed clarifications and amendments. *See* proposed 12 CFR 227.23(b), 74 FR 20814. This exception was based on the Agencies' concern that, if the deferred interest balance was not the only balance on the account, the general payment allocation rule could prevent consumers from paying off the deferred interest balance prior to expiration of the deferred interest period unless they also paid off all other balances on the account.[36] If the consumer is unaware of the need to pay off the entire balance, the consumer would be charged interest on the deferred interest balance and thus would not obtain the benefits of the deferred interest program. *See* 74 FR 20807–20808.

As noted above, comments from industry and consumer groups raised concerns that the proposed rule would prohibit consumers who may lack the resources to pay off a deferred interest balance in one of the last two billing cycles of the deferred interest period from paying that balance off in monthly installments over the course of the period. These commenters generally urged the Board to permit card issuers to allocate payments consistent with a consumer's request when an account has a deferred interest or similar balance.

Because the consumer testing conducted by the Board for the January 2009 Regulation Z Rule indicated that disclosures do not enable consumers to understand sufficiently the effects of payment allocation on interest charges, the Board is concerned that permitting card issuers to allocate payments based on a consumer's request could create a loophole that would undermine the purposes of revised TILA Section 164(b). For example, consumers who do not understand the effects of payment allocation could be misled into selecting an allocation method that will generally result in higher interest charges than applying payments first to the balance with the highest rate (such as a method under which payments are applied first to the oldest unpaid transactions on the account). For this reason, the Board does not believe that a general exception to § 226.53(a) based on a consumer's request is warranted.

However, in the narrow context of accounts with balances subject to deferred interest or similar programs, the Board is persuaded that the benefits of providing flexibility for consumers who are able to avoid deferred interest charges by paying off a deferred interest balance in installments over the course of the deferred interest period outweigh the risk that some consumers could make choices that result in higher interest charges than would occur under the proposed rule.

Accordingly, pursuant to its authority under TILA § 105(a) to make adjustments and exceptions in order to effectuate the purposes of TILA, the Board has revised proposed § 226.53(b) to permit card issuers to allocate payments in excess of the minimum consistent with a consumer's request when the account has a balance subject to a deferred interest or similar program.[37] Specifically, § 226.52(b)(1) provides that, when a balance on a credit card account under an open-end (not home-secured) consumer credit plan is subject to a deferred interest or similar program, the card issuer must allocate any amount paid by the consumer in excess of the required minimum periodic payment consistent with § 226.53(a) except that, during the two billing cycles immediately preceding expiration of the specified period, the excess amount must be allocated first to the balance subject to the deferred interest or similar program and any remaining portion allocated to any other balances consistent with § 226.53(a). In the alternative, § 226.53(b)(2) provides that the card issuer may at its option allocate any

to both, the balances must be treated as balances with different rates for purposes of § 226.53 until July 1. In addition, for purposes of allocating pursuant to § 226.53, any amount paid by the consumer in excess of the required minimum periodic payment must be applied first to the $1,000 purchase balance except during the last two billing cycles of the deferred interest period (when it must be applied first to any remaining portion of the $2,000 balance). *See* comment 53–5.v.

[35] The commentary discussed above is similar to commentary adopted by the Board and the other Agencies in the January 2009 FTC Act Rule as well as to amendments to that commentary proposed in May 2009. *See* 74 FR 5561–5562; 74 FR 20815–20816.

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

[37] Although consumer group commenters urged the Board to *require* (rather than permit) card issuers to allocate consistent with a consumer's request, the Board understands that—while some card issuers currently have the systems in place to accommodate such requests—many do not. The Board further understands that card issuers without the ability to allocate payments based on a consumer request could not develop the systems to do so prior to February 22, 2010. Although these issuers could presumably develop the necessary systems by some later date, the Board believes that the difficulties associated with making informed decisions regarding payment allocation are such that a requirement that all issuers develop the systems to accommodate consumer requests is not warranted. Instead, the Board has revised § 226.53(b) to ensure that card issuers that currently accommodate consumer requests can continue to do so.

amount paid by the consumer in excess of the required minimum periodic payment among the balances on the account in the manner requested by the consumer.

The Board has revised the proposed commentary to § 226.53(b) for consistency with the amendments to § 226.53(b) and for organizational purposes. As an initial matter, the Board has redesignated proposed comment 53(b)–2 as comment 53(b)–1. Proposed comment 53(b)–2 clarified that § 226.53(b) applies to deferred interest or similar programs under which the consumer is not obligated to pay interest that accrues on a balance if that balance is paid in full prior to the expiration of a specified period of time. The proposed comment further clarified that a grace period during which any credit extended may be repaid without incurring a finance charge due to a periodic interest rate is not a deferred interest or similar program for purposes of § 226.53(b).[38] In response to requests for guidance from commenters, the Board has revised this comment to clarify that § 226.53(b) applies regardless of whether the consumer is required to make payments with respect to the balance subject to the deferred interest or similar program during the specified period. In addition, the Board has revised the comment to clarify that a temporary annual percentage rate of zero percent that applies for a specified period of time consistent with § 226.55(b)(1) is not a deferred interest or similar program for purposes of § 226.53(b) unless the consumer may be obligated to pay interest that accrues during the period if a balance is not paid in full prior to expiration of the period. Finally, in order to ensure consistent treatment of deferred interest programs in Regulation Z, the Board has clarified that, for purposes of § 226.53, "deferred interest" has the same meaning as in § 226.16(h)(2) and associated commentary.

For organizational purposes, the Board has redesignated proposed comment 53(b)–1 as comment 53(b)–2. Proposed comment 53(b)–1 clarified the application of § 226.53(b) in circumstances where the deferred interest or similar program expires during a billing cycle (rather than at the end of a billing cycle). The comment clarified that, for purposes of § 226.53(b), a billing cycle does not constitute one of the two billing cycles immediately preceding expiration of a deferred interest or similar program if the expiration date for the program precedes the payment due date in that billing cycle. An example is provided. The Board believes that this interpretation is consistent with the purpose of amended TILA Section 164(b)(2) insofar as it ensures that, at a minimum, the consumer will receive two complete billing cycles to avoid accrued interest charges by paying off a balance subject to a deferred interest or similar program. The Board did not receive any significant comment on this guidance, which has been revised for consistency with the revisions to § 226.53(b).

The Board has also adopted a new comment 53(b)–3 in order to clarify that § 226.53(b) does not require a card issuer to allocate amounts paid by the consumer in excess of the required minimum periodic payment in the manner requested by the consumer, provided that the card issuer instead allocates such amounts consistent with § 226.53(b)(1). For example, a card issuer may decline consumer requests regarding payment allocation as a general matter or may decline such requests when a consumer does not comply with requirements set by the card issuer (such as submitting the request in writing or submitting the request prior to or contemporaneously with submission of the payment), provided that amounts paid by the consumer in excess of the required minimum periodic payment are allocated consistent with § 226.53(b)(1). Similarly, a card issuer that accepts requests pursuant to § 226.53(b)(2) generally must allocate amounts paid by a consumer in excess of the required minimum periodic payment consistent with § 226.53(b)(1) if the consumer does not submit a request or submits a request with which the card issuer cannot comply (such as a request that contains a mathematical error).

Comment 53(b)–3 also provides illustrative examples of what does and does not constitute a consumer request for purposes of § 226.53(b)(2). In particular, the comment clarifies that a consumer has made a request for purposes of § 226.53(b)(2) if the consumer contacts the card issuer and specifically requests that a payment or payments be allocated in a particular manner during the period of time that the deferred interest or similar program applies to a balance on the account. Similarly, a consumer has made a request for purposes of § 226.53(b)(2) if the consumer completes a form or payment coupon provided by the card issuer for the purpose of requesting that a payment or payments be allocated in a particular manner and submits that form to the card issuer. Finally, a consumer has made a request for purposes of § 226.53(b)(2) if the consumer contacts a card issuer and specifically requests that a payment that the card issuer has previously allocated consistent with § 226.53(b)(1) instead be allocated in a different manner.

In contrast, the comment clarifies that a consumer has not made a request for purposes of § 226.53(b)(2) if the terms and conditions of the account agreement contain preprinted language stating that by applying to open an account or by using that account for transactions subject to a deferred interest or similar program the consumer requests that payments be allocated in a particular manner. Similarly, a consumer has not made a request for purposes of § 226.53(b)(2) if the card issuer's on-line application contains a preselected check box indicating that the consumer requests that payments be allocated in a particular manner and the consumer does not deselect the box.[39]

In addition, a consumer has not made a request for purposes of § 226.53(b)(2) if the payment coupon provided by the card issuer contains preprinted language or a preselected check box stating that by submitting a payment the consumer requests that the payment be allocated in a particular manner. Furthermore, a consumer has not made a request for purposes of § 226.53(b)(2) if the card issuer requires a consumer to accept a particular payment allocation method as a condition of using a deferred interest or similar program, making a payment, or receiving account services or features.

*Section 226.54 Limitations on the Imposition of Finance Charges*

The Credit Card Act creates a new TILA Section 127(j), which applies when a consumer loses any time period provided by the creditor with respect to a credit card account within which the consumer may repay any portion of the credit extended without incurring a finance charge (*i.e.,* a grace period). 15 U.S.C. 1637(j). In these circumstances, new TILA Section 127(j)(1)(A) prohibits the creditor from imposing a finance charge with respect to any balances for days in billing cycles that precede the most recent billing cycle (a practice that is sometimes referred to as "two-cycle" or "double-cycle" billing). Furthermore, in these circumstances, Section 127(j)(1)(B) prohibits the creditor from imposing a finance charge with respect to any balances or portions thereof in

[38] The Board and the other Agencies proposed a similar comment in May 2009. *See* 12 CFR 227.23 proposed comment 23(b)–1, 74 FR 20816.

[39] These examples are similar to examples adopted by the Board with respect to the affiliate marketing provisions of the Fair Credit Reporting Act. *See* 12 CFR 222.21(d)(4)(iii) and (iv).

the current billing cycle that were repaid within the grace period. However, Section 127(j)(2) provides that these prohibitions do not apply to any adjustment to a finance charge as a result of the resolution of a dispute or the return of a payment for insufficient funds. As discussed below, the Board is implementing new TILA Section 127(j) in § 226.54.

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

54(a)(1) General Rule

Prohibition on Two-Cycle Billing

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

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

In the October 2009 Regulation Z Proposal, the Board proposed to implement new TILA Section 127(j)(1)(A)'s prohibition on two-cycle billing in § 226.54(a)(1)(i), which states that, except as provided in proposed § 226.54(b), a card issuer must not impose finance charges as a result of the loss of a grace period on a credit card account if those finance charges are based on balances for days in billing cycles that precede the most recent billing cycle. The Board also proposed to adopt § 226.54(a)(2), which would define "grace period" for purposes of § 226.54(a)(1) as having the same meaning as in § 226.5(b)(2)(ii).[40] Finally, proposed comment 54(a)(1)–4 explained that § 226.54(a)(1)(i) prohibits use of the two-cycle average daily balance computation method.

The Board did not receive significant comment on this proposed regulation and commentary. Accordingly, they are adopted as proposed.

Partial Grace Period Requirement

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

The Board also proposed comment 54(a)(1)–5, which clarified that card issuers are not required to use a particular method to comply with § 226.54(a)(1)(ii) but provided an example of a method that is consistent with the requirements of § 226.54(a)(1)(ii). Specifically, it stated that a card issuer can comply with the requirements of § 226.54(a)(1)(ii) by applying the consumer's payment to the balance subject to the grace period at the end of the prior billing cycle (in a manner consistent with the payment allocation requirements in § 226.53) and then calculating interest charges based on the amount of that balance that remains unpaid. An example of the application of this method is provided in comment 54(a)(1)–6 along with other examples of the application of § 226.54(a)(1)(i) and (ii). For the reasons discussed below, the Board has revised comments 54(a)(1)–5 and –6 to clarify the circumstances in which § 226.54 applies. Otherwise, these comments are adopted as proposed.

In addition to the commentary clarifying the specific prohibitions in § 226.54(a)(1)(i) and (ii), the Board also proposed to adopt three comments clarifying the general scope and applicability of § 226.54. First, proposed comment 54(a)(1)–1 clarified that § 226.54 does not require the card issuer to provide a grace period or prohibit a card issuer from placing limitations and conditions on a grace period to the extent consistent with § 226.54. Currently, neither TILA nor Regulation Z requires a card issuer to provide a grace period. Nevertheless, for competitive and other reasons, many credit card issuers choose to do so, subject to certain limitations and conditions. For example, credit card grace periods generally apply to

[40] Section 226.5(b)(2)(ii) was amended by the July 2009 Regulation Z Interim Final Rule to define "grace period" as a period within which any credit extended may be repaid without incurring a finance charge due to a periodic interest rate. 74 FR 36094. As discussed above, the Board has revised § 226.5(b)(2)(ii) by, among other things, moving the definition of grace period to § 226.5(b)(2)(ii)(B). Accordingly, the Board has also made a corresponding revision to § 226.54(a)(2).

purchases but not to other types of transactions (such as cash advances). In addition, as noted above, card issuers that provide a grace period generally require the consumer to pay off all balances on the account or the entire balance subject to the grace period before the period expires.

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

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

Comments from credit card issuers, retailers, and industry groups strongly supported this interpretation. However, consumer group commenters argued that new TILA Section 127(j) should be interpreted to prohibit the interest charges on amounts paid within a deferred interest and similar period. For the reasons discussed above, the Board believes that such a prohibition would be inconsistent with Congress' intent. Accordingly, the Board adopts the interpretation in proposed comment 54(a)(1)–2.

In response to requests for clarification from industry commenters, the Board has also made a number of revisions to comments 54(a)(1)–1 and –2 in order to clarify the circumstances in which § 226.54 applies. As discussed below, these clarifications are intended to preserve current industry practices with respect to grace periods and the waiver of trailing or residual interest that are generally beneficial to consumers. First, the Board has generally revised the commentary to clarify that a card issuer is permitted to condition eligibility for the grace period on the payment of certain transactions or balances within the specified period, rather than requiring consumers to pay in full all transactions or balances on the account within that period. The Board understands that, for example, some card issuers permit a consumer to retain a grace period on purchases by paying the purchase balance in full, even if other balances (such as balances subject to promotional rates or deferred interest programs) are not paid in full. Insofar as this practice enables consumers to avoid interest charges on purchases without paying the entire account balance in full, it appears to be advantageous for consumers.

Second, the Board has revised comment 54(a)(1)–1 to clarify that § 226.54 does not limit the imposition of finance charges with respect to a transaction when the consumer is not eligible for a grace period on that transaction at the end of the billing cycle in which the transaction occurred. This clarification is intended to preserve a grace period eligibility requirement used by some card issuers that is more favorable to consumers than the requirement used by other issuers. Specifically, the Board understands that, while most credit card issuers only require consumers to pay the relevant balance in full in one billing cycle in order to be eligible for the grace period, some issuers require consumers to pay in full for two consecutive cycles. While either requirement is permissible under § 226.54,[41] the less restrictive requirement appears to be more beneficial to consumers.

However, many industry commenters expressed concern that, under the less restrictive requirement, a consumer could be considered eligible for a grace period in every billing cycle—and therefore § 226.54 would apply—regardless of whether the consumer had ever paid the relevant balance in full in a previous cycle. Because new TILA Section 127(j) does not mandate provision of a grace period, the Board believes that interpreting § 226.54 as applying in every billing cycle regardless of whether the consumer paid the previous cycle's balance in full would be inconsistent with Congress' intent. Furthermore, although this interpretation could be advantageous for consumers if card issuers retained the less restrictive eligibility requirement, the Board is concerned that card issuers would instead convert to the more restrictive approach, which would ultimately harm consumers. Accordingly, the Board has revised the commentary to clarify that a card issuer that employs the less restrictive eligibility requirement is not subject to § 226.54 unless the relevant balance for the prior billing cycle has been paid in full before the beginning of the current cycle. The Board has also added illustrative examples to comment 54(a)(1)–1.

Third, the Board has revised comment 54(a)(1)–2 to clarify that the practice of waiving or rebating finance charges on an individualized basis (such as in response to a consumer's request) and the practice of waiving or rebating trailing or residual interest do not constitute provision of a grace period for purposes of § 226.54. The Board believes that these practices are generally beneficial to consumers. In particular, the Board understands that, when a consumer is not eligible for a grace period at the start of a billing cycle, many card issuers waive interest that accrues during that billing cycle if the consumer pays the relevant balance in full by the payment due date. For reasons similar to those discussed above, industry commenters expressed concern that waiving interest in these circumstances could be construed as providing a grace period regardless of whether the relevant balance for the prior cycle was paid in full. Accordingly, the revisions to comment 54(a)(1)–2 are intended to encourage issuers to continue waiving or rebating

[41] Consumer group commenters argued that the Board should prohibit the more restrictive eligibility requirement. However, as discussed above, it does not appear that Congress intended to limit card issuers' ability to place conditions on grace period eligibility.

interest charges in these circumstances. Illustrative examples are provided.

However, consumer group commenters also raised concerns about an emerging practice of establishing interest waiver or rebate programs that are similar in many respects to grace periods. Under these programs, all interest accrued on purchases will be waived or rebated if the purchase balance at the end of the billing cycle during which the purchases occurred is paid in full by the following payment due date. The Board is concerned that these programs may be structured to avoid the requirements of new TILA Section 127(j) and § 226.54 (particularly the prohibition on imposing finance charges on amounts paid during a grace period). Accordingly, pursuant to its authority under TILA Section 105(a) to prevent evasion, the Board clarifies in comment 54(a)(1)–2 that this type of program is subject to the requirements of § 226.54. An illustrative example is provided.

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

Consumer group commenters argued that credit card issuers should be required to allocate payments in a manner that preserves the grace period. However, the Board is not persuaded that, as a general matter, this approach would necessarily be more advantageous for consumers than paying down the balance with the highest annual percentage rate. Furthermore, the payment allocation requirements in revised TILA Section 164(b) are mandatory in all circumstances, whereas the limitations on the imposition of finance charges in new TILA Section 127(j) apply only when the card issuer chooses to provide a grace period. Therefore, in circumstances where, for example, a card issuer must choose between allocating a payment to the balance with the highest rate (which the Credit Card Act requires) or preserving a grace period (which the Credit Card Act does not require), the Board believes it is appropriate that the payment allocation requirements control. Accordingly, comment 54(a)(1)–3 is adopted as proposed.

54(b) Exceptions

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

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

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

The Board did not receive significant comment on this aspect of the proposal. Accordingly, § 226.54(b) is adopted as proposed.

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

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

55(a) General Rule

As noted above, revised TILA Section 171(a) generally prohibits increases in annual percentage rates, fees, and finance charges on outstanding balances. Revised TILA Section 171(d) defines "outstanding balance" as the amount owed as of the end of the fourteenth day after the date on which the creditor provides notice of an increase in the annual percentage rate, fee, or finance charge in accordance with TILA Section 127(i).[42] TILA Section 127(i)(1) and (2), which went into effect on August 20, 2009, generally require creditors to notify consumers 45 days before an increase in an annual percentage rate or any other significant change in the terms of a credit card account (as determined by rule of the Board).

In the July 2009 Regulation Z Interim Final Rule, the Board implemented new TILA Section 127(i)(1) and (2) in § 226.9(c) and (g). In addition to increases in annual percentage rates, § 226.9(c)(2)(ii) lists the fees and other charges for which an increase constitutes a significant change to the account terms necessitating 45 days' advance notice, including annual or other periodic fees, fixed finance

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

charges, minimum interest charges, transaction charges, cash advance fees, late payment fees, over-the-limit fees, balance transfer fees, returned-payment fees, and fees for required insurance, debt cancellation, or debt suspension coverage. As discussed above, however, the Board has amended § 226.9(c)(2)(ii) to identify these significant account terms by a cross-reference to the account-opening disclosure requirements in § 226.6(b). Because the definition of outstanding balance in revised TILA Section 171(d) is expressly conditioned on the provision of the 45-day advance notice, the Board believes that it is consistent with the purposes of the Credit Card Act to limit the general prohibition in revised TILA Section 171(a) on increasing fees and finance charges to increases in fees and charges for which a 45-day notice is required under § 226.9.

Furthermore, because revised TILA Section 171(a) prohibits the application of increased fees and charges to outstanding balances rather than to new transactions or to the account as a whole, the Board believes that it is appropriate to apply that prohibition only to fees and charges that could be applied to an outstanding balance. For example, increased cash advance or balance transfer fees would apply only to new cash advances or balance transfers, not to existing balances. Similarly, increased penalty fees such as late payment fees, over-the-limit fees, and returned payment fees would apply to the account as a whole rather than any specific balance.[43]

Accordingly, the Board proposed to use its authority under TILA Section 105(a) to limit the general prohibition in revised TILA Section 171(a) to increases in annual percentage rates and in fees and charges required to be disclosed under § 226.6(b)(2)(ii) (fees for the issuance or availability of credit), § 226.6(b)(2)(iii) (fixed finance charges and minimum interest charges), or § 226.6(b)(2)(xii) (fees for required insurance, debt cancellation, or debt suspension coverage).[44] Although consumer groups expressed concern that card issuers might develop new fees in order to evade the prohibition on applying increased fees to existing balances, the Board believes that these categories of fees are sufficiently broad to address any attempts at circumvention.

In addition, for clarity and organizational purposes, proposed § 226.55(a) generally prohibited increases in annual percentage rates and fees and charges required to be disclosed under § 226.6(b)(2)(ii), (b)(2)(iii), or (b)(2)(xii) with respect to all transactions, rather than just increases on existing balances. As explained in the proposal, the Board does not intend to alter the substantive requirements in revised TILA Section 171. Instead, the Board believes that revised TILA Section 171 can be more clearly and effectively implemented if increases in rates, fees, and charges that apply to transactions that occur more than fourteen days after provision of a § 226.9(c) or (g) notice are addressed in an exception to the general prohibition rather than placed outside that prohibition. The Board and the other Agencies adopted a similar approach in the January 2009 FTC Act Rule. *See* 12 CFR 227.24, 74 FR 5560. The Board did not receive significant comment on this aspect of the proposal. Accordingly, § 226.55(a) states that, except as provided in § 226.55(b), a card issuer must not increase an annual percentage rate or a fee or charge required to be disclosed under § 226.6(b)(2)(ii), (b)(2)(iii), or (b)(2)(xii).

Proposed comment 55(a)–1 provided examples of the general application of § 226.55(a) and the exceptions in § 226.55(b). The Board has clarified these examples but no substantive change is intended. Additional examples illustrating specific aspects of the exceptions in § 226.55(b) are provided in the commentary to those exceptions.

Proposed comment 55(a)–2 clarified that nothing in § 226.55 prohibits a card issuer from assessing interest due to the loss of a grace period to the extent consistent with § 226.54. In addition, the comment states that a card issuer has not reduced an annual percentage rate on a credit account for purposes of § 226.55 if the card issuer does not charge interest on a balance or a portion thereof based on a payment received prior to the expiration of a grace period. For example, if the annual percentage rate for purchases on an account is 15% but the card issuer does not charge any interest on a $500 purchase balance because that balance was paid in full prior to the expiration of the grace period, the card issuer has not reduced the 15% purchase rate to 0% for purposes of § 226.55. The Board has revised this comment to clarify that any loss of a grace period must also be consistent with the requirements for mailing or delivering periodic statements in § 226.5(b)(2)(ii)(B). Otherwise, it is adopted as proposed.

55(b) Exceptions

Revised TILA Section 171(b) lists the exceptions to the general prohibition in revised Section 171(a). Similarly, § 226.55(b) lists the exceptions to the general prohibition in § 226.55(a). In addition, § 226.55(b) clarifies that the listed exceptions are not mutually exclusive. In other words, a card issuer may increase an annual percentage rate or a fee or charge required to be disclosed under § 226.6(b)(2)(ii), (b)(2)(iii), or (b)(2)(xii) pursuant to an exception set forth in § 226.55(b) even if that increase would not be permitted under a different exception. Comment 55(b)–1 clarifies that, for example, although a card issuer cannot increase an annual percentage rate pursuant to § 226.55(b)(1) unless that rate is provided for a specified period of at least six months, the card issuer may increase an annual percentage rate during a specified period due to an increase in an index consistent with § 226.55(b)(2). Similarly, although § 226.55(b)(3) does not permit a card issuer to increase an annual percentage rate during the first year after account opening, the card issuer may increase the rate during the first year after account opening pursuant to § 226.55(b)(4) if the required minimum periodic payment is not received within 60 days after the due date. The Board did not receive significant comment on the prefatory language in § 226.55(b) or on comment 55(b)–1, which are adopted as proposed. Similarly, except as noted below, comments 55(b)–2 through –6 are adopted as proposed.

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

Commenters generally supported this guidance, but requested additional clarification regarding mid-cycle increases. Because these increases can occur as a result of the interaction between the exceptions in § 226.55(b) and the 45-day notice requirements in § 226.9(c) and (g), the Board has incorporated into comment 55(b)–2 the

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

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

guidance provided in proposed comment 55(b)–6 regarding that interaction.[45] Specifically, proposed comment 55(b)–6 stated that nothing in § 226.55 alters the requirements in § 226.9(c) and (g) that creditors provide written notice at least 45 days prior to the effective date of certain increases in annual percentage rates, fees, and charges. For example, although § 226.55(b)(3)(ii) permits a card issuer that discloses an increased rate pursuant to § 226.9(c) or (g) to apply that rate to transactions that occurred more than fourteen days after provision of the notice, the card issuer cannot begin to accrue interest at the increased rate until that increase goes into effect, consistent with § 226.9(c) or (g). The final rule adopts this guidance—with illustrative examples—in comment 55(b)–2.

In addition, proposed comment 55(b)–6 clarified that, on or after the effective date, the card issuer cannot calculate interest charges for days before the effective date based on the increased rate. In response to requests from commenters for further clarification, the Board has added this guidance to comment 55(b)–2 and adopted additional guidance addressing the application of different balance computation methods when an increased rate goes into effect in the middle of a billing cycle.

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

As discussed below, several of the exceptions in proposed § 226.55 require the creditor to determine when a transaction occurred. For example, consistent with revised TILA Section 171(d)'s definition of "outstanding balance," § 226.55(b)(3)(ii) provides that a card issuer that discloses an increased rate pursuant to § 226.9(c) or (g) may not apply that increased rate to transactions that occurred prior to or within fourteen days after provision of the notice. Accordingly, comment 55(b)–4 clarifies that when a transaction occurred for purposes of § 226.55 is generally determined by the date of the transaction.[46] The Board understands that, in certain circumstances, a short delay can occur between the date of the transaction and the date on which the merchant charges that transaction to the account. As a general matter, the Board believes that these delays should not affect the application of § 226.55. However, to address the operational difficulty for card issuers in the rare circumstance where a transaction that occurred within fourteen days after provision of a § 226.9(c) or (g) notice is not charged to the account prior to the effective date of the increase or change, this comment clarifies that the card issuer may treat the transaction as occurring more than fourteen days after provision of the notice for purposes of § 226.55. In addition, the comment clarifies that, when a merchant places a "hold" on the available credit on an account for an estimated transaction amount because the actual transaction amount will not be known until a later date, the date of the transaction for purposes of § 226.55 is the date on which the card issuer receives the actual transaction amount from the merchant. Illustrative examples are provided in comment 55(b)(3)–4.iii.

Comment 55(b)–5 clarifies the meaning of the term "category of transactions," which is used in some of the exceptions in § 226.55(b). This comment states that, for purposes of § 226.55, a "category of transactions" is a type or group of transactions to which an annual percentage rate applies that is different than the annual percentage rate that applies to other transactions.[47] For example, purchase transactions, cash advance transactions, and balance transfer transactions are separate categories of transactions for purposes of § 226.55 if a card issuer applies different annual percentage rates to each. Furthermore, if, for example, the card issuer applies different annual percentage rates to different types of purchase transactions (such as one rate for purchases of gasoline or purchases over $100 and a different rate for all other purchases), each type constitutes a separate category of transactions for purposes of § 226.55.

55(b)(1) Temporary Rate Exception

Revised TILA Section 171(b)(1) provides that a creditor may increase an annual percentage rate upon the expiration of a specified period of time, subject to three conditions. First, prior to commencement of the period, the creditor must have disclosed to the consumer, in a clear and conspicuous manner, the length of the period and the increased annual percentage rate that will apply after expiration of the period. Second, at the end of the period, the creditor must not apply a rate that exceeds the increased rate that was disclosed prior to commencement of the period. Third, at the end of the period, the creditor must not apply the previously-disclosed increased rate to transactions that occurred prior to commencement of the period. Thus, under this exception, a creditor that, for example, discloses at account opening that a 5% rate will apply to purchases for six months and that a 15% rate will apply thereafter is permitted to increase the rate on the purchase balance to 15% after six months.

The Board proposed to implement the exception in revised TILA Section 171(b)(1) regarding temporary rates as well as the requirements in new TILA Section 172(b) regarding promotional rates in § 226.55(b)(1). As a general matter, commenters supported or did not address proposed § 226.55(b)(1) and its commentary. Accordingly, except as discussed below, they are adopted as proposed.[48]

[45] As a result, proposed comment 55(b)–6 is not adopted in this final rule.

[46] This comment is based on comment 9(h)(3)(ii)–2, which was adopted in the July 2009 Regulation Z Interim Final Rule. *See* 74 FR 36101.

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

[48] Some industry commenters requested that the Board expand § 226.55(b)(1) to apply to increases in fees to a pre-disclosed amount after a specified period of time. However, as discussed above with respect to § 226.9(c) and (h), the Board believes that such an exception would be inconsistent with the Credit Card Act. In addition, some industry

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

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

Section 226.55(b)(1)(i) implements the requirement in revised TILA Section 171(b)(1)(A) that creditors disclose the length of the period and the annual percentage rate that will apply after the expiration of that period. This language tracks § 226.9(c)(2)(v)(B)(*1*), which the Board adopted in the July 2009 Regulation Z Interim Final Rule as part of an exception to the general requirement that creditors provide 45 days' notice before an increase in annual percentage rate. Because the disclosure requirements in § 226.9(c)(2)(v)(B)(*1*) and § 226.55(b)(1)(i) implement the same statutory provision (revised TILA Section 171(b)(1)(A)), the Board believes a single set of disclosures should satisfy both requirements. Accordingly, comment 55(b)(1)–1 clarifies that a card issuer that has complied with the disclosure requirements in § 226.9(c)(2)(v)(B) has also complied with the disclosure requirements in § 226.55(b)(2)(i).

Section 226.55(b)(1)(ii) implements the limitations in revised TILA Section 171(b)(1)(B) and (C) on the application of increased rates following expiration of the specified period. First, § 226.55(b)(1)(ii)(A) states that, upon expiration of the specified period, a card issuer must not apply an annual percentage rate to transactions that occurred prior to the period that exceeds the rate that applied to those transactions prior to the period. In other words, the expiration of a temporary rate cannot be used as a reason to apply an increased rate to a balance that preceded application of the temporary rate. For example, assume that a credit card account has a $5,000 purchase balance at a 15% rate and that the card issuer reduces the rate that applies to all purchases (including the $5,000 balance) to 10% for six months with a 22% rate applying thereafter. Under § 226.55(b)(1)(ii)(A), the card issuer cannot apply the 22% rate to the $5,000 balance upon expiration of the six-month period (although the card issuer could apply the original 15% rate to that balance).

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

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

Comment 55(b)(1)–2 clarifies when the specified period begins for purposes of the six-month requirement in § 226.55(b)(1). As a general matter, comment 55(b)(1)–2 states that the specified period must expire no less than six months after the date on which the creditor discloses to the consumer the length of the period and rate that will apply thereafter (as required by § 226.55(b)(1)(i)). However, if the card issuer provides these disclosures before the consumer can use the account for transactions to which the temporary rate will apply, the temporary rate must expire no less than six months from the date on which it becomes available.

For example, assume that on January 1 a card issuer offers a 5% annual percentage rate for six months on purchases (with a 15% rate applying thereafter). If a consumer may begin making purchases at the 5% rate on January 1, § 226.55(b)(1) permits the issuer to begin accruing interest at the 15% rate on July 1. However, if a consumer may not begin making purchases at the 5% rate until February 1, § 226.55(b)(1) does not permit the issuer to begin accruing interest at the 15% rate until August 1.

The Board understands that card issuers often limit the application of a promotional rate to particular categories of transactions (such as balance transfers or purchases over $100). The Board does not believe that the six-month requirement in new TILA Section 172(b) was intended to prohibit

commenters requested that the Board exclude promotional programs under which no interest is charged for a specified period of time. However, the Board believes that, for purposes of § 226.55, these programs do not differ in any material way from programs that offer annual percentage rate of 0% for a specified period of time.

this practice so long as the consumer receives the benefit of the promotional rate for at least six months. Accordingly, proposed comment 55(b)(1)–2 clarifies that § 226.55(b)(1) does not prohibit these types of limitations. However, the comment also clarifies that, in circumstances where the card issuer limits application of the temporary rate to a particular transaction, the temporary rate must expire no less than six months after the date on which that transaction occurred. For example, if on January 1 a card issuer offers a 0% temporary rate on the purchase of an appliance and the consumer uses the account to purchase a $1,000 appliance on March 1, the card issuer cannot increase the rate on that $1,000 purchase until September 1.

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

As a general matter, commenters supported the guidance in comment 55(b)(1)–2. Some industry commenters argued that the six-month requirement should not apply when the temporary rate is limited to a particular transaction, but the Board finds no support for such an exclusion in new TILA Section 172(b). Other industry commenters argued that, even if a temporary rate is limited to a particular transaction, the six-month period required by § 226.55(b)(1) should always begin once the terms have been disclosed and the rate is available to consumers. However, because temporary rates that are limited to particular transactions are frequently offered in retail settings, the Board is concerned that many consumers would not receive the benefit of the six-month period mandated by Section 172(b) if that period began when the rate was available.

For example, assume that a temporary rate of 0% is available on the purchase of a television from a particular retailer beginning on January 1. If the six-month period begins on January 1, a consumer who purchases a television on January 1 will receive the benefit of 0% rate for six months. However, a consumer who purchases a television on June 1 will only receive the benefit of the 0% rate for one month. As discussed above, the Board believes that, as a general matter, the benefits of temporary rates that can be used for multiple transactions sufficiently outweigh the fact that a consumer will not receive the temporary rate for the full six months on every transaction and therefore justify interpreting the six-month period in new TILA Section 172(b) as beginning when the rate becomes available. However, when the temporary rate applies only to a single transaction, the Board believes that Section 172(b) requires the card issuer to apply the temporary rate to that transaction for at least six months.

Although some industry commenters cited the operational difficulty of tracking transaction-specific expiration dates for temporary rates, the Board notes that several card issuers do so today. Furthermore, as discussed in comment 55(b)–2, a card issuer is not required to increase the rate precisely six months after the date of the transaction. Instead, assuming monthly billing cycles, a card issuer could, for example, use a single expiration date of July 31 for all temporary rate transactions that occur during the month of January (although this would require the card issuer to extend the temporary rate for up to a month). Accordingly, in this respect, comment 55(b)(1)–2 is adopted as proposed.[49]

Comment 55(b)(1)–3 clarifies that the general prohibition in § 226.55(a) applies to the imposition of accrued interest upon the expiration of a deferred interest or similar promotional program under which the consumer is not obligated to pay interest that accrues on a balance if that balance is paid in full prior to the expiration of a specified period of time. As discussed in the January 2009 FTC Act Rule, the assessment of deferred interest is effectively an increase in rate on an existing balance. *See* 74 FR 5527–5528. However, if properly disclosed, deferred interest programs can provide substantial benefits to consumers. *See* 74 FR 20812–20813. Furthermore, as discussed above with respect to § 226.54, the Board does not believe that the Credit Card Act was intended to ban properly-disclosed deferred interest programs. Accordingly, comment 55(b)(1)–3 further clarifies that card issuers may continue to offer such programs consistent with the requirements of § 226.55(b)(1). In particular, § 226.55(b)(1) requires that the deferred interest or similar period be at least six months. Furthermore, prior to the commencement of the period, § 226.55(b)(1)(i) requires the card issuer to disclose the length of the period and the rate that will apply to the balance subject to the deferred interest program if that balance is not paid in full prior to expiration of the period. The comment provides examples illustrating the application of § 226.55 to deferred interest and similar programs.

Some industry commenters requested that the Board exclude deferred interest and similar programs from the six-month requirement in § 226.55(b)(1). However, because the Board has concluded that these programs should be treated as promotional programs for purposes of revised TILA Section 171, the Board does believe there is a basis for excluding these programs from the six-month requirement in new TILA Section 172(b). However, in order to ensure consistent treatment of deferred interest programs across Regulation Z, the Board has revised comment 55(b)(1)–3 to clarify that "deferred interest" has the same meaning as in § 226.16(h)(2) and associated commentary. In addition, the Board has added an example clarifying the application of the exception in § 226.55(b)(4) for accounts that are more than 60 days delinquent to deferred interest and similar programs.

Comment 55(b)(1)–4 clarifies that § 226.55(b)(1) does not permit a card issuer to apply an increased rate that is contingent on a particular event or occurrence or that may be applied at the card issuer's discretion. The comment provides examples of rate increases that are not permitted by § 226.55. Some industry commenters requested that, when a reduced rate is provided to employees of a business, the Board permit application of an increased rate to existing balances when employment ends. However, the Board believes that such an exception would be inconsistent with revised TILA Section 171(b)(1) because it is based on a contingent event rather than a specified period of time.

55(b)(2) Variable Rate Exception

Revised TILA Section 171(b)(2) provides that a card issuer may increase "a variable annual percentage rate in accordance with a credit card agreement that provides for changes in the rate according to operation of an index that is not under the card issuer's control

[49] However, in order to address confusion regarding the application of comment 55(b)(1)–2 to balance transfer offers, the Board has added an example clarifying that the six-month period for temporary rates that apply to multiple balance transfers begins once the terms have been disclosed and the rate is available to consumers. The Board has also made non-substantive clarifications to the examples in comment 55(b)(1)–2.

and is available to the general public." The Board proposed to implement this exception in § 226.55(b)(2), which states that a creditor may increase an annual percentage rate that varies according to an index that is not under the creditor's control and is available to the general public when the increase in rate is due to an increase in the index. Section 226.55(b)(2) is adopted as proposed.

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

Proposed comment 55(b)(1)–2 further clarified that a card issuer may not increase a variable rate based on its own prime rate or cost of funds. A card issuer is permitted, however, to use a published prime rate, such as that in the *Wall Street Journal,* even if the card issuer's own prime rate is one of several rates used to establish the published rate. In addition, proposed comment 55(b)(2)–3 clarified that a publicly-available index need not be published in a newspaper, but it must be one the consumer can independently obtain (by telephone, for example) and use to verify the annual percentage rate applied to the credit card account. These comments are adopted as proposed, except that, as discussed below, the Board has provided additional clarification in comment 55(b)(2)–2 regarding what constitutes exercising control over the operation of an index for purposes of § 226.55(b)(2).

Consumer groups and a member of Congress raised concerns about two industry practices that, in their view, exercise control over the variable rate in a manner that is inconsistent with revised TILA Section 171(b)(2). First, they noted that many card issuers set minimum rates or "floors" below which a variable rate cannot fall even if a decrease would be consistent with a change in the applicable index. For example, assume that a card issuer offers a variable rate of 17%, which is calculated by adding a margin of 12 percentage points to an index with a current value of 5%. However, the terms of the account provide that the variable rate will not decrease below 17%. As a result, the variable rate can only increase, and the consumer will not benefit if the value of the index falls below 5%. The Board agrees that this practice is inconsistent with § 226.55(b)(2). Accordingly, the Board has revised comment 55(b)(2)–2 to clarify that a card issuer exercises control over the operation of the index if the variable rate based on that index is subject to a fixed minimum rate or similar requirement that does not permit the variable rate to decrease consistent with reductions in the index.[50]

The second practice raised by consumer groups and a member of Congress relates to adjusting or resetting variable rates to account for changes in the index. Typically, card issuers do not reset variable rates on a daily basis. Instead, card issuers may reset variable rates monthly, every two months, or quarterly. When the rate is reset, some card issuers calculate the new rate by adding the margin to the value of the index on a particular day (such as the last day of a month or billing cycle). However, some issuers calculate the variable rate based on the highest index value during a period of time (such as the 90 days preceding the last day of a month or billing cycle). Consumer groups and a member of Congress argued that the latter practice is inconsistent with § 226.55(b)(2) insofar as the consumer can be prevented from receiving the benefit of decreases in the index.

The Board agrees that a card issuer exercises control over the operation of the index if the variable rate can be calculated based on any index value during a period of time. Accordingly, the Board has revised comment 55(b)(2)–2 to clarify that, if the terms of the account contain such a provision, the card issuer cannot apply increases in the variable rate to existing balances pursuant to § 226.55(b)(2). However, the comment also clarifies that a card issuer can adjust the variable rate based on the value of the index on a particular day or, in the alternative, the average index value during a specified period.

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

Because § 226.55 applies only to *increases* in annual percentage rates, proposed comment 55(b)(2)–5 clarifies that nothing in § 226.55 prohibits a card issuer from changing a variable rate to an equal or lower non-variable rate. Whether the non-variable rate is equal to or lower than the variable rate is determined at the time the card issuer provides the notice required by § 226.9(c). An illustrative example is provided. Consumer group commenters argued that the Board should prohibit issuers from converting a variable rate to a non-variable rate when the index used to calculate the variable rate has reached its peak value. However, it would be difficult or impossible to develop workable standards for determining when a variable rate has reached its peak value or for distinguishing between conversions that are done for legitimate reasons and those that are not. Furthermore, as the consumer group commenters acknowledged, non-variable rates can be beneficial to consumers insofar as they provide increased predictability regarding the cost of credit. Accordingly, this comment is adopted as proposed.

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

[50] However, because there is no disadvantage to consumers, comment 55(b)(2)–2 clarifies that card issuers are permitted to set fixed maximum rates or "ceilings" that do not permit the variable rate to increase consistent with increases in an index.

Consumer group commenters raised concerns that card issuers could substitute indices in a manner that circumvents the requirements of § 226.55(b)(2). Because comment 55(b)(2)–6 addresses the narrow circumstance in which an index becomes unavailable, the Board does not believe there is a significant risk of abuse. Indeed, this comment is substantively similar to long-standing guidance provided by the Board with respect to HELOCs (comment 5b(f)(3)(ii)–1), and the Board is not aware of any abuse in that context. Accordingly, the Board does not believe that revisions to comment 55(b)(2)–6 are warranted at this time.

55(b)(3) Advance Notice Exception

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

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

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

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

The Board did not receive significant comment regarding § 226.55(b)(3). Thus, the final rules adopt § 226.55(b)(3) as proposed. Similarly, except as discussed below, the Board has generally adopted the commentary to § 226.55(b)(3) as proposed, although the Board has made some non-substantive clarifications.

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

Comment 55(b)(3)–3 clarifies whether certain changes to a credit card account constitute an "account opening" for purposes of the prohibition in § 226.55(b)(3)(iii) on increasing annual percentage rates and fees and charges required to be disclosed under § 226.6(b)(2)(ii), (b)(2)(iii), or (b)(2)(xii) during the first year after account opening. In particular, the comment distinguishes between circumstances in which a card issuer opens multiple accounts for the same consumer and circumstances in which a card issuer substitutes, replaces, or consolidates one account with another. As an initial matter, this comment clarifies that, when a consumer has a credit card account with a card issuer and the consumer opens a new credit card account with the same card issuer (or its affiliate or subsidiary), the opening of the new account constitutes the opening of a credit card account for purposes of § 226.55(b)(3)(iii) if, more than 30 days after the new account is opened, the consumer has the option to obtain additional extensions of credit on each account. Thus, for example, if a consumer opens a credit card account with a card issuer on January 1 of year one and opens a second credit card account with that card issuer on July 1 of year one, the opening of the second account constitutes an account opening for purposes of § 226.55(b)(3)(iii) so long as, on August 1, the consumer has the option to engage in transactions using either account. This is the case even if the consumer transfers a balance from the first account to the second. Thus, because the card issuer has two separate account relationships with the consumer, the prohibition in § 226.55(b)(3)(iii) on increasing annual percentage rates and fees and charges required to be disclosed under § 226.6(b)(2)(ii), (b)(2)(iii), or (b)(2)(xii) during the first year after account opening applies to the opening of the second account.[51]

[51] This comment is based on commentary to the January 2009 FTC Act Rule proposed by the Board and the other Agencies in May 2009. *See* 12 CFR 227.24, proposed comment 24–4, 74 FR 20816; *see also* 74 FR 20809. In that proposal, the Board recognized that the process of replacing one

In contrast, the comment clarifies that an account has not been opened for purposes of § 226.55(b)(3)(iii) when a card issuer substitutes or replaces one credit card account with another credit card account (such as when a retail credit card is replaced with a cobranded general purpose card that can be used at a wider number of merchants) or when a card issuer consolidates or combines a credit card account with one or more other credit card accounts into a single credit card account. As discussed below with respect to proposed § 226.55(d)(2), the Board believes that these transfers should be treated as a continuation of the existing account relationship rather than the creation of a new account relationship. Similarly, the comment also clarifies that the substitution or replacement of an acquired credit card account does not constitute an "account opening" for purposes of § 226.55(b)(3)(iii). Thus, in these circumstances, the prohibition in § 226.55(b)(3)(iii) does not apply. However, when a substitution, replacement or consolidation occurs during the first year after account opening, comment 55(b)(3)–3.ii.B clarifies that the card issuer may not increase an annual percentage rate, fee, or charge in a manner otherwise prohibited by § 226.55.[52]

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

55(b)(4) Delinquency Exception

Revised TILA Section 171(b)(4) permits a creditor to increase an annual percentage rate, fee, or finance charge "due solely to the fact that a minimum payment by the [consumer] has not been received by the creditor within 60 days after the due date for such payment." However, this exception is subject to two conditions. First, revised Section 171(b)(4)(A) provides that the notice of the increase must include "a clear and conspicuous written statement of the reason for the increase and that the increase will terminate not later than 6 months after the date on which it is imposed, if the creditor receives the required minimum payments on time from the [consumer] during that period." Second, revised Section 171(b)(4)(B) provides that the creditor must "terminate [the] increase not later than 6 months after the date on which it is imposed, if the creditor receives the required minimum payments on time during that period."

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

First, proposed § 226.55(b)(4)(ii) interpreted the requirement that the creditor "terminate" the increase as a requirement that the card issuer reduce the annual percentage rate, fee, or charge to the rate, fee, or charge that applied prior to the increase. The Board believes that this interpretation is consistent with the intent of revised TILA Section 171(b)(4)(B) insofar as the increased rate, fee, or charge will cease to apply once the consumer has met the statutory requirements. The Board does not interpret revised TILA Section 171(b)(4)(B) to require the card issuer to refund or credit the account for amounts charged as a result of the increase prior to the termination or cessation. The Board did not receive significant comment on this aspect of the proposal, which is adopted in the final rule.

Second, proposed § 226.55(b)(4)(ii) provided that the card issuer must reduce the annual percentage rate, fee, or charge after receiving six consecutive required minimum periodic payments on or before the payment due date. The Board believes that shifting the focus from the number of months to the number of on-time payments provides more specificity and clarity for both consumers and card issuers as to what is required to obtain the reduction. Because credit card accounts typically require payment on a monthly basis,[53] a consumer who makes six consecutive on-time payments will also generally have paid on time for six months. However, card issuers are permitted to adjust their due dates and billing cycles from time to time,[54] which could create uncertainty regarding whether a consumer has complied with the statutory requirement to make on-time payments during the six-month period. The Board did not receive significant comment on this proposed adjustment. Accordingly, because the Board believes that this adjustment to TILA Section 171(b)(4) will facilitate compliance with that provision, it is adopted in the final rule.

Third, proposed § 226.55(b)(4)(ii) applied to the six consecutive required minimum periodic payments received on or before the payment due date beginning with the first payment due following the effective date of the increase. The Board believes that limiting this requirement to the period immediately following the increase is consistent with revised TILA Section 171(b)(4)(B), which requires a creditor to terminate an increase "6 months *after* the date on which it is imposed, if the creditor receives the required minimum payments on time during that period." Thus, as clarified in comment 55(b)(4)–3 (which is discussed below), § 226.55(b)(4)(ii) does not require a card issuer to terminate an increase if, at some later point in time, the card issuer receives six consecutive required minimum periodic payments on or before the payment due date. The Board did not receive significant comment on this interpretation, which is adopted in the final rule.

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

account with another generally is not instantaneous. If, for example, a consumer requests that a credit card account with a $1,000 balance be upgraded to a credit card account that offers rewards on purchases, the second account may be opened immediately or within a few days but, for operational reasons, there may be a delay before the $1,000 balance can be transferred and the first account can be closed. For this reason, the Board sought comment on whether 15 or 30 days was the appropriate amount of time to complete this process. In response, industry commenters generally stated that at least 30 days was required. Accordingly, the Board proposed a 30-day period in comment 55(b)(3)–3. The Board did not receive additional comment on this issue. Accordingly, the 30-day period is adopted in the final rule.

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

[53] Although some creditors use quarterly billing cycles for other open-end products, the Board is not aware of any creditor that does so with respect to credit card accounts under open-end (not home-secured) consumer credit plans.

[54] *See, e.g.,* comments 2(a)(4)–3 and 7(b)(11)–7.

§ 226.55(b)(3)(ii). As above, the Board did not receive significant comment on this aspect of the proposal, which is adopted in the final rule.

Accordingly, for the reasons discussed above, § 226.55(b)(4) is adopted as proposed. Similarly, except as discussed below, the Board has adopted the commentary to § 226.55(b)(4) as proposed (with certain non-substantive clarifications).

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

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

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

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

Third, the comment states that, if § 226.55(b)(4)(ii) requires a card issuer to reduce an annual percentage rate, fee, or charge on a date that is not the first day of a billing cycle, the card issuer may delay application of the reduced rate, fee, or charge until the first day of the following billing cycle. As discussed above with respect to comment 55(b)–2, the Board understands that it may be operationally difficult for some card issuers to reduce a rate, fee, or charge in the middle of a billing cycle. Accordingly, this comment is consistent with comment 55(b)–2, which clarifies that a card issuer may delay application of an increase in a rate, fee, or charge until the start of the next billing cycle without relinquishing its ability to apply that rate, fee, or charge. Finally, the comment provides examples illustrating the application of § 226.55(b)(4)(ii).[55]

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

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

The Board proposed to implement this exception in § 226.55(b)(5). The notice requirements in revised Section 171(b)(3)(B) were set forth in proposed § 226.55(b)(5)(i). The limitation on increases following completion or failure of a workout or temporary hardship arrangement was set forth in proposed § 226.55(b)(5)(ii). Section 226.55(b)(5) is generally adopted as proposed, although—as discussed below—the Board has revised § 226.55(b)(5)(i) and comment 55(b)(5)–2 for consistency with the revisions to the notice requirements for workout and temporary hardship arrangements in § 226.9(c)(2)(v)(D). Otherwise, the commentary to § 226.55(b)(5) is adopted as proposed.

Comment 55(b)(5)–1 clarifies that nothing in § 226.55(b)(5) permits a card issuer to alter the requirements of § 226.55 pursuant to a workout or temporary hardship arrangement. For example, a card issuer cannot increase

[55] In response to requests for clarification, the Board has added an example to comment 55(b)(4)–3 illustrating the application of § 226.55(b)(4)(ii) when a consumer qualifies for a reduction in rate while a temporary rate is still in effect. In addition, the Board has added a cross-reference to comment 55(b)(1)–3, which provides an illustrative example of the application of § 226.55(b)(4) to deferred interest or similar programs.

an annual percentage rate or a fee or charge required to be disclosed under § 226.6(b)(2)(ii), (b)(2)(iii), or (b)(2)(xii) pursuant to a workout or temporary hardship arrangement unless otherwise permitted by § 226.55. In addition, a card issuer cannot require the consumer to make payments with respect to a protected balance that exceed the payments permitted under § 226.55(c).[56]

Comment 55(b)(5)–2 clarifies that a card issuer that has complied with the disclosure requirements in § 226.9(c)(2)(v)(D) has also complied with the disclosure requirements in § 226.55(b)(5)(i). The comment also contains a cross-reference to proposed comment 9(c)(2)(v)–10 (formerly comment 9(c)(2)(v)–8), which the Board adopted in the July 2009 Regulation Z Interim Final Rule to clarify the terms a creditor is required to disclose prior to commencement of a workout or temporary hardship arrangement for purposes of § 226.9(c)(2)(v)(D), which is an exception to the general requirement that a creditor provide 45 days advance notice of an increase in annual percentage rate. *See* 74 FR 36099. Because the disclosure requirements in § 226.9(c)(2)(v)(D) and § 226.55(b)(5)(i) implement the same statutory provision (revised TILA Section 171(b)(3)(B)), the Board believes a single set of disclosures should satisfy the requirements of all three provisions. The Board has revised the disclosure requirement in § 226.55(b)(5)(i) and the guidance in comment 55(b)(5)–2 for consistency with the revisions to § 226.9(c)(2)(v)(D), which permit creditors to disclose the terms of the workout or temporary hardship arrangement orally by telephone, provided that the creditor mails or delivers a written disclosure of the terms as soon as reasonably practicable after the oral disclosure is provided.

Similar to the commentary to § 226.55(b)(4), comment 55(b)(5)–3 states that, although the card issuer may not apply an annual percentage rate, fee, or charge to transactions that occurred prior to commencement of the arrangement that exceeds the rate, fee, or charge that applied to those transactions prior to commencement of the arrangement, § 226.55(b)(5)(ii) does not prohibit the card issuer from applying an increased rate, fee, or charge upon completion or failure of the arrangement to the extent consistent with any of the other exceptions in § 226.55(b) (such as an increase in a variable rate consistent with § 226.55(b)(2)). Finally, comment 55(b)(5)–4 provides illustrative examples of the application of this exception.[57]

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

In the October 2009 Regulation Z Proposal, the Board proposed to use its authority under TILA Section 105(a) to clarify the relationship between the general prohibition on increasing annual percentage rates in revised TILA Section 171 and certain provisions of the Servicemembers Civil Relief Act (SCRA), 50 U.S.C. app. 501 *et seq*. Specifically, 50 U.S.C. app. 527(a)(1) provides that "[a]n obligation or liability bearing interest at a rate in excess of 6 percent per year that is incurred by a servicemember, or the servicemember and the servicemember's spouse jointly, before the servicemember enters military service shall not bear interest at a rate in excess of 6 percent. * * *" With respect to credit card accounts, this restriction applies during the period of military service. *See* 50 U.S.C. app. 527(a)(1)(B).[58]

Under revised TILA Section 171, a creditor that complies with the SCRA by lowering the annual percentage rate that applies to an existing balance on a credit card account when the consumer enters military service arguably would not be permitted to increase the rate for that balance once the period of military service ends and the protections of the SCRA no longer apply. In May 2009, the Board and the other Agencies proposed to create an exception to the general prohibition in the January 2009 FTC Act Rule on applying increased rates to existing balances for these circumstances, provided that the increased rate does not exceed the rate that applied prior to the period of military service. *See* 12 CFR 227.24(b)(6), 74 FR 20814; *see also* 74 FR 20812. Revised TILA Section 171 does not contain a similar exception.

Nevertheless, the Board does not believe that Congress intended to prohibit creditors from returning an annual percentage rate that has been reduced by operation of the SCRA to its pre-military service level once the SCRA no longer applies. Accordingly, the Board proposed to create § 226.55(b)(6), which states that, if an annual percentage rate has been decreased pursuant to the SCRA, a card issuer may increase that annual percentage rate once the SCRA no longer applies. However, the proposed rule would not have permitted the card issuer to apply an annual percentage rate to any transactions that occurred prior to the decrease that exceeds the rate that applied to those transactions prior to the decrease. Furthermore, because the Board believes that a consumer leaving military service should receive 45 days advance notice of this increase in rate, the Board did not propose a corresponding exception to § 226.9.

Commenters were generally supportive of proposed § 226.55(b)(6). Accordingly, it is adopted as proposed. However, although industry commenters argued that a similar exception should be adopted in § 226.9(c), the Board continues to believe—as discussed above with respect to § 226.9(c)—that consumers who leave military service should receive 45 days advance notice of an increase in rate.

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

55(c) Treatment of Protected Balances

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

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

[57] In response to requests for clarifications, the Board has revised comment 55(b)(5)–4 to provide an example of the application of § 226.55(b)(5) to fees.

[58] 50 U.S.C. app. 527(a)(1)(B) applies to obligations or liabilities that do not consist of a mortgage, trust deed, or other security in the nature of a mortgage.

payment that includes a percentage of the outstanding balance that is equal to not more than twice the percentage required before the effective date of the increase set forth in the Section 127(i) notice.

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

Comment 55(c)(1)–1 provides an illustrative example of a protected balance. Comment 55(c)(1)–2 clarifies that, because § 226.55(b)(3)(iii) does not permit a card issuer to increase an annual percentage rate or a fee or charge required to be disclosed under § 226.6(b)(2)(ii), (b)(2)(iii), or (b)(2)(xii) during the first year after account opening, § 226.55(c) does not apply to balances during the first year after account opening. These comments are adopted as proposed.

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

Proposed § 226.55(c)(2) would have implemented the restrictions on accelerating the repayment of protected balances in revised TILA Section 171(c). As discussed above with respect to § 226.9(h), the Board previously implemented these restrictions in the July 2009 Regulation Z Interim Final Rule as § 226.9(h)(2)(iii). However, for clarity and consistency, the Board proposed to move these restrictions to § 226.55(c)(2). The Board did not propose to substantively alter the repayment methods in § 226.9(h)(2)(iii), except that the repayment methods in § 226.55(c)(2) focused on the effective date of the increase (rather than the date on which the card issuer is notified of the rejection pursuant to § 226.9(h)). The Board did not receive significant comment on § 226.55(c)(2), which is adopted as proposed.

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

55(d) Continuing Application of § 226.55

Pursuant to its authority under TILA Section 105(a), the Board proposed to adopt § 226.55(d), which provided that the limitations in § 226.55 continue to apply to a balance on a credit card account after the account is closed or acquired by another card issuer or the balance is transferred from a credit card account issued by a card issuer to another credit account issued by the same card issuer or its affiliate or subsidiary (unless the account to which the balance is transferred is subject to § 226.5b). This provision is based on commentary to the January 2009 FTC Act Rule proposed by the Board and the other Agencies in May 2009, primarily in response to concerns that permitting card issuers to apply an increased rate to an existing balance in these circumstances could lead to circumvention of the general prohibition on such increases. *See* 12 CFR 227.21 comments 21(c)–1 through –3, 74 FR 20814–20815; *see also* 74 FR 20805–20807. As discussed below, § 226.55(d) and its commentary are adopted as proposed.

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

Section 226.55(d)(1) provides that § 226.55 continues to apply to a balance on a credit card account after the account is closed or acquired by another card issuer. In some cases, the acquiring institution may elect to close the acquired account and replace it with its own credit card account. *See* comment

12(a)(2)–3. The acquisition of an account does not involve any choice on the part of the consumer, and the Board believes that consumers whose accounts are acquired should receive the same level of protection against increases in annual percentage rates after acquisition as they did beforehand.[59] Comment 55(d)–1 clarifies that § 226.55 continues to apply regardless of whether the account is closed by the consumer or the card issuer and provides illustrative examples of the application of § 226.55(d)(1). Comment 55(d)–2 clarifies the application of § 226.55(d)(1) to circumstances in which a card issuer acquires a credit card account with a balance by, for example, merging with or acquiring another institution or by purchasing another institution's credit card portfolio.

Section 226.55(d)(2) provides that § 226.55 continues to apply to a balance on a credit card account after the balance is transferred from a credit card account issued by a card issuer to another credit account issued by the same card issuer or its affiliate or subsidiary (unless the account to which the balance is transferred is subject to § 226.5b). Comment 55(d)–3.i provides examples of circumstances in which balances may be transferred from one credit card account issued by a card issuer to another credit card account issued by the same card issuer (or its affiliate or subsidiary), such as when the consumer's account is converted from a retail credit card that may only be used at a single retailer or an affiliated group of retailers to a co-branded general purpose credit card which may be used at a wider number of merchants. Because of the concerns discussed above regarding circumvention and informed consumer choice and for consistency with the issuance rules regarding card renewals or substitutions for accepted credit cards under § 226.12(a)(2), the Board believes—and § 226.55(d)(2) provides—that these transfers should be treated as a continuation of the existing account relationship rather than the creation of a new account relationship. *See* comment 12(a)(2)–2.

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

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

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

Consumer groups and some industry commenters supported proposed § 226.55(d). However, the Board understands from industry comments received regarding both the May 2009 and October 2009 proposals that drawing a distinction between balance transfers involving the same card issuer and balance transfers involving different card issuers may limit a card issuer's ability to offer its existing cardholders the same terms that it would offer another issuer's cardholders. As noted in those proposals, however, the Board understands that currently card issuers generally do not make promotional balance transfer offers available to their existing cardholders for balances held by the issuer because it is not cost-effective to do so. Furthermore, although many card issuers do offer existing cardholders the opportunity to upgrade to accounts offering different terms or features (such as upgrading to an account that offers a particular type of rewards), the Board understands that these offers generally are not conditioned on a balance transfer, which indicates that it may be cost-effective for card issuers to make these offers without repricing an existing balance. The comments opposing § 226.55(d) do not lead the Board to a different understanding. Accordingly, the Board continues to believe that § 226.55(d) will benefit consumers overall.

*Section 226.56 Requirements for Over-the-Limit Transactions*

When a consumer seeks to engage in a credit card transaction that may cause his or her credit limit to be exceeded, the creditor may, at its discretion, authorize the over-the-limit transaction. If the creditor pays an over-the-limit transaction, the consumer is typically assessed a fee or charge for the service.[60] In addition, the over-the-limit transaction may also be considered a default under the terms of the credit card agreement and trigger a rate

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

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

increase, in some cases up to the default, or penalty, rate on the account.

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

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

56(a) Definition

Proposed § 226.56(a) defined "over-the-limit transaction" to mean any extension of credit by a creditor to complete a transaction that causes a consumer's credit card account balance to exceed the consumer's credit limit. No comments were received on the proposed definition and it is adopted as proposed. The term is limited to extensions of credit required to complete a transaction that has been requested by a consumer (for example, to make a purchase at a point-of-sale or on-line, or to transfer a balance from another account). The term is not intended to cover the assessment of fees or interest charges by the card issuer that may cause the consumer to exceed the credit limit.[61] *See, however,* § 226.56(j)(4), discussed below.

[61] As discussed below, § 226.56 and the accompanying commentary have been revised to refer to a "card issuer" in place of "creditor" to reflect the scope of accounts to which the rule applies.

56(b) Opt-In Requirement

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

The Board adopts the opt-in requirement as proposed. Under the final rule, § 226.56, including the requirement to provide notice and an opt-in right, applies only to a credit card account under an open-end (not home-secured) consumer credit plan, and therefore does not apply to credit cards that access a home equity line of credit or to debit cards linked to an overdraft line of credit. *See* § 226.2(a)(15)(ii). Section 226.56 and the accompanying commentary are also revised throughout to refer to a "card issuer," rather than "creditor," to reflect that the rule applies only to credit card accounts.

The opt-in notice may be provided by the card issuer orally, electronically, or in writing. *See* § 226.56(b)(1)(i). Compliance with the consumer consent provisions or other requirements necessary to provide consumer disclosures electronically pursuant to the E-Sign Act is not required if the card issuer elects to provide the opt-in notice electronically. *See also* § 226.5(a)(1)(ii)(A). However, as discussed below under § 226.56(d)(1)(ii), before the consumer may consent orally or electronically, the card issuer must also have provided the opt-in notice immediately prior to obtaining that consent. In addition, while the opt-in notice may be provided orally, electronically, or in writing, the revocation notice must be provided to the consumer in writing, consistent with the statutory requirement that such notice appear on the periodic statement reflecting the assessment of an over-the-limit fee or charge on the consumer's account. *See* TILA Section 127(k)(2), and § 226.56(d)(3), discussed below.

Proposed comment 56(b)–1 clarified that a creditor that has a policy and practice of declining to authorize or pay any transactions that the creditor reasonably believes would cause the consumer to exceed the credit limit is not subject to the requirements of this section and would therefore not be required to provide the consumer notice or an opt-in right. This "reasonable belief" standard recognizes that creditors generally do not have real-time information regarding a consumer's prior transactions or credits that may have posted to the consumer's credit card account.

Industry commenters asked the Board to clarify the aspects of the proposed rule that would *not* be applicable to a creditor that declined transactions if it reasonably believed that a transaction would cause the consumer to exceed the credit limit. In particular, industry commenters stated it was unclear whether a creditor would be permitted to charge an over-the-limit fee where a transaction was authorized on the creditor's reasonable belief that the consumer had sufficient available credit for a transaction, but the transaction nonetheless exceeded the consumer's credit limit when it later posts to the account (for example, because of an intervening charge). Industry commenters also requested additional guidance regarding the "reasonable belief" standard.

Comment 56(b)–1 as revised in the final rule clarifies that § 226.56(b)(1)(i)–(v), including the requirements to provide notice and obtain a consumer's affirmative consent to a card issuer's payment of over-the-limit transactions, do not apply to any card issuer that has a policy and practice of declining to pay any over-the-limit transaction when the card issuer has a reasonable belief that completing the transaction will cause the consumer to exceed his or her credit limit. While the notice and opt-in requirements of the rule do not apply to such card issuers, the prohibition against assessing an over-the-limit fee or charge without the consumer's affirmative consent continues to apply. *See also* § 226.56(b)(2). This clarification regarding application of the fee prohibition has been moved into the comment in response to consumer group suggestions. Thus, if an over-the-limit transaction is paid, for example, because of a must-pay transaction that was authorized by the card issuer on the belief that the consumer had sufficient available credit and which later causes the consumer's credit limit to be exceeded when it posts, the card issuer may not charge a fee for paying the transaction, absent the consumer's consent to the service. The revised comment also clarifies that a card issuer has a policy and practice of declining transactions on a "reasonable belief" that a consumer does not have sufficient available credit if it only authorizes those transactions that the card issuer reasonably believes, at the time of

authorization, would not cause the consumer to exceed a credit limit.

Although a card issuer must obtain consumer consent before any over-the-limit fees or charges are assessed on a consumer's account, the final rule does not require that the card issuer obtain the consumer's separate consent for each extension of credit that causes the consumer to exceed his or her credit limit. Such an approach is not compelled by the Credit Card Act. Comment 56(b)–2, which is substantively unchanged from the proposal, also explains, however, that even if a consumer has affirmatively consented or opted in to a card issuer's over-the-limit service, the card issuer is not required to authorize or pay any over-the-limit transactions.

Proposed comment 56(b)–3 would have provided that the opt-in requirement applies whether a creditor assesses over-the-limit fees or charges on a per transaction basis or as a periodic account or maintenance fee that is imposed each cycle for the creditor's payment of over-the-limit transactions regardless of whether the consumer has exceeded the credit limit during a particular cycle (for example, a monthly "over-the-limit protection" fee). As further discussed below under § 226.56(j)(1), however, TILA Section 127(k)(7) prohibits the imposition of periodic or maintenance fees related to the payment of over-the-limit transactions, even with consumer consent, if the consumer has not engaged in an over-the-limit transaction during the particular cycle. Accordingly, the final rule does not adopt proposed comment 56(b)–3.

Some industry commenters asserted that the new provisions, including the requirements to provide notice and obtain consumer consent to the payment of over-the-limit transactions, should not apply to existing accounts out of concern that transactions would otherwise be disrupted for consumers who may rely on the creditor's over-the-limit service, but fail to provide affirmative consent by February 22, 2010. By contrast, consumer groups strongly supported applying the new requirements to all credit card accounts, including existing accounts. Consumer groups urged the Board to explicitly state this fact in the rule or staff commentary. As the Board stated previously, nothing in the statute or the legislative history suggests that Congress intended that existing account-holders should not have the same rights regarding consumer choice for over-the-limit transactions as those afforded to new customers. Thus, § 226.56 applies to all credit card accounts, including those opened prior to February 22, 2010.

*Reasonable opportunity to opt in.* Proposed § 226.56(b)(1)(ii) required a creditor to provide a reasonable opportunity for the consumer to affirmatively consent to the creditor's payment of over-the-limit transactions. TILA Section 127(k)(3) provides that the consumer's affirmative consent (and revocation) may be made orally, electronically, or in writing, pursuant to regulations prescribed by the Board. *See also* § 226.56(e), discussed below. Proposed comment 56(b)–4 contained examples to illustrate methods of providing a consumer a reasonable opportunity to affirmatively consent using the specified methods. The rule and comment (which has been renumbered as comment 56(b)–3) are adopted, substantially as proposed with certain revisions for clarity.

Final comment 56(b)–3 explains that a card issuer provides a consumer with a reasonable opportunity to provide affirmative consent when, among other things, it provides reasonable methods by which the consumer may affirmatively consent. The comment provides four examples of such reasonable methods.

The first example provides that a card issuer may include the notice on an application form that a consumer may fill out to request the service as part of the application process. *See* comment 56(b)–3.i. Alternatively, after the consumer has been approved for the card, the card issuer could provide a form with the account-opening disclosures or the periodic statement that can be filled out separately and mailed to affirmatively request the service. *See* comment 56(b)–3.ii and Model Form G–25(A) in Appendix G, discussed below.

Comment 56(b)–3.iii illustrates that a card issuer may obtain consumer consent through a readily available telephone line. The final rule does not require that the telephone number be toll-free, however, as card issuers have sufficient incentives to facilitate a consumer's opt-in choice. Of course, if a card issuer elects to establish a toll-free number to obtain a consumer's opt-in, it must similarly make that number available for consumers to later revoke their opt-ins if the consumer so decides. *See* § 226.56(c).

Comment 56(b)–3.iv illustrates that a card issuer may provide an electronic means for the consumer to affirmatively consent. For example, a card issuer could provide a form on its Web site that enables the consumer to check a box to indicate his or her agreement to the over-the-limit service and confirm that choice by clicking on a button that affirms the consumer's consent. *See also* § 226.56(d)(1)(ii) (requiring the opt-in notice to be provided immediately prior to the consumer's consent). The final comment does not require that a card issuer direct consumers to a specific Web site address because issuers have an incentive to facilitate consumer opt-ins.

*Segregation of notice and consent.* The Board solicited comment in the proposal regarding whether creditors should be required to segregate the opt-in notice from other account disclosures. Some industry commenters argued that it was unnecessary to require that the opt-in notice be segregated from other disclosures because the proposed rule would also require that the consumer's consent be provided separately from other consents or acknowledgments obtained by the creditor. In addition, one industry commenter stated that the over-the-limit opt-in notice was not more significant than other disclosures given to consumers and therefore the notice did not warrant a separate segregation requirement. Consumer groups and one state government agency, as well as one industry commenter, however, supported a segregation requirement to ensure that the information is highlighted and to help consumers understand the choice that is presented to them. One industry commenter asked whether it would be permissible to include a simplified notice on the credit application that provided certain key information about the opt-in right, but that referred the applicant to separate terms and conditions that included the remaining disclosures.

The final rule requires that the opt-in notice be segregated from all other information given to the consumer. *See* § 226.56(b)(1)(i). The Board believes such a requirement is necessary to ensure that the information is not obscured within other account documents and overlooked by the consumer, for example, in preprinted language in the account-opening disclosures, leading the consumer to inadvertently consent to having over-the-limit transactions paid or authorized by the card issuer. The rule would not prohibit card issuers from providing a simplified notice on an application regarding the opt-in right that referred the consumer to the full notice elsewhere in the application disclosures, provided that the full notice contains all of the required content segregated from all other information.

As discussed above, § 226.56(b)(1)(iii) of the final rule requires the card issuer to obtain the consumer's affirmative

consent, or opt-in, to the card issuer's payment of over-the-limit transactions. Proposed comment 56(b)–5 provided examples of ways in which a consumer's affirmative consent is or is not obtained. Specifically, the proposed comment clarified that the consumer's consent must be obtained separately from other consents or acknowledgments provided by the consumer. The proposal further provided that the consumer must initial, sign or otherwise make a separate request for the over-the-limit service. Thus, for example, a consumer's signature alone on an application for a credit card would not sufficiently evidence the consumer's consent to the creditor's payment of over-the-limit transactions. The final rule adopts the proposed comment, renumbered as comment 56(b)–4, substantially as proposed.

One industry commenter agreed that it was appropriate to segregate consumer consent for over-the-limit transactions from other consents provided by the consumer. A state government agency believed, however, that the check box approach described in the proposal would not sufficiently ensure that consumers will understand that the over-the-limit decision is not a required part of the credit card application. Accordingly, the agency urged the Board to explicitly require that both disclosures and written consents are presented separately from other account disclosures, with stand-alone plain language documents that clearly present the over-the-limit service as discretionary.

Final comment 56(b)–4 clarifies that regardless of the means in which the notice of the opt-in right is provided, the consumer's consent must be obtained separately from other consents or acknowledgments provided by the consumer. Consent to the payment of over-the-limit transactions may not, for example, be obtained solely because the consumer signed a credit application to request a credit card. The final comment further provides that a card issuer could obtain a consumer's affirmative consent by providing a blank signature line or a check box on the application that the consumer can sign or select to request the over-the-limit coverage, provided that the signature line or check box is used solely for the purpose of evidencing the consumer's choice and not for any other purpose, such as to obtain consumer consents for other account services or features or to receive disclosures electronically. The Board believes that the need to obtain a consumer's consent separate from any other consents or acknowledgments, including from the request for the credit card account itself, sufficiently ensures that a consumer would understand that consenting to the payment of over-the-limit transactions is not a required part of the credit card application.[62] See, however, § 226.56(j)(3) (prohibiting card issuers from conditioning the amount of credit provided on the consumer also opting in to over-the-limit coverage).

*Written confirmation.* The September 2009 Regulation Z Proposal also solicited comment on whether creditors should be required to provide the consumer with written confirmation once the consumer has opted in under proposed § 226.56(b)(1)(iii) to verify that the consumer intended to make the election. Industry commenters opposed such a requirement, stating that it would impose considerable burden and costs on creditors, while resulting in little added protection for the consumer. In particular, industry commenters observed that the statute and proposed rule already require consumers to receive notices of their right to revoke a prior consent on each periodic statement reflecting an over-the-limit fee or charge. Thus, industry commenters argued that the revocation notice would provide sufficient confirmation of the consumer's opt-in choice. Industry commenters further noted that written confirmation is not required by the statute. In the event that written confirmation was required, industry commenters asked the Board to permit creditors to provide such notice on or with the next periodic statement provided to the consumer after the opt-in election.

Consumer groups and one state government agency strongly supported a written confirmation requirement as a safeguard to ensure consumers that have opted in understand that they have consented to the payment of over-the-limit transactions. These commenters believed that written confirmation of the consumer's choice was critical where a consumer has opted in by a non-written method, such as by telephone or in person. In this regard, one consumer group asserted that oral opt-ins should be permitted only if written confirmation was also required to allow consumers time to examine the terms of the opt-in and make a considered determination whether the option is right for them.

The final rule in § 226.56(b)(1)(iv) requires that the card issuer provide the consumer with confirmation of the consumer's consent in writing, or if the consumer agrees, electronically. The Board believes that written confirmation will help ensure that a consumer intended to opt into the over-the-limit service by providing the consumer with a written record of his or her choice. The Board also anticipates that card issuers are most likely to attempt to obtain a consumer's opt-in by telephone, and thus in those circumstances in particular, written confirmation is appropriate to evidence the consumer's intent to opt in to the service.

Under new comment 56(d)–5, a card issuer could comply with the written confirmation requirement, for example, by sending a letter to the consumer acknowledging that the consumer has elected to opt in to the card issuer's service, or, in the case of a mailed request, the card issuer could provide a copy of the consumer's completed opt-in form. The new comment also provides that a card issuer could satisfy the written confirmation requirement by providing notice on the first periodic statement sent after the consumer has opted in. *See* § 225.56(d)(2), discussed below. Comment 56(d)–5 further provides that a notice consistent with the revocation notice described in § 226.56(e)(2) would satisfy the requirement. Notwithstanding a consumer's consent, however, a card issuer would be prohibited from assessing over-the-limit fees or charges to the consumer's credit card account until the card issuer has sent the written confirmation. Thus, if a card issuer elects to provide written confirmation on the first periodic statement after the consumer has opted in, it would not be permitted to assess any over-the-limit fees or charges until the next statement cycle.

*Payment of over-the-limit transactions where consumer has not opted in.* Proposed § 226.56(b)(2) provided that a creditor may pay an over-the-limit transaction even if the consumer has not provided affirmative consent, so long as the creditor does not impose a fee or charge for paying the transaction. Proposed comment 56(b)(2)–1 contained further guidance stating that the prohibition on imposing fees for paying an over-the-limit transaction where the consumer has not opted in applies even in circumstances where the creditor is unable to avoid paying a transaction that exceeds the consumer's credit limit. The proposed comment also set forth two illustrative examples of this provision.

The first proposed example addressed circumstances where a merchant does not submit a credit card transaction to

[62] Evidence of consumer consents (as well as revocations) must be retained for a period of at least two years under Regulation Z's record retention rules, regardless of the means by which consent is obtained. *See* § 226.25.

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

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

Industry commenters urged the Board to create exceptions for the circumstances described in the examples to allow creditors to impose over-the-limit fees or charges even if the consumer has not consented to the payment of over-the-limit transactions. These commenters argued that exceptions were warranted in these circumstances because creditors may not be able to block such transactions at the time of purchase. One industry commenter recommended that the Board create a broad exception to the fee prohibition for any transactions that are approved based on a reasonable belief that the transaction would not exceed the consumer's credit limit. Consumer group commenters strongly supported the proposed comment and the included examples.

Comment 56(b)(2)–1 is adopted substantially as proposed and clarifies that the prohibition against assessing over-the-limit fees or charges without consumer consent to the payment of such transactions applies even in circumstances where the card issuer is unable to avoid paying a transaction that exceeds the consumer's credit limit. As the Board stated in the supplementary information to the proposal, nothing in the statute suggests that Congress intended to permit an exception to allow any over-the-limit fees to be charged in these circumstances absent consumer consent. *See* 74 FR at 54179.

The final comment includes a third example of circumstances where a card issuer would not be permitted to assess any fees or charges on a consumer's account in connection with an over-the-limit transaction if the consumer has not opted in to the over-the-limit service. Specifically, the new example addresses circumstances where an intervening transaction (for example, a recurring charge) that is charged to the account before a previously authorized transaction is submitted for payment causes the consumer to exceed his or her credit limit with respect to the authorized transaction. Under these circumstances, the card issuer would not be permitted to assess an over-the-limit fee or charge for the previously authorized transaction absent consumer consent to the payment of over-the-limit transactions. *See* comment 56(b)(2)–1.iii.

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

Consumer groups opposed the proposed comment, expressing concern that the comment could enable creditors to potentially circumvent the statutory protections by charging consumers that have not opted in a fee substantively similar to an over-the-limit fee or charge, and using a different term to describe the fee. Consumer groups urged the Board to instead broadly prohibit any fee directly or indirectly caused by or resulting from the payment of an over-the-limit transaction unless the consumer has opted in. Specifically, consumer groups argued that creditors should be prohibited from paying an over-the-limit transaction if it might result in any type of fee, including any late fees that might arise if the consumer cannot make the increased minimum payment caused by the over-the-limit transaction.

By its terms, TILA Section 127(k)(1) applies only to the assessment of any over-the-limit fees by the creditor as a result of an extension of credit that exceeds a consumer's credit limit where the consumer has not consented to the completion of such transactions. The protections in TILA Section 127(k)(1) apply to any such fees for paying an over-the-limit transaction regardless of the term used to describe the fee. This provision does not, however, apply to other fees or charges that may be imposed as a result of the over-the-limit transaction, such as balance transfer fees or late payment fees. Nor does the statute require that a card issuer cease paying over-the-limit transactions altogether if the consumer has not opted in. Accordingly, the final rule adopts comment 56(b)(2)–2 substantively as proposed.[63] The final comment has also been revised to clarify that a card issuer may debit the consumer's account for the amount of the transaction, provided that the card issuer is permitted to do so under applicable law. *See* comment 56(b)(2)–2.

56(c) Method of Election

TILA Section 127(k)(2) provides that a consumer may consent or revoke consent to over-the-limit transactions orally, electronically, or in writing, and directs the Board to prescribe rules to ensure that the same options are available for both making and revoking such election. The Board proposed to implement this requirement in § 226.56(c). In addition, proposed comment 56(c)–1 clarified that the creditor may determine the means by which consumers may provide affirmative consent. The creditor could decide, for example, whether to obtain consumer consent in writing, electronically, by telephone, or to offer some or all of these options.

In addition, proposed § 226.56(c) would have required that whatever method a creditor provides for obtaining consent, such method must be equally available to the consumer to revoke the prior consent. *See* TILA Section 127(k)(3). In that regard, the Board requested comment on whether the rule should require creditors to allow consumers to opt in and to revoke that consent using any of the three methods (that is, orally, electronically, and in writing).

Industry commenters stated that the final rule should not require creditors to provide all three methods of consent and revocation, citing the compliance

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

burden and costs of setting up separate systems for obtaining consumer consents and processing consumer revocations, particularly for small community banks and credit unions. Consumer groups agreed with the clarification in comment 56(c)–1 that a creditor should be required to accept revocations of consent made by the same methods made available to the consumer for providing consent. However, consumer groups believed that the proposed rule fell short of that goal because it did not similarly provide a form that consumers could fill out and mail in to revoke consent similar to the form for providing consent. Instead, consumer groups noted that the proposed model revocation notice directed the consumer to write a separate letter and mail it in to the creditor.

Section 226.56(c) is adopted substantively as proposed and allows a card issuer to obtain a consumer's consent to the card issuer's payment of over-the-limit transactions in writing, orally, or electronically, at the card issuer's option. The rule recognizes that card issuers have a strong interest in facilitating a consumer's ability to opt in, and thus permits them to determine the most effective means in obtaining such consent. Regardless of which methods are provided to the consumer for obtaining consent, the final rule requires that the same methods must be made available to the consumer for revoking consent. As discussed below, Model Form G–25(B) has been revised to include a check box form that a card issuer may use to provide consumers for revoking a prior consent.

Comment 56(c)–2 is adopted as proposed and provides that consumer consent or revocation requests are not consumer disclosures for purposes of the E-Sign Act. Accordingly, card issuers would not be required to comply with the consumer consent or other requirements for providing disclosures electronically pursuant to the E-Sign Act for consumer requests submitted electronically.

56(d) Timing

Proposed § 226.56(d)(1)(i) established a general requirement that a creditor provide an opt-in notice before the creditor assesses any fee or charge on the consumer's account for paying an over-the-limit transaction. No comments were received regarding proposed § 226.56(d)(1)(i), and it is adopted as proposed. A card issuer may comply with the rule, for example, by including the notice as part of the credit card application. *See* comment 56(b)–3.i. Alternatively, the creditor could include the notice with other account-opening documents, either within the account-opening disclosures under § 226.6 or in a stand-alone document. *See* comment 56(b)–3.ii.

Proposed § 226.56(d)(1)(ii) would have required a creditor to provide the opt-in notice immediately before and contemporaneously with a consumer's election where the consumer consents by oral or electronic means. For example, if a consumer calls the creditor to consent to the creditor's payment of over-the-limit transactions, the proposed rule would have required the creditor to provide the opt-in notice immediately prior to obtaining the consumer's consent. This proposed requirement recognized that creditors may wish to contact consumers by telephone or electronically as a more expeditious means of obtaining consumer consent to the payment of over-the-limit transactions. Thus, proposed § 226.56(d)(1)(ii) was intended to ensure that a consumer would have full information regarding the opt-in right at the most meaningful time, that is, when the opt-in decision is made. Consumer groups strongly supported the proposed requirement for oral and electronic consents to ensure that consumers are able to make an informed decision regarding over-the-limit transactions. Industry commenters did not oppose this requirement. The final rule adopts § 226.56(d)(1)(ii), generally as proposed.

New comment 56(d)–1 clarifies that the requirement to provide an opt-in notice immediately prior to obtaining consumer consent orally or electronically means that the card issuer must provide an opt-in notice prior to and as part of the process of obtaining the consumer's consent. That is, the issuer must provide an opt-in notice containing the content in § 226.56(e)(1) as part of the same transaction in which the issuer obtains the consumer's oral or electronic consent.

As discussed above, a card issuer must provide a consumer with written confirmation of the consumer's decision to opt in to the card issuer's payment of over-the-limit transactions. *See* § 226.56(b)(1)(iv). New § 226.56(d)(2) requires that this written confirmation must be provided no later than the first periodic statement sent after the consumer has opted in. As discussed above, a card issuer could provide a notice consistent with the revocation notice described in § 226.56(e)(2). *See* comment 56(b)–5. Consistent with § 226.56(b)(1), however, a card issuer may not assess any over-the-limit fees or charges unless and until it has sent written confirmation of the consumer's opt-in decision.

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

One industry commenter stated that the periodic statement requirement would be overly burdensome and costly for financial institutions. This commenter believed that providing a consumer notice of his or her right to revoke consent at the time of the opt-in would sufficiently inform the consumer of that possibility without requiring creditors to bear the cost of providing a revocation notice on each statement reflecting an over-the-limit fee or charge. Consumer groups believed that the final rule should require that a standalone revocation notice be sent to a consumer after the incurrence of an over-the-limit fee to make it more likely that a consumer would see the notice, rather than placing the notice on the periodic statement with other disclosures. In the alternative, consumer groups stated that the revocation notice should be placed on the first page of the periodic statement or on the page reflecting the fee to enhance likelihood that the consumer would notice it. Consumer groups also argued that revocation notices should only be provided by a creditor when an over-the-limit fee is assessed to a consumer's credit card account to avoid the possibility that consumers would ignore the notice as boilerplate language on the statement.

In the final rule, the timing and placement requirements for the notice of the right of revocation has been adopted

in § 226.56(d)(3), as proposed. The requirement to provide notice informing a consumer of the right to revoke a prior election regarding the payment of over-the-limit transactions following the imposition of an over-the-limit fee is statutory. TILA Section 127(k)(2) also provides that such notice must be on the periodic statement reflecting the fee. The final rule does not, however, mandate that the notice be placed on the front of the first page of the periodic statement or on the front of the page that indicates the over-the-limit fee or charge. The Board is concerned about the potential for information overload in light of other requirements elsewhere in the regulation regarding notices that must be on the front of the first page of the periodic statement or in proximity to disclosures regarding fees that have been assessed by the creditor during that cycle. *See, e.g.,* § 226.7(b)(6)(i); § 226.7(b)(13).

Proposed comment 56(d)–1, which would have permitted creditors to include a revocation notice on each periodic statement whether or not a consumer has incurred an over-the-limit fee or charge, is not adopted in the final rule. The final rule does not expressly prohibit card issuers from providing a revocation notice on every statement regardless of whether a consumer has been assessed an over-the-limit fee or charge. Nonetheless, the Board believes that for some consumers, a notice appearing on each statement informing the consumer of the right to revoke a prior consent would not be as effective as a more targeted notice that is provided at a point in time when the consumer may be motivated to act, that is, after he or she has incurred an over-the-limit fee or charge.

56(e) Content and Format

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

*Initial notice content.* Proposed § 226.56(e)(1) set forth content requirements for the opt-in notice provided to consumers before a creditor may assess any fees or charges for paying an over-the-limit transaction. In addition to the amount of the over-the-limit fee, the proposed rule prescribed certain other information regarding the opt-in right to be included in the opt-in notice pursuant to the Board's authority under TILA Section 105(a) to make adjustments that are necessary to effectuate the purposes of TILA. 15 U.S.C. 1604(a). The Board requested comment regarding whether the rule should permit or require any other information to be included in the opt-in notice.

Consumer groups and one state government agency generally supported the proposed content and model opt-in form, but suggested the Board revise the form to include additional information about the opt-in right, including that a consumer is not required to sign up for over-the-limit coverage and the minimum over-the-limit amount that could trigger a fee. Consumer groups and this agency also asserted that no other information should be permitted in the notice unless expressly specified or permitted under the rule. For example, these commenters believed that creditors should be precluded from including any marketing of the benefits that may be associated with over-the-limit coverage out of concern that the additional information could dilute consumer understanding of the opt-in disclosure. Industry commenters suggested various additions to the model form to enable creditors to provide more information that they deemed appropriate to enhance a consumer's understanding or the risks and benefits associated with the opt-in right. Industry commenters also stated that creditors should be able to include contractual terms or safeguards regarding the right.

The Board is adopting § 226.56(e)(1) largely as proposed, but with modified content based on the comments received and upon further consideration. The final rule does not permit card issuers to include any information in the opt-in notice that is not specified or otherwise permitted by § 226.56(e)(1). The Board believes that the addition of other information would potentially overwhelm the required content in the notice and impede consumer understanding of the opt-in right. For the same reason, the final rule does not require card issuers to include any additional information regarding the opt-in right as suggested by consumer groups and others.

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

Some card issuers may vary the fee amount that may be imposed based upon the number of times the consumer has gone over the limit, the amount the consumer has exceeded the credit limit, or due to other factors. Under these circumstances, proposed comment 56(e)–1 would have permitted a creditor to disclose the maximum fee that may be imposed or a range of fees. The final comment does not include the reference to the range of fees. Card issuers that tier the amount of the fee could otherwise include a range from $0 to their maximum fee, which could lead consumers to underestimate the costs of exceeding their credit limit. To address tiered over-the-limit fees, comment 56(e)–1 provides that the card issuer may indicate that the consumer may be assessed a fee "up to" the maximum fee.

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

Section 226.56(e)(1)(iii) requires card issuers to explain the consumer's right

to affirmatively consent to the card issuer's payment of over-the-limit transactions, including the method(s) that the card issuer may use to exercise the right to opt in. Comment 56(e)–2 provides guidance regarding how a card issuer may describe this right. For example, the card issuer could explain that any transactions that exceed the consumer's credit limit will be declined if the consumer does not consent to the service. In addition, a card issuer should explain that even if a consumer consents, the payment of over-the-limit transactions is at the card issuer's discretion. In this regard, the card issuer may indicate that it may decline a transaction for any reason, such as if the consumer is past due or significantly over the limit. The card issuer may also disclose the consumer's right to revoke consent.

Under the comment as proposed, a creditor would have been permitted to also describe the benefits of the payment of over-the-limit transactions. Upon further analysis, the Board believes that including discussion of any such benefits could dilute the core purpose of the form, which is to explain the opt-in right in a clear and readily understandable manner. Of course, a card issuer may provide additional discussion about the over-the-limit service, including the potential benefits of the service, in a separate document.

*Notice of right of revocation.* Section 226.56(e)(2) implements the requirement in TILA Section 127(k)(2) that a creditor must provide notice of the right to revoke consent that was previously granted for paying over-the-limit transactions. Under the final rule, the notice must describe the consumer's right to revoke any consent previously granted, including the method(s) by which the consumer may revoke the service. The Board did not receive any comment on proposed § 226.56(e)(2), and it is adopted without any substantive changes.

*Model forms.* Model Forms G–25(A) and (B) include sample language that card issuers may use to comply with the notice content requirement. Use of the model forms, or substantially similar notices, provides card issuers a safe harbor for compliance under § 226.56(e)(3). The Model Forms have been revised from the proposal for clarity, and in response to comments received. To facilitate consumer understanding, a card issuer may, but is not required, to provide a signature line or check box on the opt-in form where the consumer can indicate that they decline to opt in. *See* Model Form G–25(A). Nonetheless, if the consumer does not check any box or provide a signature, the card issuer must assume that the consumer does not opt in.

Model Form G–25(B) contains language that card issuers may use to satisfy both the revocation notice and written confirmation requirements in § 226.56(b)(1)(iv) and (v). The model form has been revised to include a form that consumers may fill out and send back to the card issuer to cancel or revoke a prior consent.

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

*Joint accounts.* Proposed § 226.56(f) would have required a creditor to treat affirmative consent provided by any joint consumer of a credit card account as affirmative consent for the account from all of the joint consumers. The proposed provision also provided that a creditor must treat a revocation of affirmative consent by any of the joint consumers as revocation of consent for that account. Consumer groups urged the Board to require creditors to obtain consent from all account-holders on a joint account before any over-the-limit fees or charges could be assessed on the account so that each account-holder would have an equal opportunity to avoid the imposition of such fees or charges.

The Board is adopting § 226.56(f) substantively as proposed. This provision recognizes that it may not be operationally feasible for a card issuer to determine which account-holder was responsible for a particular transaction and then decide whether to authorize or pay an over-the-limit transaction based on that account-holder's opt-in choice. Moreover, because the same credit limit presumably applies to a joint account, one joint account-holder's decision to opt in to the payment of over-the-limit transactions would also necessarily impact the other account-holder. Accordingly, if one joint consumer opts in to the creditor's payment of over-the-limit transactions, the card issuer must treat the consent as applying to all over-the-limit transactions for that account. The final rule would similarly provide that if one joint consumer elects to cancel the over-the-limit coverage for the account, the card issuer must treat the revocation as applying to all over-the-limit transactions for that account.

Section 226.56(f) applies only to consumer consent and revocation requests from consumers that are jointly liable on a credit card account. Accordingly, card issuers are not required or permitted to honor a request by an authorized user on an account to opt in or revoke a prior consent with respect to the card issuer's over-the-limit transaction. Comment 56(f)–1 provides this guidance.

*Continuing right to opt in or revoke opt-in.* Proposed § 226.56(g) provided that a consumer may affirmatively consent to a creditor's payment of over-the-limit transactions at any time in the manner described in the opt-in notice. This provision would allow consumers to decide later in the account relationship whether they want to opt in to the creditor's payment of over-the-limit transactions. Similarly, a consumer may revoke a prior consent at any time in the manner described in the revocation notice. *See* TILA Section 127(k)(4). No comments were received on § 226.56(g), and it is adopted substantively as proposed.

Comment 56(g)–1 has been revised to clarify that a consumer's decision to revoke a prior consent would not require the card issuer to waive or reverse any over-the-limit fee or charges assessed to the consumer's account for transactions that occurred prior to the card issuer's implementation of the consumer's revocation request. Thus, the comment permits a card issuer to impose over-the-limit fees or charges for transactions that the card issuer authorized prior to implementing the revocation request, even if the transaction is not charged to the account until after implementation. In addition, the final rule does not prevent the card issuer from assessing over-the-limit fees in a subsequent cycle if the consumer's account balance continues to exceed the credit limit after the payment due date as a result of an over-the-limit transaction that occurred prior to the consumer's revocation of consent. *See* § 226.56(j)(1).

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

*Time to implement consumer revocation.* Proposed § 226.56(i) would have required a creditor to implement a consumer's revocation request as soon as reasonably practicable after the creditor receives the request. The proposed requirement recognized that while creditors will presumably want to implement a consumer's consent request as soon as possible, the same incentives may not apply if the

consumer subsequently decides to revoke that request.

The proposal also solicited comment whether a safe harbor for implementing revocation requests would be useful to facilitate compliance with the proposed rule, such as five business days from the date of the request. In addition, comment was requested on an alternative approach which would require creditors to implement revocation requests within the same time period that a creditor generally takes to implement opt-in requests. For example, under the alternative approach, if the creditor typically takes three business days to implement a consumer's written opt-in request, it should take no more than three business days to implement the consumer's later written request to revoke that consent.

Consumer groups supported the alternative approach of requiring creditors to implement a consumer's revocation request within the same period taken to implement the consumer's opt-in request, but believed that a firm number of days would provide greater certainty for consumers regarding when their revocation requests will be implemented. Specifically, consumer groups urged the Board to establish a safe harbor of three days from when the creditor receives the revocation request.

Industry commenters varied in their recommendations of an appropriate safe harbor for implementing a revocation request, ranging from five to 20 days or the creditor's normal billing cycle. In general, industry commenters generally believed that the Board should provide flexibility for creditors in processing revocation requests because the appropriate amount of time will vary due to a number of factors, including the volume of requests and the channel in which the creditor receives the request. One industry commenter supported the alternative approach stating that there was little reason opt-in and revocation requests could not be processed in the same period of time. Another industry commenter stated, however, that the rule should provide creditors a reasonable period of time to implement a revocation request to prevent a consumer from engaging in transactions that may exceed the consumer's credit limit before a creditor can update its systems to decline the transactions.

The final rule requires a card issuer to implement a consumer's revocation request as soon as reasonably practicable after the creditor receives it, as proposed. Accordingly, § 226.56(i) does not prescribe a specific period of time within which a card issuer must honor a consumer's revocation request because the appropriate time period may depend on a number of variables, including the method used by the consumer to communicate the revocation request (for example, in writing or orally) and the channel in which the request is received (for example, if a consumer sends a written request to the card issuer's general address for receiving correspondence or to an address specifically designated to receive consumer opt-in and revocation requests). The Board also notes that the approach taken in the final rule mirrors the same rule adopted in the Board's recently issued final rule on overdraft services for processing revocation requests relating to consumer opt-ins to ATM and one-time debit card overdraft services. *See* 74 FR 59033 (Nov. 17, 2009). The Board believes that in light of the similar opt-in and revocation regimes adopted in both rules, consistency across the regulations would facilitate compliance for institutions that offer both debit and credit card products.

56(j) Prohibited Practices

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

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

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

Proposed § 226.56(j)(1)(i) would have prohibited a creditor from imposing more than one over-the-limit fee or charge on a consumer's credit card account in any billing cycle. The proposed rule also prohibited a creditor from imposing an over-the-limit fee or charge on the account for the same over-the-limit transaction or transactions in more than three billing cycles. Proposed § 226.56(j)(1)(ii) would have provided, however, that the limitation on imposing over-the-limit fees for more than three billing cycles does not apply if a consumer engages in an additional over-the-limit transaction in either of the two billing cycles following the cycle in which the consumer is first assessed a fee for exceeding the credit limit. No comments were received on the proposed restrictions in § 226.56(j)(1) and the final rule adopts § 226.56(j)(1) substantively as proposed.

Section 226.56(j)(1)(i) in the final rule further prohibits a card issuer from imposing any over-the-limit fees or charges for the same transaction in the second or third cycle unless the consumer has failed to reduce the account balance below the credit limit by the payment due date of either cycle. The Board believes that this interpretation of TILA Section 127(k)(7) is consistent with Congress's general intent to limit a creditor's ability to impose multiple over-the-limit fees for the same transaction as well as the requirement in TILA Section 106(b) that consumers be given a sufficient amount of time to make payments.[64]

One possible interpretation of new TILA Section 127(k)(7) would provide consumers until the end of the billing cycle, rather than the payment due date, to make a payment that reduces the account balance below the credit limit. The Board understands, however, that under current billing practices, the end of the billing cycle serves as the statement cut-off date and occurs a certain number of days after the due date for payment on the prior cycle's activity. The time period between the payment due date and the end of the billing cycle allows the card issuer sufficient time to reflect timely payments on the subsequent periodic statement and to determine the fees and interest charges for the statement period. Thus, if the rule were to give consumers until the end of the billing cycle to reduce the account balance below the credit limit, card issuers would have difficulty determining whether or not they could impose another over-the-limit fee for the statement cycle, which could delay the generation and mailing of the periodic statement and impede their ability to comply with the 21-day requirement for mailing statements in advance of the payment due date. *See* TILA Section 163(a); § 226.5(b)(2)(ii).

[64] In the supplementary information accompanying the proposed rule, the Board noted that a creditor's failure to provide a consumer sufficient time to reduce his or her balance below the credit limit would appear to be an unfair or deceptive act or practice. Because the Board has used its authority under TILA Section 105(a) to adjust the requirements in TILA Section 127(k)(7) in order to ensure that the consumer has at least until the payment due date to reduce his or her balance below the credit limit, the Board believes it is unnecessary to address this concern using its separate authority under TILA Section 127(k)(5).

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

New comment 56(j)–1 clarifies that an over-the-limit fee or charge may be assessed on a consumer's account only if the consumer has exceeded the credit limit during the billing cycle. Thus, a card issuer may not impose any recurring or periodic fees for paying over-the-limit transactions (for example, a monthly "over-the-limit protection" service fee), even if the consumer has affirmatively consented to or opted in to the service, unless the consumer has in fact exceeded the credit limit during that cycle. The new comment is adopted in response to a consumer group comment that TILA Section 127(k)(7) only permits an over-the-limit fee to be charged during a billing cycle "if the credit limit on the account is exceeded."

Section 226.56(j)(1)(ii) of the final rule provides that the limitation on imposing over-the-limit fees for more than three billing cycles in § 226.56(j)(1)(i) does not apply if a consumer engages in an additional over-the-limit transaction in either of the two billing cycles following the cycle in which the consumer is first assessed a fee for exceeding the credit limit. The assessment of fees or interest charges by the card issuer would not constitute an additional over-the-limit transaction for purposes of this exception, consistent with the definition of "over-the-limit transaction" under § 226.56(a). In addition, the exception would not permit a card issuer to impose fees for both the initial over-the-limit transaction as well as the additional over-the-limit transaction(s), as the general restriction on assessing more than one over-the-limit fee in the same billing cycle would continue to apply. Comment 56(j)–2 contains examples illustrating the general rule and the exception.

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

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

Legal Authority

The Credit Card Act does not set forth a standard for what is an "unfair or deceptive act or practice" and the legislative history for the Credit Card Act is similarly silent. Congress has elsewhere codified standards developed by the Federal Trade Commission for determining whether acts or practices are unfair under Section 5(a) of the Federal Trade Commission Act, 15 U.S.C. 45(a).[65] Specifically, the FTC Act provides that an act or practice is unfair when it causes or is likely to cause substantial injury to consumers which is not reasonably avoidable by consumers themselves and not outweighed by countervailing benefits to consumers or to competition. In addition, in determining whether an act or practice is unfair, the FTC may consider established public policy, but public policy considerations may not serve as the primary basis for its determination that an act or practice is unfair. 15 U.S.C. 45(a).

According to the FTC, an unfair act or practice will almost always represent a market failure or market imperfection that prevents the forces of supply and demand from maximizing benefits and minimizing costs.[66] Not all market failures or imperfections constitute unfair acts or practices, however. Instead, the central focus of the FTC's unfairness analysis is whether the act or practice causes substantial consumer injury.[67]

The FTC has also adopted standards for determining whether an act or practice is deceptive, although these standards, unlike unfairness standards, have not been incorporated into the FTC Act.[68] Under the FTC's standards, an act or practice is deceptive where: (1) There is a representation or omission of information that is likely to mislead consumers acting reasonably under the circumstances; and (2) that information is material to consumers.[69]

Many states also have adopted statutes prohibiting unfair or deceptive acts or practices, and these statutes may employ standards that are different from the standards currently applied to the FTC Act.[70] In adopting rules under TILA Section 127(k)(5), the Board has considered the standards currently applied to the FTC Act's prohibition against unfair or deceptive acts or practices, as well as the standards applied to similar state statutes.

56(j)(2) Failure To Promptly Replenish

Section 226.10 of Regulation Z generally requires creditors to credit consumer payments as of the date of receipt, except when a delay in crediting does not result in a finance or other charge. This provision does not address, however, when a creditor must *replenish* the consumer's credit limit after receiving payment. Thus, a consumer may submit payment sufficient to reduce his or her account balance below the credit limit and make additional purchases during the next cycle on the assumption that the credit line will be replenished once the payment is credited. If the creditor does not promptly replenish the credit line, the additional transactions may cause the consumer to exceed the credit limit and incur fees.

In the September 2009 Regulation Z Proposal, the Board proposed to prohibit creditors from assessing an over-the-limit fee or charge that is caused by the creditor's failure to

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

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

[67] *Id.* at 7743.

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

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

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

promptly replenish the consumer's available credit. Section 226.56(j)(2) of the final rule adopts the prohibition substantively as proposed.

Public Comments

Consumer groups supported the proposed prohibition against assessing over-the-limit fees or charges caused by a creditor's failure to promptly replenish the consumer's available credit. Industry commenters generally did not oppose the proposed prohibition, but asked the Board to provide additional guidance regarding what it considered to be "prompt" replenishment of the consumer's available credit. One industry commenter asked the Board to specifically permit a creditor to wait a reasonable amount of time after receiving payment before replenishing the consumer's available credit. This commenter noted that while creditors will typically credit payments as of the date of receipt, the rule should not expose creditors to possible fraud or nonpayment by requiring them to make credit available in connection with a payment that has not cleared.

In response to the Board's request for comment regarding whether the rule should provide a safe harbor specifying the number of days following the crediting of a consumer's payment by which a creditor must replenish a consumer's available credit, industry commenters offered suggestions ranging from three to ten days in order to provide creditors sufficient time to mitigate any losses due to fraud or returned payments. One industry commenter cautioned that establishing any parameters regarding replenishment could contribute to a higher cost of credit if the established time period did not permit sufficient time for payments to clear.

Legal Analysis

The Board finds that the imposition of fees or charges for an over-the-limit transaction caused solely by a card issuer's failure to promptly replenish the consumer's available credit after the card issuer has credited the consumer's payment is an unfair practice.

*Potential injury that is not reasonably avoidable.* A 2006 Government Accountability Office (GAO) report on credit cards indicates that the average cost to consumers resulting from over-the-limit transactions exceeded $30 in 2005.[71] The GAO also reported that in the majority of credit card agreements that it surveyed, default rates could apply if a consumer exceeded the credit limit on the card.[72]

In most cases, card issuers replenish the available credit on a credit card account shortly after the payment has been credited to the account to enable the cardholder to make new transactions on the account. As a result, a consumer that has used all or most of the available credit during one billing cycle would again be able to make transactions using the credit card account once the consumer has made payments on the account balance and the available credit is restored to the account. If, however, the card issuer delays replenishment on the account after crediting the payment to the consumer's account, the consumer could inadvertently exceed the credit limit if the consumer uses the credit card account for new transactions and such transactions are authorized by the card issuer. In such event, the consumer could incur substantial monetary injury due to the fees assessed and potential interest rate increases in connection with the card issuer's payment of over-the-limit transactions.

Because the consumer will generally be unaware when the card issuer has delayed replenishing the available credit on the account after crediting the payment to the account, the Board concludes that consumers cannot reasonably avoid the injury caused by over-the-limit fees and rate increases triggered by transactions that exceed the limit as a result of the delay in replenishment.

*Potential costs and benefits.* The Board also finds that the prohibited practice does not create benefits for consumers and competition that outweigh the injury. While a card issuer may reasonably decide to delay replenishing a consumer's available credit, for example, to ensure the payment clears or in cases of suspected fraud on the account, there is minimal if any benefit to the consumer from permitting the card issuer to assess over-the-limit fees that may be incurred as a result of the delay in replenishment.

Final Rule

Section 226.56(j)(2) is adopted substantively as proposed and prohibits a card issuer from imposing any over-the-limit fee or charge solely because of the card issuer's failure to promptly replenish the consumer's available credit after the card issuer has credited the consumer's payment under § 226.10.

Comment 56(j)–3 clarifies that the final rule does not require card issuer to immediately replenish the consumer's available credit upon crediting the consumer's payment under § 226.10. Rather, the creditor is only prohibited from assessing any over-the-limit fees or charges caused by the creditor's decision not to replenish the available credit after posting the consumer's payment to the account. Thus, a card issuer may continue to delay replenishment as necessary to allow the consumer's payment to clear or to prevent potential fraud, provided that it does not assess any over-the-limit fees or charges because of its delay in restoring the consumer's available credit. Comment 56(j)–3 also clarifies that the rule does not require a card issuer to decline all transactions for consumers who have opted in to the card issuer's payment of over-the-limit transactions until the available credit has been restored.

As discussed above, § 226.56(j)(2) solely prohibits the assessment of an over-the-limit fee or charge due to a card issuer's failure to promptly replenish a consumer's available credit following the crediting of the consumer's payment under § 226.10. Thus, the final rule does not establish a number of days within which a consumer's available credit must be replenished by a card issuer after a payment has been credited. Because the time in which a payment may take to clear may vary greatly depending on the type of payment, the Board believes that the determination of when the available credit should be replenished should rest with the individual card issuer, so long as the consumer does not incur over-the-limit fees or charges as a result of the card issuer's delay in replenishment.

56(j)(3) Conditioning

The Board proposed to prohibit a creditor from conditioning the amount of available credit provided on the consumer's affirmative consent to the creditor's payment of over-the-limit transactions. Proposed § 226.56(j)(3) was intended to address concerns that a creditor may seek to tie the amount of credit provided to the consumer affirmatively consenting to the creditor's payment of over-the-limit transactions. The final rule adopts the prohibition as proposed.

Public Comments

Consumer groups and one federal banking agency supported the proposed prohibition to help ensure that consumers can freely choose whether or not to opt in. However, these commenters believed that greater

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

[72] *See id.* at 25.

protections were needed to prevent other creditor actions that could compel a consumer to opt in or that otherwise discriminated against a consumer that elected not to opt in. Specifically, these commenters urged the Board to prohibit *any* differences in credit card accounts based upon whether the consumer elects to opt in to the payment of over-the-limit transactions. These commenters were concerned that issuers might otherwise offer other less favorable terms to consumers who do not opt in, such as a higher interest rate or a higher annual fee. Or, creditors might induce consumers to opt in by waiving a fee or lowering applicable APRs. Consumer groups further observed that the Board has recently taken a similar approach in the Board's recent final rules under Regulation E addressing overdraft services to prohibit financial institutions from varying the account terms, conditions, or features for consumers that do not opt in to overdraft services for ATM and one-time debit card transactions. *See* 74 FR 59033 (Nov. 17, 2009). Consumer groups also urged the Board to prohibit issuers from imposing fees, such as denied transaction fees, that could be designed to coerce consumers to opt in to over-the-limit coverage.

Both consumer groups and the federal banking agency agreed with the Board's observation in the supplementary information to the proposal that conditioning the amount of credit provided based on whether the consumer opts in to the creditor's payment of over-the-limit transactions raised significant concerns under the Equal Credit Opportunity Act (ECOA). *See* 15 U.S.C. 1691(a)(3). The federal banking agency expressed concern, however, that the Board's failure to similarly state that providing other adverse credit terms, such as higher fees or rates, based on the consumer's decision not to opt in could suggest that such variances were in fact permissible under ECOA and Regulation B (12 CFR 205).

Legal Analysis

The Board finds that conditioning or linking the amount of credit available to the consumer based on the consumer consenting to the card issuer's payment of over-the-limit transactions is an unfair practice.

*Potential injury that is not reasonably avoidable.* As the Board has previously stated elsewhere, consumers receive considerable benefits from receiving credit cards that provide a meaningful amount of available credit. For example, credit cards enable consumers to engage in certain types of transactions, such as making purchases by telephone or on-line, or renting a car or hotel room. Given these benefits, some consumers might be compelled to opt in to a card issuer's payment of over-the-limit transactions if not doing so may result in the consumer otherwise obtaining a minimal amount of credit or failing to qualify for credit altogether. Thus, it appears that such consumers would be prevented from exercising a meaningful choice regarding the card issuer's payment of over-the-limit transactions.

*Potential costs and benefits.* The Board concludes that there are few if any benefits to consumers or competition from conditioning or linking the amount of credit available to the consumer based on the consumer consenting to the card issuer's payment of over-the-limit transactions. While some card issuers may seek to replace the revenue from over-the-limit fees by charging consumers higher annual percentage rates or fees, the Board believes that consumers will benefit overall from having a meaningful choice regarding whether to have over-the-limit transactions approved by the card issuer.

Final Rule

Section 226.56(j)(3) prohibits a card issuer from conditioning or otherwise linking the amount of credit granted on the consumer opting in to the card issuer's payment of over-the-limit transactions. Thus, the final rule is intended to prevent card issuers from effectively circumventing the consumer choice requirement by tying the amount of a consumer's credit limit to the consumer's opt-in decision.

Under the final rule, a card issuer may not, for example, require a consumer to opt in to the card issuer's fee-based over-the-limit service in order to receive a higher credit limit for the account. Similarly, a card issuer would be prohibited from denying a consumer's credit card application solely because the consumer did not opt in to the card issuer's over-the-limit service. The final rule is illustrated by way of example in comment 56(j)–4.

The final rule does not address other card issuer actions that may also lead a consumer to opt in to the card issuer's payment of over-the-limit transactions contrary to the consumer's preferences. As discussed above, TILA Section 127(k)(5)(B) directs the Board to prescribe regulations preventing unfair or deceptive acts or practices "in connection with the manipulation of credit limits designed to increase over-the-limit fees or other penalty fees." Nonetheless, the Board notes this rule is not intended to identify all unfair or deceptive acts or practices that may arise in connection with the opt-in requirement. To the extent that specific practices raise concerns regarding unfairness or deception under the FTC Act with respect to this requirement, this rule would not limit the ability of the Board or any other agency to make any such determination on a case-by-case basis. This rule also does not preclude any action by the Board or any other agency to address creditor practices with respect to a consumer's exercise of the opt-in right that may raise significant concerns under ECOA and Regulation B.

56(j)(4) Over-the-Limit Fees Attributed to Fees or Interest

The Board proposed to prohibit the imposition of any over-the-limit fees or charges if the credit limit is exceeded solely because of the creditor's assessment of accrued interest charges or fees on the consumer's credit card account. Section 226.56(j)(4) adopts this prohibition substantively as proposed.

Public Comments

Consumer groups supported the proposed prohibition. In contrast, one industry trade association representing community banks believed that the proposed prohibition would require extensive programming of data systems and urged the Board not to adopt the prohibition in light of the significant operational burden and costs that would be incurred. Another industry commenter questioned whether the proposed prohibition was sufficiently tied to a creditor's manipulation of credit limits as contemplated by TILA Section 127(k)(5).

Legal Analysis

The Board finds the imposition of any over-the-limit fees or charges if a consumer's credit limit is exceeded solely because of the card issuer's assessment of accrued interest charges or fees on the consumer's credit card account is an unfair practice.

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

The Board concludes that the injury from over-the-limit fees and potential rate increases is not reasonably avoidable in these circumstances because consumers are, as a general matter, unlikely to be aware of the

amount of interest charges or fees that may be added to their account balance when deciding whether or not to engage in a credit card transaction. With respect to accrued interest charges, these additional amounts are typically added to a consumer's account balance at the end of the billing cycle after the consumer has completed his or her transactions for the cycle and thus are unlikely to have been taken into account when the consumer engages in the transactions.

*Potential costs and benefits.* Although prohibition of the assessment of over-the-limit fees caused by accrued finance charges and fees may reduce card issuer revenues and lead card issuers to replace lost revenue by charging consumers higher rates or fees, the Board believes the final rule will result in a net benefit to consumers because some consumers are likely to benefit substantially while the adverse effects on others are likely to be small. Because permitting fees and interest charges to trigger over-the-limit fees may have the effect of retroactively reducing a consumer's available credit for prior transactions, prohibiting such a practice would protect consumers against unexpected over-the-limit fees and rate increases which could substantially add to their cost of credit. Moreover, consumers will be able to more accurately manage their credit lines without having to factor additional costs that cannot be easily determined. While some consumers may pay higher fees and initial rates, consumers are likely to benefit overall through more transparent pricing.

Final Rule

Section 226.56(j)(4) in the final rule prohibits card issuers from imposing an over-the-limit fee or charge if a consumer exceeds a credit limit solely because of fees or interest charged by the card issuer to the consumer's account during the billing cycle, as proposed. For purposes of this prohibition, the fees or interest charges that may not trigger the imposition of an over-the-limit fee or charge are considered charges imposed as part of the plan under § 226.6(b)(3)(i). Thus, the final rule also prohibits the assessment of an over-the-limit fee or charge even if the credit limit was exceeded due to fees for services requested by the consumer if such fees constitute charges imposed as part of the plan (for example, fees for voluntary debt cancellation or suspension coverage). The prohibition in the final rule does not, however, restrict card issuers from assessing over-the-limit fees due to accrued finance charges or fees from prior cycles that have subsequently been added to the account balance. New comment 56(j)–5 includes this additional guidance and illustrative examples.

*Section 226.57 Reporting and Marketing Rules for College Student Open-End Credit*

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

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

57(a) Definitions

New TILA Section 127(r) provides definitions for terms that are also used in new TILA Section 140(f). *See* 15 U.S.C. 1650(f). To ensure the use of these terms is consistent throughout these sections, the Board proposed to incorporate the definitions set forth in TILA Section 127(r) in § 226.57(a) and apply them to regulations implementing both TILA Sections 127(r) and 140(f).

Proposed § 226.57(a)(1) defined "college student credit card" as a credit card issued under a credit card account under an open-end (not home-secured) consumer credit plan to any college student. This definition is similar to TILA Section 127(r)(1)(B), which defines "college student credit card account" as a credit card account under an open-end consumer credit plan established or maintained for or on behalf of any college student. The Board received no comments on this definition, and the definition is adopted as proposed with one non-substantive wording change. As proposed, § 226.57(a)(1) defines "college student credit card" rather than "college student credit card account" because the statute and regulation use the former term but not the latter. Consistent with the approach the Board is implementing for other sections of the Credit Card Act, the definition uses the proposed term "credit card account under an open-end (not home-secured) consumer credit plan," as defined in § 226.2(a)(15). The term "college student credit card" therefore excludes home-equity lines of credit accessed by credit cards and overdraft lines of credit accessed by debit cards, which the Board believes are not typical types of college student credit cards.

TILA Section 127(r)(1)(A) defines "college affinity card" as a credit card issued under an open end consumer credit plan in conjunction with an agreement between the issuer and an institution of higher education or an alumni organization or a foundation affiliated with or related to an institution of higher education under which cards are issued to college students having an affinity with the institution, organization or foundation where at least one of three criteria also is met. These three criteria are: (1) The creditor has agreed to donate a portion of the proceeds of the credit card to the institution, organization, or foundation (including a lump-sum or one-time payment of money for access); (2) the creditor has agreed to offer discounted terms to the consumer; or (3) the credit card bears the name, emblem, mascot, or logo of such institution, organization, or foundation, or other words, pictures or symbols readily identified with such institution or affiliated organization. In connection with the proposed rule, the Board solicited comment on whether § 226.57 should include a regulatory definition of "college affinity card." One card issuer commenter requested that the Board include such a definition in the final rule. The Board continues to believe, however, that the definition of "college student credit card," discussed above, is broad enough to encompass any "college affinity card" as defined in TILA Section 127(r)(1)(A), and that a definition of "college affinity card" therefore is unnecessary. As proposed, the Board is not adopting a regulatory definition comparable to this definition in the statute.

Comment 57(a)(1)–1 is adopted as proposed. Comment 57(a)(1)–1 clarifies that a college student credit card includes a college affinity card, as discussed above, and that, in addition, a card may fall within the scope of the definition regardless of the fact that it is not intentionally targeted at or marketed to college students.

Proposed § 226.57(a)(2) defined "college student" as an individual who is a full-time or a part-time student attending an institution of higher

education. This definition is consistent with the definition of "college student" in TILA Section 127(r)(1)(C). An industry commenter suggested that the Board limit the definition to students who are under the age of 21. As the Board discussed in the October 2009 Regulation Z Proposal, the definition is intended to be broad and would apply to students of any age attending an institution of higher education and applies to all students, including those enrolled in graduate programs or joint degree programs. The Board believes that it was Congress's intent to apply this term broadly, and is adopting § 226.57(a)(2) as proposed with one non-substantive wording change.

As discussed in the October 2009 Regulation Z Proposal, the Board proposed to adopt a definition of "institution of higher education" in § 226.57(a)(3) that would be consistent with the definition of the term in TILA Section 127(r)(1)(D) and in § 226.46(b)(2) for private education loans. The proposed definition provided that the term has the same meaning as in sections 101 and 102 of the Higher Education Act of 1965. 20 U.S.C. 1001 and 1002. In proposing the definition, the Board proposed to use its authority under TILA Section 105(a) to apply the definition in TILA Section 127(r)(1)(D) to TILA Section 140(f) in order to have a consistent definition of the term for all sections added by the Credit Card Act and to facilitate compliance. 15 U.S.C. 1604(a). The Board received no comment on the proposed definition, and § 226.57(a)(3) is adopted as proposed.

Proposed § 226.57(a)(4) defined "affiliated organization" as an alumni organization or foundation affiliated with or related to an institution of higher education, to provide a conveniently shorter term to be used to refer to such organizations and foundations in various provisions of the proposed regulations. The Board received no comment regarding this definition, and § 226.57(a)(4) is adopted as proposed with one non-substantive wording change.

Proposed § 226.57(a)(5) delineated the types of agreements for which creditors must provide annual reports to the Board, under the defined term "college credit card agreement." The term was defined to include any business, marketing or promotional agreement between a card issuer and an institution of higher education or an affiliated organization in connection with which college student credit cards are issued to college students currently enrolled at that institution. In connection with the proposed rule, the Board noted that the proposed definition did not incorporate the concept of a college affinity card agreement used in TILA Section 127(r)(1)(A) and solicited comment on whether language referring to college affinity card agreements also should be included in the regulations. The Board received no comments on this issue. The Board continues to believe that the definition of "college credit card agreement" is broad enough to include agreements concerning college affinity cards. Section 226.57(a)(5) therefore is adopted as proposed with one non-substantive wording change.

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

57(b) Public Disclosure of Agreements

In the October 2009 Regulation Z Proposal the Board proposed to implement new TILA Section 140(f)(1) in § 226.57(b). Consistent with the statute, proposed § 226.57(b) requires an institution of higher education to publicly disclose any credit card marketing contract or other agreement made with a card issuer or creditor. The Board also proposed comment 57(b)–1 to specify that an institution of higher education may fulfill its duty to publicly disclose any contract or other agreement made with a card issuer or creditor for the purposes of marketing a credit card by posting such contract or agreement on its Web site. Comment 57(b)–1 also provided that the institution of higher education may alternatively make such contract or agreement available upon request, provided the procedures for requesting the documents are reasonable and free of cost to the requestor, and the contract or agreement is provided within a reasonable time frame. As discussed in the October 2009 Regulation Z Proposal the list in proposed comment 57(b)–1 was not meant to be exhaustive, and the Board noted that an institution of higher education may publicly disclose these contracts or agreements in other ways.

Consumer group commenters suggested that the Board clarify that the term "any contracts or agreements" includes a memorandum of understanding or other amendment, interpretation or understanding between the parties that directly or indirectly relates to a college credit agreement. The Board does not believe such amendments are necessary. If, as a matter of contract law, any amendment or memorandum of understanding constitutes a part of a contract, the Board believes that the language in the regulation would require its disclosure. As a result, the Board is adopting comment 57(b)–1 as proposed.

The Board also proposed comment 57(b)–2 in the October 2009 Regulation Z Proposal to bar institutions of higher education from redacting any contracts or agreements they are required to publicly disclose under proposed § 226.57(b). As a result, any clauses in existing contract or agreements addressing the confidentiality of such contracts or agreements would be invalid to the extent they prevent institutions of higher education from publicly disclosing such contracts or agreements in accordance with proposed § 226.57(b). The Board did not receive any significant comments on comment 57(b)–2. Furthermore, the Board continues to believe that it is important that all provisions of these contracts or agreements be available to college students and other interested parties, and comment 57(b)–2 is adopted as proposed.

57(c) Prohibited Inducements

TILA Section 140(f)(2) prohibits card issuers and creditors from offering to a student at an institution of higher education any tangible item to induce such student to apply for or participate in an open-end consumer credit plan offered by such card issuer or creditor, if such offer is made on the campus of an institution of higher education, near the campus of an institution of higher education, or at an event sponsored by

or related to an institution of higher education. Proposed § 226.57(c) generally followed the statutory language. As the Board noted in the October 2009 Regulation Z Proposal, TILA Section 140(f)(2) applies not only to credit card accounts, but also other open-end consumer credit plans, such as lines of credit. The Board received comment from some industry commenters requesting that the Board limit this provision to credit card accounts only. The statute specifically includes other open-end consumer credit plans other than credit card accounts, and the Board believes Congress intended to cover all open-end consumer credit plans. Therefore, the Board is adopting § 226.57(c) as proposed.

One industry commenter requested an exception to the restrictions on offering a tangible item in exchange for introducing a wide range of financial services to a college student. The Board notes that the restriction in § 226.57(c) applies to inducements to apply for or participate in an open-end consumer credit plan only. Consequently, if a financial institution were to offer a tangible item to induce a college student to open a deposit account, for example, such item would not be prohibited because a deposit account is not an open-end credit plan. However, if a financial institution were to offer a tangible item to induce a college student to apply for or participate in a package of financial services that includes any open-end consumer credit plans, such items would be prohibited under § 226.57(c).

Proposed comment 57(c)–1 in the October 2009 Regulation Z Proposal clarified that a tangible item under § 226.57(c) includes any physical item, such as a gift card, a t-shirt, or a magazine subscription, that a card issuer or creditor offers to induce a college student to apply for or open an open-end consumer credit plan offered by such card issuer or creditor. The proposed comment also provided some examples of non-physical inducements that would not be considered tangible items, such as discounts, rewards points, or promotional credit terms.

Consumer group commenters suggested that while the Board's interpretation of "tangible" item was valid, there is an alternate definition of "tangible" item as an item that is real, as opposed to visionary or imagined. The Board believes interpreting the term "tangible" as these commenters' suggest would be inappropriate. Since it would be impossible for a creditor to offer an imagined item, defining "tangible" as something real would render the term superfluous. The Board believes that Congress meant to limit this prohibition to a certain class of items; otherwise, the statute would have prohibited the offering any kind of inducement, rather than a "tangible" one. Proposed comment 57(c)–1 is therefore adopted as proposed.

Under TILA Section 140(f)(2), offering tangible items to college students is prohibited only if the items are offered to induce the student to apply for or open an open-end consumer credit plan. As a result, the Board proposed comment 57(c)–2 to clarify that if a tangible item is offered to a college student whether or not that student applies for or opens an open-end consumer credit plan, the item is not an inducement. Consumer group commenters opposed the Board's interpretation and stated that any tangible item offered to a college student, even if it is not conditioned on the college student applying for or opening an open-end consumer credit plan, is an inducement. The Board disagrees with this interpretation. In addition, the Board believes the approach suggested by consumer group commenters could produce unintended consequences and practical complications. For example, under the interpretation suggested by commenters, even a simple candy dish in the lobby of a bank branch or at a retailer that has a retail credit card program could be prohibited because of the possibility a college student may walk into the branch or the store and take a piece of candy. Therefore, the Board is adopting comment 57(c)–2 as proposed.

TILA Section 140(f)(2)(B) requires the Board to determine what is considered near the campus of an institution of higher education. As discussed in the October 2009 Regulation Z Proposal, the Board proposed comment 57(c)–3 to provide that a location that is within 1,000 feet of the border of the campus of an institution of higher education, as defined by the institution of higher education, be considered near the campus of an institution of higher education. The Board based its proposal on the distances used in state and federal laws for other restricted activities near a school,[73] and solicited comment on other appropriate ways to determine a location that is considered near the campus of an institution of higher education.

The Board received support for its proposal from various types of commenters, but many industry commenters thought the Board's definition for what is considered near campus to be too broad. Several of these commenters suggested that the Board provide exceptions from the prohibition in § 226.57(c) for either retailer-creditors or bank branches on or near campus. Another industry commenter requested that the Board provide guidance on defining the campus of an institution of higher education. One industry commenter also suggested that the Board exempt on-line universities to avoid interpretations that a student's home might constitute a part of the "campus."

The Board is adopting comment 57(c)–3 as proposed. The statute provides that creditors are subject to the restrictions on offering tangible items to college students in particular locations and makes no exceptions for creditors that may already be established in such locations. Furthermore, the Board believes that institutions of higher education would be the proper entities to determine the borders of their respective campuses. In addition, it is the Board's understanding that on-line universities do not define their campuses as inclusive of a student's home. Therefore, the Board believes it would be unnecessary to provide an exemption for such institutions.

Proposed comment 57(c)–4 clarified that offers of tangible items mailed to a college student at an address on or near the campus of an institution of higher education would be subject to the restrictions in § 226.57(c). Proposed comment 57(c)–4 clarified that offers of tangible items made on or near the campus of an institution of higher education for purposes of § 226.57(c) include offers of tangible items that are sent to those locations through the mail. Some industry commenters opposed the Board's proposed comment to include offers of tangible items that are mailed to a college student at an address on or near campus. Another industry commenter requested the Board clarify whether e-mailed offers constituted offers mailed to an address on or near campus.

Comment 57(c)–4 is adopted as proposed. As the Board discussed in the October 2009 Regulation Z Proposal, the statute does not distinguish between different methods of making offers of tangible items, but clearly delineates the locations where such offers may not be

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

made. The Board notes that the prohibition in § 226.57(c) focuses on offering a tangible item. Therefore, creditors are not prohibited by the rule from mailing applications and solicitations to college students at an address that is on or near campus. Such mailings may even advertise the possibility of a tangible item for any applicant who is not a college student, so long as the credit has reasonable procedures for determining whether an applicant is a college student, consistent with comment 57(c)–6. Moreover, the Board does not believe that comment 57(c)–4 as adopted would include mailings to an e-mail address as it encompasses only mailings to an address that is on or near campus. An e-mail address does not physically exist anywhere, and therefore, cannot be considered an address on or near campus.

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

A credit union commenter suggested that the Board's proposal was too broad, particularly for credit unions that may share a similar name to an institution of higher education. While the Board understands the difficulty in complying with § 226.57(c) for such creditors, the Board believes that the potential for confusion that a particular event or function is endorsed by the institution of higher education is too great. The Board, however, notes that comment 57(c)–6, as discussed below, provides guidance for procedures such creditors can put in place to mitigate the impact of the rule.

Proposed comment 57(c)–6 requires creditors to have reasonable procedures for determining whether an applicant is a college student. Since the prohibition in § 226.57(c) applies solely to offering a tangible item to a college student at specified locations, a card issuer or creditor would be permitted to offer any person who is not a college student a tangible item to induce such person to apply for or open an open-end consumer credit plan offered by such card issuer or creditor at such locations. Proposed comment 57(c)–6 illustrated one way in which a card issuer or creditor might meet this standard and provided that the card issuer or creditor may rely on the representations made by the applicant.

The Board did not receive significant comment on this provision, and the proposed comment is adopted in final. As the Board discussed in the October 2009 Regulation Z Proposal, § 226.57(c) would not prohibit card issuers and creditors from instituting marketing programs on or near the campus of an institution of higher education, or at an event sponsored by or related to an institution of higher education, where a tangible item will be offered to induce people to apply for or open an open-end consumer credit plan. However, those card issuers or creditors that do so must have reasonable procedures for determining whether an applicant or participant is a college student before giving the applicant or participant the tangible item.

57(d) Annual Report to the Board

The Board proposed to implement new TILA Section 127(r)(2) in § 226.57(d). Consistent with the statute, proposed § 226.57(d) required card issuers that are a party to one or more college credit card agreements to submit annual reports to the Board regarding those agreements. Section 226.57(d) is adopted with modifications as discussed below.

Proposed § 226.57(d) required creditors that were a party to one or more college credit card agreements to register with the Board before submitting their first annual report. The Board is eliminating the registration requirement from the final rule because of technical changes to the Board's submission process. Proposed § 226.57(d)(1) therefore is not included in the final rule. The Board will capture the identifying information that would have been captured from each issuer during the registration process (*e.g.,* the issuer's name, address, and identifying number (such as an RSSD ID number or tax identification number), and the name, phone number and email address of a contact person at the issuer) at the time the issuer submits its annual report to the Board. Under the final rule, there is no requirement to register with the Board prior to submitting an annual report regarding college credit card agreements. As proposed, issuers must submit their initial annual report on college credit card agreements, providing information for the 2009 calendar year, to the Board by February 22, 2010. For each subsequent calendar year, issuers must submit annual reports by the first business day on or after March 31 of the following calendar year.

Proposed § 226.57(d) required that annual reports include a copy of each college credit card agreement to which the card issuer was a party that was in effect during the period covered by the report, as well as certain related information specified in new TILA Section 127(r)(2), including the total dollar amount of payments pursuant to the agreement from the card issuer to the institution (or affiliated organization) during the period covered by the report, and how such amount is determined; the total number of credit card accounts opened pursuant to the agreement during the period; and the total number of such credit card accounts that were open at the end of the period. The final rule specifies that annual reports must include "the method or formula used to determine" the amount of payments from an issuer to an institution of higher education or affiliated organization during the reporting period, rather than "how such amount is determined" as proposed. The Board believes this more precisely describes the information intended to be captured under new TILA Section 127(r)(2).

In connection with the proposal, the Board solicited comment on whether issuers should be required to submit additional information on the terms and conditions of college credit card agreements in the annual report, such as identifying specific terms that differentiate between student and non-student accounts (for example, that provide for difference in payments based on whether an account is a student or non-student account), identifying specific terms that relate to advertising or marketing (such as provisions on mailing lists, on-line advertising, or on-campus marketing), and the terms and conditions of credit card accounts (for example, rates and fees) that may be opened in connection with the college credit card agreement. One card issuer commenter argued that such additional information should not be required, citing the additional burden on issuers. Some consumer group commenters urged the Board to collect additional information including the items identified by the Board in the proposal as well as other information such as the differences in comparative rates of default and average outstanding balances between student and non-student accounts. The Board believes

that requiring issuers to track, assemble, and submit this information would impose significant costs and administrative burdens on issuers, and the Board does not believe that requiring issuers to submit additional information is necessary to achieve the purposes of new TILA Section 127(r)(2). Thus, no additional information requirements are adopted in the final rule.

As proposed, § 226.57(d) requires that each annual report include a copy of any memorandum of understanding that "directly or indirectly relates to the college credit card agreement or that controls or directs any obligations or distribution of benefits between any such entities." Proposed comment 57(d)(3)–1 clarified what types of documents would be considered memoranda of understanding for purposes of this requirement, by providing that a memorandum of understanding includes any document that amends the college credit card agreement, or that constitutes a further agreement between the parties as to the interpretation or administration of the agreement, and by providing of examples of documents that would or would not be included. The Board received no comments regarding what types of documents should be considered memoranda of understanding, and comment 57(d)(3)–1, redesignated as comment 57(d)(2)–1, is adopted as proposed.

Additional details regarding the submission process are provided in the Consumer and College Credit Card Agreement Submission Technical Specifications Document, which is published as Attachment I to this **Federal Register** notice and which will be available on the Board's public Web site.

*Section 226.58 Internet Posting of Credit Card Agreements*

Section 204 of the Credit Card Act adds new TILA Section 122(d) to require creditors to post agreements for open-end consumer credit card plans on the creditors' Web sites and to submit those agreements to the Board for posting on a publicly-available Web site established and maintained by the Board. 15 U.S.C. 1632(d). The Board proposed to implement these provisions in proposed § 226.58 with additional guidance included in proposed Appendix N. As discussed below, proposed § 226.58 is adopted with modifications. Proposed Appendix N has been eliminated from the final rule, but the provisions of proposed Appendix N, with certain modifications, have been incorporated into § 226.58.

The final rule requires that card issuers post on their Web sites, so as to be available to the public generally, the credit card agreements they offer to the public. Issuers must also submit these agreements to the Board quarterly for posting on the Board's public Web site. However, under the final rule, as proposed, issuers are not required to post on their publicly available Web sites, or to submit to the Board, credit card agreements that are no longer offered to the public, even if the issuer still has credit card accounts open under such agreements.

In addition, the final rule requires that issuers post on their Web sites, or otherwise make available upon request by the cardholder, all of their agreements for open credit card accounts, whether or not such agreements are currently offered to the public. Thus, any cardholder will be able to access a copy of his or her own credit card agreement. Agreements posted (or otherwise made available) under this provision in the final rule may contain personally identifiable information relating to the cardholder, provided that the issuer takes appropriate measures to make the agreement accessible only to the cardholder or other authorized persons. In contrast, the agreements that are currently offered to the public and that must be posted on the issuer's Web site (and submitted to the Board) may not contain personally identifiable information.

The final rule also contains, as proposed, a de minimis exception from the requirement to post on issuers' publicly available Web sites, and submit to the Board for posting on the Board's public Web site, agreements currently offered to the public. The de minimis exception applies to issuers with fewer than 10,000 open credit card accounts. The final rule also contains exceptions for private label plans offered on behalf of a single merchant or a group of affiliated merchants and for plans that are offered in order to test a new credit card product, provided that in each case the plan involves no more than 10,000 credit card accounts. However, none of these exceptions applies to the requirement that issuers make available by some means upon request all of their credit card agreements for their open credit card accounts, whether or not currently offered to the public.

58(a) Applicability

The Board proposed to make § 226.58 applicable to any card issuer that issues credit cards under a credit card account under an open-end (not home-secured) consumer credit plan, as defined in proposed § 226.2(a)(15). The Board received no comments on proposed § 226.58(a) and therefore is adopting this section as proposed. Thus, consistent with the approach the Board is implementing with respect to other sections of the Credit Card Act, home-equity lines of credit accessible by credit cards and overdraft lines of credit accessed by debit cards are not covered by § 226.58.

58(b) Definitions

58(b)(1) Agreement

Proposed § 226.58(b)(1) defined "agreement" or "credit card agreement" as a written document or documents evidencing the terms of the legal obligation or the prospective legal obligation between a card issuer and a consumer for a credit card account under an open-end (not home-secured) consumer credit plan. Proposed § 226.58(b)(1) further provided that an agreement includes the information listed under the defined term "pricing information."

Commenters generally were supportive of the Board's proposed definition of agreement, and the Board is adopting § 226.58(b)(1) as proposed. One card issuer commenter stated that creditors should not be required to provide pricing information as part of agreements submitted to the Board. The Board disagrees. The Board continues to believe that, to enable consumers to shop for credit cards and compare information about various credit card plans in an effective manner, it is necessary that the credit card agreements posted on the Board's Web site include rates, fees, and other pricing information.

The Board proposed two comments clarifying the definition of agreement under § 226.58(b)(1). Proposed comment 58(b)(1)–1 clarified that an agreement is deemed to include the information listed under the defined term "pricing information," even if the issuer does not otherwise include this information in the document evidencing the terms of the obligation. Comment 58(b)(1)–1 is adopted as proposed.

Proposed comment 58(b)(1)–2 clarified that an agreement would not include documents sent to the consumer along with the credit card or credit card agreement such as a cover letter, a validation sticker on the card, other information about card security, offers for credit insurance or other optional products, advertisements, and disclosures required under federal or state law. The Board received no comments on proposed comment 58(b)(1)–2. For organizational reasons,

proposed comment 58(b)(1)–2 has been eliminated and the guidance contained in proposed comment 58(b)(1)–2 has been moved to § 228.58(c)(8), discussed below.

The final rule adds new comment 58(b)(1)–2, which clarifies that an agreement may consist of multiple documents that, taken together, define the legal obligation between the issuer and the consumer. As an example, comment 58(b)(1)–2 notes that provisions that mandate arbitration or allow an issuer to unilaterally alter the terms of the issuer's or consumer's obligation are part of the agreement even if they are provided to the consumer in a document separate from the basic credit contract. The definition of agreement under § 226.58(b)(1) indicates that an agreement may consist of a "document *or documents*" (emphasis added). However, several commenters indicated that it would be helpful for the Board to emphasize this point, and the Board agrees that further clarity may assist issuers in complying with § 226.58.

58(b)(2) Amends

In connection with the proposed rule, the Board solicited comment on whether issuers should be required to resubmit agreements to the Board following minor, technical changes. Commenters overwhelmingly indicated that the Board should only require resubmission of agreements following substantive changes. Commenters including both large and small card issuers noted that issuers frequently make non-substantive changes without simultaneously making substantive changes and that requiring resubmission following technical changes would impose a significant burden on issuers while providing little or no benefit to consumers. The Board agrees that requiring resubmission of agreements following minor, technical changes would impose a significant administrative burden with no corresponding benefit of increased transparency.

The final rule therefore includes a new definition of "amends" as § 226.58(b)(2). The definition specifies that an issuer amends an agreement if it makes a substantive change to the agreement. A change is substantive if it alters the rights or obligations of the card issuer or the consumer under the agreement. Any change in the pricing information, as defined in § 226.58(b)(6), is deemed to be a substantive change, and therefore an amendment. Under § 226.58(c), discussed below, an issuer is only required to resubmit an agreement to the Board following a change to the agreement if that change constitutes an amendment as defined in § 226.58(b)(2).

To provide additional clarity regarding what types of changes would be considered amendments, the final rule includes two new comments, comment 58(b)(2)–1 and 58(b)(2)–2. Comment 58(b)(2)–1 gives examples of changes that generally would be considered substantive, such as: (i) Addition or deletion of a provision giving the issuer or consumer a right under the agreement, such as a clause that allows an issuer to unilaterally change the terms of an agreement; (ii) addition or deletion of a provision giving the issuer or consumer an obligation under the agreement, such as a clause requiring the consumer to pay an additional fee; (iii) changes that may affect the cost of credit to the consumer, such as changes in a clause describing how the minimum payment will be calculated; (iv) changes that may affect how the terms of the agreement are construed or applied, such as changes in a choice-of-law provision; and (v) changes that may affect the parties to whom the agreement may apply, such as changes in a provision regarding authorized users or assignment of the agreement.

Comment 58(b)(2)–2 gives examples of changes that generally would not be considered substantive, such as: (i) Correction of typographical errors that do not affect the meaning of any terms of the agreement; (ii) changes to the issuer's corporate name, logo, or tagline; (iii) changes to the format of the agreement, such as conversion to a booklet from a full-sheet format, changes in font, or changes in margins; (iv) changes to the name of the credit card to which the program applies; (v) reordering sections of the agreement without affecting the meaning of any terms of the agreement; (vi) adding, removing, or modifying a table of contents or index; and (vii) changes to titles, headings, section numbers, or captions.

58(b)(3) Business Day

As proposed, § 226.58(b)(3) of the final rule, corresponding to proposed § 226.58(b)(2), defines "business day" as a day on which the creditor's offices are open to the public for carrying on substantially all of its business functions. This is consistent with the definition of business day used in most other sections of Regulation Z. The Board received no comments regarding proposed § 226.58(b)(2).

58(b)(4) Offers

The proposed rule provided that an issuer "offers" or "offers to the public" an agreement if the issuer is soliciting or accepting applications for new accounts that would be subject to that agreement. The Board received no comments regarding the definition of offers, and the § 226.58(b)(4) definition, corresponding to proposed § 226.58(b)(3), is adopted as proposed.

Several credit union commenters argued that credit cards issued by credit unions are not offered to the public under this definition because such cards are available only to credit union members. These commenters concluded that credit unions therefore should not be required to submit agreements to the Board for posting on the Board's Web site. The Board disagrees. The Board understands that, of the one hundred largest Visa and MasterCard credit card issuers in the United States, several dozen are credit unions, including some with hundreds of thousands of open credit card accounts and at least one with over one million open credit card accounts. In addition, credit union membership criteria have relaxed in recent years, in some cases significantly. Credit cards issued by credit unions are a significant source of open-end consumer credit, and exempting credit unions from submitting agreements to the Board would significantly lessen the usefulness of the Board's Web site as a comparison shopping tool for consumers. The final rule therefore includes new language in comment 58(b)(4)–1, corresponding to proposed comment 58(b)(3)–1, clarifying that agreements for credit cards issued by credit unions are considered to be offered to the public even though they are available only to credit union members.

The two proposed comments to the definition of offers are otherwise adopted as proposed. Comment 58(b)(4)–1, corresponding to proposed comment 58(b)(3)–1, clarifies that a card issuer is deemed to offer a credit card agreement to the public even if the issuer solicits, or accepts applications from, only a limited group of persons. For example, an issuer may market affinity cards to students and alumni of a particular educational institution or solicit only high-net-worth individuals for a particular card, but the corresponding agreements would be considered to be offered to the public. Comment 58(b)(4)–2, corresponding to proposed comment 58(b)(3)–2, clarifies that a card issuer is deemed to offer a credit card agreement to the public even if the terms of the agreement are

changed immediately upon opening of an account to terms not offered to the public.

58(b)(5) Open Account

The proposed rule provided guidance in proposed comment 58(e)–2 regarding the definition of open accounts for purposes of the de minimis exception. Proposed comment 58(e)–2 stated that, for purposes of the de minimis exception, a credit card account is considered to be open even if the account is inactive, as long as the account has not been closed by the cardholder or the card issuer and the cardholder can obtain extensions of credit on the account. In addition, if an account has only temporarily been suspended (for example, due to a report of unauthorized use), the account is considered open. However, if an account has been closed for new activity (for example, due to default by the cardholder), but the cardholder is still making payments to pay off the outstanding balance, the account need not be considered open.

The final rule eliminates this comment and adds a new definition of "open account" as § 226.58(b)(5). Under § 226.58(b)(5), an account is an "open account" or "open credit card account" if it is a credit card account under an open-end (not home-secured) consumer credit plan and either: (i) The cardholder can obtain extensions of credit on the account; or (ii) there is an outstanding balance on the account that has not been charged off. An account that has been suspended only temporarily (for example, due to a report by the cardholder of unauthorized use of the card) is considered an open account or open credit card account. The term open account is used in the de minimis, private label, and product testing exceptions under § 226.58(c) and in § 226.58(e), regarding availability of agreements to existing cardholders. These sections are discussed below.

The final rule also includes new comment 58(b)(5)–1. This comment clarifies that, under the § 226.58(b)(5) definition of open account, an account is considered open if either of the two conditions set forth in the definition are met even if the account is inactive. Similarly, the comment clarifies that an account is considered open if an account has been closed for new activity (for example, due to default by the cardholder) but the cardholder is still making payments to pay off the outstanding balance.

The definition of open account included in the final rule differs from the guidance provided in proposed comment 58(e)–2. In particular, accounts closed to new activity are considered open accounts under § 226.58(b)(5), but were not considered open accounts under the proposed comment. The Board is aware that, under the new definition of open accounts, some issuers that may have qualified for the de minimis exception under the proposed rule will not qualify for the exception under the final rule. The Board believes that the approach to accounts closed for new activity under the final rule more accurately reflects the size of an issuer's portfolio. This approach also is more consistent with the treatment of such accounts under other sections of Regulation Z.

In addition, the proposed comment applied only to the de minimis exception and did not provide guidance on the meaning of open accounts for other purposes, including for purposes of determining availability of agreements to existing cardholders. Because the definition of open account applies to all subsections of § 226.58, the addition of the defined term clarifies that issuers must provide a cardholder with a copy of his or her particular credit card agreement under § 226.58(e) even if his or her account has been closed to new activity.

58(b)(6) Pricing Information

Proposed § 226.58(b)(4) defined the term "pricing information" to include: (1) the information under § 226.6(b)(2)(i) through (b)(2)(xii), (b)(3) and (b)(4) that is required to be disclosed in writing pursuant to § 226.5(a)(1)(ii); (2) the credit limit; and (3) the method used to calculate required minimum payments. The Board received a number of comments on the proposed definition of pricing information, and the definition is adopted with modifications, as discussed below, as § 226.58(b)(6).

Section 226.58(b)(6) defines the pricing information as the information listed in § 226.6(b)(2)(i) through (b)(2)(xii) and (b)(4). The definition specifies that the pricing information does not include temporary or promotional rates and terms or rates and terms that apply only to protected balances.

Under § 226.58(b)(6), the pricing information continues to include the information listed in § 226.6(b)(2)(i) through (b)(2)(xii), as proposed. The information listed in § 226.6(b)(3) has been omitted from the final rule, as information listed under § 226.6(b)(3) required to be disclosed in writing pursuant to § 226.5(a)(1)(ii) is, by definition, included in § 226.6(b)(2). The information listed in § 226.6(b)(4) is included as proposed.

The credit limit is not included in the definition of pricing information under the final rule. Many card issuer commenters stated that the Board should not include the credit limit as an element of the pricing information. These commenters argued that the range of credit limits offered in connection with a particular agreement is likely to be so broad that it would not assist consumers in shopping for a credit card and noted that existing cardholders are notified of their individual credit limit on their periodic statements. These commenters also noted that credit limits are individually tailored and change frequently. They argued that including the credit limit as part of the pricing information therefore would require issuers to update and resubmit agreements frequently, imposing a significant burden on card issuers. The Board agrees with these commenters.

The method used to calculate minimum payments also is not included in the definition of pricing information under the final rule. Methods used to calculate minimum payments are often complex and may be difficult to explain in a form that is readily understandable but still accurate. Upon further consideration, the Board believes that including this information in the pricing information likely would cause confusion among consumers and is unlikely to assist consumers in shopping for a credit card.

The § 226.58(b)(6) definition of pricing information also excludes temporary or promotional rates and terms or rates and terms that apply only to protected balances. Several card issuer commenters noted that promotional terms change frequently and therefore become outdated quickly. They also noted that these terms may be offered only to targeted groups of consumers. Including such terms as part of the pricing information likely would lead to confusion, as consumers often would be misled into believing they could apply for a particular set of terms when in fact they could not. The Board agrees that including these terms likely would lead to substantial consumer confusion about the terms available from a particular issuer. Similarly, including rates and terms that apply only to protected balances likely would mislead consumers about the terms that would apply to an account generally.

Consumer groups commented that the Board should require issuers to disclose as part of the pricing information how the credit limit is set and under what circumstances it may be reduced and how issuers allocate the minimum payment. The Board does not believe that this information would assist

consumers in shopping for a credit card. The Board has conducted extensive consumer testing to develop account opening disclosures that are meaningful and understandable to consumers. The Board believes that these disclosures are an appropriate basis for the pricing information to be submitted to the Board and provided to cardholders under § 226.58. This additional information therefore is not included in the definition of pricing information under the final rule.

Other commenters suggested that the Board should use the disclosure requirements for credit and charge card applications and solicitations under § 226.5a, rather than the account-opening disclosures under § 226.6, as the basis for the pricing information definition. The Board continues to believe that the account-opening disclosures under § 226.6 are a more appropriate basis for the pricing information to be submitted to the Board and provided to cardholders under § 226.58. For example, the Board believes that the more robust disclosure regarding rates required by § 226.6(b)(4) would be of substantial assistance to consumers in comparing credit cards among different issuers. As proposed, the final rule continues to use § 226.6 as the basis for the definition of pricing information.

As proposed, the definition of pricing information makes reference to the provisions of § 226.6 as revised by the January 2009 Regulation Z Rule. As discussed elsewhere in this supplementary information, the Board has decided to retain the July 1, 2010, mandatory compliance date for revised § 226.6, while the effective date of § 226.58 is February 22, 2010. The definition of pricing information for purposes of § 226.58 conforms to the requirements of revised § 226.6(b)(2)(i) through (b)(2)(xii) and (b)(4) beginning on February 22, 2010, even though compliance with portions of revised § 226.6(b) is not mandatory until July 1, 2010.

58(b)(7) Private Label Credit Card Account and Private Label Credit Card Plan

In connection with the proposed rule, the Board solicited comment on whether the Board should create an exception applicable to small credit card plans offered by an issuer of any size. The Board is adopting in § 226.58(c)(6) an exception for small private label credit card plans, discussed below. The final rule includes as § 226.58(b)(7) definitions for two new defined terms, "private label credit card account" and "private label credit card plan," used in connection with that exception.

Section 226.58(b)(7) defines a private label credit card account as a credit card account under an open-end (not home-secured) consumer credit plan with a credit card that can be used to make purchases only at a single merchant or an affiliated group of merchants and defines a private label credit card plan as all of the private label credit card accounts issued by a particular issuer with credit cards usable at the same single merchant or affiliated group of merchants.

The final rule includes additional guidance regarding these definitions in four comments. Comment 58(b)(7)–1 clarifies that the term private label credit card account applies to any credit card account that meets the terms of the definition, regardless of whether the account is issued by the merchant or its affiliate or by an unaffiliated third party.

Comment 58(b)(7)–2 clarifies that accounts with so-called co-branded credit cards are not considered private label credit card accounts. Credit cards that display the name, mark, or logo of a merchant or affiliated group of merchants as well as the mark, logo, or brand of payment network are generally referred to as co-branded cards. While these credit cards may display the brand of the merchant or affiliated group of merchants as the dominant brand on the card, such credit cards are usable at any merchant that participates in the payment network. Because these credit cards can be used at multiple unaffiliated merchants, they are not considered private label credit cards under § 226.58(b)(7).

Comment 58(b)(7)–3 clarifies that an "affiliated group of merchants" means two or more affiliated merchants or other persons that are related by common ownership or common corporate control. For example, the term would include franchisees that are subject to a common set of corporate policies or practices under the terms of their franchise licenses. The term also applies to two or more merchants or other persons that agree among each other, by contract or otherwise, to accept a credit card bearing the same name, mark, or logo (other than the mark, logo, or brand of a payment network such as Visa or MasterCard), for the purchase of goods or services solely at such merchants or persons. For example, several local clothing retailers jointly agree to issue credit cards called the "Main Street Fashion Card" that can be used to make purchases only at those retailers. For purposes of this section, these retailers would be considered an affiliated group of merchants.

Comment 58(b)(7)–4 provides examples of which credit card accounts constitute a private label credit card plan under § 226.58(b)(7). As comment 58(b)(7)–4 indicates, which credit card accounts issued by a particular issuer constitute a private label credit card plan is determined by where the credit cards can be used. All of the private label credit card accounts issued by a particular issuer with credit cards that are usable at the same merchant or affiliated group of merchants constitute a single private label credit card plan, regardless of whether the rates, fees, or other terms applicable to the individual credit card accounts differ. Comment 58(b)(7)–4 provides the following example: an issuer has 3,000 open private label credit card accounts with credit cards usable only at Merchant A and 5,000 open private label credit card accounts with credit cards usable only at Merchant B and its affiliates. The issuer has two separate private label credit card plans, as defined by § 226.58(b)(7)—one plan consisting of 3,000 open accounts with credit cards usable only at Merchant A and another plan consisting of 5,000 open accounts with credit cards usable only at Merchant B and its affiliates.

Comment 58(b)(7)–4 notes that the example above remains the same regardless of whether (or the extent to which) the terms applicable to the individual open accounts differ. For example, assume that, with respect to the issuer's 3,000 open accounts with credit cards usable only at Merchant A in the example above, 1,000 of the open accounts have a purchase APR of 12 percent, 1,000 of the open accounts have a purchase APR of 15 percent, and 1,000 of the open accounts have a purchase APR of 18 percent. All of the 5,000 open accounts with credit cards usable only at Merchant B and Merchant B's affiliates have the same 15 percent purchase APR. The issuer still has only two separate private label credit card plans, as defined by § 226.58(b)(7). The open accounts with credit cards usable only at Merchant A do not constitute three separate private label credit card plans under § 226.58(b)(7), even though the accounts are subject to different terms.

Proposed 58(c) Registration With Board

Proposed § 226.58(c) required any card issuer that offered one or more credit card agreements as of December 31, 2009 to register with the Board, in the form and manner prescribed by the Board, no later than February 1, 2010. The proposed rule required issuers that had not previously registered with the Board (such as new issuers formed after

December 31, 2009) to register before the deadline for their first quarterly submission.

Proposed § 226.58(c) is not included in the final rule. The Board is eliminating the registration requirement from the final rule because of technical changes to the Board's submission process. The Board instead plans to capture the identifying information about each issuer that would have been captured during the registration process (*e.g.,* the issuer's name, address, and identifying number (such as an RSSD ID number or tax identification number), and the name, phone number and e-mail address of a contact person at the issuer) at the time of each issuer's first submission of agreements to the Board. Under the final rule, there is no requirement to register with the Board prior to submitting credit card agreements.

58(c) Submission of Agreements to Board

Proposed § 226.58(d) required that each card issuer electronically submit to the Board on a quarterly basis the credit card agreements that the issuer offers to the public. Commenters did not oppose the general requirements of proposed § 226.58(d), and the Board is adopting the proposed provision, redesignated as § 226.58(c), with certain modifications, as discussed below. Consistent with new TILA Section 122(d)(3), the Board will post the credit card agreements it receives on its Web site.

The Board proposed to use its exemptive authority under Sections 105(a) and 122(d)(5) of TILA to require issuers to submit to the Board only agreements currently offered to the public. Commenters generally were supportive of this proposed use of the Board's exemptive authority, and the Board received no comments indicating that issuers should be required to submit agreements not offered to the public. The Board continues to believe that, with respect to credit card agreements that are not currently offered to the public, the administrative burden on issuers of preparing and submitting agreements for posting on the Board's Web site would outweigh the benefit of increased transparency for consumers. The Board also continues to believe that providing an exception for agreements not currently offered to the public is appropriate both to effectuate the purposes of TILA and to facilitate compliance with TILA.

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

58(c)(1) Quarterly Submissions

Proposed § 226.58(d)(1) required issuers to send quarterly submissions to the Board no later than the first business day on or after January 31, April 30, July 31, and October 31 of each year. The proposed rule required issuers to submit: (i) The credit card agreements that the issuer offered to the public as of the last business day of the preceding calendar quarter that the issuer has not previously submitted to the Board; (ii) any credit card agreement previously submitted to the Board that was modified or amended during the preceding calendar quarter; and (iii) notification regarding any credit card agreement previously submitted to the Board that the issuer is withdrawing. Proposed comment § 226.58(d)–1 provided an example of the submission requirements as applied to a hypothetical issuer. Proposed comment 58(d)–2 clarified that an issuer is not required to make any submission to the Board if, during the previous calendar quarter, the issuer did not take any of the following actions: (1) Offering a new credit card agreement that was not submitted to the Board previously; (2) revising or amending an agreement previously submitted to the Board; and (3) ceasing to offer an agreement previously submitted to the Board.

Commenters did not oppose the Board's approach to submission of agreements as described in proposed § 226.58(d)(1). The Board therefore is adopting proposed § 226.58(d)(1) and proposed comments 58(d)–1 and 58(d)–2, redesignated in the final rule as § 226.58(c)(1) and comments 58(c)(1)–1 and 58(c)(1)–2, with certain modifications.

As discussed above, the Board is eliminating from the final rule the requirement that issuers register with the Board before submitting agreements to the Board. Section 226.58(c)(1) therefore includes a new requirement that issuers submit along with their quarterly submissions identifying information relating to the card issuer and the agreements submitted, including the issuer's name, address, and identifying number (such as an RSSD ID number or tax identification number).

In addition, Sections 226.58(c)(1) and comments 58(c)(1)–1 and (c)(1)–2 reflect, through use of the defined term "amend," that issuers are required to resubmit agreements only following substantive changes. As discussed above, commenters overwhelmingly indicated that the Board should only require resubmission of agreements following substantive changes. The Board agrees that requiring resubmission of agreements following minor, technical changes would impose a significant administrative burden with no corresponding benefit of transparency. This is reflected in the final rule by requiring that issuers resubmit agreements under § 226.58(c)(1) only when an agreement has been amended as defined in § 226.58(b)(2).

Several commenters asked that issuers be permitted to submit a complete, updated set of credit card agreements on a quarterly basis, rather than tracking which agreements are being modified, withdrawn, or added. These commenters argued that requiring issuers to track which agreements are being modified, withdrawn, or amended could impose a substantial burden on some issuers with no corresponding benefit to consumers. The Board agrees. The final rule therefore includes new comment 58(c)(1)–3, which clarifies that § 226.58(c)(1) permits an issuer to submit to the Board on a quarterly basis a complete, updated set of the credit card agreements the issuer offers to the public. The comment gives the following example: An issuer offers agreements A, B and C to the public as of March 31. The issuer submits each of these agreements to the Board by April 30 as required by § 226.58(c)(1). On May 15, the issuer amends agreement A, but does not make any changes to agreements B or C. As of June 30, the issuer continues to offer amended agreement A and agreements B and C to the public. At the next quarterly submission deadline, July 31, the issuer

must submit the entire amended agreement A and is not required to make any submission with respect to agreements B and C. The issuer may either: (i) Submit the entire amended agreement A and make no submission with respect to agreements B and C; or (ii) submit the entire amended agreement A and also resubmit agreements B and C. The comment also states that an issuer may choose to resubmit to the Board all of the agreements it offered to the public as of a particular quarterly submission deadline even if the issuer has not introduced any new agreements or amended any agreements since its last submission and continues to offer all previously submitted agreements.

Additional details regarding the submission process are provided in the Consumer and College Credit Card Agreement Submission Technical Specifications Document, which is published as Attachment I to this **Federal Register** notice and which will be available on the Board's public Web site.

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

Proposed § 226.58(d)(2), redesignated as § 226.58(c)(2), is adopted as proposed. Section 3 of the Credit Card Act provides that new TILA Section 122(d) becomes effective on February 22, 2010, nine months after the date of enactment of the Credit Card Act. Thus, consistent with Section 3 of the Credit Card Act and as proposed, the final rule requires issuers to send their initial submissions, containing credit card agreements offered to the public as of December 31, 2009, to the Board no later than February 22, 2010. The next submission must be sent to the Board no later than August 2, 2010 (the first business day on or after July 31, 2010), and must contain: (1) Any credit card agreement that the card issuer offered to the public as of June 30, 2010, that the card issuer has not previously submitted to the Board; (2) any credit card agreement previously submitted to the Board that was modified or amended after December 31, 2009, and on or before June 30, 2010, as described in § 226.58(c)(3); and (3) notification regarding any credit card agreement previously submitted to the Board that the issuer is withdrawing as of June 30, 2010, as described in § 226.58(c)(4) and (5).

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

Several card issuer commenters suggested that issuers' initial submission should be due on a date later than February 22, 2010. The Board is aware that many issuers are likely to make changes to their agreements related to other provisions of the Credit Card Act before the February 22, 2010, effective date and that agreements as of December 31, 2009, therefore will be somewhat outdated by the time they are sent to the Board on February 22, 2010. The Board believes, however, that it is important to provide consumers with access to issuer's credit card agreements promptly following the statutory effective date.

58(c)(3) Amended Agreements

Proposed § 226.58(d)(3) required that, if an issuer makes changes to an agreement previously submitted to the Board, the issuer must submit the entire revised agreement to the Board by the first quarterly submission deadline after the last day of the calendar quarter in which the change became effective. The proposed rule also specified that, if a credit card agreement has been submitted to the Board, no changes have been made to the agreement, and the card issuer continues to offer the agreement to the public, no additional submission with respect to that agreement is required. Two proposed comments, proposed comments 58(d)–3 and 58(d)–4, provided examples of situations in which resubmission would not and would be required, respectively. Proposed comment 58(d)–5 clarified that an issuer could not fulfill the requirement to submit the entire revised agreement to the Board by submitting a change-in-terms or similar notice covering only the changed terms and that revisions could not be submitted as separate riders.

The proposed rule required credit card issuers to resubmit agreements following any change, regardless of whether that change affects the substance of the agreement. As discussed above, the Board solicited comment on whether issuers should be required to resubmit agreements to the Board following minor, technical changes. Commenters overwhelmingly indicated that the Board should only require resubmission of agreements following substantive changes.

The Board agrees with these commenters that requiring resubmission of agreements following minor, technical changes would impose a significant administrative burden with no corresponding benefit of increased transparency to consumers. The final rule therefore includes a new definition of "amends" in § 226.58(b)(2), as discussed above. Under the final rule, an issuer is only required to resubmit an agreement to the Board following a change to the agreement if that change constitutes an amendment as defined in § 226.58(b)(2). The definition in § 226.58(b)(2) specifies that an issuer amends an agreement if it makes a substantive change to the agreement. A change is substantive if it alters the rights or obligations of the card issuer or the consumer under the agreement. The definition specifies that any change in the pricing information is deemed to be a substantive change and therefore an amendment. Section 226.58(c)(3) and comments 58(c)(3)–1, 58(c)(3)–2, and 58(c)(3)–3 (corresponding to proposed § 226.58(d)(3) and proposed comments 58(d)–3, 58(d)–4, and 58(d)–5) have been revised to incorporate the defined term "amend" but otherwise are adopted as proposed with several technical changes.

Under § 226.58(c)(3), corresponding to proposed § 226.58(d)(3), if a credit card agreement has been submitted to the Board, the agreement has not been amended as defined in § 226.58(b)(2) and the card issuer continues to offer the agreement to the public, no additional submission regarding that agreement is required. For example, as described in comment 58(c)(3)–1, corresponding to proposed comment 58(d)–3, a credit card issuer begins offering an agreement in October and submits the agreement to the Board the following January 31, as required by § 226.58(c)(1). As of March 31, the issuer has not amended the agreement and is still offering the agreement to the public. The issuer is not required to submit anything to the Board regarding that agreement by April 30.

If a credit card agreement that previously has been submitted to the Board is amended, as defined in § 226.58(b)(2), the final rule provides that the card issuer must submit the entire amended agreement to the Board by the first quarterly submission deadline after the last day of the calendar quarter in which the change became effective. Comment 58(c)(3)–2, corresponding to proposed comment 58(d)–4, gives the following example: an issuer submits an agreement to the

Board on October 31. On November 15, the issuer changes the balance computation method used under the agreement. Because an element of the pricing information has changed, the agreement has been amended and the issuer must submit the entire amended agreement to the Board no later than January 31.

Comment 58(c)(3)–3, corresponding to proposed comment 58(d)–5, explains that an issuer may not fulfill the requirement to submit the entire amended agreement to the Board by submitting a change-in-terms or similar notice covering only the terms that have changed. In addition, the comment emphasizes that, as required by § 226.58(c)(8)(iv), amendments must be integrated into the text of the agreement (or the addenda described in § 226.58(c)(8)), not provided as separate riders. For example, an issuer changes the purchase APR associated with an agreement the issuer has previously submitted to the Board. The purchase APR for that agreement was included in the addendum of pricing information, as required by § 226.58(c)(8). The issuer may not submit a change-in-terms or similar notice reflecting the change in APR, either alone or accompanied by the original text of the agreement and original pricing information addendum. Instead, the issuer must revise the pricing information addendum to reflect the change in APR and submit to the Board the entire text of the agreement and the entire revised addendum, even though no changes have been made to the provisions of the agreement and only one item on the pricing information addendum has changed.

58(c)(4) Withdrawal of Agreements

Proposed § 226.58(d)(4), redesignated as § 226.58(c)(4), and proposed comment 58(d)–6, redesignated as comment 58(c)(4)–1, are adopted as proposed with one technical change. The Board received no comments regarding this section and the accompanying commentary. As proposed, § 226.58(c)(4) requires an issuer to notify the Board if the issuer ceases to offer any agreement previously submitted to the Board by the first quarterly submission deadline after the last day of the calendar quarter in which the issuer ceased to offer the agreement. For example, as described in comment 58(c)(4)–1, on January 5 an issuer stops offering to the public an agreement it previously submitted to the Board. The issuer must notify the Board that the agreement is being withdrawn by April 30, the first quarterly submission deadline after March 31, the last day of the calendar quarter in which the issuer stopped offering the agreement.

58(c)(5) De Minimis Exception

Proposed § 226.58(e) provided an exception to the requirement that credit card agreements be submitted to the Board for issuers with fewer than 10,000 open credit card accounts under open-end (not home-secured) consumer credit plans. Commenters generally were supportive of this provision, and proposed § 226.58(e) is incorporated into the final rule as § 226.58(c)(5) with certain modifications as discussed below.

The proposal noted that TILA Section 122(d)(5) provides that the Board may establish exceptions to the requirements that credit card agreements be posted on creditors' Web sites and submitted to the Board for posting on the Board's Web site in any case where the administrative burden outweighs the benefit of increased transparency, such as where a credit card plan has a de minimis number of consumer account holders. The Board expressed its belief that a de minimis exception should be created, but noted that it might not be feasible to base such an exception on the number of accounts under a credit card plan. In particular, the Board stated that it was unaware of a way to define "credit card plan" that would not divide issuers' portfolios into such small units that large numbers of credit card agreements could fall under the de minimis exception. The Board therefore proposed a de minimis exception for issuers with fewer than 10,000 open credit card accounts. Under the proposed exception, such issuers were not required to submit any credit card agreements to the Board.

As described below, the Board is adopting as part of the final rule two exceptions based on the number of accounts under a credit card plan—the private label credit card exception and the product testing exception. The Board continues to believe, however, that the administrative burden on small issuers of preparing and submitting agreements would outweigh the benefit of increased transparency from including those agreements on the Board's Web site. The final rule therefore includes the proposed § 226.58(e) de minimis exception for issuers with fewer than 10,000 open accounts substantially as proposed, redesignated as § 226.58(c)(5).

In connection with the proposed rule, the Board solicited comment on the 10,000 open account threshold for the de minimis exception. Several commenters supported the 10,000 account threshold. Several other commenters stated that the threshold should be raised to 25,000 open accounts. The Board continues to believe that 10,000 open accounts is an appropriate threshold for the de minimis exception, and that threshold is retained in the final rule. One commenter stated that accounts with terms and conditions that are no longer offered to the public should not be counted toward the 10,000 account threshold. The Board believes that this exception is unworkable and could bring large numbers of issuers within the de minimis exception. The final rule therefore does not incorporate this approach.

Proposed § 226.58(e)(1) has been modified to incorporate the defined term "open account," discussed above, and redesignated as § 226.58(c)(5)(i), but otherwise is adopted as proposed. Under § 226.58(c)(5)(i), a card issuer is not required to submit any credit card agreements to the Board if the card issuer has fewer than 10,000 open credit card accounts as of the last business day of the calendar quarter.

The final rule includes new comment 58(c)(5)–1, which clarifies the relationship between the de minimis exception and the private label credit card and product testing exceptions. As comment 58(c)(5)–1 explains, the de minimis exception is distinct from the private label credit card exception under § 226.58(c)(6) and the product testing exception under § 226.58(c)(7). The de minimis exception provides that an issuer with fewer than 10,000 open credit card accounts is not required to submit any agreements to the Board, regardless of whether those agreements qualify for the private label credit card exception or the product testing exception. In contrast, the private label credit card exception and the product testing exception provide that an issuer is not required to submit to the Board agreements offered solely in connection with certain types of credit card plans with fewer than 10,000 open accounts, regardless of the issuer's total number of open accounts.

Proposed comments 58(e)–1 and 58(e)–3, redesignated as comments 58(c)(5)–2 and 58(c)(5)–3, have been modified to incorporate the defined term "open account," but otherwise are adopted as proposed. Comment 58(c)(5)–2 gives the following example of an issuer that qualifies for the de minimis exception: an issuer offers five credit card agreements to the public as of September 30. However, the issuer has only 2,000 open credit card accounts as of September 30. The issuer is not required to submit any agreements to the Board by October 31

because the issuer qualifies for the de minimis exception. Comment 58(c)(5)–3 clarifies that whether an issuer qualifies for the de minimis exception is determined as of the last business day of the calendar quarter and gives the following example: as of December 31, an issuer offers three agreements to the public and has 9,500 open credit card accounts. As of January 30, the issuer still offers three agreements, but has 10,100 open accounts. As of March 31, the issuer still offers three agreements, but has only 9,700 open accounts. Even though the issuer had 10,100 open accounts at one time during the calendar quarter, the issuer qualifies for the de minimis exception because the number of open accounts was less than 10,000 as of March 31. The issuer therefore is not required to submit any agreements to the Board under § 226.58(c)(1) by April 30.

Proposed comment 58(e)–2 provided guidance regarding the definition of open accounts for purposes of the de minimis exception. As discussed above, the Board has eliminated proposed comment 58(e)–2 from the final rule and added a definition of "open account" as § 226.58(b)(5).

Proposed § 226.58(e)(2), redesignated as § 226.58(c)(5)(ii), is adopted as proposed. Section 226.58(c)(5)(ii) specifies that if an issuer that previously qualified for the de minimis exception ceases to qualify, the card issuer must begin making quarterly submissions to the Board no later than the first quarterly submission deadline after the date as of which the issuer ceased to qualify. Proposed comment 58(e)–4, redesignated as comment 58(c)(5)–4, has been modified to incorporate the defined term "open account," but otherwise is adopted as proposed. Comment 58(c)(5)–4 clarifies that whether an issuer has ceased to qualify for the de minimis exception is determined as of the last business day of the calendar quarter and provides the following example: As of June 30, an issuer offers three agreements to the public and has 9,500 open credit card accounts. The issuer is not required to submit any agreements to the Board under § 226.58(c)(1) because the issuer qualifies for the de minimis exception. As of July 15, the issuer still offers the same three agreements, but now has 10,000 open accounts. The issuer is not required to take any action at this time, because whether an issuer qualifies for the de minimis exception under § 226.58(c)(5) is determined as of the last business day of the calendar quarter. As of September 30, the issuer still offers the same three agreements and still has 10,000 open accounts. Because the issuer had 10,000 open accounts as of September 30, the issuer ceased to qualify for the de minimis exception and must submit the three agreements it offers to the Board by October 31, the next quarterly submission deadline.

Proposed § 226.58(e)(3), redesignated as § 226.58(c)(5)(iii), has been modified to reflect the elimination of the requirement to register with the Board, as discussed above, but otherwise is adopted substantively as proposed. Section 226.58(c)(5)(iii) provides that if an issuer that did not previously qualify for the de minimis exception qualifies for the de minimis exception, the card issuer must continue to make quarterly submissions to the Board until the issuer notifies the Board that the issuer is withdrawing all agreements it previously submitted to the Board.

Proposed comment 58(e)–5, redesignated as comment 58(c)(5)–5, is similarly modified to reflect the elimination of the registration requirement, but otherwise is adopted substantively as proposed. Comment 58(c)(5)–5 gives the following example of the option to withdraw agreements under § 226.58(c)(5)(iii): An issuer has 10,001 open accounts and offers three agreements to the public as of December 31. The issuer has submitted each of the three agreements to the Board as required under § 226.58(c)(1). As of March 31, the issuer has only 9,999 open accounts. The issuer has two options. First, the issuer may notify the Board that the issuer is withdrawing each of the three agreements it previously submitted. Once the issuer has notified the Board, the issuer is no longer required to make quarterly submissions to the Board under § 226.58(c)(1). Alternatively, the issuer may choose not to notify the Board that it is withdrawing its agreements. In this case, the issuer must continue making quarterly submissions to the Board as required by § 226.58(c)(1). The issuer might choose not to withdraw its agreements if, for example, the issuer believes that it likely will cease to qualify for the de minimis exception again in the near future.

58(c)(6) Private Label Credit Card Exception

The final rule includes new section § 226.58(c)(6), which provides an exception to the requirement that credit card agreements be submitted to the Board for private label credit card plans with fewer than 10,000 open accounts. TILA Section 122(d)(5) provides that the Board may establish exceptions to the requirements that credit card agreements be posted on creditors' Web sites and submitted to the Board for posting on the Board's Web site in any case where the administrative burden outweighs the benefit of increased transparency, such as where a credit card plan has a de minimis number of consumer account holders. As discussed above, the final rule includes a de minimis exception for issuers with fewer than 10,000 total open credit card accounts as § 226.58(c)(5). As also disclosed above, the Board solicited comment in connection with the proposed rule regarding whether the Board should create a de minimis exception applicable to small credit card plans offered by an issuer of any size and, if so, how the Board should define a credit card plan. Commenters generally supported creating such an exception. One card issuer commenter suggested that the Board create an exception for credit cards that can only be used for purchases at a single merchant or affiliated group of merchants, commonly referred to as private label credit cards, regardless of issuer size.

The Board is adopting such an exception. The Board believes that the administrative burden on issuers of preparing and submitting to the Board agreements for private label credit card plans with a de minimis number of consumer account holders outweighs the benefit of increased transparency of including these agreements on the Board's Web site. The small size of these credit card plans suggests that it is unlikely that most consumers would regard these products as comparable alternatives to other credit card products. In addition, the Board is aware that the number of small private label credit card programs is very large. Including agreements associated with these plans on the Board's Web site would significantly increase the number of agreements, potentially making the Web site less useful to consumers as a comparison shopping tool. Also, the Board believes that, with respect to private label credit cards, a credit card plan can be defined sufficiently narrowly to avoid dividing issuers' portfolios into units so small that large numbers of credit card agreements would fall under the exception.

Under § 226.58(c)(6)(i), a card issuer is not required to submit to the Board a credit card agreement if, as of the last business day of the calendar quarter, the agreement: (A) Is offered for accounts under one or more private label credit card plans each of which has fewer than 10,000 open accounts; and (B) is not offered to the public other than for accounts under such a plan.

As discussed above, a private label credit card plan is defined in § 226.58(b)(7) as all of the private label credit card accounts issued by a particular issuer with credit cards usable at the same single merchant or affiliated group of merchants. For example, all of the private label credit card accounts issued by Issuer A with credit cards usable only at Merchant B and Merchant B's affiliates constitute a single private label credit card plan under § 226.58(b)(7).

The exception is limited to agreements that are "not offered to the public other than for accounts under [one or more private label credit card plans each of which has fewer than 10,000 open accounts]" in order to ensure that issuers are required to submit to the Board agreements that are offered in connection with general purpose credit card accounts or credit card accounts under large (*i.e.,* 10,000 or more open accounts) private label plans, regardless of whether those agreements also are used in connection with a small (*i.e.,* fewer than 10,000 open accounts) private label credit card plan. The Board is concerned that, without this limitation, large numbers of credit card agreements could fall under the private label credit card exception.

Section 226.58(c)(6)(ii) provides that if an agreement that previously qualified for the private label credit card exception ceases to qualify, the card issuer must submit the agreement to the Board no later than the first quarterly submission deadline after the date as of which the agreement ceased to qualify. Section 226.58(c)(6)(iii) provides that if an agreement that did not previously qualify for the private label credit card exception qualifies for the exception, the card issuer must continue to make quarterly submissions to the Board with respect to that agreement until the issuer notifies the Board that the agreement is being withdrawn.

The final rule includes six related comments. Comment 58(c)(6)–1 gives the following two examples of how the exception applies. In the first example, an issuer offers to the public a credit card agreement offered solely for private label credit card accounts with credit cards that can be used only at Merchant A. The issuer has 8,000 open accounts with such credit cards usable only at Merchant A. The issuer is not required to submit this agreement to the Board under § 226.58(c)(1) because the agreement is offered for accounts under a private label credit card plan (*i.e.,* the 8,000 private label credit card accounts with credit cards usable only at Merchant A), that private label credit card plan has fewer than 10,000 open accounts, and the credit card agreement is not offered to the public other than for accounts under that private label credit card plan.

In the second example, in contrast, the same issuer also offers to the public a different credit card agreement that is offered solely for private label credit card accounts with credit cards usable only at Merchant B. The issuer has 12,000 open accounts with such credit cards usable only at Merchant B. The private label credit card exception does not apply. Although this agreement is offered for a private label credit card plan (*i.e.,* the 12,000 private label credit card accounts with credit cards usable only at Merchant B), and the agreement is not offered to the public other than for accounts under that private label credit card plan, the private label credit card plan has more than 10,000 open accounts. (The issuer still is not required to submit to the Board the agreement offered in connection with credit cards usable only at Merchant A, as each agreement is evaluated separately under the private label credit card exception.)

Comment 58(c)(6)–2 clarifies that whether the private label credit card exception applies is determined on an agreement-by-agreement basis. Therefore, some agreements offered by an issuer may qualify for the private label credit card exception even though the issuer also offers other agreements that do not qualify, such as agreements offered for accounts with cards usable at multiple unaffiliated merchants or agreements offered for accounts under private label credit card plans with 10,000 or more open accounts.

Comment 58(c)(6)–3 clarifies the relationship between the private label credit card exception and the § 226.58(c)(5) de minimis exception. The comment notes that the two exceptions are distinct. The private label credit card exception exempts an issuer from submitting certain agreements under a private label plan to the Board, regardless of the issuer's overall size as measured by the issuer's total number of open accounts. In contrast, the de minimis exception exempts an issuer from submitting any credit card agreements to the Board if the issuer has fewer than 10,000 total open accounts. For example, an issuer offers to the public two credit card agreements. Agreement A is offered solely for private label credit card accounts with credit cards usable only at Merchant A. The issuer has 5,000 open credit card accounts with such credit cards usable only at Merchant A. Agreement B is offered solely for credit card accounts with cards usable at multiple unaffiliated merchants that participate in a major payment network. The issuer has 40,000 open credit card accounts with such payment network cards. The issuer is not required to submit agreement A to the Board under § 226.58(c)(1) because agreement A qualifies for the private label credit card exception under § 226.58(c)(6). Agreement A is offered for accounts under a private label credit card plan with fewer than 10,000 open accounts (*i.e.,* the 5,000 private label credit card accounts with credit cards usable only at Merchant A) and is not otherwise offered to the public. The issuer is required to submit agreement B to the Board under § 226.58(c)(1). The issuer does not qualify for the de minimis exception under § 226.58(c)(5) because it has more than 10,000 open accounts, and agreement B does not qualify for the private label credit card exception under § 226.58(c)(6) because it is not offered solely for accounts under a private label credit card plan with fewer than 10,000 open accounts.

Comment 58(c)(6)–4 gives the following example of when an agreement would not qualify for the private label credit card exception because it is offered to the public other than for accounts under a private label credit card plan with fewer than 10,000 open accounts. An issuer offers an agreement for private label credit card accounts with credit cards usable only at Merchant A. This private label plan has 9,000 such open accounts. The same agreement also is offered for credit card accounts with credit cards usable at multiple unaffiliated merchants that participate in a major payment network. The agreement does not qualify for the private label credit card exception. The agreement is offered for accounts under a private label credit card plan with fewer than 10,000 open accounts. However, the agreement also is offered to the public for accounts that are not part of a private label credit card plan, and therefore does not qualify for the private label credit card exception.

Comment 58(c)(6)–4 notes that, similarly, an agreement does not qualify for the private label credit card exception if it is offered in connection with one private label credit card plan with fewer than 10,000 open accounts and one private label credit card plan with 10,000 or more open accounts. For example, an issuer offers a single credit card agreement to the public. The agreement is offered for two types of accounts. The first type of account is a private label credit card account with a credit card usable only at Merchant A. The second type of account is a private label credit card account with a credit

card usable only at Merchant B. The issuer has 10,000 such open accounts with credit cards usable only at Merchant A and 5,000 such open accounts with credit cards usable only at Merchant B. The agreement does not qualify for the private label credit card exception. While the agreement is offered for accounts under a private label credit card plan with fewer than 10,000 open accounts (*i.e.,* the 5,000 open accounts with credit cards usable only at Merchant B), the agreement is also offered for accounts not under such a plan (*i.e.,* the 10,000 open accounts with credit cards usable only at Merchant A).

Comment 58(c)(6)–5 clarifies that the private label exception applies even if the same agreement is used for more than one private label credit card plan with fewer than 10,000 open accounts. For example, a card issuer has 15,000 total open private label credit card accounts. Of these, 7,000 accounts have credit cards usable only at Merchant A, 5,000 accounts have credit cards usable only at Merchant B, and 3,000 accounts have credit cards usable only at Merchant C. The card issuer offers to the public a single credit card agreement that is offered for all three types of accounts and is not offered for any other type of account. The issuer is not required to submit the agreement to the Board under § 226.58(c)(1). The agreement is used for three different private label credit card plans (*i.e.,* the accounts with credit cards usable at Merchant A, the accounts with credit cards usable at Merchant B, and the accounts with credit cards usable at Merchant C), each of which has fewer than 10,000 open accounts, and the issuer does not offer the agreement for any other type of account. The agreement therefore qualifies for the private label credit card exception under § 226.58(c)(6).

Comment 58(c)(6)–6 clarifies that the private label credit card exception applies even if an issuer offers more than one agreement in connection with a particular private label credit card plan. For example, an issuer has 5,000 open private label credit card accounts with credit cards usable only at Merchant A. The issuer offers to the public three different agreements each of which may be used in connection with private label credit card accounts with credit cards usable only at Merchant A. The agreements are not offered for any other type of credit card account. The issuer is not required to submit any of the three agreements to the Board under § 226.58(c)(1) because each of the agreements is used for a private label credit card plan which has fewer than 10,000 open accounts and none of the three is offered to the public other than for accounts under such a plan.

58(c)(7) Product Testing Exception

The final rule includes new section § 226.58(c)(7), which provides an exception to the requirement that credit card agreements be submitted to the Board for certain agreements offered to the public solely as part of product test by an issuer. As described above, TILA Section 122(d)(5) provides that the Board may establish exceptions to the requirements that credit card agreements be posted on creditors' Web sites and submitted to the Board for posting on the Board's Web site in any case where the administrative burden outweighs the benefit of increased transparency, such as where a credit card plan has a de minimis number of consumer account holders. As discussed above, the final rule includes a de minimis exception for issuers with fewer than 10,000 open credit card accounts as § 226.58(c)(5). As also discussed above, the Board solicited comment in connection with the proposed rule regarding whether the Board should create a de minimis exception applicable to small credit card plans offered by an issuer of any size and, if so, how the Board should define a credit card plan. Commenters generally supported creating such an exception. One card issuer commenter suggested that the Board create an exception for agreements offered to limited groups of consumers in connection with product testing by an issuer, regardless of issuer size.

The Board is adopting such an exception. The Board believes that the administrative burden on issuers of preparing and submitting to the Board agreements used for a small number of consumer account holders in connection with a product test by an issuer outweighs the benefit of increased transparency of including these agreements on the Board's Web site. The Board understands that issuers test new credit card strategies and products by offering credit cards to discrete, targeted groups of consumers for a limited time. Posting these agreements on the Board's and issuers' Web sites would not facilitate comparison shopping by consumers, as these terms are offered only to a limited group of consumers for a short period of time. Including these agreements could mislead consumers into believing that these terms are available more generally. In addition, posting these agreements would make issuer testing strategies transparent to competitors. Also, the Board believes that, with respect to product tests, a credit card plan can be defined sufficiently narrowly to avoid dividing issuers' portfolios into units so small that large numbers of credit card agreements would fall under the exception.

Under § 226.58(c)(7)(i), an issuer is not required to submit to the Board a credit card agreement if, as of the last day of the calendar quarter, the agreement: (A) Is offered as part of a product test offered to only a limited group of consumers for a limited period of time; (B) is used for fewer than 10,000 open accounts; and (C) is not offered to the public other than in connection with such a product test. Section 226.58(c)(7)(ii) provides that if an agreement that previously qualified for the product testing exception ceases to qualify, the card issuer must submit the agreement to the Board no later than the first quarterly submission deadline after the date as of which the agreement ceased to qualify. Section 226.58(c)(7)(iii) provides that if an agreement that did not previously qualify for the product testing exception qualifies for the exception, the card issuer must continue to make quarterly submissions to the Board with respect to that agreement until the issuer notifies the Board that the agreement is being withdrawn.

58(c)(8) Form and Content of Agreements Submitted to the Board

Many commenters on the proposed rule expressed confusion about the form and content requirements for agreements submitted to the Board. In order to make this information more readily noticeable and understandable, the Board is eliminating proposed Appendix N and incorporating the form and content requirements for agreements submitted to the Board as new § 226.58(c)(8). The form and content requirements under § 226.58(c)(8) are organized into four subsections, discussed below: (i) Form and content generally; (ii) pricing information; (iii) optional variable terms addendum; and (iv) integrated agreement. Form and content requirements included in proposed Appendix N for agreements posted on issuers' Web sites under proposed § 226.58(f)(1), redesignated as § 226.58(d), and individual cardholders' agreements provided under proposed § 226.58(f)(2), redesignated as § 226.58(e), have similarly been incorporated into those sections and are discussed below.

58(c)(8)(i) Form and Content Generally

Section 226.58(c)(8)(i)(A) states that each agreement must contain the provisions of the agreement and the pricing information in effect as of the last business day of the preceding calendar quarter, as proposed in Appendix N, paragraph 1. One commenter questioned whether a change-in-terms notice should be integrated into an agreement where the change-in-terms notice is not yet effective. The final rule therefore includes new comment 58(c)(8)–1, which gives the following example of the application of § 226.5(c)(8)(i)(A): on June 1, an issuer decides to decrease the purchase APR associated with one of the agreements it offers to the public. The change in the APR will become effective on August 1. If the issuer submits the agreement to the Board on July 31 (for example, because the agreement has been otherwise amended), the agreement submitted should not include the new lower APR because that APR was not in effect on June 30, the last business day of the preceding calendar quarter.

Section 226.58(c)(8)(i)(B) states that agreements submitted to the Board must not include any personally identifiable information relating to any cardholder, such as name, address, telephone number, or account number, as proposed in Appendix N, paragraph 1.

Section 226.58(c)(8)(i)(C) identifies certain items that are not deemed to be part of the agreement for purposes of § 226.58, and therefore are not required to be included in submissions to the Board. These items are as follows: (i) Disclosures required by state or federal law, such as affiliate marketing notices, privacy policies, or disclosures under the E-Sign Act; (ii) solicitation materials; (iii) periodic statements; (iv) ancillary agreements between the issuer and the consumer, such as debt cancellation contracts or debt suspension agreements; (v) offers for credit insurance or other optional products and other similar advertisements; and (vi) documents that may be sent to the consumer along with the credit card or credit card agreement, such as a cover letter, a validation sticker on the card, or other information about card security.

This list incorporates items identified as excluded from agreements in proposed Appendix N, paragraph 1, and proposed comment 58(b)(1)–2. In addition, one commenter asked that Board clarify that the agreement does not include ancillary agreements between the issuer and the consumer, such as debt cancellation contracts or debt suspension agreements. Because the Board agrees that including such ancillary agreements would not assist consumers in shopping for a credit card, this item is included in § 226.58(c)(8)(i)(C).

The final rule also includes new § 226.58(c)(8)(i)(D), which provides that agreements submitted to the Board must be presented in a clear and legible font.

58(c)(8)(ii) Pricing Information

Section 226.58(c)(8)(ii)(A) of the final rule specifies that pricing information must be set forth in a single addendum to the agreement that contains only the pricing information. This differs from proposed Appendix N, paragraph 1, which required issuers to set forth any information not uniform for all cardholders, including the pricing information, in an addendum to the agreement.

The Board believes, on the basis of consumer testing conducted in the context of developing the requirements for account-opening disclosures, that the pricing information (which is defined by reference to the requirements for account-opening disclosures under § 226.6) is particularly relevant to consumers in choosing a credit card. Upon further consideration, the Board has concluded that this information could be difficult for consumers to find if it is integrated into the text of the credit card agreement. The Board believes that requiring pricing information to be attached as a separate addendum would ensure that this information is easily accessible to consumers. The Board understands that cardholder agreements may be complex and densely worded, and the Board is concerned that including pricing information within such a document could hamper the ability of consumers to find and comprehend it. The Board therefore is requiring under § 226.58(c)(8)(ii)(A) that this information be provided in a separate addendum.

The final rule also includes comment 58(c)(8)–2, which clarifies that pricing information must be set forth in the separate addendum described in § 226.58(c)(8)(ii)(A) even if it is also stated elsewhere in the agreement.

Section 226.58(c)(8)(ii)(B) of the final rule provides that pricing information that may vary from one cardholder to another depending on the cardholder's creditworthiness or state of residence or other factors must be disclosed either by setting forth all the possible variations (such as purchase APRs of 13 percent, 15 percent, 17 percent, and 19 percent) or by providing a range of possible variations (such as purchase APRs ranging from 13 percent to 19 percent). This corresponds with a provision from proposed Appendix N, paragraph 1.

One commenter stated that issuers should have the flexibility to either provide pricing information and other varying information in an addendum or to provide each variation as a separate agreement. The Board's final rule does not provide this flexibility with respect to pricing information. The Board understands that issuers offer a range of terms and conditions and that issuers may make these terms and conditions available in a variety of different combinations, particularly with respect to items included in the pricing information. The Board is aware that the number of variations of pricing information is extremely large, and believes that including each of these variations on the Board's Web site likely would render the number of agreements provided on the Web site too large to be helpful to most consumers. For example, an issuer might offer credit cards with a purchase APR of 12 percent, 13 percent, 14 percent, 15 percent, 16 percent or 17 percent, an annual fee of $0, $20, or $40, and one of three debt suspension coverage fees. Including each of the 54 possible combinations of these terms as a separate agreement on the Board's Web site would likely be overwhelming to consumers shopping for a credit card.

The final rule includes comment 58(c)(8)–3, which clarifies that variations in pricing information do not constitute a separate agreement for purposes of § 226.58(c). The comment provides the following example: an issuer offers two types of credit card accounts that differ only with respect to the purchase APR. The purchase APR for one type of account is 15 percent, while the purchase APR for the other type of account is 18 percent. The provisions of the agreement and pricing information for the two types of accounts are otherwise identical. The issuer should not submit to the Board one agreement with a pricing information addendum listing a 15 percent purchase APR and another agreement with a pricing information addendum listing an 18 percent purchase APR. Instead, the issuer should submit to the Board one agreement with a pricing information addendum listing possible purchase APRs of 15 percent and 18 percent.

Section 226.58(c)(8)(ii)(C) of the final rule provides that if a rate included in the pricing information is a variable rate, the issuer must identify the index or formula used in setting the rate and the margin. Rates that may vary from one cardholder to another must be

disclosed by providing the index and the possible margins (such as the prime rate plus 5 percent, 8 percent, 10 percent, or 12 percent) or the range of possible margins (such as the prime rate plus from 5 percent to 12 percent). The value of the rate and the value of the index are not required to be disclosed.

Several card issuer commenters requested that issuers be permitted to provide interest rate information as an index and range of margins. These commenters argued that updating and resubmitting agreements every time an underlying index changes would be a substantial burden on issuers that would not provide a corresponding benefit to consumers. The Board agrees with these commenters. For purposes of comparison shopping for credit cards using the Board's Web site, consumers would be able to compare the margins offered by issuers using the same index and would be able to reference other on-line resources that provide the current values of financial indices to compare the rates offered by issuers using different indices. To provide uniformity in how variable rates are disclosed, the Board is requiring that such rates be provided as an index and margin, list of possible margins or range of possible margins.

58(c)(8)(iii) Optional Variable Terms Addendum

Section 226.58(c)(8)(iii) of the final rule provides that provisions of the agreement other than the pricing information that may vary from one cardholder to another depending on the cardholder's creditworthiness or state of residence or other factors may be set forth in a single addendum to the agreement separate from the pricing information addendum. This differs from the provisions of proposed Appendix N, paragraph 1, which required issuers to set forth any information not uniform for all cardholders in a single addendum to the agreement.

As noted above, one commenter stated that issuers should have the flexibility to either provide pricing information and other varying information in an addendum or to provide each variation as a separate agreement. The Board's final rule provides this flexibility with respect to provisions of the agreement other than the pricing information. The Board understands that there is substantially less variation in the credit card agreements offered by a particular issuer with respect to terms other than pricing information. The Board therefore believes that providing issuers with flexibility regarding how these terms are disclosed is unlikely to result in a volume of data on the Board's Web site that is overwhelming to consumers.

The final rule also includes comment 58(c)(8)–4, which gives examples of provisions that might be included in the optional variable terms addendum. For example, the addendum might include a clause that is required by law to be included in credit card agreements in a particular state but not in other states (unless, for example, a clause is included in the agreement used for all cardholders under a heading such as "For State X Residents"), the name of the credit card plan to which the agreement applies (if this information is included in the agreement), or the name of a charitable organization to which donations will be made in connection with a particular card (if this information is included in the agreement).

58(c)(8)(iv) Integrated Agreement

Section 226.58(c)(8)(iv) incorporates provisions of proposed Appendix N, paragraph 1, stating that issuers may not provide provisions of the agreement or pricing information in the form of change-in-terms notices or riders (other than the pricing information addendum and optional variable terms addendum described in § 226.58(c)(8)(ii) and (c)(8)(iii)). Changes in the provisions or pricing information must be integrated into the body of the agreement, the pricing information addendum or the optional variable terms addendum, as appropriate.

The final rule also includes new comment 58(c)(8)–5, which provides clarification regarding the integrated agreement requirement. Comment 58(c)(8)–5 explains that only two addenda may be submitted as part of an agreement—the pricing information addendum and optional variable terms addendum described in § 226.58(c)(8). Changes in provisions or pricing information must be integrated into the body of the agreement, pricing information addendum, or optional variable terms addendum. For example, it would be impermissible for an issuer to submit to the Board an agreement in the form of a terms and conditions document dated January 1, 2005, four subsequent change in terms notices, and two addenda showing variations in pricing information. Instead, the issuer must submit a document that integrates the changes made by each of the change-in-terms notices into the body of the original terms and conditions document and a single addendum displaying variations in pricing information.

As the Board stated in connection with the proposal, the Board believes that permitting issuers to submit agreements that include change-in-terms notices or riders containing amendments and revisions would be confusing for consumers and would greatly lessen the usefulness of the agreements posted on the Board's Web site. Consumers would be required to sift through change-in-terms notices and riders in an attempt to assemble a coherent picture of the terms currently offered. The Board believes that this would impose a significant burden on consumers attempting to shop for credit cards. The Board also believes that consumers in many instances would draw incorrect conclusions about which terms have been changed or superseded, causing these consumers to be misled regarding the credit card terms that are currently available. This would hinder the ability of consumers to understand and to effectively compare the terms offered by various issuers. The Board believes that issuers are better placed than consumers to assemble this information correctly. While the Board understands that this requirement may significantly increase the burden on issuers, the Board believes that the corresponding benefit of increased transparency for consumers outweighs this burden.

58(d) Posting of Agreements Offered to the Public

New TILA Section 122(d) requires that, in addition to submitting credit card agreements to the Board for posting on the Board's Web site, each card issuer must post the credit card agreements to which it is a party on its own Web site. The Board proposed to implement this requirement in proposed § 226.58(f). Proposed § 226.58(f)(1) required each issuer to post on its publicly available Web site the same agreements it submitted to the Board (*i.e.,* the agreements the issuer offered to the public). The Board proposed additional guidance regarding the posting requirement in proposed Appendix N, paragraph 2.

Commenters did not oppose the general requirements of proposed § 226.58(f)(1), and the Board is adopting the proposed provision in final form, with certain modifications, as discussed below. In the final rule, proposed § 226.58(f)(1) is redesignated § 226.58(d), and the content of Appendix N, paragraph 2, is incorporated into this section of the regulation, in order to ensure that the guidance provided is more readily noticeable and conveniently located for readers.

Comment 58(d)–1 is added in the final rule to clarify that issuers are only

required to post and maintain on their publicly available Web site the credit card agreements that the issuer must submit to the Board under § 226.58(c). If, for example, an issuer is not required to submit any agreements to the Board because the issuer qualifies for the de minimis exception under § 226.58(c)(5), the issuer is not required to post and maintain any agreements on its Web site under § 226.58(d). Similarly, if an issuer is not required to submit a specific agreement to the Board, such as an agreement that qualifies for the private label exception under § 226.58(c)(6), the issuer is not required to post and maintain that agreement under § 226.58(d) (either on the issuer's publicly available Web site or on the publicly available Web sites of merchants at which private label credit cards can be used). The comment also emphasizes that the issuer in both of these cases is still required to provide each individual cardholder with access to his or her specific credit card agreement under § 226.58(e) by posting and maintaining the agreement on the issuer's Web site or by providing a copy of the agreement upon the cardholder's request.

Comment 58(d)–2 is added to the final rule to clarify that, unlike § 226.58(e), discussed below, § 226.58(d) does not include a special rule for issuers that do not otherwise maintain a Web site. If an issuer is required to submit one or more agreements to the Board under § 226.58(c), that issuer must post those agreements on a publicly available Web site it maintains (or, with respect to an agreement for a private label credit card, on the publicly available Web site of at least one of the merchants at which the card may be used, as provided in § 226.58(d)(1)).

Some card issuer commenters suggested that issuers should be permitted to post agreements for private label or co-branded cards on the Web site of a retailer that accepts the card, rather than the issuer's own Web site; the commenters noted that consumers are more likely to find such agreements if posted on the retailer's Web site. The Board agrees with these commenters, and accordingly § 226.58(d)(1) provides that an issuer may comply by posting and maintaining an agreement offered solely for accounts under one or more private label credit card plans in accordance with the requirements of § 226.58(d) on the publicly available Web site of at least one of the merchants at which credit cards issued under each private label credit card plan with 10,000 or more open accounts may be used.

Comment 58(d)–3 is included in the final rule to clarify how this provision would apply. The comment provides the following example: A card issuer has 100,000 open private label credit card accounts. Of these, 75,000 open accounts have credit cards usable only at Merchant A and 25,000 open accounts have credit cards usable only at Merchant B and Merchant B's affiliates, Merchants C and D. The card issuer offers to the public a single credit card agreement that is offered for both of these types of accounts and is not offered for any other type of account.

The issuer is required to submit the agreement to the Board under § 226.58(c)(1). Because the issuer is required to submit the agreement to the Board under § 226.58(c)(1), the issuer is required to post and maintain the agreement on the issuer's publicly available Web site under § 226.58(d). However, because the agreement is offered solely for accounts under one or more private label credit card plans, the issuer may comply with § 226.58(d) in either of two ways. First, the issuer may comply by posting and maintaining the agreement on the issuer's own publicly available Web site. Alternatively, the issuer may comply by posting and maintaining the agreement on the publicly available Web site of Merchant A *and* the publicly available Web site of at least one of Merchants B, C and D. It would not be sufficient for the issuer to post the agreement on Merchant A's Web site alone because § 226.58(d) requires the issuer to post the agreement on the publicly available Web site of "at least one of the merchants at which cards issued under *each* private label credit card plan may be used" (emphasis added).

The comment also provides an additional, contrasting example, as follows: Assume that an issuer has 100,000 open private label credit card accounts. Of these, 5,000 open accounts have credit cards usable only at Merchant A and 95,000 open accounts have credit cards usable only at Merchant B and Merchant B's affiliates, Merchants C and D. The card issuer offers to the public a single credit card agreement that is offered for both of these types of accounts and is not offered for any other type of account.

The issuer is required to submit the agreement to the Board under § 226.58(c)(1). Because the issuer is required to submit the agreement to the Board under § 226.58(c)(1), the issuer is required to post and maintain the agreement on the issuer's publicly available Web site under § 226.58(d). However, because the agreement is offered solely for accounts under one or more private label credit card plans, the issuer may comply with § 226.58(d) in either of two ways. First, the issuer may comply by posting and maintaining the agreement on the issuer's own publicly available Web site. Alternatively, the issuer may comply by posting and maintaining the agreement on the publicly available Web site of at least one of Merchants B, C and D. The issuer is not required to post and maintain the agreement on the publicly available Web site of Merchant A because the issuer's private label credit card plan consisting of accounts with cards usable only at Merchant A has fewer than 10,000 open accounts.

Section 226.58(d)(2) incorporates provisions from proposed Appendix N, paragraph 2, stating that agreements posted pursuant to this section must conform to the form and content requirements for agreements submitted to the Board specified in § 226.58(c)(8), except as provided in § 226.58(d) (for example, as provided in § 226.58(d)(3), agreements posted on an issuer's Web site need not conform to the electronic format required for submission to the Board, as discussed below).

Proposed Appendix N clarified that the agreements posted on an issuer's Web site need not conform to the electronic format required for submission to the Board. This clarification is incorporated into the final rule as § 226.58(d)(3), which states that agreements posted pursuant to this section may be posted in any electronic format that is readily usable by the general public. For example, when posting the agreements on its own Web site, an issuer may post the agreements in plain text format, in PDF format, in HTML format, or in some other electronic format, provided the format is readily usable by the general public.

Consumer group comments suggested that the rule should ensure that consumers are able to access credit card agreements offered to the public through an issuer's Web site without being required to provide personal information. The Board believes that the intent of the statute is to allow access to credit card agreements offered to the public without having to provide such information; accordingly, § 226.58(d)(3) also includes language setting forth this requirement, as well as a requirement that agreements posted on the issuer's Web site must be placed in a location that is prominent and readily accessible by the public, moved from proposed Appendix N, paragraph 2.

Section 226.58(d)(4) incorporates provisions from proposed Appendix N, paragraph 2, stating that an issuer must update the agreements posted on its

Web site at least as frequently as the quarterly schedule required for submission of agreements to the Board. If the issuer chooses to update the agreements on its Web site more frequently, the agreements posted on the issuer's Web site may contain the provisions of the agreement and the pricing information in effect as of a date other than the last business day of the preceding calendar quarter.

Consumer group commenters suggested that the final rule clarify that any member of the public may have access to the agreement for any open account, whether or not currently offered to the public. The Board is not adopting such a requirement because, as discussed above, the Board believes the administrative burden associated with providing access to all open accounts would outweigh the benefit to consumers. A consumer group commenter asked that the rule require that, when a change is made to an agreement, the on-line version of that agreement be updated within a specific period of time no greater than 72 hours. The final rule does not include this requirement because the Board believes the burden to card issuers of updating agreements in such a short time would outweigh the benefit. In addition, if a consumer applies or is solicited for a credit card, the consumer will receive updated disclosures under § 226.5a. Finally, the same commenter suggested that issuers should be required to archive previous versions of credit card agreements and allow on-line access to them for purposes of comparison. The Board believes the burden to card issuers of being required to archive and make available all previous versions of its credit card agreements would outweigh the benefit to consumers.

58(e) Agreements for All Open Accounts

In addition to the requirements under proposed § 226.58(f)(1), proposed § 226.58(f)(2) required each issuer to provide each individual cardholder with access to his or her specific credit card agreement, by either: (1) Posting and maintaining the individual cardholder's agreement on the issuer's Web site; or (2) making a copy of each cardholder's agreement available to the cardholder upon that cardholder's request. Proposed Appendix N, paragraph 3, provided further guidance on these requirements. Proposed § 226.58(f)(2), along with material from proposed Appendix N, paragraph 3, is incorporated into the final rule as § 226.58(e), with certain modifications, as discussed below.

As discussed above, the Board is exercising its authority to create exceptions from the requirements of new TILA Section 122(d) with respect to the submission of certain agreements to the Board for posting on the Board's Web site. However, the Board believes that it would not be appropriate to apply these exceptions to the requirement that issuers provide cardholders with access to their specific credit card agreement through the issuer's Web site. In particular, the Board believes that, for the reasons discussed above, posting credit card agreements that are not currently offered to the public on the Board's Web site would not be beneficial to consumers. However, the Board believes that the benefit of increased transparency of providing an individual cardholder access to his or her specific credit card agreement is substantial regardless of whether the cardholder's agreement continues to be offered by the issuer. The Board believes that this benefit outweighs the administrative burden on issuers of providing such access, and the final rule therefore does not exempt agreements that are not offered to the public from the requirements of § 226.58(e).

Similarly, the final rule provides that card issuers with fewer than 10,000 open credit card accounts are not required to submit agreements to the Board, and provides for other exceptions from the requirement to submit agreements. However, the Board believes that the benefit of increased transparency associated with providing an individual cardholder with access to his or her specific credit card agreement is substantial regardless of the whether the card issuer is required to submit the agreement to the Board for posting on the Board's Web site. The Board believes that this benefit of increased transparency for consumers outweighs the administrative burden on issuers of providing such access, and therefore § 226.58(e) in the final rule does not include the exceptions from the requirement to submit agreements to the Board under § 226.58(c).

Comment 58(e)–1 clarifies that the requirement to provide access to credit card agreements under § 226.58(e) applies to all open credit card accounts, regardless of whether such agreements are required to be submitted to the Board pursuant to § 226.58(c) (or posted on the issuer's Web site pursuant to § 226.58(d)). For example, an issuer that is not required to submit agreements to the Board because it qualifies for the de minimis exception under § 226.58(c)(5) still is required to provide cardholders with access to their specific agreements under § 226.58(e). Similarly, an agreement that is no longer offered to the public is not required to be submitted to the Board under § 226.58(c), but nevertheless must be provided to the cardholder to whom it applies under § 226.58(e). This comment corresponds to proposed comment 58(f)(2)–2.

Section 226.58(e)(1)(ii) provides issuers with the option to make copies of cardholder agreements available on request because the Board believes that the benefit of increased transparency associated with immediate access to cardholder agreements, as compared to access after a brief waiting period, does not outweigh the administrative burden on issuers of providing immediate access. The Board believes that the administrative burden associated with posting each cardholder's credit card agreement on the issuer's Web site may be substantial for some issuers. In particular, the Board notes that some smaller institutions with limited information technology resources could find a requirement to post all cardholder's agreements to be a significant burden. The Board understands that it is important that all cardholders be able to obtain copies of their credit card agreements promptly, and § 226.58(e)(1)(ii) ensures that this will occur.

Under proposed § 226.58(f)(2)(ii), a card issuer that chose to make agreements available upon request was required to provide the cardholder with the ability to request a copy of the agreement both: (1) By using the issuer's Web site (such as by clicking on a clearly identified box to make the request); and (2) by calling a toll-free telephone number displayed on the Web site and clearly identified as to purpose. Commenters suggested that an exception should be created for issuers that do not maintain toll-free telephone numbers; the commenters contended that maintaining a toll-free telephone number could be a substantial burden for small issuers, and noted that issuers that currently do not maintain toll-free telephone numbers likely have a primarily local customer base. The final rule, in § 226.58(e)(1)(ii), does not require that the telephone number for cardholders to call to request copies of their agreements be toll-free, but instead provides that the telephone line must be "readily available."

Comment 58(e)–2 provides guidance on the "readily available" standard, stating that to satisfy the readily available standard, the card issuer must provide enough telephone lines so that cardholders get a reasonably prompt response, but that the issuer need only provide telephone service during normal business hours. The comment

further states that, within its primary service area, the issuer must provide a local or toll-free telephone number, but that the issuer need not provide a toll-free number or accept collect long-distance calls from outside the area where it normally conducts business. This standard is based on a comparable requirement under Regulation E, 12 CFR Part 205, that requires financial institutions to provide a telephone line for consumers to call for certain purposes. *See* Regulation E, § 205.10(a)(1)(iii), 12 CFR 205.10(a)(1)(iii), and comment 10(a)(1)–7 in the Regulation E Official Staff Commentary, 12 CFR Part 205, Supplement I, paragraph 10(a)(1)–7.

A number of commenters addressed the requirement to provide cardholders the ability to request a copy of their agreement by using the issuer's Web site (under proposed § 226.58(f)(2)(ii)(A), redesignated § 226.58(e)(1)(ii)(A) in the final rule), in addition to the ability to request a copy by calling a telephone number. The commenters noted that many card issuers do not have interactive Web sites, and that some may not have Web sites of any kind; they contended that permitting cardholders to request copies of their particular agreements through a Web site would require creating and maintaining an interactive Web site and complying with privacy and data security requirements, which could represent a significant compliance burden, especially for smaller issuers. The commenters suggested various alternative means for providing cardholders the means to request copies of their agreements.

Based on information received from financial institution trade associations and service providers, it appears that a substantial number of card issuers do not maintain interactive Web sites, and that some issuers (for example, more than 250 credit unions) do not have Web sites of any kind. The Board believes that cardholders should be provided with convenient means to request copies of their credit card agreements, but that there are alternative methods that would serve this purpose and would not require issuers that do not have interactive Web sites to incur the expense to create and maintain such Web sites; the Board believes that the burden of creating and maintaining such Web sites would not be outweighed by the convenience to cardholders of being able to request a copy of their agreements directly through a Web site, as opposed to using an alternative means.

Accordingly, in the final rule, § 226.58(e)(2) sets forth a special rule for card issuers that do not have a Web site or that have a Web site that is not interactive (*i.e.,* a Web site from which a cardholder cannot access specific information about his or her individual account). Section 226.58(e)(2) provides that, instead of complying with § 226.58(e)(1), such an issuer may make agreements available upon request by providing the cardholder with the ability to request a copy of the agreement by calling a readily available telephone line, the number for which is: (i) Displayed on the issuer's Web site and clearly identified as to purpose; or (ii) included on each periodic statement sent to the cardholder and clearly identified as to purpose.

The final rule includes comment 58(e)–3, which further clarifies how this special rule applies. Comment 58(e)–3 clarifies that an issuer that does not maintain a Web site from which cardholders can access specific information about their individual accounts is not required to provide a cardholder with the ability to request a copy of the agreement by using the issuer's Web site. The comment further clarifies that an issuer without a Web site of any kind could comply by disclosing the telephone number on each periodic statement; an issuer with a non-interactive Web site could comply in the same way, or alternatively could comply by displaying the telephone number on the issuer's Web site.

Under proposed § 226.58(f)(2)(ii), if a cardholder requested a copy of his or her credit card agreement (either using the issuer's Web site or by calling the telephone number provided), the issuer was required to send, or otherwise make available to, the cardholder a copy of the agreement within 10 business days after receiving the request. The Board solicited comments on whether issuers should have a shorter or longer period in which to respond to cardholder requests. Some commenters contended that 10 business days would not provide sufficient time to respond to a request; the commenters noted that they will be required to integrate changes in terms into the agreement and provide pricing information, which, particularly for older agreements that may have had many changes in terms over the years, could require more time. The commenters suggested various longer time periods to respond to a cardholder request, including 30 business days or 60 calendar days.

The Board believes that it would be reasonable to provide more time for an issuer to respond to a cardholder request for a copy of the credit card agreement. Although cardholders should be able to obtain a copy of their agreement promptly, integrating changes in terms may require more time for older agreements; for newer agreements with fewer changes since the account was opened, the cardholder is more likely to still have a copy of the agreement and therefore less likely to need to request a copy. For all agreements, the pricing information has been disclosed to cardholders at the time the account is opened, and much of the pricing information is disclosed again on periodic statements. Accordingly, the final rule, in §§ 226.58(e)(1)(ii) and (e)(2), provides that the issuer must send or otherwise make available to the cardholder the agreement in electronic or paper form within 30 calendar days after receiving the cardholder's request.

Proposed comment 58(f)(2)–3 provided guidance on the deadline for providing agreements upon request. In the final rule, the comment is redesignated comment 58(e)–4. The comment states that if an issuer chooses to respond to a cardholder's request by mailing a paper copy of the cardholder's agreement, the issuer would be required to mail the agreement no later than 30 days after receipt of the cardholder's request. Alternatively, if an issuer chooses to respond to a cardholder's request by posting the cardholder's agreement on the issuer's Web site, the issuer must post the agreement on its Web site no later than 30 days after receipt of the cardholder's request. The comment further notes that, under § 226.58(e)(3)(v), issuers are permitted to provide copies of agreements in either paper or electronic form, regardless of the form of the cardholder's request, as discussed below.

Section 226.58(e)(3) states requirements for the form and content of agreements, and is drawn largely from proposed Appendix N, paragraph 3, and proposed staff commentary. Section 226.58(e)(3)(i) corresponds to part of paragraph 3(b) of proposed Appendix N, and states that except as elsewhere provided, agreements posted on the card issuer's Web site pursuant to § 226.58(e)(1)(i) or made available upon the cardholder's request pursuant to § 226.58(e)(1)(ii) or (e)(2) must conform to the form and content requirements for agreements submitted to the Board specified in § 226.58(c)(8).

Section 226.58(e)(3)(ii) corresponds to proposed Appendix N, paragraph 3(a), and states that if a card issuer posts an agreement on its Web site or otherwise provides an agreement to a cardholder electronically pursuant to § 226.58(e), the agreement may be posted in any electronic format that is readily usable

by the general public and must be placed in a location that is prominent and readily accessible to the cardholder.

Section 226.58(e)(1)(iii) is drawn from part of paragraph 3(b) of proposed Appendix N and provides that agreements posted or otherwise provided pursuant to § 226.58(e) may contain personally identifiable information relating to the cardholder, such as name, address, telephone number, or account number, provided that the issuer takes appropriate measures to make the agreement accessible only to the cardholder or other authorized persons.

Section 226.58(e)(1)(iv) corresponds generally to proposed Appendix N, paragraph (c), and states that agreements must set forth the specific provisions and pricing information applicable to the particular cardholder, and that agreement provisions and pricing information must be complete and accurate as of a date no more than 60 days prior to the date on which the agreement is posted on the card issuer's Web site or the cardholder's request is received.

Finally, § 226.58(e)(1)(v) is drawn from proposed comment 58(f)(2)–1, and provides that agreements provided upon request may be provided by the issuer in either electronic or paper form, regardless of the form of the cardholder's request.

Paragraph 3(d) of proposed Appendix N clarified that issuers may not provide provisions of the agreement or pricing information in the form of change-in-terms notices or riders. This language is not incorporated into the text of the final rule as part of § 226.58(e), but the requirement nevertheless applies because § 226.58(e) provides that agreements posted on the card issuer's Web site or made available upon the cardholder's request must conform to the form and content requirements for agreements submitted to the Board specified in § 226.58(c)(8), and § 226.58(c)(8) imposes this requirement. Thus, changes in provisions or pricing information must be integrated into the text of the agreement (or into the pricing information described in § 226.58(c)(8)(ii)). For example, it is not permissible for an issuer to send to a cardholder under § 226.58(e)(1)(ii) an agreement consisting of a terms and conditions document dated January 1, 2005, and four subsequent change-in-terms notices. Instead, the issuer is required to send to the cardholder a single document that integrates the changes made by each of the change-in-terms notices into the body of the terms and conditions document or the pricing information addendum.

The Board believes that it is important for consumers be able to accurately assess the terms of a credit card agreement to which they are a party. As described above in connection with the integrated agreement requirement for agreements submitted to the Board, the Board believes that requiring consumers to sift through change-in-terms notices and riders in an attempt to assemble the current version of a credit card agreement imposes a significant burden on consumers, is likely to lead to consumer confusion, and would greatly lessen the usefulness of making credit card agreements available under the final rule. The Board believes that these arguments apply with even more force in the context of providing an individual cardholder with access to his or her specific credit card agreement. Permitting issuers to provide provisions of the agreement or pricing information as change-in-terms notices or riders would require consumers to bear the burden of assembling a coherent picture of the terms to which they are currently subject. The Board believes that this likely would hinder the ability of many consumers to understand the terms applicable to them. The Board also believes that consumers in many instances would draw incorrect conclusions about which terms have been changed or superseded, causing these consumers to be misled regarding the terms of their credit card agreement. The Board believes that issuers are better placed than consumers to assemble this information correctly. While the Board understands that this may significantly increase the burden on issuers, the Board believes that the corresponding benefit of increased transparency for consumers outweighs this burden.

Some commenters suggested that the final rule provide an exception from the requirements of § 226.58(e) for accounts purchased from another issuer. Similarly, commenters suggested an exception for older accounts. Commenters argued that in such cases, issuers may not have the agreements and therefore may find it difficult or impossible to comply. The final rule does not contain the suggested exceptions. The Board believes that cardholders need to be able to obtain the credit card agreements to which they are parties.

Finally, some commenters suggested that the final rule provide a grace period during which issuers would not be required to provide an integrated agreement upon request, but could instead send the cardholder the initial agreement and all subsequent change in terms notices. Alternatively, it was suggested that such a grace period be provided for accounts opened prior to a specific date. The final rule does not provide such a grace period. As discussed above, it likely would be difficult in many cases for cardholders to understand a complex credit card agreement supplemented by change in terms notices. In addition, as discussed above, the final rule allows 30 days (as opposed to 10 business days, as proposed) for issuers to respond to cardholder requests, in part in order to provide issuers sufficient time to integrate change in terms notices with the initial agreement before sending it to the cardholder.

58(f) E-Sign Act Requirements

Section § 226.58(f), corresponding to proposed § 226.58(f)(3), provides that card issuers may provide credit card agreements in electronic form under § 226.58(d) and (e) without regard to the consumer notice and consent requirements of section 101(c) of the Electronic Signatures in Global and National Commerce Act (E-Sign Act) (15 U.S.C. 7001 *et seq.*). Because new TILA Section 122(d) specifies that credit card issuers must provide access to cardholder agreements on the issuer's Web site, the Board believes that the requirements of the E-Sign Act do not apply.

Appendix M1—Repayment Disclosures

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

TILA Section 127(b)(11), as added by Section 1301(a) of the Bankruptcy Act,

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

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

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

*Calculating the minimum payment repayment estimate.* As proposed in the October 2009 Regulation Z Proposal, the minimum payment repayment estimate would have been an estimate of the number of months that it would take to pay the outstanding balance shown on the periodic statement, if the consumer pays only the required minimum monthly payments and if no further advances are made. The final rule adopts guidance in Appendix M1 to part 226 for calculating the minimum payment repayment estimate as proposed with several modifications as discussed below. The guidance in Appendix M1 to part 226 for calculating the minimum payment repayment estimate is similar to the guidance that the Board adopted in Appendix M2 to part 226 in the January 2009 Regulation Z Rule for calculating the actual repayment disclosure. Under Appendix M1 to part 226, credit card issuers generally must calculate the minimum payment repayment estimate for a consumer based on the minimum payment formula(s), the APRs and the outstanding balance currently applicable to a consumer's account. For other terms that may impact the calculation of the minimum payment repayment estimate, issuers are allowed to make certain assumption about these terms.

1. *Minimum payment formulas.* When calculating the minimum payment repayment estimate, in the October 2009 Regulation Z Proposal, the Board proposed that credit card issuers generally must use the minimum payment formula(s) that apply to a cardholder's account. The final rule retains this provision as proposed. Appendix M1 to part 226 provides that in calculating the minimum payment repayment estimate, if more than one minimum payment formula applies to an account, the issuer must apply each minimum payment formula to the portion of the balance to which the formula applies. In providing the minimum payment repayment estimate, an issuer must disclose the longest repayment period calculated. For example, assume that an issuer uses one minimum payment formula to calculate the minimum payment amount for a general revolving feature, and another minimum payment formula to calculate the minimum payment amount for special purchases, such as a "club plan purchase." Also, assume that based on a consumer's balances in these features, the repayment period calculated pursuant to Appendix M1 to part 226 for the general revolving feature is 5 years, while the repayment period calculated for the special purchase feature is 3 years. This issuer must disclose 5 years as the repayment period for the entire balance to the consumer. This provision of the final rule differs from the approach adopted in the January 2009 Regulation Z Rule, which gave card issuers the option of disclosing either the longest repayment period calculated or the repayment period calculated for each minimum payment formula, when disclosing the actual repayment disclosures through a toll-free telephone number. The Board believes that allowing card issuers to disclose on the periodic statement the repayment period calculated for each minimum payment formula might create "information overload" for consumers and might distract the consumer from other important information that is contained on the periodic statement.

Under proposed Appendix M1 to part 226, card issuers would have been allowed to disregard promotional terms related to payments, such as deferred billing promotional plans and skip payment features. In response to the October 2009 Regulation Z Proposal, several industry commenters requested clarification on how to handle promotional programs that involve a reduction in the requirement minimum payment for a limited time period, such as may occur with fixed payment programs. These commenters suggested that the Board provide a card issuer with flexibility to choose whether the repayment disclosures are based only on the promotional minimum payment or on the minimum payments as they will be calculated over the duration of the account.

The final rule retains the provision in Appendix M1 to part 226 that if any promotional terms related to payments apply to a cardholder's account, such as a deferred billing plan where minimum payments are not required for 12 months, credit card issuers may assume no promotional terms apply to the account. In Appendix M1 to part 226, the term "promotional terms" is defined as terms of a cardholder's account that will expire in a fixed period of time, as set forth by the card issuer. Appendix M1 to part 226 clarifies that issuers have two alternatives for handling promotional minimum payments. Under the first alternative, an issuer may disregard the promotional minimum payment during the promotional period, and instead calculated the minimum payment repayment estimate using the standard minimum payment formula that is applicable to the account. For example, assume that a promotional

minimum payment of $10 applies to an account for six months, and then after the promotional period expires, the minimum payment is calculated as 2 percent of the outstanding balance on the account or $20 whichever is greater. An issuer may assume during the promotional period that the $10 promotional minimum payment does not apply, and instead calculate the minimum payment disclosures based on the minimum payment formula of 2 percent of the outstanding balance or $20, whichever is greater. The Board notes that allowing issuers to disregard promotional payment terms on accounts where the promotional payment terms apply only for a limited amount of time eases compliance burden on issuers, without a significant impact on the accuracy of the repayment estimates for consumers.

Under the second alternative, an issuer in calculating the minimum payment repayment estimate during the promotional period may choose not to disregard the promotional minimum payment but instead may calculate the minimum payments as they will be calculated over the duration of the account. In the above example, an issuer could calculate the minimum payment repayment estimate during the promotional period by assuming the $10 promotional minimum payment will apply for the first six months and then assuming the 2 percent or $20 (whichever is greater) minimum payment formula will apply until the balance is repaid. Appendix M1 to part 226 clarifies, however, that in calculating the minimum payment repayment estimate during a promotional period, an issuer may not assume that the promotional minimum payment will apply until the outstanding balance is paid off by making only minimum payments (assuming the repayment estimate is longer than the promotional period.) In the above example, the issuer may not calculate the minimum payment repayment estimate during the promotional period by assuming that the $10 promotional minimum payment will apply beyond the six months until the outstanding balance is repaid. The Board believes that allowing the card issuer to assume during the promotional period that the promotional minimum payment will apply indefinitely would distort the repayment disclosures provided to consumers.

2. *Annual percentage rates.* Generally, when calculating the minimum payment repayment estimate, the October 2009 Regulation Z 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.

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

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

For deferred interest or similar plans, under the October 2009 Regulation Z Proposal, if minimum payments under the plan will repay the balances or transactions prior to the expiration of the specified period of time, a card issuer would have been required to assume that the consumer will not be obligated to pay the accrued interest. This means, in calculating the minimum payment repayment estimate, the card issuer must apply a zero percent APR to the balance subject to the deferred interest or similar plan. If, however, minimum payments under the deferred interest or similar plan may not repay the balances or transactions in full prior to the expiration of the specified period of time, a credit card issuer would have been required to assume that a consumer will not repay the balances or transactions in full prior to the expiration of the specified period and thus the consumer will be obligated to pay the accrued interest. This means, in calculating the minimum payment repayment estimate, the card issuer must apply the APR at which interest is accruing to the balance subject to the deferred interest or similar plan. The final rule retains these provisions as proposed. This approach with respect to deferred interest or similar plans is consistent with the assumption that only minimum payments are made in repaying the balance on the account.

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

3. *Outstanding balance.* When calculating the minimum payment repayment estimate, 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. The final rule retains this provision as proposed. Issuers would not be required to take into account any

transactions consumers may have made since the last billing cycle. The Board believes that this approach would make it easier for consumers to understand the minimum payment repayment estimate, because the outstanding balance used to calculate the minimum payment repayment estimate would be the same as the outstanding balance shown on the periodic statement. Issuers would be allowed to round the outstanding balance to the nearest whole dollar to calculate the minimum payment repayment estimate.

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

a. *Balance computation method.* The Board proposed to allow issuers to use the average daily balance method for purposes of calculating the minimum payment repayment estimate. The average daily balance method is commonly used by issuers to compute the balance on credit card accounts. Nonetheless, requiring use of the average daily balance method makes other assumptions necessary, including the length of the billing cycle, and when payments are made. The Board proposed to allow an issuer to assume a monthly or daily periodic rate applies to the account. If a daily periodic rate is used, the issuer would be allowed to assume either (1) a year is 365 days long, and all months are 30.41667 days long, or (2) a year is 360 days long, and all months are 30 days long. Both sets of assumptions about the length of the year and months would yield the same repayment estimates. The Board also proposed to allow issuers to assume that payments are credited on the last day of the month. The final rule retains these provisions with one modification. Based on comments received in response to the October 2009 Regulation Z Proposal, Appendix M1 to part 226 is revised to allow card issuers to assume either that payments are credited on the last day of the month or the last day of the billing cycle.

b. *Grace period.* In proposed Appendix M1 to part 226, the Board proposed to allow issuers to assume that no grace period exists. The final rule retains this provision 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 minimum payment repayment estimate is disclosed on the periodic statement, and that no grace period applies. This assumption about the grace period is also consistent with the rule to exempt issuers from providing the minimum payment repayment estimate to consumers that have paid their balances in full for two consecutive months.

c. *Residual interest.* When the consumer's account balance at the end of a billing cycle is less than the required minimum payment, the Board proposed to allow an issuer to assume that no additional transactions occurred after the end of the billing cycle, that the account balance will be paid in full, and that no additional finance charges will be applied to the account between the date the statement was issued and the date of the final payment. The final rule retains these provisions 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.

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

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

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

f. *Payment allocation.* In proposed Appendix M1 to part 226, the Board 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 provision as proposed. As discussed in the section-by-section analysis to § 226.53, the rule permits issuers to allocate minimum payment amounts as they choose; however, issuers are restricted in how they may allocate payments above the minimum payment amount. The Board assumes that issuers are likely to allocate the minimum payment amount to lower APR balances before higher APR balances, and issuers may assume that is the case in calculating the minimum payment repayment estimate.

g. *Account not past due and the account balance does not exceed the credit limit.* The proposed rule would have allowed 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 retains this provision as proposed. The Board believes that this assumption will ease compliance burden on issuers, without a significant impact on the accuracy of the repayment estimates for consumers. In response to the October 2009 Regulation Z Proposal, one commenter asked for confirmation that if the account terms operate such that the past due amount will be added to the minimum payment due in the next billing cycle, the card issuer may assume that the consumer will pay that higher minimum payment amount in the next billing cycle in calculating the minimum payment repayment estimate. The Board notes that while issuers are allowed to assume that an account is not past due, the issuer is not required to assume that fact. The Board notes that under Appendix M1 to part 226, when calculating the minimum payment repayment estimate, a credit card issuer may make certain assumptions about account terms (as set forth in paragraph (b)(4) of Appendix M1 to part 226) or may use the account term that applies to a consumer's account.

h. *Rounding assumed payments, current balance and interest charges to the nearest cent.* Under proposed Appendix M1 to part 226, when calculating the minimum payment repayment estimate, an issuer would have been permitted to round to the nearest cent the assumed payments, current balance and interest charges for each month, as shown in proposed Appendix M2 to part 226. The final rule retains this provision as proposed.

5. *Tolerances.* The Board proposed to provide that the minimum payment repayment estimate calculated by an issuer will be considered accurate if it is not more than 2 months above or below the minimum payment repayment estimate determined in accordance with the guidance in proposed Appendix M1 to part 226, prior to rounding. The final rule retains this provision with one technical revision as discussed below. This tolerance would prevent small variations in the calculation of the minimum payment repayment estimate from causing a disclosure to be inaccurate. Take, for example, a minimum payment formula of the greater of 2 percent or $20 and two separate amortization calculations that, at the end of 28 months, arrived at remaining balances of $20 and $20.01 respectively. The $20 remaining balance would be paid off in the 29th month, resulting in the disclosure of a 2-year repayment period due to the Board's rounding rule set forth in § 226.7(b)(12)(i)(B). The $20.01 remaining balance would be paid off in the 30th month, resulting in the disclosure of a 3-year repayment period due to the Board's rounding rule. Thus, in the example above, an issuer 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 estimate is within the 2 months' tolerance, prior to rounding. In addition, the rule also provides that even if an issuer's estimate is more than 2 months above or below the minimum payment repayment estimate calculated using the guidance in Appendix M1 to part 226, so long as the issuer discloses the correct number of years to the consumer based on the rounding rule set forth in § 226.7(b)(12)(i)(B), the issuer would be in compliance with the guidance in Appendix M1 to part 226. For example, assume the minimum payment repayment estimate calculated using the guidance in Appendix M1 to part 226 is 32 months (2 years, 8 months), and the minimum payment repayment estimate calculated by the issuer is 38 months (3 years, 2 months). Under the rounding rule set forth in § 226.7(b)(12)(i)(B), both of these estimates would be rounded and disclosed to the consumer as 3 years. Thus, if the issuer disclosed 3 years to the consumer, the issuer would be in compliance with the guidance in Appendix M1 to part 226 even through the minimum payment repayment estimate calculated by the issuer is outside the 2 months' tolerance amount.

In response to comments received on the October 2009 Regulation Z Proposal, Appendix M1 to part 226 is revised to clarify that the 2-month tolerance described above will apply even if the card issuer uses the consumer's account terms in calculating the minimum payment repayment estimate (instead of the listed assumptions set forth in paragraph (b)(4) of Appendix M1 to part 226).

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

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

years), the minimum payment total cost estimate would be deemed to be accurate.

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

In calculating the estimated monthly payment for repayment in 36 months, the Board proposed to require an issuer to use a weighted APR that is based on the APRs that apply to a cardholder's account and the portion of the balance to which the rate applies, as shown in proposed Appendix M2 to part 226. In response to the October 2009 Regulation Z Proposal, several industry commenters requested that the Board allow issuers to utilize other methods of calculating the estimated monthly payment for repayment in 36 months (other than a weighted average). These commenters indicate that use of the weighted average does not seem to provide the most accurate calculation in all circumstances and other methods of calculating the estimated monthly payment for repayment in 36 months, which do not use the weighted average, provide less variance and are arguably more accurate.

Based on these comments, Appendix M1 to part 226 is revised to permit card issuers to use methods of calculating the estimated monthly payment for repayment in 36 months other than a weighted average, so long as the calculation results in the same payment amount each month and so long as the total of the payments would pay off the outstanding balance shown on the periodic statement within 36 months. The Board believes this approach will provide card issuers with the flexibility to use calculation methods other than a weighed APR that provide more accurate estimates of the monthly payment for repayment in 36 months.

Nonetheless, Appendix M1 to part 226 would still permit, but not require, card issuers to use a weighted APR to calculate the estimated monthly payment for repayment in 36 months. The Board believes that permitting card issuers to use a weighted APR to calculate the estimated monthly payment for repayment in 36 months when multiple APRs apply to an account will ease compliance burden on issuers by significantly simplifying the calculation of the estimated monthly payment, without a significant impact on the accuracy of the estimated monthly payments for consumers.

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

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

In the October 2009 Regulation Z Proposal, the Board requested comment on whether the Board should adopt specific tolerances for calculation and disclosure of the estimated monthly payment for repayment in 36 months, and if so, what those tolerances should be. In response to the October 2009 Regulation Z Proposal, one industry commenter suggested the Board adopt a tolerance of 10 percent, such that the estimated monthly payment for repayment in 36 months that is disclosed to the consumer would be considered accurate if it is not more than 10 percent above or below the estimated monthly payment for repayment in 36 months determined in accordance with the guidance in Appendix M1 to part 226. Another industry commenter suggested 5 percent as the tolerance amount. The final rule adopts 10 percent as the tolerance amount for accuracy of the estimated monthly payment for repayment in 36 months, to account for complexity in calculating that disclosure.

*Calculating the total cost estimate for repayment in 36 months.* Under proposed Appendix M1 to part 226, when calculating the total cost estimate for repayment in 36 months, a credit card issuer would have been required to total the dollar amount of the interest and principal that the consumer would pay if he or she made the estimated monthly payment for repayment in 36 months calculated under proposed Appendix M1 to part 226 each month for 36 months. The final rule retains this provision as proposed.

In the October 2009 Regulation Z Proposal, the Board requested comment on whether the Board should adopt specific tolerances for calculation and disclosure of the total cost estimate for repayment in 36 months, and if so, what those tolerances should be. In response to the October 2009 Regulation Z Proposal, one industry commenter suggested that the Board amend Appendix M1 to part 226 to provide that the total cost estimate for repayment in 36 months is deemed accurate if it is based on the estimated monthly payment for repayment in 36 months that is calculated in accordance with paragraph (d) of Appendix M1 to part 226. The Board recognizes that the total cost estimate for repayment in 36

months is an estimate. Accordingly, the Board revises Appendix M1 to part 226 to incorporate the above accuracy standard for the total cost estimate for repayment in 36 months.

*Calculating savings estimate for repayment in 36 months.* Under proposed Appendix M1 to part 226, when calculating the savings estimate for repayment in 36 months, a credit card issuer would be required to subtract the total cost estimate for repayment in 36 months calculated under paragraph (e) of Appendix M1 (rounded to the nearest whole dollar as set forth in proposed § 226.7(b)(12)(i)(F)(*3*)) from the minimum payment total cost estimate calculated under paragraph (c) of Appendix M1 (rounded to the nearest whole dollar as set forth in proposed § 226.7(b)(12)(i)(C)). The final rule retains this provision as proposed.

In the October 2009 Regulation Z Proposal, the Board requested comment on whether the Board should adopt specific tolerances for calculation and disclosure of the savings estimate for repayment in 36 months, and if so, what those tolerances should be. In response to the October 2009 Regulation Z Proposal, one industry commenter suggested that the Board amend Appendix M1 to part 226 to provide that the savings estimate for repayment in 36 months is deemed to be accurate if it is based on the total cost estimate for repayment in 36 months that is calculated in accordance with paragraph (e) of Appendix M1 to part 226 and the minimum payment total cost estimate calculated under paragraph (c) of Appendix M1 to part 226. The Board recognizes that the savings estimate for repayment in 36 months is an estimate. Accordingly, the Board revises Appendix M1 to part 226 to incorporate the above accuracy standard for the saving estimate.

Appendix M2—Sample Calculations of Repayment Disclosures

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

Additional Issues Raised by Commenters

Circumvention or Evasion

Consumer groups and a member of Congress requested that the Board adopt a provision specifically prohibiting creditors from circumventing or evading Regulation Z. However, this request seems to suggest that circumvention or evasion of Regulation Z is permitted unless specifically prohibited by the Board when, in fact, the opposite is true. Nothing in TILA or Regulation Z permits a creditor to circumvent or evade their provisions. Thus, although the Board agrees that circumvention or evasion of Regulation Z is prohibited, the Board does not believe that it is necessary or appropriate to adopt a provision specifically prohibiting circumvention or evasion. Furthermore, because the requested provision would be broad and general, the Board is concerned that it would produce uncertainty for creditors regarding compliance with Regulation Z and for the agencies that supervise compliance with Regulation Z without producing compensating benefits for consumers.

Accordingly, it appears that the better approach is for the Board to continue using its authority under TILA Section 105(a) to prevent circumvention or evasion by prohibiting specific practices that—although arguably not expressly prohibited by TILA—are nevertheless clearly inconsistent with its provisions. For example, in this rulemaking, the Board has:

- Provided that the restrictions in revised TILA Section 171 and new TILA Section 172 on increasing annual percentage rates and certain fees continue to apply after an account is closed or acquired by another creditor or after the balance is transferred to another credit account issued by the same creditor or its affiliate or subsidiary. *See* § 226.55(d).
- Provided that a card issuer that uses fixed "floors" to exercise control over the operation of an index cannot utilize the exception for variable rates in revised TILA Section 171(b)(2). *See* comment 55(b)(2)–2.
- Provided that the restrictions in new TILA Section 127(n) apply not only to fees charged to a credit card account but also to fees that the consumer is required to pay with respect to that account through other means (such as through a payment from the consumer to the card issuer or from another credit account provided by the card issuer). *See* comment 52(a)(1)–1.

The Board will continue to monitor industry practices and take action when appropriate. In addition, Section 502 of the Credit Card Act requires that—at least every two years—the Board conduct a review of, among other things, the terms of credit card agreements, the practices of card issuers, the effectiveness of credit card disclosures, and the adequacy of protections against unfair or deceptive acts or practices relating to credit cards.

Waiver or Forfeiture of Protections

Consumer groups also requested that—in order to prevent creditors from misleading consumers into consenting to practices prohibited by Regulation Z—the Board adopt a provision affirmatively stating that the protections in Regulation Z cannot be waived or forfeited. However, as above, this request incorrectly assumes that creditors are generally permitted to engage in practices prohibited by Regulation Z in these circumstances. There is no such general exception to the provisions in Regulation Z. Instead, the Board has expressly and narrowly defined the circumstances in which a consumer's consent or request alters the requirements in Regulation Z.[74] For this reason, the Board does not believe that the requested provision is necessary.

**VI. Mandatory Compliance Dates**

A. *Mandatory compliance dates—in general.* The mandatory compliance date for the portion of § 226.5(a)(2)(iii) regarding use of the term "fixed" and for §§ 226.5(b)(2)(ii), 226.7(b)(11), 226.7(b)(12), 226.7(b)(13), 226.9(c)(2) (except for 226.9(c)(2)(iv)(D)), 226.9(e), 226.9(g) (except for 226.9(g)(3)(ii)), 226.9(h), 226.10, 226.11(c), 226.16(f), and §§ 226.51–226.58 is February 22, 2010. The mandatory compliance date for all other provisions of this final rule is July 1, 2010. For those provisions that are effective July 1, 2010, except to the extent that early compliance with this final rule is permitted, creditors generally must comply with the existing requirements of Regulation Z until July 1, 2010.

B. *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

[74] *See, e.g.,* comment 53(b)–5 (clarifying that preprinted language in an account agreement or on a payment coupon does not constitute a consumer request for purposes of allocating a payment in excess of the minimum pursuant to § 226.53(b)(2)); revised § 226.9(c)(2)(i) (clarifying that the statement in § 226.9(c)(2)(i) that the 45-day timing requirement does not apply if the consumer has agreed to a particular change is solely intended for use in the unusual instance when a consumer substitutes collateral or when the creditor can advance additional credit only if a change relatively unique to that consumer is made).

comply with the final rule by the relevant mandatory compliance date.

C. *Tabular summaries that accompany applications or solicitations (§ 226.5a).* 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.

D. *Account-opening disclosures (§ 226.6).* 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.

E. *Periodic statements (§ § 226.7 and 226.5(b)(2)).*

*Timing requirements (§ 226.5(b)(2)).* As discussed in the July 2009 Regulation Z Interim Final Rule, revised TILA Section 163 (as amended by the Credit Card Act) became effective on August 20, 2009. Accordingly, the interim final rule's revisions to § 226.5(b)(2)(ii) also became effective on August 22, 2009. In the interim final rule, the Board recognized that, with respect to open-end consumer credit plans other than credit cards, it could be difficult for some creditors to update their systems to produce periodic statements by August 20, 2009 that disclosed payment due dates and grace period expiration dates (if applicable) that were consistent with the 21-day requirement in revised § 226.5(b)(2)(ii). As a result, the Board noted the possibility that, for a short period of time after August 20, some periodic statements for open-end consumer credit plans other than credit cards might disclose payment due dates and grace period expiration dates (if applicable) that were technically inconsistent with the interim final rule. In these circumstances, the Board stated that the creditor could remedy this technical issue by prominently disclosing elsewhere on or with the periodic statement that the consumer's payment will not be treated as late for any purpose if received within 21 days after the statement was mailed or delivered.

However, on November 6, 2009, the Technical Corrections Act amended Section 163(a) to remove the requirement that creditors provide periodic statements at least 21 days before the payment due date with respect to open-end consumer credit plans other than credit card accounts. Thus, effective November 6, 2009, creditors were no longer required to comply with § 226.5(b)(2)(ii) to the extent inconsistent with TILA Section 163(a), as amended by the Technical Corrections Act.

As noted above, the final rule's revisions to § 226.5(b)(2)(ii) and its commentary are intended to implement the Technical Corrections Act and to clarify certain aspects of the interim final rule. These revisions are not intended to impose any new substantive requirements on creditors. Nevertheless, to the extent that these revisions require creditors to make any changes to their systems or processes for providing periodic statements, the relevant date for purposes of determining when a creditor must comply with the final rule is the date on which the periodic statement is mailed or delivered, not the due date or grace period expiration date reflected on the statement. Thus, if a periodic statement is mailed or delivered on February 22, the creditor must have reasonable procedures designed to ensure that the payment due date and the grace period expiration date are not earlier than March 15, consistent with the revisions to § 226.5(b)(2)(ii) in this final rule. However, if a periodic statement is mailed or delivered on February 21, the revisions to § 226.5(b)(2)(ii) in this final rule do not apply to that statement.

*Content requirements (§ 226.7).* Periodic statements mailed or delivered on or after February 22, 2010 must comply with § 226.7(b)(11), (b)(12), and (b)(13) of the final rule. The requirement in § 226.7(b)(11)(i)(A) that the due date for a credit card account under an open-end (not home-secured) consumer credit plan be the same day each month applies beginning with the first statement for an account that is mailed or delivered on or after February 22, 2010. The due date disclosed on the last statement for an account mailed or delivered prior to February 22, 2010 need not be the same day of the month as the due date disclosed on the first statement for that account that is mailed or delivered on or after February 22, 2010.

For all other requirements of § 226.7(b), 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).

F. *Checks that access a credit card account (§ 226.9(b)).* 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.

G. *Notices of changes in terms and penalty rate increases for credit card accounts under an open-end (not home-secured) consumer credit plan (§ 226.9(c)(2) and (g)).*

*In general.* With the exception of the formatting requirements in § 226.9(c)(2)(iv)(D) and (g)(3)(ii), compliance with § 226.9(c)(2) and (g) is mandatory on the effective date of this final rule, February 22, 2010. Compliance with the formatting requirements set forth in § 226.9(c)(2)(iv)(D) and (g)(3)(ii) is mandatory on July 1, 2010.

*Change in terms notices.* The relevant date for determining whether a change-in-terms notice must comply with the new requirements of revised § 226.9(c)(2) is generally the date on which the notice is provided, not the effective date of the change. Therefore, if a card issuer provides a notice of a change in terms for a credit card account under an open-end (not home-secured) consumer credit plan pursuant to § 226.9(c)(2) of the July 2009 Regulation Z Interim Final Rule prior to February 22, 2010, the notice generally is required to comply with the requirements of § 226.9(c)(2) of the Board's July 2009 Regulation Z Interim Final Rule rather than the final rule.

Accordingly, a card issuer may provide a notice in accordance with the July 2009 Regulation Z Interim Final Rule on February 20, 2010 disclosing a change-in-terms effective April 6, 2009. This notice would not be required to comply with the revised requirements of this final rule. For example, if the change being disclosed is a rate increase due to the consumer's failure to make a required minimum payment within 60 days of the due date, a notice provided prior to February 22, 2010 is not required to disclose the consumer's right to cure the rate increase by making the first six minimum payments on time following the effective date of the rate increase.

This transition guidance is similar to the guidance the Board provided with the July 2009 Regulation Z Interim Final Rule. The Board believes that this is the appropriate way to implement the February 22, 2010 effective date in order to ensure that institutions are provided the full implementation period provided under the Credit Card Act. In the alternative, the Credit Card Act could be construed to require creditors to provide notices, pursuant to new § 226.9(c)(2), 45 days in advance of changes occurring on or after February 22. However, this reading would create uncertainty regarding compliance with the rule by requiring creditors to begin providing change-in-terms notices in accordance with revised § 226.9(c)(2) prior to the publication of this final rule. Accordingly, for clarity and consistency, the Board believes the better interpretation is that creditors must begin to comply with amended TILA Section 127(i) (as implemented in amended § 226.9(c)(2)) for change-in-terms notices provided on or after February 22, 2010.

*Penalty rate increases.* For rate increases due to the consumer's default or delinquency or as a penalty, the 45-day timing requirement of § 226.9(g) of the July 2009 Regulation Z Interim Final Rule currently applies to credit card accounts under an open-end (not home-secured) consumer credit plan.

The Board is adopting an amended § 226.9(g) in this final rule, which retains the 45-day notice requirement from the July 2009 Regulation Z Interim Final Rule, with several changes. For example, for rate increases due to the consumer's failure to make a required minimum payment within 60 days of the due date, the final rule requires disclosure of the consumer's right to cure the rate increase by making the first six minimum payments on time following the effective date of the rate increase. Similar to, and for the reasons discussed in connection with, the transition guidance for § 226.9(c)(2), the relevant date for determining whether a change-in-terms notice must comply with the new requirements of revised § 226.9(g) is generally the date on which the notice is provided, not the effective date of the rate increase. Therefore, if a card issuer provides a notice of a rate increase due to delinquency, default, or as a penalty for a credit card account under an open-end (not home-secured) consumer credit plan pursuant to § 226.9(g) of the July 2009 Regulation Z Interim Final Rule prior to February 22, 2010, the notice generally is required to comply with the requirements of § 226.9(g) of the Board's July 2009 Regulation Z Interim Final Rule rather than the final rule.

*Workout and temporary hardship arrangements.* The Board's July 2009 Regulation Z Interim Final Rule amended § 226.9(c)(2) and (g) to provide that creditors are not required to provide 45 days advance notice when a rate is increased due to the completion or failure of a workout or temporary hardship arrangement, provided that, among other things, the creditor had provided the consumer prior to commencement of the arrangement with a clear and conspicuous written disclosure of the terms of the arrangement (including any increases due to completion or failure of the arrangement). This final rule further amends § 226.9(c)(2)(v)(D) to provide that, although this disclosure must generally be in writing, a creditor may disclose the terms of the arrangement orally by telephone, provided that the creditor mails or delivers a written disclosure of the terms to the consumer as soon as reasonably practicable after the oral disclosure is provided.

The revision to § 226.9(c)(2)(v)(D) recognizes that workout and temporary hardship arrangements are frequently established over the telephone and that creditors often apply the reduced rate immediately. Accordingly, to the extent that a creditor disclosed the terms of a workout or temporary hardship arrangement orally by telephone prior to February 22, 2010, the creditor may increase a rate to the extent consistent with § 226.9(c)(2)(v)(D)(*1*) on or after February 22 so long as the creditor has mailed or delivered written disclosure of the terms to the consumer by February 22.

*Changes necessary to comply with final rule.* The Board understands that, in order to comply with the final rule by February 22, 2010, card issuers may have to make changes to the account terms set forth in a consumer's credit agreement or similar legal documents. The Board also understands that, in some circumstances, the terms of the account may be inconsistent with the final rule on February 22, 2010 because those terms have not yet been amended consistent with the 45-day notice requirement in § 226.9(c)(2). For example, if a card issuer provides a notice on January 30, 2010 informing the consumer of changes to the method used to calculate a variable rate necessary to comply with § 226.55(b)(2), changes to the balance computation method necessary to comply with § 226.54, § 226.9(c)(2) technically prohibits the issuer from applying those changes to the account until March 16,

2010. In these circumstances, however, the card issuer must comply with the provisions of the final rule on February 22, 2010, even if the terms of the account have not yet been amended consistent with § 226.9(c)(2). Otherwise, card issuers could continue to, for example, calculate variable rates in a manner that is inconsistent with § 226.55(b)(2) after February 22, which would not be consistent with Congress' intent.

Accordingly, if on February 22, 2010 the terms of an account are inconsistent with the final rule, the card issuer is prohibited from enforcing those terms, even if those terms have not yet been amended consistent with the 45-day notice requirement in § 226.9(c)(2). Illustrative examples are provided below in the transition guidance for § 226.55(b)(2).

*Right to reject.* The Board's July 2009 Regulation Z Interim Final Rule adopted § 226.9(h), which provides consumers with the right to reject certain significant changes in account terms. Under § 226.9(h), the right to reject applies when the card issuer is required to disclose that right in a § 226.9 notice. Current § 226.9(c) and (g) generally require disclosure of the right to reject when a rate is increased and when certain other significant account terms are changed. However, under the final rule, disclosure of the right to reject will no longer be required for rate increases because § 226.55 generally prohibits application of increased rates to existing balances. Thus, card issuers are not required to provide consumers with the right to reject a rate increase that is subject to § 226.55, consistent with the transition guidance for § 226.55 (discussed below).

Furthermore, as discussed above with respect to § 226.9(c)(2), the Board understands that card issuers will have to make significant changes in account terms in order to comply with the final rule by February 22, 2010. Because it would not be appropriate to permit consumers to reject changes that are mandated by the Credit Card Act and this final rule, card issuers are not required to provide consumers with the right to reject a change that is necessary to comply with the final rule. For example, card issuers are not required to provide a right to reject for changes to a balance computation method necessary to comply with § 226.54 or changes to the method used to calculate a variable rate necessary to comply with § 226.55(b)(2).

H. *Notices of changes in terms and penalty rate increases for other open-end (not home-secured) plans (§ 226.9(c)(2) and (g)).*

*Change in terms notices—in general.* Compliance with § 226.9(c)(2) of the final rule (except for the formatting requirements of § 226.9(c)(2)(iv)(D)) is mandatory on February 22, 2010 for open-end (not home-secured) plans that are not credit card accounts under an open-end (not home-secured) consumer credit plan. Prior to February 22, 2010, such creditors may provide change-in-terms notices 15 days in advance of a change, consistent with § 226.9(c)(1) of the July 2009 Interim Final Rule. For example, such a creditor may mail a change-in-terms notice to a consumer on February 20, 2010 disclosing a change effective on March 7, 2010. In contrast, a notice of a rate increase sent on February 22, 2010 would be required to comply with § 226.9(c)(2) of the final rule (except for the formatting requirements of § 226.9(c)(2)(iv)(D)), and thus the change disclosed in the notice could have an effective date no earlier than April 8, 2010.

*Promotional rates.*[75] Some creditors that are not card issuers may have outstanding promotional rate programs that were in place before the effective date of this final rule, but under which the promotional rate will not expire until after February 22, 2010. For example, a creditor may have offered its consumers a 5% promotional rate on transactions beginning on September 1, 2009 that will be increased to 15% effective as of September 1, 2010. Such creditors may have concerns about whether the disclosures that they have provided to consumers in accordance with these arrangements are sufficient to qualify for the exception in § 226.9(c)(2)(v)(B). The Board notes that § 226.9(c)(2)(v)(B) of this final rule requires written disclosures of the term of the promotional rate and the rate that will apply when the promotional rate expires. The final rule further requires that the term of the promotional rate and the rate that will apply when the promotional rate expires be disclosed in close proximity and equally prominent to the disclosure of the promotional rate. The Board anticipates that many creditors offering such a promotional rate program may already have complied with these advance notice requirements in connection with offering the promotional program.

The Board is nonetheless aware that some other creditors may be uncertain whether written disclosures provided at the time an existing promotional rate program was offered are sufficient to comply with the exception in § 226.9(c)(2)(v)(B). For example, for promotional rate offers provided after February 22, 2010, the disclosure under § 226.9(c)(2)(v)(B)(*1*) must include the rate that will apply after the expiration of the promotional period. For an existing promotional rate program, a creditor might instead have disclosed this rate narratively, for example by stating that the rate that will apply after expiration of the promotional rate is the standard annual percentage rate applicable to purchases. The Board does not believe that it is appropriate to require a creditor that generally provided disclosures consistent with § 226.9(c)(2)(v)(B), but that are technically not compliant because they described the post-promotional rate narratively, to provide consumers with 45 days' advance notice before expiration of the promotional period. This would have the impact of imposing the requirements of this final rule retroactively, to disclosures given prior to the February 22, 2010 effective date. Therefore, a creditor that generally made disclosures in connection with an open-end (not home-secured) plan that is not a credit card account under an open-end (not home-secured) consumer credit plan prior to February 22, 2010 complying with § 226.9(c)(2)(v)(B) but that describe the type of post-promotional rate rather than disclosing the actual rate is not required to provide an additional notice pursuant to § 226.9(c)(2) before expiration of the promotional rate in order to use the exception.

Similarly, the Board acknowledges that there may be some creditors with outstanding promotional rate programs that did not make, or, without conducting extensive research, are not aware if they made, written disclosures of the length of the promotional period and the post-promotional rate. For example, some creditors may have made these disclosures orally. For the same reasons described in the foregoing paragraph, the Board believes that it would be inappropriate to preclude use of the § 226.9(c)(2)(v)(B) exception by creditors offering these promotional rate programs. That interpretation of the rule would in effect require creditors to have complied with the precise requirements of the exception before the February 22, 2010 effective date. However, the Board believes at the same time that it would be inconsistent with the intent of the Credit Card Act for creditors that provided no advance notice of the term of the promotion and the post-promotional rate to receive an

[75] For simplicity, the Board refers in this transition guidance to "promotional rates." However, pursuant to new comment 9(c)(2)(v)–9, this transition guidance is intended to apply equally to deferred interest or similar programs.

exemption from the general notice requirements of § 229.9(c)(2).

Consequently, any creditor that is not a card issuer that provides a written disclosure to consumers subject to an existing promotional rate program, prior to February 22, 2010, stating the length of the promotional period and the rate or type of rate that will apply after that promotional rate expires is not required to provide an additional notice pursuant to § 226.9(c)(2) prior to applying the post-promotional rate. In addition, any creditor that is not a card issuer that provided, prior to February 22, 2010, oral disclosures of the length of the promotional period and the rate or type of rate that will apply after the promotional period also need not provide an additional notice under § 226.9(c)(2). However, any creditor subject to § 226.9(c)(2) that is not a card issuer and has not provided advance notice of the term of a promotion and the rate that will apply upon expiration of that promotion in the manner described above prior to February 22, 2010 will be required to provide 45 days' advance notice containing the content set forth in this final rule before raising the rate.

*Penalty rate increases.* For open-end (not home-secured) plans that are not credit card accounts under an open-end (not home-secured) consumer credit plan, § 226.9(c)(1) of the July 2009 Regulation Z Interim Final Rule requires only that notice of an increase due to the consumer's default, delinquency, or as a penalty must be given before the effective date of the change. Therefore, the relevant date for purposes of such penalty rate increases generally is the date on which the increase becomes effective. For example, if a consumer makes a late payment on February 15, 2010 that triggers penalty pricing, a creditor that is not a card issuer may increase the rate effective on or before February 21, 2010 in compliance with § 226.9(c)(1) of the July 2009 Regulation Z Interim Final Rule, and need not provide 45 days' advance notice of the change.

The Board is aware that there may be some circumstances in which a consumer's actions prior to February 22, 2010 trigger a penalty rate, but a creditor that is not a card issuer may be unable to implement that rate increase prior to February 22, 2010. For example, a consumer may make a late payment on February 15, 2010 that triggers a penalty rate, but the creditor may not be able to implement that rate increase until March 1, 2010 for operational reasons. In these circumstances, the Board believes that requiring 45 days' advance notice prior to the imposition of the penalty rate would not be appropriate, because it would in effect require compliance with new § 226.9(g) prior to the February 22 effective date. Therefore, for such penalty rate increases that are triggered, but cannot be implemented, prior to February 22, 2010, a creditor must either provide the consumer, prior to February 22, 2010, with a written notice disclosing the impending rate increase and its effective date, or must comply with new § 226.9(g). In the example described above, therefore, a creditor could mail to the consumer a notice on February 20, 2010 disclosing that the consumer has triggered a penalty rate increase that will be effective on March 1, 2010. If the creditor mailed such a notice, it would not be required to comply with new § 226.9(g). This transition guidance applies only to penalty rate increases triggered prior to February 22, 2010; if a consumer engages in actions that trigger penalty pricing on February 22, 2010, the creditor must comply with new § 226.9(g) and, accordingly, must provide the consumer with a notice at least 45 days in advance of the effective date of the increase.

I. *Renewal disclosures (§ 226.9(e)).* Amended § 226.9(e) is effective February 22, 2010. Accordingly, renewal notices provided on or after February 22, 2010 must be provided 30 days in advance of renewal and must comply with § 226.9(e). If a creditor provides a renewal notice prior to February 22, 2010, even if the renewal occurs after the effective date, that notice need not comply with the final rule. For example, a card issuer may impose an annual fee and provide a renewal notice on February 21, 2010 consistent with the alternative timing rule currently in § 226.9(e)(2). In addition, the requirement to provide a renewal notice based on an undisclosed change in a term required to be disclosed pursuant to § 226.6(b)(1) and (b)(2) applies only if the change occurred on or after February 22, 2010. The Board believes that this is appropriate because card issuers may not have systems in place to track whether undisclosed changes of the type subject to § 226.9(e) have occurred prior to the effective date of this rule.

J. *Advertising rules (§ 226.16).* Advertisements occurring on or after February 22, 2010, such as an advertisement broadcast on the radio, published in a newspaper, or mailed on February 22, 2010 or later, must comply with the new rules regarding the use of the term "fixed." Thus, an advertisement mailed on February 21, 2010 is not required to comply with the final rule regarding use of the term "fixed" even if that advertisement is received by the consumer on February 28, 2010. Advertisements occurring on or after July 1, 2010, such as an advertisement broadcast on the radio, published in a newspaper, or mailed on July 1, 2010 or later, must comply with the remainder of the final rule regarding advertisements.

K. *Additional rules regarding disclosures.* 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.

L. *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 July 1, 2010.

M. *Implementation of disclosure rules in stages.* As noted above, commenters indicated creditors will likely implement the disclosure requirements of the final rule for which compliance is mandatory by July 1, 2010 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 the January 2009 Regulation Z Rule, 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.

N. *Ability to pay rules (§ 226.51).* Section 226.51 applies to the opening of all accounts on or after February 22, 2010 as well as to all credit line increases occurring on or after February 22, 2010 for existing accounts. Industry commenters suggested that the Board apply the provisions of § 226.51 to applications received on or after February 22, 2010. The Board is concerned, however, that if the rule is applied only to applications received on or after February 22, 2010, it will be possible for a consumer whose application is received before February 22, 2010 but whose account is not opened until after February 22, 2010 to be deprived of the protections afforded by the statute. TILA Section 150 states, in part, that a card issuer may not *open* a credit card account unless the card issuer has considered the consumer's ability to make the required payments. Similarly, for consumer under 21 years old, TILA Section 127(c)(8) prohibits the issuance of a credit card without the submission of a written application meeting the requirements set forth in the statute. Therefore, the Board believes the relevant date is the date the account is opened.

Industry commenters also requested that the Board provide an exception to § 226.51 for accounts opened in response to solicitations and applications mailed before February 22, 2010. For the same reasons associated with the Board's decision to apply § 226.51 to applications received on or after February 22, 2010, the Board declines to make such an exception. The Board, however, is providing a limited exception for firm offers of credit made before February 22, 2010. The Fair Credit Reporting Act prohibits conditioning an offer on the consumer's income if income was not previously established as one of the card issuer's specific criteria prior to prescreening. 15. U.S.C. 1681a(l)(1)(A). Consequently, the Board does not believe § 226.51 should apply to accounts opened in response to firm offers of credit made before February 22, 2010 where income was not previously established as a specific criteria prior to prescreening.

The Board also received requests that the provisions of § 226.51 not apply to credit line increases on accounts in existence before February 22, 2010. The Board believes that grandfathering such accounts would be contrary to the Credit Card Act's purpose, and therefore declines to make such an exception. The Board notes, however, that § 226.51(b)(2) only applies to accounts that have been opened pursuant to § 226.51(b)(1)(ii). As a result, if a consumer under the age of 21 has an existing account that was opened before February 22, 2010 without a cosigner, guarantor, or joint accountholder, the issuer need not obtain the written consent required under § 226.51(b)(2) before increasing the credit limit. The issuer, however, must still evaluate the consumer's ability to make the required payments under the credit line increase, consistent with § 226.51(a). If the consumer under the age of 21 is not able to make the required payments under the credit line increase, the issuer may either refrain from granting the credit line increase or have the consumer obtain a cosigner, guarantor, or joint accountholder on the account, consistent with the procedures set forth in § 226.51(b)(1)(ii), for the increased credit line. Moreover, if a consumer under the age of 21 has an existing account that was opened before February 22, 2010 with a cosigner, guarantor, or joint accountholder, the issuer must comply with § 226.51(b)(2) before increasing the credit limit, whether or not such cosigner, guarantor, or joint accountholder is at least 21 years old.

O. *Limitations on fees (§ 226.52).* The effective date for new TILA Section 127(n) is February 22, 2010. Accordingly, card issuers must comply with § 226.52(a) beginning on February 22, 2010. However, § 226.52(a) does not apply to accounts opened prior to February 22, 2010.

Some commenters suggested that the limitations in new TILA Section 127(n) should apply to accounts opened less than one year before the statutory effective date. Although the Board has generally taken the position that the provisions of the Credit Card Act apply to existing accounts as of the effective date, the Board has also generally attempted to avoid applying those provisions retroactively. Section 127(n) is different than most provisions of the Credit Card Act because it applies only during a specified period of time (the first year after account opening). Thus, if the Board were to apply § 226.52(a) to any account opened on or after February 23, 2009, card issuers could be in violation of the 25 percent limit as a result of fees that were permissible at the time they were imposed.[76]

The Board believes that limiting application of new TILA Section 127(n) and § 226.52(a) to accounts opened on or after February 22, 2010 is consistent with Congress' intent. The Credit Card Act expressly provides that certain requirements in revised TILA Section 148(b) apply retroactively. Specifically, although the Credit Card Act was enacted on May 22, 2009, revised TILA Section 148(b)(2) states that the requirement that card issuers review rate increases no less frequently than once every six months applies to "accounts as to which the annual percentage rate has been increased since January 1, 2009." However, Congress did not include any language in new TILA Section 127(n) suggesting that it should apply retroactively.

P. *Payment allocation (§ 226.53).* The effective date for revised TILA Section 164(b) is February 22, 2010. Accordingly, card issuers must comply with § 226.53 beginning on February 22, 2010. As of that date, § 226.53 applies to existing as well as new accounts and balances. Thus, if a card issuer receives a payment that exceeds the required minimum periodic payment on or after February 22, 2010, the card issuer must apply the excess amount consistent with § 226.53.

Q. *Limitations on the imposition of finance charges (§ 226.54).* The effective

[76] For example, if the Board interpreted new TILA Section 127(n) as applying retroactively, a card issuer that opened an account with a $500 limit and $150 dollars in fees for the issuance or availability of credit on March 1, 2009 would be in violation of the Credit Card Act, despite the fact that the legislation was not enacted until May 22, 2009. Similarly, a card issuer that opened an account with a $500 limit and $125 dollars in fees for the issuance or availability of credit on June 1, 2009 would be prohibited from charging any fees to the account (other than those exempted by § 226.52(a)(2)) until June 1, 2010 as a result of imposing fees that were permitted at the time of imposition.

date for new TILA Section 127(j) is February 22, 2010. Accordingly, card issuers must comply with § 226.54 beginning on February 22, 2010. The Board understands that card issuers generally calculate finance charges imposed with respect to transactions that occur during a billing cycle at the end of that cycle. Accordingly, if § 226.54 were applied to billing cycles that end on or after February 22, 2010, card issuers would be required to comply with its requirements with respect to transactions that occurred before February 22, 2010. However, for the reasons discussed above, the Board does not believe that Congress intended the provisions of the Credit Card Act to apply retroactively unless expressly provided. Accordingly, § 226.54 applies to the imposition of finance charges with respect to billing cycles that begin on or after February 22, 2010.

R. *Limitations on increasing annual percentage rates, fees, and charges (§ 226.55).* The effective date for revised TILA Section 171 and new TILA Section 172 is February 22, 2010. Accordingly, compliance with § 226.55 is mandatory beginning on February 22, 2010.

*Prohibition on increases in rates and fees (§ 226.55(a)).* Beginning on February 22, 2010, § 226.55(a) prohibits a card issuer from increasing an annual percentage rate or a fee or charge required to be disclosed under § 226.6(b)(2)(ii), (iii), or (xii) unless the increase is consistent with one of the exceptions in § 226.55(b) or the implementation guidance discussed below. The prohibition in § 226.55(a) applies to both existing accounts and accounts opened after February 22, 2010.

*Temporary rates—generally (§ 226.55(b)(1)).*[77] If a rate that will increase upon the expiration of a specified period of time applies to a balance on February 22, 2010, § 226.55(b)(1) permits the card issuer to apply an increased rate to that balance at expiration of the period so long as the card issuer previously disclosed to the consumer the length of the period and the rate that would apply upon expiration of the period. For example, if on February 22, 2010 a 5% rate applies to a $1,000 purchase balance and that rate is scheduled to increase to 15% on June 1, 2010, the card issuer may apply the 15% rate to any remaining portion of the $1,000 balance on June 1, provided that the card issuer previously disclosed that the 15% rate would apply on June 1.

A card issuer has satisfied the disclosure requirement in § 226.55(b)(1)(i) if it has provided disclosures consistent with § 226.9(c)(2)(v)(B), as adopted by the Board in the July 2009 Regulation Z Interim Final Rule. Because § 226.9(c)(2)(v)(B) became effective on August 20, 2009, the Board expects that card issuers will have satisfied the disclosure requirement in § 226.55(b)(1)(i) with respect to any temporary rate offered on or after that date. However, the Board understands that, with respect to temporary rates offered prior to August 20, 2009, card issuers may be uncertain whether the disclosures provided at the time those rates were offered are sufficient to comply with § 226.9(c)(2)(v)(B) and § 226.55(b)(1)(i). The Board addressed this issue in the implementation guidance for § 226.9(c)(2)(v)(B) in the July 2009 Regulation Z Interim Final Rule. *See* 74 FR 36091–36092. That guidance applies equally with respect to § 226.55(b)(1)(i).

Specifically, the Board stated in the July 2009 Regulation Z Interim Final Rule that, if prior to August 20, 2009 a creditor provided disclosures that generally complied with § 226.9(c)(2)(v)(B) but described the type of increased rate that would apply upon expiration of the period instead of disclosing the actual rate,[78] the creditor could utilize the exception in § 226.9(c)(2)(v)(B). *See* 74 FR 36092. In these circumstances, a card issuer has also satisfied the requirements of § 226.55(b)(1)(i).

In addition, the Board acknowledged in the July 2009 Regulation Z Interim Final Rule that, prior to August 20, 2009, some creditors may not have provided written disclosures of the period during which the temporary rate would apply and the increased rate that would apply thereafter or may not be able to determine if they provided such disclosures without conducting extensive research.[79] The Board stated that, in these circumstances, a creditor could utilize the exception in § 226.9(c)(2)(v)(B) if it provided written disclosures that met the requirements in § 226.9(c)(2)(v)(B) prior to August 20, 2009 or if it can demonstrate that it provided oral disclosures that otherwise meet the requirements in § 226.9(c)(2)(v)(B). *See* 74 FR 36092. Similarly, in these circumstances, a card issuer that satisfies either of these criteria has also satisfied the requirements of § 226.55(b)(1)(i).

*Temporary rates—six-month requirement (§ 226.55(b)(1)).* The requirement in § 226.55(b)(1) that temporary rates expire after a period of no less than six months applies to temporary rates offered on or after February 22, 2010. Thus, for example, if a card issuer offered a temporary rate on December 1, 2009 that applies to purchases until March 1, 2010, § 226.55(b)(1) would not prohibit the card issuer from applying an increased rate to the purchase balance on March 1 so long as the card issuer previously disclosed the period during which the temporary rate would apply and the increased rate that would apply thereafter. Some commenters suggested that the six-month requirement in § 226.55(b)(1) (which implements new TILA Section 172(b)) should apply to temporary rates offered less than six months before the statutory effective date (in other words, any temporary rate offered after September 22, 2009). However, as discussed above with respect to the restrictions on fees during the first year after account opening in new TILA Section 127(n) and new § 226.52(a), the Board believes that limiting application of the six-month requirement in new TILA Section 172(b) to temporary rates offered on or after February 22, 2010 is consistent with Congress' intent because—in contrast to revised TILA Section 148—Congress did not expressly provide that new TILA Section 172(b) applies retroactively.

*Variable rates (§ 226.55(b)(2)).* If a rate that varies according to a publicly-available index applies to a balance on February 22, 2010, the card issuer may continue to adjust that rate due to changes in the relevant index consistent with § 226.55(b)(2). However, if on February 22, 2010 the account terms governing the variable rate permit the card issuer to exercise control over the operation of the index in a manner that is inconsistent with § 226.55(b)(2) or its commentary, the card issuer is prohibited from enforcing those terms with respect to subsequent adjustments to the variable rate, even if the terms of the account have not yet been amended consistent with the 45-day notice requirement in § 226.9(c). The following examples illustrate the application of this guidance:

- Assume that the billing cycles for a credit card account begin on the first day of the month and end on the last day of the month. The terms of the account provide that, at the beginning of each billing cycle, the card issuer will

[77] For simplicity, this implementation guidance refers to rates subject to § 226.55(b)(1) as "temporary rates." However, pursuant to comment 55(b)(1)–3, this guidance is intended to apply equally to deferred interest or similar programs.

[78] For example: "After six months, the standard annual percentage rate applicable to purchases will apply."

[79] For example, some creditors may have provided these disclosures orally.

calculate the variable rate by adding a margin of 10 percentage points to the value of a publicly-available index on the last day of the prior billing cycle. However, contrary to § 226.55(b)(2), the terms of the account also provide that the variable rate will not decrease below 15%. *See* comment 55(b)(2)–2. On January 30, 2010, the card issuer provides a notice pursuant to § 226.9(c)(2) informing the consumer that, effective March 16, the 15% fixed minimum rate will be removed from the account terms. On January 31, the value of the index is 3% but, consistent with the fixed minimum rate, the card issuer applies a 15% rate beginning on February 1. The card issuer is not required to adjust the variable rate on February 22 because the terms of the account do not provide for a rate adjustment until the beginning of the March billing cycle. However, if the value of the index is 3% on February 28, the card issuer must apply a 13% rate beginning on March 1, even though the amendment to the account terms is not effective until March 16.

• Assume that the billing cycles for a credit card account begin on the first day of the month and end on the last day of the month. The terms of the account provide that, at the beginning of each billing cycle, the card issuer will calculate the variable rate by adding a margin of 10 percentage points to the value of a publicly-available index. However, contrary to § 226.55(b)(2), the terms of the account also provide that the variable rate will be calculated based on the highest index value during the prior billing cycle. *See* comment 55(b)(2)–2. On January 30, 2010, the card issuer provides a notice pursuant to § 226.9(c)(2) informing the consumer that, effective March 16, the terms of the account will be amended to provide that the variable rate will be calculated based on the value of the index on the last day of the prior billing cycle. On January 31, the value of the index is 4.9% but, because the highest value for the index during the January billing cycle was 5.1%, the card issuer applies a 15.1% rate beginning on February 1. The card issuer is not required to adjust the variable rate on February 22 because the terms of the account do not provide for a rate adjustment until the beginning of the March billing cycle. However, if the value of the index is 4.9% on February 28, the card issuer complies with § 226.55(b)(2) if it applies a 14.9% rate beginning on March 1, even though the amendment to the account terms is not effective until March 16.

*Increases in rates and certain fees and charges that apply to new transactions (§ 226.55(b)(3)).* Section 226.55(b)(3) applies to any increase in a rate or in a fee or charge required to be disclosed under § 226.6(b)(2)(ii), (iii), or (xii) that is effective on or after February 22, 2010. Some commenters argued that the Board should adopt guidance similar to that in the July 2009 Regulation Z Interim Final Rule, where the Board determined that the relevant date for purposes of compliance with revised § 226.9(c)(2) and new § 226.9(g) was generally the date on which the notice was provided. That guidance, however, was based in large part on concerns about requiring creditors to comply with revised TILA Section 127(i) with respect to notices provided as much as 45 days prior to the statutory effective date. *See* 74 FR 36091.

In contrast, under this guidance, card issuers are only required to comply with revised TILA Section 171 with respect to increases that take effect *after* the statutory effective date. Furthermore, if the relevant date for compliance with § 226.55(b)(3) was the date on which a § 226.9(c) or (g) notice was provided, card issuers would be permitted to apply increased rates, fees, or charges to existing balances until April 7, 2010 so long as the notice was sent before the Credit Card Act's February 22, 2010 effective date. The Board does not believe that this was Congress' intent.

The following examples illustrate the application of this guidance:

• On January 7, 2010, a card issuer provides a notice of an increase in the purchase rate pursuant to § 226.9(c). Consistent with § 226.9(c), the increased rate is effective on February 21, 2010. Therefore, § 226.55(b)(3) does not apply. Accordingly, on February 21, 2010, the card issuer may apply the increased rate to both new purchases and the existing purchase balance (provided the consumer has not rejected application of the increased rate to the existing balance pursuant to § 226.9(h)).

• On January 8, 2010, a card issuer provides a notice of an increase in the purchase rate pursuant to § 226.9(c). Consistent with § 226.9(c), the increased rate is effective on February 22, 2010. Therefore, § 226.55(b)(3) applies. Accordingly, on February 22, 2010, the card issuer cannot apply the increased rate to purchases that occurred on or before January 22, 2010 (which is the fourteenth day after provision of the notice) but may apply the increased rate to purchases that occurred after that date.

*Prohibition on increasing rates and certain fees and charges during first year after account opening (§ 226.55(b)(3)(iii)).* The prohibition in § 226.55(b)(3)(iii) on increasing rates and certain fees and charges during the first year after account opening applies to accounts opened on or after February 22, 2010. Some commenters suggested that this provision (which implements new TILA Section 172(a)) should apply to accounts opened less than one year before the statutory effective date. However, as discussed above with respect to new TILA Section 172(b), the Board believes that limiting application of new TILA Section 172(a) to accounts opened on or after February 22, 2010 is consistent with Congress' intent because Congress did not expressly provide that new TILA Section 172(a) applies retroactively.

*Delinquencies of more than 60 days (§ 226.55(b)(4)).* Section 226.55(b)(4) applies once an account becomes more than 60 days delinquent even if the delinquency began prior to February 22, 2010. For example, if the required minimum periodic payment due on January 1, 2010 has not been received by March 3, 2010, § 226.55(b)(4) permits the card issuer to apply an increased rate, fee, or charge to existing balances on the account after providing notice pursuant to § 226.9(c) or (g).

*Workout and temporary hardship arrangements (§ 226.55(b)(5)).* Section 226.55(b)(5) applies to workout and temporary hardship arrangements that apply to an account on February 22, 2010. A card issuer that has complied with § 226.9(c)(2)(v)(D) or the transition guidance for that provision has satisfied the disclosure requirement in § 226.55(b)(5)(i).

If a workout or temporary hardship arrangement applies to an account on February 22, 2010 and the consumer completes or fails to comply with the terms of the arrangement on or after that date, § 226.55(b)(5)(ii) only permits the card issuer to apply an increased rate, fee, or charge that does not exceed the rate, fee, or charge that applied prior to commencement of the workout arrangement. For example, assume that, on January 1, 2010, a card issuer decreases the rate that applies to a $5,000 balance from 30% to 5% pursuant to a workout or temporary hardship arrangement between the issuer and the consumer. Under this arrangement, the consumer must pay by the fifteenth of each month in order to retain the 5% rate. The card issuer does not receive the payment due on March 15 until March 20. In these circumstances, § 226.55(b)(5)(ii) does not permit the card issuer to apply a rate to any remaining portion of the $5,000 balance that exceeds the 30% penalty rate.

*Servicemembers Civil Relief Act (§ 226.55(b)(6)).* If a card issuer reduced an annual percentage rate pursuant to

50 U.S.C. app. 527 prior to February 22, 2010 and the consumer leaves military service on or after that date, § 226.55(b)(6) only permits the card issuer to apply an increased rate that does not exceed the rate that applied prior to the reduction.

*Closed or acquired accounts and transferred balances (§ 226.55(d)).* Section 226.55(d) applies to any credit card account under an open-end (not home-secured) consumer credit plan that is closed on or after February 22, 2010 or acquired by another creditor on or after February 22, 2010. Section 226.55(d) also applies to any balance that is transferred from a credit card account under an open-end (not home-secured) consumer credit plan issued by a creditor to another credit account issued by the same creditor or its affiliate or subsidiary on or after February 22, 2010. Thus, beginning on February 22, 2010, card issuers are prohibited from increasing rates, fees, or charges in these circumstances to the extent inconsistent with § 226.55, its commentary, and this guidance.

S. *Over-the-limit transactions (§ 226.56).* For credit card accounts opened prior to February 22, 2010, a card issuer may elect to provide an opt-in notice to all of its account-holders on or with the first periodic statement sent after the effective date of the final rule. Card issuers that choose to do so are prohibited from assessing any over-the-limit fees or charges after the effective date of the rule and prior to providing the opt-in notice, and subsequently could not assess any such fees or charges unless and until the consumer opts in and the card issuer sends written confirmation of the opt-in. The final rule does not, however, require that a card issuer waive fees that are incurred in connection with over-the-limit transactions that occur prior to February 22, 2010 even if the consumer has not opted in by the effective date. Thus, for example, a card issuer may assess fees if the consumer engages in an over-the-limit transaction prior to February 22, 2010, but the transaction posts or is charged to the account after that date, even if the consumer has not opted in by the effective date.

*Early compliance.* For existing accounts, an opt-in requirement could potentially result in a disruption in a consumer's ability to complete transactions if card issuers could not send notices, and obtain consumer opt-ins, until February 22, 2010. Accordingly, the Board solicited comment regarding whether a creditor should be permitted to obtain consumer consent for the payment of over-the-limit transactions prior to that date. Allowing creditors to obtain consumer consent prior to February 22, 2010 could also allow creditors to phase in their delivery of opt-in notices and processing of consumer consents.

Industry commenters agreed that the rule should permit creditors to obtain consents prior to February 22, 2010 to enable both creditors and consumers to avoid a flood of opt-in notices and transaction denials on or after that date. One industry commenter urged the Board to permit creditors to obtain valid consumer consents so long as they follow the requirements set forth in the proposed rule and provide the proposed model form. In contrast, consumer groups and one state government agency argued that creditors should not be permitted to obtain consumer consents prior to the effective date of the rule because they did not believe that the rule as proposed afforded consumers adequate protections.

Under the final rule, card issuers may provide the notice and obtain the consumer's affirmative consent prior to the effective date, provided that the card issuer complies with all the requirements in § 226.56, including the requirements to segregate the notice and provide written confirmation of the consumer's choice. The opt-in notice must also include the specified content in § 226.56(e)(1). Use of Model Form G–25(A), or a substantially similar notice, constitutes compliance with the notice requirements in § 226.56(e)(1). *See* § 226.56(e)(3). If an existing account-holder responds to an opt-in notice provided before February 22, 2010 and expresses a desire not to opt in, the Board expects that the card issuer would honor the consumer's choice at that time, unless the card issuer has clearly and conspicuously explained in the opt-in notice that the opt-in protections do not apply until that date.

In addition, in order to minimize potential disruptions to the payment systems that may otherwise result if card issuers could not send notices or obtain consumer consents until near the effective date of the rule, the Board believes that it is appropriate to treat opt-in notices that follow the model form as proposed as a substantially similar notice to the final model form for purposes of § 226.56(e)(3). That is, card issuers that provide opt-in notices based on the proposed model form would be deemed to be in compliance with the over-the-limit opt-in provisions, provided that the other requirements of the rule, including the written confirmation requirement, are satisfied. The Board anticipates that such relief would be temporary, however, and expects that card issuers will transition to the final Model Form G–25(A) as soon as reasonably practicable after February 22, 2010 in order to retain the safe harbor.

*Prohibited practices.* Sections 226.56(j)(2)–(4) prohibit certain credit card acts or practices regarding the imposition of over-the-limit fees. These prohibitions are based on the Board's authority under TILA Section 127(k)(5)(B) to prescribe regulations that prevent unfair or deceptive acts or practices in connection with the manipulation of credit limits designed to increase over-the-limit fees or other penalty fees. However, compliance with the provisions of the final rule is not required before February 22, 2010. Thus, the final rule and the Board's accompanying analysis should have no bearing on whether or not acts or practices restricted or prohibited under this rule are unfair or deceptive before the effective date of this rule.

Unfair acts or practices can be addressed through case-by-case enforcement actions against specific institutions, through regulations applying to all institutions, or both. An enforcement action concerns a specific institution's conduct and is based on all of the facts and circumstances surrounding that conduct. By contrast, a regulation is prospective and applies to the market as a whole, drawing bright lines that distinguish broad categories of conduct.

Moreover, as part of the Board's unfairness analysis, the Board has considered that broad regulations, such as the prohibitions in connection with over-the-limit practices in the final rule, can require large numbers of institutions to make major adjustments to their practices, and that there could be more harm to consumers than benefit if the regulations were effective earlier than the effective date. If institutions were not provided a reasonable time to make changes to their operations and systems to comply with the final rule, they would either incur excessively large expenses, which would be passed on to consumers, or cease engaging in the regulated activity altogether, to the detriment of consumers. For example, card issuers may be required to make significant systems changes in order to ensure that fees and interest charges assessed during a billing cycle did not cause an over-the-limit fee or charge to be imposed on a consumer's account. Thus, because the Board finds an act or practice unfair only when the harm outweighs the benefits to consumers or to competition, the implementation period preceding the effective date set forth in the final rule is integral to the

Board's decision to restrict or prohibit certain acts or practices by regulation.

For these reasons, acts or practices occurring before the effective date of the final rule will be judged on the totality of the circumstances under applicable laws or regulations. Similarly, acts or practices occurring after the rule's effective date that are not governed by these rules will be judged on the totality of the circumstances under applicable laws or regulations. Consequently, only acts or practices covered by the rule that occur on or after the effective date would be prohibited by the regulation.

T. *Reporting and marketing rules for college student open-end credit (§ 226.57).*

*Prohibited inducements (§ 226.57(c)).* All tangible items offered to induce a college student to apply for or participate in an open end consumer credit plan, on or near the campus of an institution of higher education or at an event sponsored by or related to an institution of higher education, are prohibited on or after February 22, 2010 pursuant to § 226.57(c). If a college student has submitted an application for, or agreed to participate in, an open-end consumer credit plan prior to February 22, 2010, in reliance on the offer of a tangible item, such item may still be provided to the student on or after February 22, 2010.

*Submission of reports to Board (§ 226.57(d)).* Section 226.57(d)(3) provides that card issuers must submit the first report regarding college credit card agreements for the 2009 calendar year to the Board by February 22, 2010.

U. *Internet posting of credit card agreements (§ 226.58).* Section 226.58(c)(2) provides that card issuers must submit credit card agreements offered to the public as of December 31, 2009 to the Board no later than February 22, 2010.

V. *Open-End Credit Secured by Real Property.*

In the May 2009 Regulation Z Proposed Clarifications, the Board solicited comment on whether additional transition guidance is needed for creditors that offer open-end credit secured by real property, where it is unclear whether that property is, or remains, the consumer's dwelling. The issue arose because the January 2009 Regulation Z Rule preserved certain existing rules, for example the rules under §§ 226.6, 226.7, and 226.9, for home-equity plans subject to § 226.5b pending the completion of the Board's separate review of the rules applicable to home-secured credit. The Board noted that creditors offering open-end credit secured by real property may be uncertain how they should comply with the January 2009 Regulation Z Rule. Financial institution commenters suggested that creditors be permitted to treat all open-end credit secured by residential property as covered by § 226.5b, rather than the rules for open-end (not home-secured) credit, regardless of whether the property is the consumer's dwelling. Consumer group commenters did not address this issue.

In the August 2009 Regulation Z HELOC Proposal, the Board proposed to adopt a new comment 5–1 that would provide guidance in situations where a creditor is uncertain whether an open-end credit plan is covered by the § 226.5b rules for HELOCs or the rules for open-end (not home-secured) credit. The comment period on this proposal closed on December 24, 2009, and the Board is still considering the comments it received.

Accordingly, the Board believes that until the August 2009 Regulation Z HELOC Proposal is finalized, it is appropriate to permit creditors that offer open-end credit secured by real property that are uncertain whether the plan is covered by § 226.5b to comply with this final rule by complying with, at their option, either the new rules that apply to open-end (not home-secured) credit, or the existing rules applicable to home-equity plans. Therefore, if a creditor that offers open-end credit secured by real property is uncertain whether that property is, or remains, the consumer's dwelling, that creditor may comply with either the new rules regarding account-opening disclosures in § 226.6(b), periodic statement disclosures in § 226.7(b), and change-in-terms notices in § 226.9(c)(2), or the existing rules as preserved in §§ 226.6(a), 226.7(a), and 226.9(c)(1). However, such a creditor must treat the product consistently for the purpose of the disclosures in §§ 226.6, 226.7, and 226.9(c); for example, a creditor may not provide account-opening disclosures consistent with the new requirements of § 226.6(b) and periodic statement disclosures consistent with the existing requirements for HELOCs under § 226.7(a). In addition, as of the mandatory compliance date for this final rule, creditors must comply with any requirements of this final rule that apply to all open-end credit regardless of whether it is home-secured, such as the provision in § 226.10(d) regarding weekend or holiday due dates. This transition guidance applies only to provisions of Regulation Z that are amended by this rulemaking; accordingly, this transition guidance does not address creditors' responsibilities under other sections of Regulation Z, such as §§ 226.5b and 226.15.

## VII. Regulatory Flexibility Analysis

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

Prior to the October 2009 Regulation Z Proposal, the Board conducted initial and final regulatory flexibility analyses and ultimately concluded that the rules in the Board's January 2009 Regulation Z Rule and July 2009 Regulation Z Interim Final Rule would have a significant economic impact on a substantial number of small entities. *See* 72 FR 33033–33034 (June 14, 2007); 74 FR 5390–5392; 74 FR 36092–36093. As discussed in **I. Background and Implementation of the Credit Card Act** and **V. Section-by-Section Analysis,** several of the provisions of the Credit Card Act are similar to provisions in the Board's January 2009 Regulation Z Rule and July 2009 Regulation Z Interim Final Rule. To the extent that the provisions in the October 2009 Regulation Z Proposal were substantially similar to provisions in those rules, the Board continued to rely on the regulatory flexibility analyses conducted for the Board's January 2009 Regulation Z Rule and July 2009 Regulation Z Interim Final Rule. The Credit Card Act, however, also addressed practices or mandated disclosures that were not addressed in the Board's January 2009 Regulation Z Rules and July 2009 Regulation Z Interim Final Rule. The Board prepared an initial regulatory flexibility analysis in connection with the October 2009 Regulation Z Proposal, which reached the preliminary conclusion that the proposed rule would impose additional requirements and burden on small entities. *See* 74 FR 54198–54200 (October 21, 2009). The Board received no significant comments addressing the initial regulatory flexibility analysis. Therefore, based on its prior analyses and for the reasons stated below, the Board has concluded that the final rule will have a significant economic impact on a substantial number of small entities. Accordingly, the Board has prepared the following final regulatory flexibility analysis pursuant to section 604 of the RFA.

1. *Statement of the need for, and objectives of, the rule.* The final rule implements a number of new substantive and disclosure provisions required by the Credit Card Act, which establishes fair and transparent practices relating to the extension of

open-end consumer credit plans. The supplementary information above describes in detail the reasons, objectives, and legal basis for each component of the final rule.

2. *Summary of the significant issues raised by public comment in response to the Board's initial analysis, the Board's assessment of such issues, and a statement of any changes made as a result of such comments.* As discussed above, the Board's initial regulatory flexibility analysis reached the preliminary conclusion that the proposed rule would have a significant economic impact on a substantial number of small entities. *See* 74 FR 54199 (October 21, 2009). The Board received no comments specifically addressing this analysis.

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

4. *Recordkeeping, reporting, and compliance requirements.* The final rule does not impose any new recordkeeping requirements. The final rule does, however, impose new reporting and compliance requirements. The reporting and compliance requirements of this rule are described above in **V. Section-by-Section Analysis**. The Board notes that the precise costs to small entities to conform their open-end credit disclosures to the final rule and the costs of updating their systems to comply with the rule are difficult to predict. These costs will depend on a number of factors that are unknown to the Board, including, among other things, the specifications of the current systems used by such entities to prepare and provide disclosures and administer open-end accounts, the complexity of the terms of the open-end credit products that they offer, and the range of such product offerings.

Provisions Regarding Consumer Credit Card Accounts

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

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

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

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

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

Section 226.52 generally limits the imposition of fees by card issuers during the first year after account opening. This provision will reduce revenue that some entities derive from fees.

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

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

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

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

Section 226.56 prohibits small entities that are card issuers from imposing fees or charges for an over-the-limit transaction unless the card issuer provides the consumer with notice and obtains the consumer's affirmative consent, or opt-in. Compliance with this provision will impose additional costs on small entities in order to provide notice and obtain consent, if the small entity elects to impose fees or charges for over-the-limit transactions. Section 226.56 may reduce revenue that certain small entities derive from fees and

charges related to over-the-limit transaction. In addition, § 226.56 will require some small entities to alter their systems in order to comply with the provision. The cost of such change will depend on the size of the institution and the composition of its portfolio.

Section 226.58 requires small entities that are card issuers to post agreements for open-end consumer credit card plans on the card issuer's Web site and to submit those agreements to the Board for posting in a publicly-available on-line repository established and maintained by the Board. The cost of compliance will depend on the size of the institution and the composition of its portfolio. Section 226.58(c)(5), however, provides a de minimis exception, which will reduce the economic impact and compliance burden on small entities. Under § 226.58(c)(5), a card issuer is not required to submit an agreement to the Board if the card issuer has fewer than 10,000 open accounts under open-end consumer credit card plans subject to § 226.5a as of the last business day of the calendar quarter.

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

5. *Other federal rules.* Other than the January 2009 FTC Act Rule and similar rules adopted by other Agencies, the Board has not identified any federal rules that duplicate, overlap, or conflict with the Board's revisions to TILA. As discussed in the supplementary information to the final rule, the Board is withdrawing its January 2009 FTC Act Rule, which is published elsewhere in today's **Federal Register**.

6. *Significant alternatives to the final revisions.* The provisions of the final rule implement the statutory requirements of the Credit Card Act that go into effect on February 22, 2010. The Board sought to avoid imposing additional burden, while effectuating the statute in a manner that is beneficial to consumers. The Board did not receive any comment on any significant alternatives, consistent with the Credit Card Act, which would minimize impact of the final rule on small entities.

## VIII. 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.[80]

This information collection is required to provide benefits for consumers and is mandatory (15 U.S.C. 1601 *et seq.*). The respondents/recordkeepers are creditors and other entities subject to Regulation Z, including for-profit financial institutions, small businesses, and institutions of higher education. TILA and Regulation Z are intended to ensure effective disclosure of the costs and terms of credit to consumers. For open-end credit, creditors are required to, among other things, disclose information about the initial costs and terms and to provide periodic statements of account activity, notices of changes in terms, and statements of rights concerning billing error procedures. Regulation Z requires specific types of disclosures for credit and charge card accounts and home-equity plans. For closed-end loans, such as mortgage and installment loans, cost disclosures are required to be provided prior to consummation. Special disclosures are required in connection with certain products, such as reverse mortgages, certain variable-rate loans, and certain mortgages with rates and fees above specified thresholds. TILA and Regulation Z also contain rules concerning credit advertising. Creditors are required to retain evidence of compliance for twenty-four months (§ 226.25), but Regulation Z does not specify the types of records that must be retained.

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

As discussed in **I. Background and Implementation of the Credit Card Act**, a notice of proposed rulemaking (NPR) was published in the **Federal Register** on October 21, 2009 (74 FR 54124). The comment period for this notice expired on November 20, 2009. No comments specifically addressing the paperwork burden estimates were received; therefore, the estimates will remain unchanged as published in the NPR.

Based on the adjustments to the Board's prior estimates in the October 2009 Regulation Z Proposal and the Board's PRA analysis in the January 2009 Regulation Z Rule, the final rule will impose a one-time increase in the total annual burden under Regulation Z for all respondents regulated by the Federal Reserve by 575,452 hours. The total one-time burden increase represents averages for all respondents regulated by the Federal Reserve. The Federal Reserve expects that the amount of time required to implement each of the changes adopted by the final rule for a given financial institution or entity may vary based on the size and complexity of the respondent. In addition, the Federal Reserve estimates that, on a continuing basis, the final rule will increase the total annual burden on a continuing basis by 70,400 hours. The total annual burden will therefore increase by 645,852 hours from 1,008,962 to 1,654,814 hours.[81]

The Board has a continuing interest in the public's opinion of the collection of information. Comments on the collection of information should be sent to Michelle Shore, Federal Reserve Board Clearance Officer, Division of Research and Statistics, Mail Stop 95–A, Board of Governors of the Federal Reserve System, Washington, DC 20551, with copies of such comments sent to the Office of Management and Budget, Paperwork Reduction Project (7100–0199), Washington, DC 20503.

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

[81] The burden estimate for this final rule does not include the burden addressing changes to implement provisions of Closed-End Mortgages (Docket No. R–1366) or the Home-Equity Lines of Credit (Docket No. R–1367), as announced in separate proposed rulemakings. *See* 74 FR 43232 and 74 FR 43428. In addition, the burden estimate for this final rule does not include the burden addressing changes to implement the notification of sale or transfer of mortgage loans (Docket No. R–1378), as announced in an interim final rulemaking. *See* 74 FR 60143.

**List of Subjects in 12 CFR Part 226**

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

**Text of Final Revisions**

■ For the reasons set forth in the preamble, the Board amends Regulation Z, 12 CFR part 226, as set forth below:

## PART 226—TRUTH IN LENDING (REGULATION Z)

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

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

## Subpart A—General

■ 2. Section 226.1 is revised to read as follows:

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

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

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

(c) *Coverage.* (1) In general, this regulation applies to each individual or business that offers or extends credit when four conditions are met:

(i) The credit is offered or extended to consumers;

(ii) The offering or extension of credit is done regularly; [1]

(iii) The credit is subject to a finance charge or is payable by a written agreement in more than four installments; and

(iv) The credit is primarily for personal, family, or household purposes.

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

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

(4) Furthermore, certain requirements of § 226.57 apply to institutions of higher education.

(d) *Organization.* The regulation is divided into subparts and appendices as follows:

(1) Subpart A contains general information. It sets forth:

(i) The authority, purpose, coverage, and organization of the regulation;

(ii) The definitions of basic terms;

(iii) The transactions that are exempt from coverage; and

(iv) The method of determining the finance charge.

(2) Subpart B contains the rules for open-end credit. It requires that account-opening disclosures and periodic statements be provided, as well as additional disclosures for credit and charge card applications and solicitations and for home-equity plans subject to the requirements of § 226.5a and § 226.5b, respectively. It also describes special rules that apply to credit card transactions, treatment of payments and credit balances, procedures for resolving credit billing errors, annual percentage rate calculations, rescission requirements, and advertising.

(3) Subpart C relates to closed-end credit. It contains rules on disclosures, treatment of credit balances, annual percentages rate calculations, rescission requirements, and advertising.

(4) Subpart D contains rules on oral disclosures, disclosures in languages other than English, record retention, effect on state laws, state exemptions, and rate limitations.

(5) Subpart E contains special rules for certain mortgage transactions. Section 226.32 requires certain disclosures and provides limitations for loans that have rates and fees above specified amounts. Section 226.33 requires disclosures, including the total annual loan cost rate, for reverse mortgage transactions. Section 226.34 prohibits specific acts and practices in connection with mortgage transactions that are subject to § 226.32. Section 226.35 prohibits specific acts and practices in connection with higher-priced mortgage loans, as defined in § 226.35(a). Section 226.36 prohibits specific acts and practices in connection with credit secured by a consumer's principal dwelling.

(6) Subpart F relates to private education loans. It contains rules on disclosures, limitations on changes in terms after approval, the right to cancel the loan, and limitations on co-branding in the marketing of private education loans.

(7) Subpart G relates to credit card accounts under an open-end (not home-secured) consumer credit plan (except for § 226.57(c), which applies to all open-end credit plans). Section 226.51 contains rules on evaluation of a consumer's ability to make the required payments under the terms of an account. Section 226.52 limits the fees that a consumer can be required to pay with respect to an open-end (not home-secured) consumer credit plan during the first year after account opening. Section 226.53 contains rules on allocation of payments in excess of the minimum payment. Section 226.54 sets forth certain limitations on the imposition of finance charges as the result of a loss of a grace period. Section 226.55 contains limitations on increases in annual percentage rates, fees, and charges for credit card accounts. Section 226.56 prohibits the assessment of fees or charges for over-the-limit transactions unless the consumer affirmatively consents to the creditor's payment of over-the-limit transactions. Section 226.57 sets forth rules for reporting and marketing of college student open-end credit. Section 226.58 sets forth requirements for the Internet posting of credit card accounts under an open-end (not home-secured) consumer credit plan.

(8) Several appendices contain information such as the procedures for

[1] [Reserved].

determinations about state laws, state exemptions and issuance of staff interpretations, special rules for certain kinds of credit plans, a list of enforcement agencies, and the rules for computing annual percentage rates in closed-end credit transactions and total-annual-loan-cost rates for reverse mortgage transactions.

(e) *Enforcement and liability.* Section 108 of the act contains the administrative enforcement provisions. Sections 112, 113, 130, 131, and 134 contain provisions relating to liability for failure to comply with the requirements of the act and the regulation. Section 1204 (c) of title XII of the Competitive Equality Banking Act of 1987, Public Law 100–86, 101 Stat. 552, incorporates by reference administrative enforcement and civil liability provisions of sections 108 and 130 of the act.

■ 3. Section 226.2 is revised to read as follows:

**§ 226.2 Definitions and rules of construction.**

(a) *Definitions.* For purposes of this regulation, the following definitions apply:

(1) *Act* means the Truth in Lending Act (15 U.S.C. 1601 *et seq.*).

(2) *Advertisement* means a commercial message in any medium that promotes, directly or indirectly, a credit transaction.

(3) [Reserved] [2]

(4) *Billing cycle* or *cycle* means the interval between the days or dates of regular periodic statements. These intervals shall be equal and no longer than a quarter of a year. An interval will be considered equal if the number of days in the cycle does not vary more than four days from the regular day or date of the periodic statement.

(5) *Board* means the Board of Governors of the Federal Reserve System.

(6) *Business day* means a day on which the creditor's offices are open to the public for carrying on substantially all of its business functions. However, for purposes of rescission under §§ 226.15 and 226.23, and for purposes of §§ 226.19(a)(1)(ii), 226.19(a)(2), 226.31, and 226.46(d)(4), the term means all calendar days except Sundays and the legal public holidays specified in 5 U.S.C. 6103(a), such as New Year's Day, the Birthday of Martin Luther King, Jr., Washington's Birthday, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans Day, Thanksgiving Day, and Christmas Day.

(7) *Card issuer* means a person that issues a credit card or that person's agent with respect to the card.

(8) *Cardholder* means a natural person to whom a credit card is issued for consumer credit purposes, or a natural person who has agreed with the card issuer to pay consumer credit obligations arising from the issuance of a credit card to another natural person. For purposes of § 226.12(a) and (b), the term includes any person to whom a credit card is issued for any purpose, including business, commercial or agricultural use, or a person who has agreed with the card issuer to pay obligations arising from the issuance of such a credit card to another person.

(9) *Cash price* means the price at which a creditor, in the ordinary course of business, offers to sell for cash property or service that is the subject of the transaction. At the creditor's option, the term may include the price of accessories, services related to the sale, service contracts and taxes and fees for license, title, and registration. The term does not include any finance charge.

(10) *Closed-end credit* means consumer credit other than "open-end credit" as defined in this section.

(11) *Consumer* means a cardholder or natural person to whom consumer credit is offered or extended. However, for purposes of rescission under §§ 226.15 and 226.23, the term also includes a natural person in whose principal dwelling a security interest is or will be retained or acquired, if that person's ownership interest in the dwelling is or will be subject to the security interest.

(12) *Consumer credit* means credit offered or extended to a consumer primarily for personal, family, or household purposes.

(13) *Consummation* means the time that a consumer becomes contractually obligated on a credit transaction.

(14) *Credit* means the right to defer payment of debt or to incur debt and defer its payment.

(15)(i) *Credit card* means any card, plate, or other single credit device that may be used from time to time to obtain credit.

(ii) *Credit card account under an open-end (not home-secured) consumer credit plan* means any open-end credit account accessed by a credit card, except:

(A) A credit card that accesses a home-equity plan subject to the requirements of § 226.5b; or

(B) An overdraft line of credit accessed by a debit card.

(iii) *Charge card* means a credit card on an account for which no periodic rate is used to compute a finance charge.

(16) *Credit sale* means a sale in which the seller is a creditor. The term includes a bailment or lease (unless terminable without penalty at any time by the consumer) under which the consumer—

(i) Agrees to pay as compensation for use a sum substantially equivalent to, or in excess of, the total value of the property and service involved; and

(ii) Will become (or has the option to become), for no additional consideration or for nominal consideration, the owner of the property upon compliance with the agreement.

(17) *Creditor* means:

(i) A person who regularly extends consumer credit [3] that is subject to a finance charge or is payable by written agreement in more than four installments (not including a down payment), and to whom the obligation is initially payable, either on the face of the note or contract, or by agreement when there is no note or contract.

(ii) For purposes of §§ 226.4(c)(8) (Discounts), 226.9(d) (Finance charge imposed at time of transaction), and 226.12(e) (Prompt notification of returns and crediting of refunds), a person that honors a credit card.

(iii) For purposes of subpart B, any card issuer that extends either open-end credit or credit that is not subject to a finance charge and is not payable by written agreement in more than four installments.

(iv) For purposes of subpart B (except for the credit and charge card disclosures contained in §§ 226.5a and 226.9(e) and (f), the finance charge disclosures contained in § 226.6(a)(1) and (b)(3)(i) and § 226.7(a)(4) through (7) and (b)(4) through (6) and the right of rescission set forth in § 226.15) and subpart C, any card issuer that extends closed-end credit that is subject to a finance charge or is payable by written agreement in more than four installments.

(v) A person regularly extends consumer credit only if it extended credit (other than credit subject to the requirements of § 226.32) more than 25 times (or more than 5 times for transactions secured by a dwelling) in the preceding calendar year. If a person did not meet these numerical standards in the preceding calendar year, the numerical standards shall be applied to the current calendar year. A person regularly extends consumer credit if, in any 12-month period, the person originates more than one credit extension that is subject to the requirements of § 226.32 or one or more

[2] [Reserved].

[3] [Reserved].

such credit extensions through a mortgage broker.

(18) *Downpayment* means an amount, including the value of property used as a trade-in, paid to a seller to reduce the cash price of goods or services purchased in a credit sale transaction. A deferred portion of a downpayment may be treated as part of the downpayment if it is payable not later than the due date of the second otherwise regularly scheduled payment and is not subject to a finance charge.

(19) *Dwelling* means a residential structure that contains one to four units, whether or not that structure is attached to real property. The term includes an individual condominium unit, cooperative unit, mobile home, and trailer, if it is used as a residence.

(20) *Open-end credit* means consumer credit extended by a creditor under a plan in which:

(i) The creditor reasonably contemplates repeated transactions;

(ii) The creditor may impose a finance charge from time to time on an outstanding unpaid balance; and

(iii) The amount of credit that may be extended to the consumer during the term of the plan (up to any limit set by the creditor) is generally made available to the extent that any outstanding balance is repaid.

(21) *Periodic rate* means a rate of finance charge that is or may be imposed by a creditor on a balance for a day, week, month, or other subdivision of a year.

(22) *Person* means a natural person or an organization, including a corporation, partnership, proprietorship, association, cooperative, estate, trust, or government unit.

(23) *Prepaid finance charge* means any finance charge paid separately in cash or by check before or at consummation of a transaction, or withheld from the proceeds of the credit at any time.

(24) *Residential mortgage transaction* means a transaction in which a mortgage, deed of trust, purchase money security interest arising under an installment sales contract, or equivalent consensual security interest is created or retained in the consumer's principal dwelling to finance the acquisition or initial construction of that dwelling.

(25) *Security interest* means an interest in property that secures performance of a consumer credit obligation and that is recognized by state or federal law. It does not include incidental interests such as interests in proceeds, accessions, additions, fixtures, insurance proceeds (whether or not the creditor is a loss payee or beneficiary), premium rebates, or interests in after-acquired property. For purposes of disclosures under §§ 226.6 and 226.18, the term does not include an interest that arises solely by operation of law. However, for purposes of the right of rescission under §§ 226.15 and 226.23, the term does include interests that arise solely by operation of law.

(26) *State* means any state, the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession of the United States.

(b) *Rules of construction.* For purposes of this regulation, the following rules of construction apply:

(1) Where appropriate, the singular form of a word includes the plural form and plural includes singular.

(2) Where the words *obligation* and *transaction* are used in the regulation, they refer to a consumer credit obligation or transaction, depending upon the context. Where the word *credit* is used in the regulation, it means *consumer credit* unless the context clearly indicates otherwise.

(3) Unless defined in this regulation, the words used have the meanings given to them by state law or contract.

(4) Footnotes have the same legal effect as the text of the regulation.

(5) Where the word *amount* is used in this regulation to describe disclosure requirements, it refers to a numerical amount.

■ 4. Section 226.3 is revised to read as follows:

**§ 226.3 Exempt transactions.**

This regulation does not apply to the following:[4]

(a) *Business, commercial, agricultural, or organizational credit.*

(1) An extension of credit primarily for a business, commercial or agricultural purpose.

(2) An extension of credit to other than a natural person, including credit to government agencies or instrumentalities.

(b) *Credit over $25,000 not secured by real property or a dwelling.* An extension of credit in which the amount financed exceeds $25,000 or in which there is an express written commitment to extend credit in excess of $25,000, unless the extension of credit is:

(1) Secured by real property, or by personal property used or expected to be used as the principal dwelling of the consumer; or

(2) A private education loan as defined in § 226.46(b)(5).

(c) *Public utility credit.* An extension of credit that involves public utility services provided through pipe, wire, other connected facilities, or radio or similar transmission (including extensions of such facilities), if the charges for service, delayed payment, or any discounts for prompt payment are filed with or regulated by any government unit. The financing of durable goods or home improvements by a public utility is not exempt.

(d) *Securities or commodities accounts.* Transactions in securities or commodities accounts in which credit is extended by a broker-dealer registered with the Securities and Exchange Commission or the Commodity Futures Trading Commission.

(e) *Home fuel budget plans.* An installment agreement for the purchase of home fuels in which no finance charge is imposed.

(f) *Student loan programs.* Loans made, insured, or guaranteed pursuant to a program authorized by title IV of the Higher Education Act of 1965 (20 U.S.C. 1070 *et seq.*).

(g) *Employer-sponsored retirement plans.* An extension of credit to a participant in an employer-sponsored retirement plan qualified under Section 401(a) of the Internal Revenue Code, a tax-sheltered annuity under Section 403(b) of the Internal Revenue Code, or an eligible governmental deferred compensation plan under Section 457(b) of the Internal Revenue Code (26 U.S.C. 401(a); 26 U.S.C. 403(b); 26 U.S.C. 457(b)), provided that the extension of credit is comprised of fully vested funds from such participant's account and is made in compliance with the Internal Revenue Code (26 U.S.C. 1 *et seq.*).

■ 5. Section 226.4 is revised to read as follows:

**§ 226.4 Finance charge.**

(a) *Definition.* The finance charge is the cost of consumer credit as a dollar amount. It includes any charge payable directly or indirectly by the consumer and imposed directly or indirectly by the creditor as an incident to or a condition of the extension of credit. It does not include any charge of a type payable in a comparable cash transaction.

(1) *Charges by third parties.* The finance charge includes fees and amounts charged by someone other than the creditor, unless otherwise excluded under this section, if the creditor:

(i) Requires the use of a third party as a condition of or an incident to the extension of credit, even if the consumer can choose the third party; or

(ii) Retains a portion of the third-party charge, to the extent of the portion retained.

(2) *Special rule; closing agent charges.* Fees charged by a third party that

[4] [Reserved].

conducts the loan closing (such as a settlement agent, attorney, or escrow or title company) are finance charges only if the creditor—

(i) Requires the particular services for which the consumer is charged;

(ii) Requires the imposition of the charge; or

(iii) Retains a portion of the third-party charge, to the extent of the portion retained.

(3) *Special rule; mortgage broker fees.* Fees charged by a mortgage broker (including fees paid by the consumer directly to the broker or to the creditor for delivery to the broker) are finance charges even if the creditor does not require the consumer to use a mortgage broker and even if the creditor does not retain any portion of the charge.

(b) *Examples of finance charges.* The finance charge includes the following types of charges, except for charges specifically excluded by paragraphs (c) through (e) of this section:

(1) Interest, time price differential, and any amount payable under an add-on or discount system of additional charges.

(2) Service, transaction, activity, and carrying charges, including any charge imposed on a checking or other transaction account to the extent that the charge exceeds the charge for a similar account without a credit feature.

(3) Points, loan fees, assumption fees, finder's fees, and similar charges.

(4) Appraisal, investigation, and credit report fees.

(5) Premiums or other charges for any guarantee or insurance protecting the creditor against the consumer's default or other credit loss.

(6) Charges imposed on a creditor by another person for purchasing or accepting a consumer's obligation, if the consumer is required to pay the charges in cash, as an addition to the obligation, or as a deduction from the proceeds of the obligation.

(7) Premiums or other charges for credit life, accident, health, or loss-of-income insurance, written in connection with a credit transaction.

(8) Premiums or other charges for insurance against loss of or damage to property, or against liability arising out of the ownership or use of property, written in connection with a credit transaction.

(9) Discounts for the purpose of inducing payment by a means other than the use of credit.

(10) Charges or premiums paid for debt cancellation or debt suspension coverage written in connection with a credit transaction, whether or not the coverage is insurance under applicable law.

(c) *Charges excluded from the finance charge.* The following charges are not finance charges:

(1) Application fees charged to all applicants for credit, whether or not credit is actually extended.

(2) Charges for actual unanticipated late payment, for exceeding a credit limit, or for delinquency, default, or a similar occurrence.

(3) Charges imposed by a financial institution for paying items that overdraw an account, unless the payment of such items and the imposition of the charge were previously agreed upon in writing.

(4) Fees charged for participation in a credit plan, whether assessed on an annual or other periodic basis.

(5) Seller's points.

(6) Interest forfeited as a result of an interest reduction required by law on a time deposit used as security for an extension of credit.

(7) *Real-estate related fees.* The following fees in a transaction secured by real property or in a residential mortgage transaction, if the fees are bona fide and reasonable in amount:

(i) Fees for title examination, abstract of title, title insurance, property survey, and similar purposes.

(ii) Fees for preparing loan-related documents, such as deeds, mortgages, and reconveyance or settlement documents.

(iii) Notary and credit-report fees.

(iv) Property appraisal fees or fees for inspections to assess the value or condition of the property if the service is performed prior to closing, including fees related to pest-infestation or flood-hazard determinations.

(v) Amounts required to be paid into escrow or trustee accounts if the amounts would not otherwise be included in the finance charge.

(8) Discounts offered to induce payment for a purchase by cash, check, or other means, as provided in section 167(b) of the Act.

(d) *Insurance and debt cancellation and debt suspension coverage.* (1) *Voluntary credit insurance premiums.* Premiums for credit life, accident, health, or loss-of-income insurance may be excluded from the finance charge if the following conditions are met:

(i) The insurance coverage is not required by the creditor, and this fact is disclosed in writing.

(ii) The premium for the initial term of insurance coverage is disclosed in writing. If the term of insurance is less than the term of the transaction, the term of insurance also shall be disclosed. The premium may be disclosed on a unit-cost basis only in open-end credit transactions, closed-end credit transactions by mail or telephone under § 226.17(g), and certain closed-end credit transactions involving an insurance plan that limits the total amount of indebtedness subject to coverage.

(iii) The consumer signs or initials an affirmative written request for the insurance after receiving the disclosures specified in this paragraph, except as provided in paragraph (d)(4) of this section. Any consumer in the transaction may sign or initial the request.

(2) *Property insurance premiums.* Premiums for insurance against loss of or damage to property, or against liability arising out of the ownership or use of property, including single interest insurance if the insurer waives all right of subrogation against the consumer,[5] may be excluded from the finance charge if the following conditions are met:

(i) The insurance coverage may be obtained from a person of the consumer's choice,[6] and this fact is disclosed. (A creditor may reserve the right to refuse to accept, for reasonable cause, an insurer offered by the consumer.)

(ii) If the coverage is obtained from or through the creditor, the premium for the initial term of insurance coverage shall be disclosed. If the term of insurance is less than the term of the transaction, the term of insurance shall also be disclosed. The premium may be disclosed on a unit-cost basis only in open-end credit transactions, closed-end credit transactions by mail or telephone under § 226.17(g), and certain closed-end credit transactions involving an insurance plan that limits the total amount of indebtedness subject to coverage.

(3) *Voluntary debt cancellation or debt suspension fees.* Charges or premiums paid for debt cancellation coverage for amounts exceeding the value of the collateral securing the obligation or for debt cancellation or debt suspension coverage in the event of the loss of life, health, or income or in case of accident may be excluded from the finance charge, whether or not the coverage is insurance, if the following conditions are met:

(i) The debt cancellation or debt suspension agreement or coverage is not required by the creditor, and this fact is disclosed in writing;

(ii) The fee or premium for the initial term of coverage is disclosed in writing. If the term of coverage is less than the term of the credit transaction, the term

[5] [Reserved].

[6] [Reserved].

of coverage also shall be disclosed. The fee or premium may be disclosed on a unit-cost basis only in open-end credit transactions, closed-end credit transactions by mail or telephone under § 226.17(g), and certain closed-end credit transactions involving a debt cancellation agreement that limits the total amount of indebtedness subject to coverage;

(iii) The following are disclosed, as applicable, for debt suspension coverage: That the obligation to pay loan principal and interest is only suspended, and that interest will continue to accrue during the period of suspension.

(iv) The consumer signs or initials an affirmative written request for coverage after receiving the disclosures specified in this paragraph, except as provided in paragraph (d)(4) of this section. Any consumer in the transaction may sign or initial the request.

(4) *Telephone purchases.* If a consumer purchases credit insurance or debt cancellation or debt suspension coverage for an open-end (not home-secured) plan by telephone, the creditor must make the disclosures under paragraphs (d)(1)(i) and (ii) or (d)(3)(i) through (iii) of this section, as applicable, orally. In such a case, the creditor shall:

(i) Maintain evidence that the consumer, after being provided the disclosures orally, affirmatively elected to purchase the insurance or coverage; and

(ii) Mail the disclosures under paragraphs (d)(1)(i) and (ii) or (d)(3)(i) through (iii) of this section, as applicable, within three business days after the telephone purchase.

(e) *Certain security interest charges.* If itemized and disclosed, the following charges may be excluded from the finance charge:

(1) Taxes and fees prescribed by law that actually are or will be paid to public officials for determining the existence of or for perfecting, releasing, or satisfying a security interest.

(2) The premium for insurance in lieu of perfecting a security interest to the extent that the premium does not exceed the fees described in paragraph (e)(1) of this section that otherwise would be payable.

(3) *Taxes on security instruments.* Any tax levied on security instruments or on documents evidencing indebtedness if the payment of such taxes is a requirement for recording the instrument securing the evidence of indebtedness.

(f) *Prohibited offsets.* Interest, dividends, or other income received or to be received by the consumer on deposits or investments shall not be deducted in computing the finance charge.

## Subpart B—Open-End Credit

■ 6. Section 226.5 is revised to read as follows:

### § 226.5 General disclosure requirements.

(a) *Form of disclosures.* (1) *General.* (i) The creditor shall make the disclosures required by this subpart clearly and conspicuously.

(ii) The creditor shall make the disclosures required by this subpart in writing,[7] in a form that the consumer may keep,[8] except that:

(A) The following disclosures need not be written: Disclosures under § 226.6(b)(3) of charges that are imposed as part of an open-end (not home-secured) plan that are not required to be disclosed under § 226.6(b)(2) and related disclosures of charges under § 226.9(c)(2)(iii)(B); disclosures under § 226.9(c)(2)(vi); disclosures under § 226.9(d) when a finance charge is imposed at the time of the transaction; and disclosures under § 226.56(b)(1)(i).

(B) The following disclosures need not be in a retainable form: Disclosures that need not be written under paragraph (a)(1)(ii)(A) of this section; disclosures for credit and charge card applications and solicitations under § 226.5a; home-equity disclosures under § 226.5b(d); the alternative summary billing-rights statement under § 226.9(a)(2); the credit and charge card renewal disclosures required under § 226.9(e); and the payment requirements under § 226.10(b), except as provided in § 226.7(b)(13).

(iii) The disclosures required by this subpart may be provided to the consumer in electronic form, subject to compliance with the consumer consent and other applicable provisions of the Electronic Signatures in Global and National Commerce Act (E-Sign Act) (15 U.S.C. 7001 *et seq.*). The disclosures required by §§ 226.5a, 226.5b, and 226.16 may be provided to the consumer in electronic form without regard to the consumer consent or other provisions of the E-Sign Act in the circumstances set forth in those sections.

(2) *Terminology.* (i) Terminology used in providing the disclosures required by this subpart shall be consistent.

(ii) For home-equity plans subject to § 226.5b, the terms *finance charge* and *annual percentage rate,* when required to be disclosed with a corresponding amount or percentage rate, shall be more conspicuous than any other required disclosure.[9] The terms need not be more conspicuous when used for periodic statement disclosures under § 226.7(a)(4) and for advertisements under § 226.16.

(iii) If disclosures are required to be presented in a tabular format pursuant to paragraph (a)(3) of this section, the term *penalty APR* shall be used, as applicable. The term *penalty APR* need not be used in reference to the annual percentage rate that applies with the loss of a promotional rate, assuming the annual percentage rate that applies is not greater than the annual percentage rate that would have applied at the end of the promotional period; or if the annual percentage rate that applies with the loss of a promotional rate is a variable rate, the annual percentage rate is calculated using the same index and margin as would have been used to calculate the annual percentage rate that would have applied at the end of the promotional period. If credit insurance or debt cancellation or debt suspension coverage is required as part of the plan, the term *required* shall be used and the program shall be identified by its name. If an annual percentage rate is required to be presented in a tabular format pursuant to paragraph (a)(3)(i) or (a)(3)(iii) of this section, the term *fixed,* or a similar term, may not be used to describe such rate unless the creditor also specifies a time period that the rate will be fixed and the rate will not increase during that period, or if no such time period is provided, the rate will not increase while the plan is open.

(3) *Specific formats.* (i) Certain disclosures for credit and charge card applications and solicitations must be provided in a tabular format in accordance with the requirements of § 226.5a(a)(2).

(ii) Certain disclosures for home-equity plans must precede other disclosures and must be given in accordance with the requirements of § 226.5b(a).

(iii) Certain account-opening disclosures must be provided in a tabular format in accordance with the requirements of § 226.6(b)(1).

(iv) Certain disclosures provided on periodic statements must be grouped together in accordance with the requirements of § 226.7(b)(6) and (b)(13).

(v) Certain disclosures provided on periodic statements must be given in accordance with the requirements of § 226.7(b)(12).

[7] [Reserved].

[8] [Reserved].

[9] [Reserved].

(vi) Certain disclosures accompanying checks that access a credit card account must be provided in a tabular format in accordance with the requirements of § 226.9(b)(3).

(vii) Certain disclosures provided in a change-in-terms notice must be provided in a tabular format in accordance with the requirements of § 226.9(c)(2)(iv)(D).

(viii) Certain disclosures provided when a rate is increased due to delinquency, default or as a penalty must be provided in a tabular format in accordance with the requirements of § 226.9(g)(3)(ii).

(b) *Time of disclosures.* (1) *Account-opening disclosures.* (i) *General rule.* The creditor shall furnish account-opening disclosures required by § 226.6 before the first transaction is made under the plan.

(ii) *Charges imposed as part of an open-end (not home-secured) plan.* Charges that are imposed as part of an open-end (not home-secured) plan and are not required to be disclosed under § 226.6(b)(2) may be disclosed after account opening but before the consumer agrees to pay or becomes obligated to pay for the charge, provided they are disclosed at a time and in a manner that a consumer would be likely to notice them. This provision does not apply to charges imposed as part of a home-equity plan subject to the requirements of § 226.5b.

(iii) *Telephone purchases.* Disclosures required by § 226.6 may be provided as soon as reasonably practicable after the first transaction if:

(A) The first transaction occurs when a consumer contacts a merchant by telephone to purchase goods and at the same time the consumer accepts an offer to finance the purchase by establishing an open-end plan with the merchant or third-party creditor;

(B) The merchant or third-party creditor permits consumers to return any goods financed under the plan and provides consumers with a sufficient time to reject the plan and return the goods free of cost after the merchant or third-party creditor has provided the written disclosures required by § 226.6; and

(C) The consumer's right to reject the plan and return the goods is disclosed to the consumer as a part of the offer to finance the purchase.

(iv) *Membership fees.* (A) *General.* In general, a creditor may not collect any fee before account-opening disclosures are provided. A creditor may collect, or obtain the consumer's agreement to pay, membership fees, including application fees excludable from the finance charge under § 226.4(c)(1), before providing account-opening disclosures if, after receiving the disclosures, the consumer may reject the plan and have no obligation to pay these fees (including application fees) or any other fee or charge. A membership fee for purposes of this paragraph has the same meaning as a fee for the issuance or availability of credit described in § 226.5a(b)(2). If the consumer rejects the plan, the creditor must promptly refund the membership fee if it has been paid, or take other action necessary to ensure the consumer is not obligated to pay that fee or any other fee or charge.

(B) *Home-equity plans.* Creditors offering home-equity plans subject to the requirements of § 226.5b are not subject to the requirements of paragraph (b)(1)(iv)(A) of this section.

(v) *Application fees.* A creditor may collect an application fee excludable from the finance charge under § 226.4(c)(1) before providing account-opening disclosures. However, if a consumer rejects the plan after receiving account-opening disclosures, the consumer must have no obligation to pay such an application fee, or if the fee was paid, it must be refunded. *See* § 226.5(b)(1)(iv)(A).

(2) *Periodic statements.* (i) *Statement required.* The creditor shall mail or deliver a periodic statement as required by § 226.7 for each billing cycle at the end of which an account has a debit or credit balance of more than $1 or on which a finance charge has been imposed. A periodic statement need not be sent for an account if the creditor deems it uncollectible, if delinquency collection proceedings have been instituted, if the creditor has charged off the account in accordance with loan-loss provisions and will not charge any additional fees or interest on the account, or if furnishing the statement would violate federal law.

(ii) *Timing requirements.* (A) *Payment due date.* For credit card accounts under an open-end (not home-secured) consumer credit plan, a card issuer must adopt reasonable procedures designed to ensure that:

(*1*) Periodic statements are mailed or delivered at least 21 days prior to the payment due date disclosed on the statement pursuant to § 226.7(b)(11)(i)(A); and

(*2*) The card issuer does not treat as late for any purpose a required minimum periodic payment received by the card issuer within 21 days after mailing or delivery of the periodic statement disclosing the due date for that payment.

(B) *Grace period expiration date.* For open-end consumer credit plans, a creditor must adopt reasonable procedures designed to ensure that:

(*1*) Periodic statements are mailed or delivered at least 21 days prior to the date on which any grace period expires; and

(*2*) The creditor does not impose finance charges as a result of the loss of a grace period if a payment that satisfies the terms of the grace period is received by the creditor within 21 days after mailing or delivery of the periodic statement.

(*3*) For purposes of paragraph (b)(2)(ii)(B) of this section, "grace period" means a period within which any credit extended may be repaid without incurring a finance charge due to a periodic interest rate.[10]

(3) *Credit and charge card application and solicitation disclosures.* The card issuer shall furnish the disclosures for credit and charge card applications and solicitations in accordance with the timing requirements of § 226.5a.

(4) *Home-equity plans.* Disclosures for home-equity plans shall be made in accordance with the timing requirements of § 226.5b(b).

(c) *Basis of disclosures and use of estimates.* Disclosures shall reflect the terms of the legal obligation between the parties. If any information necessary for accurate disclosure is unknown to the creditor, it shall make the disclosure based on the best information reasonably available and shall state clearly that the disclosure is an estimate.

(d) *Multiple creditors; multiple consumers.* If the credit plan involves more than one creditor, only one set of disclosures shall be given, and the creditors shall agree among themselves which creditor must comply with the requirements that this regulation imposes on any or all of them. If there is more than one consumer, the disclosures may be made to any consumer who is primarily liable on the account. If the right of rescission under § 226.15 is applicable, however, the disclosures required by §§ 226.6 and 226.15(b) shall be made to each consumer having the right to rescind.

(e) *Effect of subsequent events.* If a disclosure becomes inaccurate because of an event that occurs after the creditor mails or delivers the disclosures, the resulting inaccuracy is not a violation of this regulation, although new disclosures may be required under § 226.9(c).

■ 7. Section 226.5a is revised to read as follows:

[10] [Reserved].

**§ 226.5a Credit and charge card applications and solicitations.**

(a) *General rules.* The card issuer shall provide the disclosures required under this section on or with a solicitation or an application to open a credit or charge card account.

(1) *Definition of solicitation.* For purposes of this section, the term *solicitation* means an offer by the card issuer to open a credit or charge card account that does not require the consumer to complete an application. A "firm offer of credit" as defined in section 603(l) of the Fair Credit Reporting Act (15 U.S.C. 1681a(l)) for a credit or charge card is a solicitation for purposes of this section.

(2) *Form of disclosures; tabular format.* (i) The disclosures in paragraphs (b)(1) through (5) (except for (b)(1)(iv)(B)) and (b)(7) through (15) of this section made pursuant to paragraph (c), (d)(2), (e)(1) or (f) of this section generally shall be in the form of a table with headings, content, and format substantially similar to any of the applicable tables found in G–10 in appendix G to this part.

(ii) The table described in paragraph (a)(2)(i) of this section shall contain only the information required or permitted by this section. Other information may be presented on or with an application or solicitation, provided such information appears outside the required table.

(iii) Disclosures required by paragraphs (b)(1)(iv)(B) and (b)(6) of this section must be placed directly beneath the table.

(iv) When a tabular format is required, any annual percentage rate required to be disclosed pursuant to paragraph (b)(1) of this section, any introductory rate required to be disclosed pursuant to paragraph (b)(1)(ii) of this section, any rate that will apply after a premium initial rate expires required to be disclosed under paragraph (b)(1)(iii) of this section, and any fee or percentage amounts required to be disclosed pursuant to paragraphs (b)(2), (b)(4), (b)(8) through (b)(13) of this section must be disclosed in bold text. However, bold text shall not be used for: Any maximum limits on fee amounts disclosed in the table that do not relate to fees that vary by state; the amount of any periodic fee disclosed pursuant to paragraph (b)(2) of this section that is not an annualized amount; and other annual percentage rates or fee amounts disclosed in the table.

(v) For an application or a solicitation that is accessed by the consumer in electronic form, the disclosures required under this section may be provided to the consumer in electronic form on or with the application or solicitation.

(vi)(A) Except as provided in paragraph (a)(2)(vi)(B) of this section, the table described in paragraph (a)(2)(i) of this section must be provided in a prominent location on or with an application or a solicitation.

(B) If the table described in paragraph (a)(2)(i) of this section is provided electronically, it must be provided in close proximity to the application or solicitation.

(3) *Fees based on a percentage.* If the amount of any fee required to be disclosed under this section is determined on the basis of a percentage of another amount, the percentage used and the identification of the amount against which the percentage is applied may be disclosed instead of the amount of the fee.

(4) *Fees that vary by state.* Card issuers that impose fees referred to in paragraphs (b)(8) through (12) of this section that vary by state may, at the issuer's option, disclose in the table required by paragraph (a)(2)(i) of this section: the specific fee applicable to the consumer's account; or the range of the fees, if the disclosure includes a statement that the amount of the fee varies by state and refers the consumer to a disclosure provided with the table where the amount of the fee applicable to the consumer's account is disclosed. A card issuer may not list fees for multiple states in the table.

(5) *Exceptions.* This section does not apply to:

(i) Home-equity plans accessible by a credit or charge card that are subject to the requirements of § 226.5b;

(ii) Overdraft lines of credit tied to asset accounts accessed by check-guarantee cards or by debit cards;

(iii) Lines of credit accessed by check-guarantee cards or by debit cards that can be used only at automated teller machines;

(iv) Lines of credit accessed solely by account numbers;

(v) Additions of a credit or charge card to an existing open-end plan;

(vi) General purpose applications unless the application, or material accompanying it, indicates that it can be used to open a credit or charge card account; or

(vii) Consumer-initiated requests for applications.

(b) *Required disclosures.* The card issuer shall disclose the items in this paragraph on or with an application or a solicitation in accordance with the requirements of paragraphs (c), (d), (e)(1) or (f) of this section. A credit card issuer shall disclose all applicable items in this paragraph except for paragraph (b)(7) of this section. A charge card issuer shall disclose the applicable items in paragraphs (b)(2), (4), (7) through (12), and (15) of this section.

(1) *Annual percentage rate.* Each periodic rate that may be used to compute the finance charge on an outstanding balance for purchases, a cash advance, or a balance transfer, expressed as an annual percentage rate (as determined by § 226.14(b)). When more than one rate applies for a category of transactions, the range of balances to which each rate is applicable shall also be disclosed. The annual percentage rate for purchases disclosed pursuant to this paragraph shall be in at least 16-point type, except for the following: Oral disclosures of the annual percentage rate for purchases; or a penalty rate that may apply upon the occurrence of one or more specific events.

(i) *Variable rate information.* If a rate disclosed under paragraph (b)(1) of this section is a variable rate, the card issuer shall also disclose the fact that the rate may vary and how the rate is determined. In describing how the applicable rate will be determined, the card issuer must identify the type of index or formula that is used in setting the rate. The value of the index and the amount of the margin that are used to calculate the variable rate shall not be disclosed in the table. A disclosure of any applicable limitations on rate increases or decreases shall not be included in the table.

(ii) *Discounted initial rate.* If the initial rate is an introductory rate, as that term is defined in § 226.16(g)(2)(ii), the card issuer must disclose in the table the introductory rate, the time period during which the introductory rate will remain in effect, and must use the term "introductory" or "intro" in immediate proximity to the introductory rate. The card issuer also must disclose the rate that would otherwise apply to the account pursuant to paragraph (b)(1) of this section. Where the rate is not tied to an index or formula, the card issuer must disclose the rate that will apply after the introductory rate expires. In a variable-rate account, the card issuer must disclose a rate based on the applicable index or formula in accordance with the accuracy requirements set forth in paragraphs (c)(2), (d)(3), or (e)(4) of this section, as applicable.

(iii) *Premium initial rate.* If the initial rate is temporary and is higher than the rate that will apply after the temporary rate expires, the card issuer must disclose the premium initial rate pursuant to paragraph (b)(1) of this section and the time period during which the premium initial rate will

remain in effect. Consistent with paragraph (b)(1) of this section, the premium initial rate for purchases must be in at least 16-point type. The issuer must also disclose in the table the rate that will apply after the premium initial rate expires, in at least 16-point type.

(iv) *Penalty rates.* (A) *In general.* Except as provided in paragraph (b)(1)(iv)(B) of this section, if a rate may increase as a penalty for one or more events specified in the account agreement, such as a late payment or an extension of credit that exceeds the credit limit, the card issuer must disclose pursuant to paragraph (b)(1) of this section the increased rate that may apply, a brief description of the event or events that may result in the increased rate, and a brief description of how long the increased rate will remain in effect.

(B) *Introductory rates.* If the issuer discloses an introductory rate, as that term is defined in § 226.16(g)(2)(ii), in the table or in any written or electronic promotional materials accompanying applications or solicitations subject to paragraph (c) or (e) of this section, the issuer must briefly disclose directly beneath the table the circumstances, if any, under which the introductory rate may be revoked, and the type of rate that will apply after the introductory rate is revoked.

(v) *Rates that depend on consumer's creditworthiness.* If a rate cannot be determined at the time disclosures are given because the rate depends, at least in part, on a later determination of the consumer's creditworthiness, the card issuer must disclose the specific rates or the range of rates that could apply and a statement that the rate for which the consumer may qualify at account opening will depend on the consumer's creditworthiness, and other factors if applicable. If the rate that depends, at least in part, on a later determination of the consumer's creditworthiness is a penalty rate, as described in paragraph (b)(1)(iv) of this section, the card issuer at its option may disclose the highest rate that could apply, instead of disclosing the specific rates or the range of rates that could apply.

(vi) *APRs that vary by state.* Issuers imposing annual percentage rates that vary by state may, at the issuer's option, disclose in the table: the specific annual percentage rate applicable to the consumer's account; or the range of the annual percentage rates, if the disclosure includes a statement that the annual percentage rate varies by state and refers the consumer to a disclosure provided with the table where the annual percentage rate applicable to the consumer's account is disclosed. A card issuer may not list annual percentage rates for multiple states in the table.

(2) *Fees for issuance or availability.* (i) Any annual or other periodic fee that may be imposed for the issuance or availability of a credit or charge card, including any fee based on account activity or inactivity; how frequently it will be imposed; and the annualized amount of the fee.

(ii) Any non-periodic fee that relates to opening an account. A card issuer must disclose that the fee is a one-time fee.

(3) *Fixed finance charge; minimum interest charge.* Any fixed finance charge and a brief description of the charge. Any minimum interest charge if it exceeds $1.00 that could be imposed during a billing cycle, and a brief description of the charge. The $1.00 threshold amount shall be adjusted periodically by the Board to reflect changes in the Consumer Price Index. The Board shall calculate each year a price level adjusted minimum interest charge using the Consumer Price Index in effect on June 1 of that year. When the cumulative change in the adjusted minimum value derived from applying the annual Consumer Price level to the current minimum interest charge threshold has risen by a whole dollar, the minimum interest charge will be increased by $1.00. The issuer may, at its option, disclose in the table minimum interest charges below this threshold.

(4) *Transaction charges.* Any transaction charge imposed by the card issuer for the use of the card for purchases.

(5) *Grace period.* The date by which or the period within which any credit extended for purchases may be repaid without incurring a finance charge due to a periodic interest rate and any conditions on the availability of the grace period. If no grace period is provided, that fact must be disclosed. If the length of the grace period varies, the card issuer may disclose the range of days, the minimum number of days, or the average number of days in the grace period, if the disclosure is identified as a range, minimum, or average. In disclosing in the tabular format a grace period that applies to all types of purchases, the phrase "How to Avoid Paying Interest on Purchases" shall be used as the heading for the row describing the grace period. If a grace period is not offered on all types of purchases, in disclosing this fact in the tabular format, the phrase "Paying Interest" shall be used as the heading for the row describing this fact.

(6) *Balance computation method.* The name of the balance computation method listed in paragraph (g) of this section that is used to determine the balance for purchases on which the finance charge is computed, or an explanation of the method used if it is not listed. In determining which balance computation method to disclose, the card issuer shall assume that credit extended for purchases will not be repaid within the grace period, if any.

(7) *Statement on charge card payments.* A statement that charges incurred by use of the charge card are due when the periodic statement is received.

(8) *Cash advance fee.* Any fee imposed for an extension of credit in the form of cash or its equivalent.

(9) *Late payment fee.* Any fee imposed for a late payment.

(10) *Over-the-limit fee.* Any fee imposed for exceeding a credit limit.

(11) *Balance transfer fee.* Any fee imposed to transfer an outstanding balance.

(12) *Returned-payment fee.* Any fee imposed by the card issuer for a returned payment.

(13) *Required insurance, debt cancellation or debt suspension coverage.* (i) A fee for insurance described in § 226.4(b)(7) or debt cancellation or suspension coverage described in § 226.4(b)(10), if the insurance or debt cancellation or suspension coverage is required as part of the plan; and

(ii) A cross reference to any additional information provided about the insurance or coverage accompanying the application or solicitation, as applicable.

(14) *Available credit.* If a card issuer requires fees for the issuance or availability of credit described in paragraph (b)(2) of this section, or requires a security deposit for such credit, and the total amount of those required fees and/or security deposit that will be imposed and charged to the account when the account is opened is 15 percent or more of the minimum credit limit for the card, a card issuer must disclose the available credit remaining after these fees or security deposit are debited to the account, assuming that the consumer receives the minimum credit limit. In determining whether the 15 percent threshold test is met, the issuer must only consider fees for issuance or availability of credit, or a security deposit, that are required. If fees for issuance or availability are optional, these fees should not be considered in determining whether the disclosure must be given. Nonetheless, if the 15 percent threshold test is met, the issuer in providing the disclosure must disclose the amount of available

credit calculated by excluding those optional fees, and the available credit including those optional fees. This paragraph does not apply with respect to fees or security deposits that are not debited to the account.

(15) *Web site reference.* A reference to the Web site established by the Board and a statement that consumers may obtain on the Web site information about shopping for and using credit cards.

(c) *Direct mail and electronic applications and solicitations.* (1) *General.* The card issuer shall disclose the applicable items in paragraph (b) of this section on or with an application or solicitation that is mailed to consumers or provided to consumers in electronic form.

(2) *Accuracy.* (i) Disclosures in direct mail applications and solicitations must be accurate as of the time the disclosures are mailed. An accurate variable annual percentage rate is one in effect within 60 days before mailing.

(ii) Disclosures provided in electronic form must be accurate as of the time they are sent, in the case of disclosures sent to a consumer's e-mail address, or as of the time they are viewed by the public, in the case of disclosures made available at a location such as a card issuer's Web site. An accurate variable annual percentage rate provided in electronic form is one in effect within 30 days before it is sent to a consumer's e-mail address, or viewed by the public, as applicable.

(d) *Telephone applications and solicitations.* (1) *Oral disclosure.* The card issuer shall disclose orally the information in paragraphs (b)(1) through (7) and (b)(14) of this section, to the extent applicable, in a telephone application or solicitation initiated by the card issuer.

(2) *Alternative disclosure.* The oral disclosure under paragraph (d)(1) of this section need not be given if the card issuer either:

(i)(A) Does not impose a fee described in paragraph (b)(2) of this section; or

(B) Imposes such a fee but provides the consumer with a right to reject the plan consistent with § 226.5(b)(1)(iv); and

(ii) The card issuer discloses in writing within 30 days after the consumer requests the card (but in no event later than the delivery of the card) the following:

(A) The applicable information in paragraph (b) of this section; and

(B) As applicable, the fact that the consumer has the right to reject the plan and not be obligated to pay fees described in paragraph (b)(2) or any other fees or charges until the consumer has used the account or made a payment on the account after receiving a billing statement.

(3) *Accuracy.* (i) The oral disclosures under paragraph (d)(1) of this section must be accurate as of the time they are given.

(ii) The alternative disclosures under paragraph (d)(2) of this section generally must be accurate as of the time they are mailed or delivered. A variable annual percentage rate is one that is accurate if it was:

(A) In effect at the time the disclosures are mailed or delivered; or

(B) In effect as of a specified date (which rate is then updated from time to time, but no less frequently than each calendar month).

(e) *Applications and solicitations made available to general public.* The card issuer shall provide disclosures, to the extent applicable, on or with an application or solicitation that is made available to the general public, including one contained in a catalog, magazine, or other generally available publication. The disclosures shall be provided in accordance with paragraph (e)(1) or (e)(2) of this section.

(1) *Disclosure of required credit information.* The card issuer may disclose in a prominent location on the application or solicitation the following:

(i) The applicable information in paragraph (b) of this section;

(ii) The date the required information was printed, including a statement that the required information was accurate as of that date and is subject to change after that date; and

(iii) A statement that the consumer should contact the card issuer for any change in the required information since it was printed, and a toll-free telephone number or a mailing address for that purpose.

(2) *No disclosure of credit information.* If none of the items in paragraph (b) of this section is provided on or with the application or solicitation, the card issuer may state in a prominent location on the application or solicitation the following:

(i) There are costs associated with the use of the card; and

(ii) The consumer may contact the card issuer to request specific information about the costs, along with a toll-free telephone number and a mailing address for that purpose.

(3) *Prompt response to requests for information.* Upon receiving a request for any of the information referred to in this paragraph, the card issuer shall promptly and fully disclose the information requested.

(4) *Accuracy.* The disclosures given pursuant to paragraph (e)(1) of this section must be accurate as of the date of printing. A variable annual percentage rate is accurate if it was in effect within 30 days before printing.

(f) *In-person applications and solicitations.* A card issuer shall disclose the information in paragraph (b) of this section, to the extent applicable, on or with an application or solicitation that is initiated by the card issuer and given to the consumer in person. A card issuer complies with the requirements of this paragraph if the issuer provides disclosures in accordance with paragraph (c)(1) or (e)(1) of this section.

(g) *Balance computation methods defined.* The following methods may be described by name. Methods that differ due to variations such as the allocation of payments, whether the finance charge begins to accrue on the transaction date or the date of posting the transaction, the existence or length of a grace period, and whether the balance is adjusted by charges such as late payment fees, annual fees and unpaid finance charges do not constitute separate balance computation methods.

(1)(i) *Average daily balance (including new purchases).* This balance is figured by adding the outstanding balance (including new purchases and deducting payments and credits) for each day in the billing cycle, and then dividing by the number of days in the billing cycle.

(ii) *Average daily balance (excluding new purchases).* This balance is figured by adding the outstanding balance (excluding new purchases and deducting payments and credits) for each day in the billing cycle, and then dividing by the number of days in the billing cycle.

(2) *Adjusted balance.* This balance is figured by deducting payments and credits made during the billing cycle from the outstanding balance at the beginning of the billing cycle.

(3) *Previous balance.* This balance is the outstanding balance at the beginning of the billing cycle.

(4) *Daily balance.* For each day in the billing cycle, this balance is figured by taking the beginning balance each day, adding any new purchases, and subtracting any payment and credits.

■ 8. Revise § 226.6 to read as follows:

**§ 226.6 Account-opening disclosures.**

(a) *Rules affecting home-equity plans.* The requirements of this paragraph (a) apply only to home-equity plans subject to the requirements of § 226.5b. A creditor shall disclose the items in this section, to the extent applicable:

(1) *Finance charge.* The circumstances under which a finance charge will be

imposed and an explanation of how it will be determined, as follows:

(i) A statement of when finance charges begin to accrue, including an explanation of whether or not any time period exists within which any credit extended may be repaid without incurring a finance charge. If such a time period is provided, a creditor may, at its option and without disclosure, impose no finance charge when payment is received after the time period's expiration.

(ii) A disclosure of each periodic rate that may be used to compute the finance charge, the range of balances to which it is applicable,[11] and the corresponding annual percentage rate.[12] If a creditor offers a variable-rate plan, the creditor shall also disclose: the circumstances under which the rate(s) may increase; any limitations on the increase; and the effect(s) of an increase. When different periodic rates apply to different types of transactions, the types of transactions to which the periodic rates shall apply shall also be disclosed. A creditor is not required to adjust the range of balances disclosure to reflect the balance below which only a minimum charge applies.

(iii) An explanation of the method used to determine the balance on which the finance charge may be computed.

(iv) An explanation of how the amount of any finance charge will be determined,[13] including a description of how any finance charge other than the periodic rate will be determined.

(2) *Other charges.* The amount of any charge other than a finance charge that may be imposed as part of the plan, or an explanation of how the charge will be determined.

(3) *Home-equity plan information.* The following disclosures described in § 226.5b(d), as applicable:

(i) A statement of the conditions under which the creditor may take certain action, as described in § 226.5b(d)(4)(i), such as terminating the plan or changing the terms.

(ii) The payment information described in § 226.5b(d)(5)(i) and (ii) for both the draw period and any repayment period.

(iii) A statement that negative amortization may occur as described in § 226.5b(d)(9).

(iv) A statement of any transaction requirements as described in § 226.5b(d)(10).

(v) A statement regarding the tax implications as described in § 226.5b(d)(11).

(vi) A statement that the annual percentage rate imposed under the plan does not include costs other than interest as described in § 226.5b(d)(6) and (d)(12)(ii).

(vii) The variable-rate disclosures described in § 226.5b(d)(12)(viii), (d)(12)(x), (d)(12)(xi), and (d)(12)(xii), as well as the disclosure described in § 226.5b(d)(5)(iii), unless the disclosures provided with the application were in a form the consumer could keep and included a representative payment example for the category of payment option chosen by the consumer.

(4) *Security interests.* The fact that the creditor has or will acquire a security interest in the property purchased under the plan, or in other property identified by item or type.

(5) *Statement of billing rights.* A statement that outlines the consumer's rights and the creditor's responsibilities under §§ 226.12(c) and 226.13 and that is substantially similar to the statement found in Model Form G–3 or, at the creditor's option, G–3(A), in appendix G to this part.

(b) *Rules affecting open-end (not home-secured) plans.* The requirements of paragraph (b) of this section apply to plans other than home-equity plans subject to the requirements of § 226.5b.

(1) *Form of disclosures; tabular format for open-end (not home-secured) plans.* Creditors must provide the account-opening disclosures specified in paragraph (b)(2)(i) through (b)(2)(v) (except for (b)(2)(i)(D)(*2*)) and (b)(2)(vii) through (b)(2)(xiv) of this section in the form of a table with the headings, content, and format substantially similar to any of the applicable tables in G–17 in appendix G.

(i) *Highlighting.* In the table, any annual percentage rate required to be disclosed pursuant to paragraph (b)(2)(i) of this section; any introductory rate permitted to be disclosed pursuant to paragraph (b)(2)(i)(B) or required to be disclosed under paragraph (b)(2)(i)(F) of this section, any rate that will apply after a premium initial rate expires permitted to be disclosed pursuant to paragraph (b)(2)(i)(C) or required to be disclosed pursuant to paragraph (b)(2)(i)(F), and any fee or percentage amounts required to be disclosed pursuant to paragraphs (b)(2)(ii), (b)(2)(iv), (b)(2)(vii) through (b)(2)(xii) of this section must be disclosed in bold text. However, bold text shall not be used for: Any maximum limits on fee amounts disclosed in the table that do not relate to fees that vary by state; the amount of any periodic fee disclosed pursuant to paragraph (b)(2) of this section that is not an annualized amount; and other annual percentage rates or fee amounts disclosed in the table.

(ii) *Location.* Only the information required or permitted by paragraphs (b)(2)(i) through (b)(2)(v) (except for (b)(2)(i)(D)(*2*)) and (b)(2)(vii) through (b)(2)(xiv) of this section shall be in the table. Disclosures required by paragraphs (b)(2)(i)(D)(*2*), (b)(2)(vi) and (b)(2)(xv) of this section shall be placed directly below the table. Disclosures required by paragraphs (b)(3) through (b)(5) of this section that are not otherwise required to be in the table and other information may be presented with the account agreement or account-opening disclosure statement, provided such information appears outside the required table.

(iii) *Fees that vary by state.* Creditors that impose fees referred to in paragraphs (b)(2)(vii) through (b)(2)(xi) of this section that vary by state and that provide the disclosures required by paragraph (b) of this section in person at the time the open-end (not home-secured) plan is established in connection with financing the purchase of goods or services may, at the creditor's option, disclose in the account-opening table the specific fee applicable to the consumer's account, or the range of the fees, if the disclosure includes a statement that the amount of the fee varies by state and refers the consumer to the account agreement or other disclosure provided with the account-opening table where the amount of the fee applicable to the consumer's account is disclosed. A creditor may not list fees for multiple states in the account-opening summary table.

(iv) *Fees based on a percentage.* If the amount of any fee required to be disclosed under this section is determined on the basis of a percentage of another amount, the percentage used and the identification of the amount against which the percentage is applied may be disclosed instead of the amount of the fee.

(2) *Required disclosures for account-opening table for open-end (not home-secured) plans.* A creditor shall disclose the items in this section, to the extent applicable:

(i) *Annual percentage rate.* Each periodic rate that may be used to compute the finance charge on an outstanding balance for purchases, a cash advance, or a balance transfer, expressed as an annual percentage rate (as determined by § 226.14(b)). When more than one rate applies for a category of transactions, the range of balances to which each rate is applicable shall also be disclosed. The annual percentage rate for purchases disclosed pursuant to this paragraph shall be in at least 16-point type, except for the following: A penalty

[11] [Reserved].

[12] [Reserved].

[13] [Reserved].

rate that may apply upon the occurrence of one or more specific events.

(A) *Variable-rate information.* If a rate disclosed under paragraph (b)(2)(i) of this section is a variable rate, the creditor shall also disclose the fact that the rate may vary and how the rate is determined. In describing how the applicable rate will be determined, the creditor must identify the type of index or formula that is used in setting the rate. The value of the index and the amount of the margin that are used to calculate the variable rate shall not be disclosed in the table. A disclosure of any applicable limitations on rate increases or decreases shall not be included in the table.

(B) *Discounted initial rates.* If the initial rate is an introductory rate, as that term is defined in § 226.16(g)(2)(ii), the creditor must disclose the rate that would otherwise apply to the account pursuant to paragraph (b)(2)(i) of this section. Where the rate is not tied to an index or formula, the creditor must disclose the rate that will apply after the introductory rate expires. In a variable-rate account, the card issuer must disclose a rate based on the applicable index or formula in accordance with the accuracy requirements of paragraph (b)(4)(ii)(G) of this section. Except as provided in paragraph (b)(2)(i)(F) of this section, the creditor is not required to, but may disclose in the table the introductory rate along with the rate that would otherwise apply to the account if the creditor also discloses the time period during which the introductory rate will remain in effect, and uses the term "introductory" or "intro" in immediate proximity to the introductory rate.

(C) *Premium initial rate.* If the initial rate is temporary and is higher than the rate that will apply after the temporary rate expires, the creditor must disclose the premium initial rate pursuant to paragraph (b)(2)(i) of this section. Consistent with paragraph (b)(2)(i) of this section, the premium initial rate for purchases must be in at least 16-point type. Except as provided in paragraph (b)(2)(i)(F) of this section, the creditor is not required to, but may disclose in the table the rate that will apply after the premium initial rate expires if the creditor also discloses the time period during which the premium initial rate will remain in effect. If the creditor also discloses in the table the rate that will apply after the premium initial rate for purchases expires, that rate also must be in at least 16-point type.

(D) *Penalty rates.* (*1*) *In general.* Except as provided in paragraph (b)(2)(i)(D)(*2*) of this section, if a rate may increase as a penalty for one or more events specified in the account agreement, such as a late payment or an extension of credit that exceeds the credit limit, the creditor must disclose pursuant to paragraph (b)(2)(i) of this section the increased rate that may apply, a brief description of the event or events that may result in the increased rate, and a brief description of how long the increased rate will remain in effect. If more than one penalty rate may apply, the creditor at its option may disclose the highest rate that could apply, instead of disclosing the specific rates or the range of rates that could apply.

(*2*) *Introductory rates.* If the creditor discloses in the table an introductory rate, as that term is defined in § 226.16(g)(2)(ii), creditors must briefly disclose directly beneath the table the circumstances under which the introductory rate may be revoked, and the rate that will apply after the introductory rate is revoked.

(E) *Point of sale where APRs vary by state or based on creditworthiness.* Creditors imposing annual percentage rates that vary by state or based on the consumer's creditworthiness and providing the disclosures required by paragraph (b) of this section in person at the time the open-end (not home-secured) plan is established in connection with financing the purchase of goods or services may, at the creditor's option, disclose pursuant to paragraph (b)(2)(i) of this section in the account-opening table:

(*1*) The specific annual percentage rate applicable to the consumer's account; or

(*2*) The range of the annual percentage rates, if the disclosure includes a statement that the annual percentage rate varies by state or will be determined based on the consumer's creditworthiness and refers the consumer to the account agreement or other disclosure provided with the account-opening table where the annual percentage rate applicable to the consumer's account is disclosed. A creditor may not list annual percentage rates for multiple states in the account-opening table.

(F) *Credit card accounts under an open-end (not home-secured) consumer credit plan.* Notwithstanding paragraphs (b)(2)(i)(B) and (b)(2)(i)(C) of this section, for credit card accounts under an open-end (not home-secured) plan, issuers must disclose in the table—

(*1*) Any introductory rate as that term is defined in § 226.16(g)(2)(ii) that would apply to the account, consistent with the requirements of paragraph (b)(2)(i)(B) of this section, and

(*2*) Any rate that would apply upon the expiration of a premium initial rate, consistent with the requirements of paragraph (b)(2)(i)(C) of this section.

(ii) *Fees for issuance or availability.* (A) Any annual or other periodic fee that may be imposed for the issuance or availability of an open-end plan, including any fee based on account activity or inactivity; how frequently it will be imposed; and the annualized amount of the fee.

(B) Any non-periodic fee that relates to opening the plan. A creditor must disclose that the fee is a one-time fee.

(iii) *Fixed finance charge; minimum interest charge.* Any fixed finance charge and a brief description of the charge. Any minimum interest charge if it exceeds $1.00 that could be imposed during a billing cycle, and a brief description of the charge. The $1.00 threshold amount shall be adjusted periodically by the Board to reflect changes in the Consumer Price Index. The Board shall calculate each year a price level adjusted minimum interest charge using the Consumer Price Index in effect on the June 1 of that year. When the cumulative change in the adjusted minimum value derived from applying the annual Consumer Price level to the current minimum interest charge threshold has risen by a whole dollar, the minimum interest charge will be increased by $1.00. The creditor may, at its option, disclose in the table minimum interest charges below this threshold.

(iv) *Transaction charges.* Any transaction charge imposed by the creditor for use of the open-end plan for purchases.

(v) *Grace period.* The date by which or the period within which any credit extended may be repaid without incurring a finance charge due to a periodic interest rate and any conditions on the availability of the grace period. If no grace period is provided, that fact must be disclosed. If the length of the grace period varies, the creditor may disclose the range of days, the minimum number of days, or the average number of the days in the grace period, if the disclosure is identified as a range, minimum, or average. In disclosing in the tabular format a grace period that applies to all features on the account, the phrase "How to Avoid Paying Interest" shall be used as the heading for the row describing the grace period. If a grace period is not offered on all features of the account, in disclosing this fact in the tabular format, the phrase "Paying Interest" shall be used as the heading for the row describing this fact.

(vi) *Balance computation method.* The name of the balance computation method listed in § 226.5a(g) that is used

to determine the balance on which the finance charge is computed for each feature, or an explanation of the method used if it is not listed, along with a statement that an explanation of the method(s) required by paragraph (b)(4)(i)(D) of this section is provided with the account-opening disclosures. In determining which balance computation method to disclose, the creditor shall assume that credit extended will not be repaid within any grace period, if any.

(vii) *Cash advance fee.* Any fee imposed for an extension of credit in the form of cash or its equivalent.

(viii) *Late payment fee.* Any fee imposed for a late payment.

(ix) *Over-the-limit fee.* Any fee imposed for exceeding a credit limit.

(x) *Balance transfer fee.* Any fee imposed to transfer an outstanding balance.

(xi) *Returned-payment fee.* Any fee imposed by the creditor for a returned payment.

(xii) *Required insurance, debt cancellation or debt suspension coverage.* (A) A fee for insurance described in § 226.4(b)(7) or debt cancellation or suspension coverage described in § 226.4(b)(10), if the insurance, or debt cancellation or suspension coverage is required as part of the plan; and

(B) A cross reference to any additional information provided about the insurance or coverage, as applicable.

(xiii) *Available credit.* If a creditor requires fees for the issuance or availability of credit described in paragraph (b)(2)(ii) of this section, or requires a security deposit for such credit, and the total amount of those required fees and/or security deposit that will be imposed and charged to the account when the account is opened is 15 percent or more of the minimum credit limit for the plan, a creditor must disclose the available credit remaining after these fees or security deposit are debited to the account. The determination whether the 15 percent threshold is met must be based on the minimum credit limit for the plan. However, the disclosure provided under this paragraph must be based on the actual initial credit limit provided on the account. In determining whether the 15 percent threshold test is met, the creditor must only consider fees for issuance or availability of credit, or a security deposit, that are required. If fees for issuance or availability are optional, these fees should not be considered in determining whether the disclosure must be given. Nonetheless, if the 15 percent threshold test is met, the creditor in providing the disclosure must disclose the amount of available credit calculated by excluding those optional fees, and the available credit including those optional fees. The creditor shall also disclose that the consumer has the right to reject the plan and not be obligated to pay those fees or any other fee or charges until the consumer has used the account or made a payment on the account after receiving a periodic statement. This paragraph does not apply with respect to fees or security deposits that are not debited to the account.

(xiv) *Web site reference.* For issuers of credit cards that are not charge cards, a reference to the Web site established by the Board and a statement that consumers may obtain on the Web site information about shopping for and using credit cards.

(xv) *Billing error rights reference.* A statement that information about consumers' right to dispute transactions is included in the account-opening disclosures.

(3) *Disclosure of charges imposed as part of open-end (not home-secured) plans.* A creditor shall disclose, to the extent applicable:

(i) For charges imposed as part of an open-end (not home-secured) plan, the circumstances under which the charge may be imposed, including the amount of the charge or an explanation of how the charge is determined. For finance charges, a statement of when the charge begins to accrue and an explanation of whether or not any time period exists within which any credit that has been extended may be repaid without incurring the charge. If such a time period is provided, a creditor may, at its option and without disclosure, elect not to impose a finance charge when payment is received after the time period expires.

(ii) Charges imposed as part of the plan are:

(A) Finance charges identified under § 226.4(a) and § 226.4(b).

(B) Charges resulting from the consumer's failure to use the plan as agreed, except amounts payable for collection activity after default, attorney's fees whether or not automatically imposed, and post-judgment interest rates permitted by law.

(C) Taxes imposed on the credit transaction by a state or other governmental body, such as documentary stamp taxes on cash advances.

(D) Charges for which the payment, or nonpayment, affect the consumer's access to the plan, the duration of the plan, the amount of credit extended, the period for which credit is extended, or the timing or method of billing or payment.

(E) Charges imposed for terminating a plan.

(F) Charges for voluntary credit insurance, debt cancellation or debt suspension.

(iii) Charges that are not imposed as part of the plan include:

(A) Charges imposed on a cardholder by an institution other than the card issuer for the use of the other institution's ATM in a shared or interchange system.

(B) A charge for a package of services that includes an open-end credit feature, if the fee is required whether or not the open-end credit feature is included and the non-credit services are not merely incidental to the credit feature.

(C) Charges under § 226.4(e) disclosed as specified.

(4) *Disclosure of rates for open-end (not home-secured) plans.* A creditor shall disclose, to the extent applicable:

(i) For each periodic rate that may be used to calculate interest:

(A) *Rates.* The rate, expressed as a periodic rate and a corresponding annual percentage rate.

(B) *Range of balances.* The range of balances to which the rate is applicable; however, a creditor is not required to adjust the range of balances disclosure to reflect the balance below which only a minimum charge applies.

(C) *Type of transaction.* The type of transaction to which the rate applies, if different rates apply to different types of transactions.

(D) *Balance computation method.* An explanation of the method used to determine the balance to which the rate is applied.

(ii) *Variable-rate accounts.* For interest rate changes that are tied to increases in an index or formula (variable-rate accounts) specifically set forth in the account agreement:

(A) The fact that the annual percentage rate may increase.

(B) How the rate is determined, including the margin.

(C) The circumstances under which the rate may increase.

(D) The frequency with which the rate may increase.

(E) Any limitation on the amount the rate may change.

(F) The effect(s) of an increase.

(G) Except as specified in paragraph (b)(4)(ii)(H) of this section, a rate is accurate if it is a rate as of a specified date and this rate was in effect within the last 30 days before the disclosures are provided.

(H) Creditors imposing annual percentage rates that vary according to an index that is not under the creditor's

control that provide the disclosures required by paragraph (b) of this section in person at the time the open-end (not home-secured) plan is established in connection with financing the purchase of goods or services may disclose in the table a rate, or range of rates to the extent permitted by § 226.6(b)(2)(i)(E), that was in effect within the last 90 days before the disclosures are provided, along with a reference directing the consumer to the account agreement or other disclosure provided with the account-opening table where an annual percentage rate applicable to the consumer's account in effect within the last 30 days before the disclosures are provided is disclosed.

(iii) *Rate changes not due to index or formula.* For interest rate changes that are specifically set forth in the account agreement and not tied to increases in an index or formula:

(A) The initial rate (expressed as a periodic rate and a corresponding annual percentage rate) required under paragraph (b)(4)(i)(A) of this section.

(B) How long the initial rate will remain in effect and the specific events that cause the initial rate to change.

(C) The rate (expressed as a periodic rate and a corresponding annual percentage rate) that will apply when the initial rate is no longer in effect and any limitation on the time period the new rate will remain in effect.

(D) The balances to which the new rate will apply.

(E) The balances to which the current rate at the time of the change will apply.

(5) *Additional disclosures for open-end (not home-secured) plans.* A creditor shall disclose, to the extent applicable:

(i) *Voluntary credit insurance, debt cancellation or debt suspension.* The disclosures in §§ 226.4(d)(1)(i) and (d)(1)(ii) and (d)(3)(i) through (d)(3)(iii) if the creditor offers optional credit insurance or debt cancellation or debt suspension coverage that is identified in § 226.4(b)(7) or (b)(10).

(ii) *Security interests.* The fact that the creditor has or will acquire a security interest in the property purchased under the plan, or in other property identified by item or type.

(iii) *Statement of billing rights.* A statement that outlines the consumer's rights and the creditor's responsibilities under §§ 226.12(c) and 226.13 and that is substantially similar to the statement found in Model Form G–3(A) in appendix G to this part.

■ 9. Revise § 226.7 to read as follows:

**§ 226.7 Periodic statement.**

The creditor shall furnish the consumer with a periodic statement that discloses the following items, to the extent applicable:

(a) *Rules affecting home-equity plans.* The requirements of paragraph (a) of this section apply only to home-equity plans subject to the requirements of § 226.5b. Alternatively, a creditor subject to this paragraph may, at its option, comply with any of the requirements of paragraph (b) of this section; however, any creditor that chooses not to provide a disclosure under paragraph (a)(7) of this section must comply with paragraph (b)(6) of this section.

(1) *Previous balance.* The account balance outstanding at the beginning of the billing cycle.

(2) *Identification of transactions.* An identification of each credit transaction in accordance with § 226.8.

(3) *Credits.* Any credit to the account during the billing cycle, including the amount and the date of crediting. The date need not be provided if a delay in accounting does not result in any finance or other charge.

(4) *Periodic rates.* (i) Except as provided in paragraph (a)(4)(ii) of this section, each periodic rate that may be used to compute the finance charge, the range of balances to which it is applicable,[14] and the corresponding annual percentage rate.[15] If no finance charge is imposed when the outstanding balance is less than a certain amount, the creditor is not required to disclose that fact, or the balance below which no finance charge will be imposed. If different periodic rates apply to different types of transactions, the types of transactions to which the periodic rates apply shall also be disclosed. For variable-rate plans, the fact that the periodic rate(s) may vary.

(ii) *Exception.* An annual percentage rate that differs from the rate that would otherwise apply and is offered only for a promotional period need not be disclosed except in periods in which the offered rate is actually applied.

(5) *Balance on which finance charge computed.* The amount of the balance to which a periodic rate was applied and an explanation of how that balance was determined. When a balance is determined without first deducting all credits and payments made during the billing cycle, the fact and the amount of the credits and payments shall be disclosed.

(6) *Amount of finance charge and other charges.* Creditors may comply with paragraphs (a)(6) of this section, or with paragraph (b)(6) of this section, at their option.

(i) *Finance charges.* The amount of any finance charge debited or added to the account during the billing cycle, using the term *finance charge.* The components of the finance charge shall be individually itemized and identified to show the amount(s) due to the application of any periodic rates and the amounts(s) of any other type of finance charge. If there is more than one periodic rate, the amount of the finance charge attributable to each rate need not be separately itemized and identified.

(ii) *Other charges.* The amounts, itemized and identified by type, of any charges other than finance charges debited to the account during the billing cycle.

(7) *Annual percentage rate.* At a creditor's option, when a finance charge is imposed during the billing cycle, the annual percentage rate(s) determined under § 226.14(c) using the term *annual percentage rate.*

(8) *Grace period.* The date by which or the time period within which the new balance or any portion of the new balance must be paid to avoid additional finance charges. If such a time period is provided, a creditor may, at its option and without disclosure, impose no finance charge if payment is received after the time period's expiration.

(9) *Address for notice of billing errors.* The address to be used for notice of billing errors. Alternatively, the address may be provided on the billing rights statement permitted by § 226.9(a)(2).

(10) *Closing date of billing cycle; new balance.* The closing date of the billing cycle and the account balance outstanding on that date.

(b) *Rules affecting open-end (not home-secured) plans.* The requirements of paragraph (b) of this section apply only to plans other than home-equity plans subject to the requirements of § 226.5b.

(1) *Previous balance.* The account balance outstanding at the beginning of the billing cycle.

(2) *Identification of transactions.* An identification of each credit transaction in accordance with § 226.8.

(3) *Credits.* Any credit to the account during the billing cycle, including the amount and the date of crediting. The date need not be provided if a delay in crediting does not result in any finance or other charge.

(4) *Periodic rates.* (i) Except as provided in paragraph (b)(4)(ii) of this section, each periodic rate that may be used to compute the interest charge expressed as an annual percentage rate and using the term *Annual Percentage Rate,* along with the range of balances to which it is applicable. If no interest

[14] [Reserved].

[15] [Reserved].

charge is imposed when the outstanding balance is less than a certain amount, the creditor is not required to disclose that fact, or the balance below which no interest charge will be imposed. The types of transactions to which the periodic rates apply shall also be disclosed. For variable-rate plans, the fact that the annual percentage rate may vary.

(ii) *Exception.* A promotional rate, as that term is defined in § 226.16(g)(2)(i), is required to be disclosed only in periods in which the offered rate is actually applied.

(5) *Balance on which finance charge computed.* The amount of the balance to which a periodic rate was applied and an explanation of how that balance was determined, using the term *Balance Subject to Interest Rate.* When a balance is determined without first deducting all credits and payments made during the billing cycle, the fact and the amount of the credits and payments shall be disclosed. As an alternative to providing an explanation of how the balance was determined, a creditor that uses a balance computation method identified in § 226.5a(g) may, at the creditor's option, identify the name of the balance computation method and provide a toll-free telephone number where consumers may obtain from the creditor more information about the balance computation method and how resulting interest charges were determined. If the method used is not identified in § 226.5a(g), the creditor shall provide a brief explanation of the method used.

(6) *Charges imposed.* (i) The amounts of any charges imposed as part of a plan as stated in § 226.6(b)(3), grouped together, in proximity to transactions identified under paragraph (b)(2) of this section, substantially similar to Sample G–18(A) in appendix G to this part.

(ii) *Interest.* Finance charges attributable to periodic interest rates, using the term *Interest Charge,* must be grouped together under the heading *Interest Charged,* itemized and totaled by type of transaction, and a total of finance charges attributable to periodic interest rates, using the term *Total Interest,* must be disclosed for the statement period and calendar year to date, using a format substantially similar to Sample G–18(A) in appendix G to this part.

(iii) *Fees.* Charges imposed as part of the plan other than charges attributable to periodic interest rates must be grouped together under the heading *Fees,* identified consistent with the feature or type, and itemized, and a total of charges, using the term *Fees,* must be disclosed for the statement period and calendar year to date, using a format substantially similar to Sample G–18(A) in appendix G to this part.

(7) *Change-in-terms and increased penalty rate summary for open-end (not home-secured) plans.* Creditors that provide a change-in-terms notice required by § 226.9(c), or a rate increase notice required by § 226.9(g), on or with the periodic statement, must disclose the information in § 226.9(c)(2)(iv)(A) and (c)(2)(iv)(B) (if applicable) or § 226.9(g)(3)(i) on the periodic statement in accordance with the format requirements in § 226.9(c)(2)(iv)(D), and § 226.9(g)(3)(ii). See Forms G–18(F) and G–18(G) in appendix G to this part.

(8) *Grace period.* The date by which or the time period within which the new balance or any portion of the new balance must be paid to avoid additional finance charges. If such a time period is provided, a creditor may, at its option and without disclosure, impose no finance charge if payment is received after the time period's expiration.

(9) *Address for notice of billing errors.* The address to be used for notice of billing errors. Alternatively, the address may be provided on the billing rights statement permitted by § 226.9(a)(2).

(10) *Closing date of billing cycle; new balance.* The closing date of the billing cycle and the account balance outstanding on that date. The new balance must be disclosed in accordance with the format requirements of paragraph (b)(13) of this section.

(11) *Due date; late payment costs.* (i) Except as provided in paragraph (b)(11)(ii) of this section and in accordance with the format requirements in paragraph (b)(13) of this section, for a credit card account under an open-end (not home-secured) consumer credit plan, a card issuer must provide on each periodic statement:

(A) The due date for a payment. The due date disclosed pursuant to this paragraph shall be the same day of the month for each billing cycle.

(B) The amount of any late payment fee and any increased periodic rate(s) (expressed as an annual percentage rate(s)) that may be imposed on the account as a result of a late payment. If a range of late payment fees may be assessed, the card issuer may state the range of fees, or the highest fee and at the issuer's option with the highest fee an indication that the fee imposed could be lower. If the rate may be increased for more than one feature or balance, the card issuer may state the range of rates or the highest rate that could apply and at the issuer's option an indication that the rate imposed could be lower.

(ii) *Exception.* The requirements of paragraph (b)(11)(i) of this section do not apply to the following:

(A) Periodic statements provided solely for charge card accounts; and

(B) Periodic statements provided for a charged-off account where payment of the entire account balance is due immediately.

(12) *Repayment disclosures.* (i) *In general.* Except as provided in paragraphs (b)(12)(ii) and (b)(12)(v) of this section, for a credit card account under an open-end (not home-secured) consumer credit plan, a card issuer must provide the following disclosures on each periodic statement:

(A) The following statement with a bold heading: "Minimum Payment Warning: If you make only the minimum payment each period, you will pay more in interest and it will take you longer to pay off your balance;"

(B) The minimum payment repayment estimate, as described in Appendix M1 to this part. If the minimum payment repayment estimate is less than 2 years, the card issuer must disclose the estimate in months. Otherwise, the estimate must be disclosed in years and rounded to the nearest whole year;

(C) The minimum payment total cost estimate, as described in Appendix M1 to this part. The minimum payment total cost estimate must be rounded to the nearest whole dollar;

(D) A statement that the minimum payment repayment estimate and the minimum payment total cost estimate are based on the current outstanding balance shown on the periodic statement. A statement that the minimum payment repayment estimate and the minimum payment total cost estimate are based on the assumption that only minimum payments are made and no other amounts are added to the balance;

(E) A toll-free telephone number where the consumer may obtain from the card issuer information about credit counseling services consistent with paragraph (b)(12)(iv) of this section; and

(F)(*1*) Except as provided in paragraph (b)(12)(i)(F)(*2*) of this section, the following disclosures:

(*i*) The estimated monthly payment for repayment in 36 months, as described in Appendix M1 to this part. The estimated monthly payment for repayment in 36 months must be rounded to the nearest whole dollar;

(*ii*) A statement that the card issuer estimates that the consumer will repay the outstanding balance shown on the periodic statement in 3 years if the consumer pays the estimated monthly payment each month for 3 years;

(*iii*) The total cost estimate for repayment in 36 months, as described in Appendix M1 to this part. The total cost estimate for repayment in 36 months must be rounded to the nearest whole dollar; and

(*iv*) The savings estimate for repayment in 36 months, as described in Appendix M1 to this part. The savings estimate for repayment in 36 months must be rounded to the nearest whole dollar.

(*2*) The requirements of paragraph (b)(12)(i)(F)(*1*) of this section do not apply to a periodic statement in any of the following circumstances:

(*i*) The minimum payment repayment estimate that is disclosed on the periodic statement pursuant to paragraph (b)(12)(i)(B) of this section after rounding is three years or less;

(*ii*) The estimated monthly payment for repayment in 36 months, as described in Appendix M1 to this part, rounded to the nearest whole dollar that is calculated for a particular billing cycle is less than the minimum payment required for the plan for that billing cycle; and

(*iii*) A billing cycle where an account has both a balance in a revolving feature where the required minimum payments for this feature will not amortize that balance in a fixed amount of time specified in the account agreement and a balance in a fixed repayment feature where the required minimum payment for this fixed repayment feature will amortize that balance in a fixed amount of time specified in the account agreement which is less than 36 months.

(ii) *Negative or no amortization.* If negative or no amortization occurs when calculating the minimum payment repayment estimate as described in Appendix M1 of this part, a card issuer must provide the following disclosures on the periodic statement instead of the disclosures set forth in paragraph (b)(12)(i) of this section:

(A) The following statement: "Minimum Payment Warning: Even if you make no more charges using this card, if you make only the minimum payment each month we estimate you will never pay off the balance shown on this statement because your payment will be less than the interest charged each month";

(B) The following statement: "If you make more than the minimum payment each period, you will pay less in interest and pay off your balance sooner";

(C) The estimated monthly payment for repayment in 36 months, as described in Appendix M1 to this part. The estimated monthly payment for repayment in 36 months must be rounded to the nearest whole dollar;

(D) A statement that the card issuer estimates that the consumer will repay the outstanding balance shown on the periodic statement in 3 years if the consumer pays the estimated monthly payment each month for 3 years; and

(E) A toll-free telephone number where the consumer may obtain from the card issuer information about credit counseling services consistent with paragraph (b)(12)(iv) of this section.

(iii) *Format requirements.* A card issuer must provide the disclosures required by paragraph (b)(12)(i) or (b)(12)(ii) of this section in accordance with the format requirements of paragraph (b)(13) of this section, and in a format substantially similar to Samples G–18(C)(1), G–18(C)(2) and G–18(C)(3) in Appendix G to this part, as applicable.

(iv) *Provision of information about credit counseling services.* (A) *Required information.* To the extent available from the United States Trustee or a bankruptcy administrator, a card issuer must provide through the toll-free telephone number disclosed pursuant to paragraphs (b)(12)(i) or (b)(12)(ii) of this section the name, street address, telephone number, and Web site address for at least three organizations that have been approved by the United States Trustee or a bankruptcy administrator pursuant to 11 U.S.C. 111(a)(1) to provide credit counseling services in, at the card issuer's option, either the state in which the billing address for the account is located or the state specified by the consumer.

(B) *Updating required information.* At least annually, a card issuer must update the information provided pursuant to paragraph (b)(12)(iv)(A) of this section for consistency with the information available from the United States Trustee or a bankruptcy administrator.

(v) *Exemptions.* Paragraph (b)(12) of this section does not apply to:

(A) Charge card accounts that require payment of outstanding balances in full at the end of each billing cycle;

(B) A billing cycle immediately following two consecutive billing cycles in which the consumer paid the entire balance in full, had a zero outstanding balance or had a credit balance; and

(C) A billing cycle where paying the minimum payment due for that billing cycle will pay the entire outstanding balance on the account for that billing cycle.

(13) *Format requirements.* The due date required by paragraph (b)(11) of this section shall be disclosed on the front of the first page of the periodic statement. The amount of the late payment fee and the annual percentage rate(s) required by paragraph (b)(11) of this section shall be stated in close proximity to the due date. The ending balance required by paragraph (b)(10) of this section and the disclosures required by paragraph (b)(12) of this section shall be disclosed closely proximate to the minimum payment due. The due date, late payment fee and annual percentage rate, ending balance, minimum payment due, and disclosures required by paragraph (b)(12) of this section shall be grouped together. Sample G–18(D) in Appendix G to this part sets forth an example of how these terms may be grouped.

(14) *Deferred interest or similar transactions.* For accounts with an outstanding balance subject to a deferred interest or similar program, the date by which that outstanding balance must be paid in full in order to avoid the obligation to pay finance charges on such balance must be disclosed on the front of each periodic statement issued during the deferred interest period beginning with the first periodic statement issued during the deferred interest period that reflects the deferred interest or similar transaction. The disclosure provided pursuant to this paragraph must be substantially similar to Sample G–18(H) in Appendix G to this part.

■ 10. Section 226.8 is revised to read as follows:

**§ 226.8 Identifying transactions on periodic statements.**

The creditor shall identify credit transactions on or with the first periodic statement that reflects the transaction by furnishing the following information, as applicable.[16]

(a) *Sale credit.* (1) Except as provided in paragraph (a)(2) of this section, for each credit transaction involving the sale of property or services, the creditor must disclose the amount and date of the transaction, and either:

(i) A brief identification [17] of the property or services purchased, for creditors and sellers that are the same or related; [18] or

(ii) The seller's name; and the city and state or foreign country where the transaction took place.[19] The creditor may omit the address or provide any suitable designation that helps the consumer to identify the transaction when the transaction took place at a location that is not fixed; took place in

[16] [Reserved].

[17] [Reserved].

[18] [Reserved].

[19] [Reserved].

the consumer's home; or was a mail, Internet, or telephone order.

(2) Creditors need not comply with paragraph (a)(1) of this section if an actual copy of the receipt or other credit document is provided with the first periodic statement reflecting the transaction, and the amount of the transaction and either the date of the transaction to the consumer's account or the date of debiting the transaction are disclosed on the copy or on the periodic statement.

(b) *Nonsale credit.* For each credit transaction not involving the sale of property or services, the creditor must disclose a brief identification of the transaction;[20] the amount of the transaction; and at least one of the following dates: The date of the transaction, the date the transaction was debited to the consumer's account, or, if the consumer signed the credit document, the date appearing on the document. If an actual copy of the receipt or other credit document is provided and that copy shows the amount and at least one of the specified dates, the brief identification may be omitted.

(c) *Alternative creditor procedures; consumer inquiries for clarification or documentation.* The following procedures apply to creditors that treat an inquiry for clarification or documentation as a notice of a billing error, including correcting the account in accordance with § 226.13(e):

(1) Failure to disclose the information required by paragraphs (a) and (b) of this section is not a failure to comply with the regulation, provided that the creditor also maintains procedures reasonably designed to obtain and provide the information. This applies to transactions that take place outside a state, as defined in § 226.2(a)(26), whether or not the creditor maintains procedures reasonably adapted to obtain the required information.

(2) As an alternative to the brief identification for sale or nonsale credit, the creditor may disclose a number or symbol that also appears on the receipt or other credit document given to the consumer, if the number or symbol reasonably identifies that transaction with that creditor.

■ 11. Revise § 226.9 to read as follows:

**§ 226.9 Subsequent disclosure requirements.**

(a) *Furnishing statement of billing rights.* (1) *Annual statement.* The creditor shall mail or deliver the billing rights statement required by § 226.6(a)(5) and (b)(5)(iii) at least once per calendar year, at intervals of not less than 6 months nor more than 18 months, either to all consumers or to each consumer entitled to receive a periodic statement under § 226.5(b)(2) for any one billing cycle.

(2) *Alternative summary statement.* As an alternative to paragraph (a)(1) of this section, the creditor may mail or deliver, on or with each periodic statement, a statement substantially similar to Model Form G–4 or Model Form G–4(A) in appendix G to this part, as applicable. Creditors offering home-equity plans subject to the requirements of § 226.5b may use either Model Form, at their option.

(b) *Disclosures for supplemental credit access devices and additional features.* (1) If a creditor, within 30 days after mailing or delivering the account-opening disclosures under § 226.6(a)(1) or (b)(3)(ii)(A), as applicable, adds a credit feature to the consumer's account or mails or delivers to the consumer a credit access device, including but not limited to checks that access a credit card account, for which the finance charge terms are the same as those previously disclosed, no additional disclosures are necessary. Except as provided in paragraph (b)(3) of this section, after 30 days, if the creditor adds a credit feature or furnishes a credit access device (other than as a renewal, resupply, or the original issuance of a credit card) on the same finance charge terms, the creditor shall disclose, before the consumer uses the feature or device for the first time, that it is for use in obtaining credit under the terms previously disclosed.

(2) Except as provided in paragraph (b)(3) of this section, whenever a credit feature is added or a credit access device is mailed or delivered to the consumer, and the finance charge terms for the feature or device differ from disclosures previously given, the disclosures required by § 226.6(a)(1) or (b)(3)(ii)(A), as applicable, that are applicable to the added feature or device shall be given before the consumer uses the feature or device for the first time.

(3) *Checks that access a credit card account.* (i) *Disclosures.* For open-end plans not subject to the requirements of § 226.5b, if checks that can be used to access a credit card account are provided more than 30 days after account-opening disclosures under § 226.6(b) are mailed or delivered, or are provided within 30 days of the account-opening disclosures and the finance charge terms for the checks differ from the finance charge terms previously disclosed, the creditor shall disclose on the front of the page containing the checks the following terms in the form of a table with the headings, content, and form substantially similar to Sample G–19 in appendix G to this part:

(A) If a promotional rate, as that term is defined in § 226.16(g)(2)(i) applies to the checks:

(*1*) The promotional rate and the time period during which the promotional rate will remain in effect;

(*2*) The type of rate that will apply (such as whether the purchase or cash advance rate applies) after the promotional rate expires, and the annual percentage rate that will apply after the promotional rate expires. For a variable-rate account, a creditor must disclose an annual percentage rate based on the applicable index or formula in accordance with the accuracy requirements set forth in paragraph (b)(3)(ii) of this section; and

(*3*) The date, if any, by which the consumer must use the checks in order to qualify for the promotional rate. If the creditor will honor checks used after such date but will apply an annual percentage rate other than the promotional rate, the creditor must disclose this fact and the type of annual percentage rate that will apply if the consumer uses the checks after such date.

(B) If no promotional rate applies to the checks:

(*1*) The type of rate that will apply to the checks and the applicable annual percentage rate. For a variable-rate account, a creditor must disclose an annual percentage rate based on the applicable index or formula in accordance with the accuracy requirements set forth in paragraph (b)(3)(ii) of this section.

(*2*) [Reserved]

(C) Any transaction fees applicable to the checks disclosed under § 226.6(b)(2)(iv); and

(D) Whether or not a grace period is given within which any credit extended by use of the checks may be repaid without incurring a finance charge due to a periodic interest rate. When disclosing whether there is a grace period, the phrase "How to Avoid Paying Interest on Check Transactions" shall be used as the row heading when a grace period applies to credit extended by the use of the checks. When disclosing the fact that no grace period exists for credit extended by use of the checks, the phrase "Paying Interest" shall be used as the row heading.

(ii) *Accuracy.* The disclosures in paragraph (b)(3)(i) of this section must be accurate as of the time the disclosures are mailed or delivered. A variable annual percentage rate is accurate if it was in effect within 60

[20] [Reserved].

days of when the disclosures are mailed or delivered.

(c)(1) *Rules affecting home-equity plans.* (i) *Written notice required.* For home-equity plans subject to the requirements of § 226.5b, whenever any term required to be disclosed under § 226.6(a) is changed or the required minimum periodic payment is increased, the creditor shall mail or deliver written notice of the change to each consumer who may be affected. The notice shall be mailed or delivered at least 15 days prior to the effective date of the change. The 15-day timing requirement does not apply if the change has been agreed to by the consumer; the notice shall be given, however, before the effective date of the change.

(ii) *Notice not required.* For home-equity plans subject to the requirements of § 226.5b, a creditor is not required to provide notice under this section when the change involves a reduction of any component of a finance or other charge or when the change results from an agreement involving a court proceeding.

(iii) *Notice to restrict credit.* For home-equity plans subject to the requirements of § 226.5b, if the creditor prohibits additional extensions of credit or reduces the credit limit pursuant to § 226.5b(f)(3)(i) or (f)(3)(vi), the creditor shall mail or deliver written notice of the action to each consumer who will be affected. The notice must be provided not later than three business days after the action is taken and shall contain specific reasons for the action. If the creditor requires the consumer to request reinstatement of credit privileges, the notice also shall state that fact.

(2) *Rules affecting open-end (not home-secured) plans.* (i) *Changes where written advance notice is required.* (A) *General.* For plans other than home-equity plans subject to the requirements of § 226.5b, except as provided in paragraphs (c)(2)(i)(B), (c)(2)(iii) and (c)(2)(v) of this section, when a significant change in account terms as described in paragraph (c)(2)(ii) of this section is made to a term required to be disclosed under § 226.6(b)(3), (b)(4) or (b)(5) or the required minimum periodic payment is increased, a creditor must provide a written notice of the change at least 45 days prior to the effective date of the change to each consumer who may be affected. The 45-day timing requirement does not apply if the consumer has agreed to a particular change; the notice shall be given, however, before the effective date of the change. Increases in the rate applicable to a consumer's account due to delinquency, default or as a penalty described in paragraph (g) of this section that are not due to a change in the contractual terms of the consumer's account must be disclosed pursuant to paragraph (g) of this section instead of paragraph (c)(2) of this section.

(B) *Changes agreed to by the consumer.* A notice of change in terms is required, but it may be mailed or delivered as late as the effective date of the change if the consumer agrees to the particular change. This paragraph (c)(2)(i)(B) applies only when a consumer substitutes collateral or when the creditor can advance additional credit only if a change relatively unique to that consumer is made, such as the consumer's providing additional security or paying an increased minimum payment amount. The following are not considered agreements between the consumer and the creditor for purposes of this paragraph (c)(2)(i)(B): The consumer's general acceptance of the creditor's contract reservation of the right to change terms; the consumer's use of the account (which might imply acceptance of its terms under state law); the consumer's acceptance of a unilateral term change that is not particular to that consumer, but rather is of general applicability to consumers with that type of account; and the consumer's request to reopen a closed account or to upgrade an existing account to another account offered by the creditor with different credit or other features.

(ii) *Significant changes in account terms.* For purposes of this section, a "significant change in account terms" means a change to a term required to be disclosed under § 226.6(b)(1) and (b)(2), an increase in the required minimum periodic payment, or the acquisition of a security interest.

(iii) *Charges not covered by § 226.6(b)(1) and (b)(2).* Except as provided in paragraph (c)(2)(vi) of this section, if a creditor increases any component of a charge, or introduces a new charge, required to be disclosed under § 226.6(b)(3) that is not a significant change in account terms as described in paragraph (c)(2)(ii) of this section, a creditor may either, at its option:

(A) Comply with the requirements of paragraph (c)(2)(i) of this section; or

(B) Provide notice of the amount of the charge before the consumer agrees to or becomes obligated to pay the charge, at a time and in a manner that a consumer would be likely to notice the disclosure of the charge. The notice may be provided orally or in writing.

(iv) *Disclosure requirements.* (A) *Significant changes in account terms.* If a creditor makes a significant change in account terms as described in paragraph (c)(2)(ii) of this section, the notice provided pursuant to paragraph (c)(2)(i) of this section must provide the following information:

(*1*) A summary of the changes made to terms required by § 226.6(b)(1) and (b)(2), a description of any increase in the required minimum periodic payment, and a description of any security interest being acquired by the creditor;

(*2*) A statement that changes are being made to the account;

(*3*) For accounts other than credit card accounts under an open-end (not home-secured) consumer credit plan subject to § 226.9(c)(2)(iv)(B), a statement indicating the consumer has the right to opt out of these changes, if applicable, and a reference to additional information describing the opt-out right provided in the notice, if applicable;

(*4*) The date the changes will become effective;

(*5*) If applicable, a statement that the consumer may find additional information about the summarized changes, and other changes to the account, in the notice;

(*6*) If the creditor is changing a rate on the account, other than a penalty rate, a statement that if a penalty rate currently applies to the consumer's account, the new rate described in the notice will not apply to the consumer's account until the consumer's account balances are no longer subject to the penalty rate; and

(*7*) If the change in terms being disclosed is an increase in an annual percentage rate, the balances to which the increased rate will be applied. If applicable, a statement identifying the balances to which the current rate will continue to apply as of the effective date of the change in terms.

(B) *Right to reject for credit card accounts under an open-end (not home-secured) consumer credit plan.* In addition to the disclosures in paragraph (c)(2)(iv)(A) of this section, if a card issuer makes a significant change in account terms on a credit card account under an open-end (not home-secured) consumer credit plan, the creditor must generally provide the following information on the notice provided pursuant to paragraph (c)(2)(i) of this section. This information is not required to be provided in the case of an increase in the required minimum periodic payment, a change in an annual percentage rate applicable to a consumer's account, a change in the balance computation method applicable to consumer's account necessary to comply with § 226.54, or when the change results from the creditor not

receiving the consumer's required minimum periodic payment within 60 days after the due date for that payment:

(*1*) A statement that the consumer has the right to reject the change or changes prior to the effective date of the changes, unless the consumer fails to make a required minimum periodic payment within 60 days after the due date for that payment;

(*2*) Instructions for rejecting the change or changes, and a toll-free telephone number that the consumer may use to notify the creditor of the rejection; and

(*3*) If applicable, a statement that if the consumer rejects the change or changes, the consumer's ability to use the account for further advances will be terminated or suspended.

(C) *Changes resulting from failure to make minimum periodic payment within 60 days from due date for credit card accounts under an open-end (not home-secured) consumer credit plan.* For a credit card account under an open-end (not home-secured) consumer credit plan, if the significant change required to be disclosed pursuant to paragraph (c)(2)(i) of this section is an increase in an annual percentage rate or a fee or charge required to be disclosed under § 226.6(b)(2)(ii), (b)(2)(iii), or (b)(2)(xii) based on the consumer's failure to make a minimum periodic payment within 60 days from the due date for that payment, the notice provided pursuant to paragraph (c)(2)(i) of this section must also contain the following information:

(*1*) A statement of the reason for the increase; and

(*2*) That the increase will cease to apply to transactions that occurred prior to or within 14 days of provision of the notice, if the creditor receives six consecutive required minimum periodic payments on or before the payment due date, beginning with the first payment due following the effective date of the increase.

(D) *Format requirements.* (*1*) *Tabular format.* The summary of changes described in paragraph (c)(2)(iv)(A)(*1*) of this section must be in a tabular format (except for a summary of any increase in the required minimum periodic payment), with headings and format substantially similar to any of the account-opening tables found in G–17 in appendix G to this part. The table must disclose the changed term and information relevant to the change, if that relevant information is required by § 226.6(b)(1) and (b)(2). The new terms shall be described in the same level of detail as required when disclosing the terms under § 226.6(b)(2).

(*2*) *Notice included with periodic statement.* If a notice required by paragraph (c)(2)(i) of this section is included on or with a periodic statement, the information described in paragraph (c)(2)(iv)(A)(*1*) of this section must be disclosed on the front of any page of the statement. The summary of changes described in paragraph (c)(2)(iv)(A)(*1*) of this section must immediately follow the information described in paragraph (c)(2)(iv)(A)(*2*) through (c)(2)(iv)(A)(*7*) and, if applicable, paragraphs (c)(2)(iv)(B) and (c)(2)(iv)(C) of this section, and be substantially similar to the format shown in Sample G–20 or G–21 in appendix G to this part.

(*3*) *Notice provided separately from periodic statement.* If a notice required by paragraph (c)(2)(i) of this section is not included on or with a periodic statement, the information described in paragraph (c)(2)(iv)(A)(*1*) of this section must, at the creditor's option, be disclosed on the front of the first page of the notice or segregated on a separate page from other information given with the notice. The summary of changes required to be in a table pursuant to paragraph (c)(2)(iv)(A)(*1*) of this section may be on more than one page, and may use both the front and reverse sides, so long as the table begins on the front of the first page of the notice and there is a reference on the first page indicating that the table continues on the following page. The summary of changes described in paragraph (c)(2)(iv)(A)(*1*) of this section must immediately follow the information described in paragraph (c)(2)(iv)(A)(*2*) through (c)(2)(iv)(A)(*7*) and, if applicable, paragraphs (c)(2)(iv)(B) and (c)(2)(iv)(C), of this section, substantially similar to the format shown in Sample G–20 or G–21 in appendix G to this part.

(v) *Notice not required.* For open-end plans (other than home equity plans subject to the requirements of § 226.5b) a creditor is not required to provide notice under this section:

(A) When the change involves charges for documentary evidence; a reduction of any component of a finance or other charge; suspension of future credit privileges (except as provided in paragraph (c)(2)(vi) of this section) or termination of an account or plan; when the change results from an agreement involving a court proceeding; when the change is an extension of the grace period; or if the change is applicable only to checks that access a credit card account and the changed terms are disclosed on or with the checks in accordance with paragraph (b)(3) of this section;

(B) When the change is an increase in an annual percentage rate upon the expiration of a specified period of time, provided that:

(*1*) Prior to commencement of that period, the creditor disclosed in writing to the consumer, in a clear and conspicuous manner, the length of the period and the annual percentage rate that would apply after expiration of the period;

(*2*) The disclosure of the length of the period and the annual percentage rate that would apply after expiration of the period are set forth in close proximity and in equal prominence to the first listing of the disclosure of the rate that applies during the specified period of time; and

(*3*) The annual percentage rate that applies after that period does not exceed the rate disclosed pursuant to paragraph (c)(2)(v)(B)(*1*) of this paragraph or, if the rate disclosed pursuant to paragraph (c)(2)(v)(B)(*1*) of this section was a variable rate, the rate following any such increase is a variable rate determined by the same formula (index and margin) that was used to calculate the variable rate disclosed pursuant to paragraph (c)(2)(v)(B)(*1*);

(C) When the change is an increase in a variable annual percentage rate in accordance with a credit card agreement that provides for changes in the rate according to operation of an index that is not under the control of the creditor and is available to the general public; or

(D) When the change is an increase in an annual percentage rate, a fee or charge required to be disclosed under § 226.6(b)(2)(ii), (b)(2)(iii), or (b)(2)(xii), or the required minimum periodic payment due to the completion of a workout or temporary hardship arrangement by the consumer or the consumer's failure to comply with the terms of such an arrangement, provided that:

(*1*) The annual percentage rate or fee or charge applicable to a category of transactions or the required minimum periodic payment following any such increase does not exceed the rate or fee or charge or required minimum periodic payment that applied to that category of transactions prior to commencement of the arrangement or, if the rate that applied to a category of transactions prior to the commencement of the workout or temporary hardship arrangement was a variable rate, the rate following any such increase is a variable rate determined by the same formula (index and margin) that applied to the category of transactions prior to commencement of the workout or temporary hardship arrangement; and

(*2*) The creditor has provided the consumer, prior to the commencement of such arrangement, with a clear and conspicuous disclosure of the terms of the arrangement (including any increases due to such completion or failure). This disclosure must generally be provided in writing. However, a creditor may provide the disclosure of the terms of the arrangement orally by telephone, provided that the creditor mails or delivers a written disclosure of the terms of the arrangement to the consumer as soon as reasonably practicable after the oral disclosure is provided.

(vi) *Reduction of the credit limit.* For open-end plans that are not subject to the requirements of § 226.5b, if a creditor decreases the credit limit on an account, advance notice of the decrease must be provided before an over-the-limit fee or a penalty rate can be imposed solely as a result of the consumer exceeding the newly decreased credit limit. Notice shall be provided in writing or orally at least 45 days prior to imposing the over-the-limit fee or penalty rate and shall state that the credit limit on the account has been or will be decreased.

(d) *Finance charge imposed at time of transaction.* (1) Any person, other than the card issuer, who imposes a finance charge at the time of honoring a consumer's credit card, shall disclose the amount of that finance charge prior to its imposition.

(2) The card issuer, other than the person honoring the consumer's credit card, shall have no responsibility for the disclosure required by paragraph (d)(1) of this section, and shall not consider any such charge for the purposes of §§ 226.5a, 226.6 and 226.7.

(e) *Disclosures upon renewal of credit or charge card.* (1) *Notice prior to renewal.* A card issuer that imposes any annual or other periodic fee to renew a credit or charge card account of the type subject to § 226.5a, including any fee based on account activity or inactivity or any card issuer that has changed or amended any term of a cardholder's account required to be disclosed under § 226.6(b)(1) and (b)(2) that has not previously been disclosed to the consumer, shall mail or deliver written notice of the renewal to the cardholder. If the card issuer imposes any annual or other periodic fee for renewal, the notice shall be provided at least 30 days or one billing cycle, whichever is less, before the mailing or the delivery of the periodic statement on which any renewal fee is initially charged to the account. If the card issuer has changed or amended any term required to be disclosed under § 226.6(b)(1) and (b)(2) and such changed or amended term has not previously been disclosed to the consumer, the notice shall be provided at least 30 days prior to the scheduled renewal date of the consumer's credit or charge card. The notice shall contain the following information:

(i) The disclosures contained in § 226.5a(b)(1) through (b)(7) that would apply if the account were renewed; [20a] and

(ii) How and when the cardholder may terminate credit availability under the account to avoid paying the renewal fee, if applicable.

(2) *Notification on periodic statements.* The disclosures required by this paragraph may be made on or with a periodic statement. If any of the disclosures are provided on the back of a periodic statement, the card issuer shall include a reference to those disclosures on the front of the statement.

(f) *Change in credit card account insurance provider.* (1) *Notice prior to change.* If a credit card issuer plans to change the provider of insurance for repayment of all or part of the outstanding balance of an open-end credit card account of the type subject to § 226.5a, the card issuer shall mail or deliver to the cardholder written notice of the change not less than 30 days before the change in provider occurs. The notice shall also include the following items, to the extent applicable:

(i) Any increase in the rate that will result from the change;

(ii) Any substantial decrease in coverage that will result from the change; and

(iii) A statement that the cardholder may discontinue the insurance.

(2) *Notice when change in provider occurs.* If a change described in paragraph (f)(1) of this section occurs, the card issuer shall provide the cardholder with a written notice no later than 30 days after the change, including the following items, to the extent applicable:

(i) The name and address of the new insurance provider;

(ii) A copy of the new policy or group certificate containing the basic terms of the insurance, including the rate to be charged; and

(iii) A statement that the cardholder may discontinue the insurance.

(3) *Substantial decrease in coverage.* For purposes of this paragraph, a substantial decrease in coverage is a decrease in a significant term of coverage that might reasonably be expected to affect the cardholder's decision to continue the insurance. Significant terms of coverage include, for example, the following:

(i) Type of coverage provided;

(ii) Age at which coverage terminates or becomes more restrictive;

(iii) Maximum insurable loan balance, maximum periodic benefit payment, maximum number of payments, or other term affecting the dollar amount of coverage or benefits provided;

(iv) Eligibility requirements and number and identity of persons covered;

(v) Definition of a key term of coverage such as disability;

(vi) Exclusions from or limitations on coverage; and

(vii) Waiting periods and whether coverage is retroactive.

(4) *Combined notification.* The notices required by paragraph (f)(1) and (2) of this section may be combined provided the timing requirement of paragraph (f)(1) of this section is met. The notices may be provided on or with a periodic statement.

(g) *Increase in rates due to delinquency or default or as a penalty.* (1) *Increases subject to this section.* For plans other than home-equity plans subject to the requirements of § 226.5b, except as provided in paragraph (g)(4) of this section, a creditor must provide a written notice to each consumer who may be affected when:

(i) A rate is increased due to the consumer's delinquency or default; or

(ii) A rate is increased as a penalty for one or more events specified in the account agreement, such as making a late payment or obtaining an extension of credit that exceeds the credit limit.

(2) *Timing of written notice.* Whenever any notice is required to be given pursuant to paragraph (g)(1) of this section, the creditor shall provide written notice of the increase in rates at least 45 days prior to the effective date of the increase. The notice must be provided after the occurrence of the events described in paragraphs (g)(1)(i) and (g)(1)(ii) of this section that trigger the imposition of the rate increase.

(3)(i) *Disclosure requirements for rate increases.* (A) *General.* If a creditor is increasing the rate due to delinquency or default or as a penalty, the creditor must provide the following information on the notice sent pursuant to paragraph (g)(1) of this section:

(*1*) A statement that the delinquency or default rate or penalty rate, as applicable, has been triggered;

(*2*) The date on which the delinquency or default rate or penalty rate will apply;

(*3*) The circumstances under which the delinquency or default rate or penalty rate, as applicable, will cease to

[20a] [Reserved].

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;

(*4*) A statement indicating to which balances the delinquency or default rate or penalty rate will be applied; 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 minimum periodic payment within 60 days from the due date for that payment.

(B) *Rate increases resulting from failure to make minimum periodic payment within 60 days from due date.* For a credit card account under an open-end (not home-secured) consumer credit plan, if the rate increase required to be disclosed pursuant to paragraph (g)(1) of this section is an increase pursuant to § 226.55(b)(4) based on the consumer's failure to make a minimum periodic payment within 60 days from the due date for that payment, the notice provided pursuant to paragraph (g)(1) of this section must also contain the following information:

(*1*) A statement of the reason for the increase; and

(*2*) That the increase will cease to apply to transactions that occurred prior to or within 14 days of provision of the notice, if the creditor receives six consecutive required minimum periodic payments on or before the payment due date, beginning with the first payment due following the effective date of the increase.

(ii) *Format requirements.* (A) If a notice required by paragraph (g)(1) of this section is included on or with a periodic statement, the information described in paragraph (g)(3)(i) of this section must be in the form of a table and provided on the front of any page of the periodic statement, above the notice described in paragraph (c)(2)(iv) of this section if that notice is provided on the same statement.

(B) If a notice required by paragraph (g)(1) of this section is not included on or with a periodic statement, the information described in paragraph (g)(3)(i) of this section must be disclosed on the front of the first page of the notice. Only information related to the increase in the rate to a penalty rate may be included with the notice, except that this notice may be combined with a notice described in paragraph (c)(2)(iv) or (g)(4) of this section.

(4) *Exception for decrease in credit limit.* A creditor is not required to provide a notice pursuant to paragraph (g)(1) of this section prior to increasing the rate for obtaining an extension of credit that exceeds the credit limit, provided that:

(i) The creditor provides at least 45 days in advance of imposing the penalty rate a notice, in writing, that includes:

(A) A statement that the credit limit on the account has been or will be decreased.

(B) A statement indicating the date on which the penalty rate will apply, if the outstanding balance exceeds the credit limit as of that date;

(C) A statement that the penalty rate will not be imposed on the date specified in paragraph (g)(4)(i)(B) of this section, if the outstanding balance does not exceed the credit limit as of that date;

(D) The circumstances under which the penalty rate, if applied, will cease to apply to the account, or that the penalty rate, if applied, will remain in effect for a potentially indefinite time period;

(E) A statement indicating to which balances the penalty rate may be applied; and

(F) If applicable, a description of any balances to which the current rate will continue to apply as of the effective date of the rate increase, unless the consumer fails to make a minimum periodic payment within 60 days from the due date for that payment; and

(ii) The creditor does not increase the rate applicable to the consumer's account to the penalty rate if the outstanding balance does not exceed the credit limit on the date set forth in the notice and described in paragraph (g)(4)(i)(B) of this section.

(iii) (A) If a notice provided pursuant to paragraph (g)(4)(i) of this section is included on or with a periodic statement, the information described in paragraph (g)(4)(i) of this section must be in the form of a table and provided on the front of any page of the periodic statement; or

(B) If a notice required by paragraph (g)(4)(i) of this section is not included on or with a periodic statement, the information described in paragraph (g)(4)(i) of this section must be disclosed on the front of the first page of the notice. Only information related to the reduction in credit limit may be included with the notice, except that this notice may be combined with a notice described in paragraph (c)(2)(iv) or (g)(1) of this section.

(h) *Consumer rejection of certain significant changes in terms.* (1) *Right to reject.* If paragraph (c)(2)(iv)(B) of this section requires disclosure of the consumer's right to reject a significant change to an account term, the consumer may reject that change by notifying the creditor of the rejection before the effective date of the change.

(2) *Effect of rejection.* If a creditor is notified of a rejection of a significant change to an account term as provided in paragraph (h)(1) of this section, the creditor must not:

(i) Apply the change to the account;

(ii) Impose a fee or charge or treat the account as in default solely as a result of the rejection; or

(iii) Require repayment of the balance on the account using a method that is less beneficial to the consumer than one of the methods listed in § 226.55(c)(2).

(3) *Exception.* Section 226.9(h) does not apply when the creditor has not received the consumer's required minimum periodic payment within 60 days after the due date for that payment.

■ 12. Section 226.10 is revised to read as follows:

**§ 226.10 Payments.**

(a) *General rule.* A creditor shall credit a payment to the consumer's account as of the date of receipt, except when a delay in crediting does not result in a finance or other charge or except as provided in paragraph (b) of this section.

(b) *Specific requirements for payments.* (1) *General rule.* A creditor may specify reasonable requirements for payments that enable most consumers to make conforming payments.

(2) *Examples of reasonable requirements for payments.* Reasonable requirements for making payment may include:

(i) Requiring that payments be accompanied by the account number or payment stub;

(ii) Setting reasonable cut-off times for payments to be received by mail, by electronic means, by telephone, and in person (except as provided in paragraph (b)(3) of this section), provided that such cut-off times shall be no earlier than 5 p.m. on the payment due date at the location specified by the creditor for the receipt of such payments;

(iii) Specifying that only checks or money orders should be sent by mail;

(iv) Specifying that payment is to be made in U.S. dollars; or

(v) Specifying one particular address for receiving payments, such as a post office box.

(3) *In-person payments on credit card accounts.* (i) *General.* Notwithstanding § 226.10(b), payments on a credit card account under an open-end (not home-secured) consumer credit plan made in person at a branch or office of a card issuer that is a financial institution prior to the close of business of that branch or office shall be considered received on the date on which the consumer makes the payment. A card issuer that is a financial institution shall not impose a

cut-off time earlier than the close of business for any such payments made in person at any branch or office of the card issuer at which such payments are accepted. Notwithstanding § 226.10(b)(2)(ii), a card issuer may impose a cut-off time earlier than 5 p.m. for such payments, if the close of business of the branch or office is earlier than 5 p.m.

(ii) *Financial institution.* For purposes of paragraph (b)(3) of this section, "financial institution" shall mean a bank, savings association, or credit union.

(4) *Nonconforming payments.* If a creditor specifies, on or with the periodic statement, requirements for the consumer to follow in making payments as permitted under this § 226.10, but accepts a payment that does not conform to the requirements, the creditor shall credit the payment within five days of receipt.

(c) *Adjustment of account.* If a creditor fails to credit a payment, as required by paragraphs (a) or (b) of this section, in time to avoid the imposition of finance or other charges, the creditor shall adjust the consumer's account so that the charges imposed are credited to the consumer's account during the next billing cycle.

(d) *Crediting of payments when creditor does not receive or accept payments on due date.* (1) *General.* Except as provided in paragraph (d)(2) of this section, if a creditor does not receive or accept payments by mail on the due date for payments, the creditor may generally not treat a payment received the next business day as late for any purpose. For purposes of this paragraph (d), the "next business day" means the next day on which the creditor accepts or receives payments by mail.

(2) *Payments accepted or received other than by mail.* If a creditor accepts or receives payments made on the due date by a method other than mail, such as electronic or telephone payments, the creditor is not required to treat a payment made by that method on the next business day as timely, even if it does not accept mailed payments on the due date.

(e) *Limitations on fees related to method of payment.* For credit card accounts under an open-end (not home-secured) consumer credit plan, a creditor may not impose a separate fee to allow consumers to make a payment by any method, such as mail, electronic, or telephone payments, unless such payment method involves an expedited service by a customer service representative of the creditor.

(f) *Changes by card issuer.* If a card issuer makes a material change in the address for receiving payments or procedures for handling payments, and such change causes a material delay in the crediting of a payment to the consumer's account during the 60-day period following the date on which such change took effect, the card issuer may not impose any late fee or finance charge for a late payment on the credit card account during the 60-day period following the date on which the change took effect.

■ 13. Section 226.11 is revised to read as follows:

**§ 226.11 Treatment of credit balances; account termination.**

(a) *Credit balances.* When a credit balance in excess of $1 is created on a credit account (through transmittal of funds to a creditor in excess of the total balance due on an account, through rebates of unearned finance charges or insurance premiums, or through amounts otherwise owed to or held for the benefit of the consumer), the creditor shall—

(1) Credit the amount of the credit balance to the consumer's account;

(2) Refund any part of the remaining credit balance within seven business days from receipt of a written request from the consumer;

(3) Make a good faith effort to refund to the consumer by cash, check, or money order, or credit to a deposit account of the consumer, any part of the credit balance remaining in the account for more than six months. No further action is required if the consumer's current location is not known to the creditor and cannot be traced through the consumer's last known address or telephone number.

(b) *Account termination.* (1) A creditor shall not terminate an account prior to its expiration date solely because the consumer does not incur a finance charge.

(2) Nothing in paragraph (b)(1) of this section prohibits a creditor from terminating an account that is inactive for three or more consecutive months. An account is inactive for purposes of this paragraph if no credit has been extended (such as by purchase, cash advance or balance transfer) and if the account has no outstanding balance.

(c) *Timely settlement of estate debts.* (1) *General rule.* (i) *Reasonable policies and procedures required.* For credit card accounts under an open-end (not home-secured) consumer credit plan, card issuers must adopt reasonable written policies and procedures designed to ensure that an administrator of an estate of a deceased accountholder can determine the amount of and pay any balance on the account in a timely manner.

(ii) *Application to joint accounts.* Paragraph (c) of this section does not apply to the account of a deceased consumer if a joint accountholder remains on the account.

(2) *Timely statement of balance.* (i) *Requirement.* Upon request by the administrator of an estate, a card issuer must provide the administrator with the amount of the balance on a deceased consumer's account in a timely manner.

(ii) *Safe harbor.* For purposes of paragraph (c)(2)(i) of this section, providing the amount of the balance on the account within 30 days of receiving the request is deemed to be timely.

(3) *Limitations after receipt of request from administrator.* (i) *Limitation on fees and increases in annual percentage rates.* After receiving a request from the administrator of an estate for the amount of the balance on a deceased consumer's account, a card issuer must not impose any fees on the account (such as a late fee, annual fee, or over-the-limit fee) or increase any annual percentage rate, except as provided by § 226.55(b)(2).

(ii) *Limitation on trailing or residual interest.* A card issuer must waive or rebate any additional finance charge due to a periodic interest rate if payment in full of the balance disclosed pursuant to paragraph (c)(2) of this section is received within 30 days after disclosure.

■ 14. Section 226.12 is revised to read as follows:

**§ 226.12 Special credit card provisions.**

(a) *Issuance of credit cards.* Regardless of the purpose for which a credit card is to be used, including business, commercial, or agricultural use, no credit card shall be issued to any person except—

(1) In response to an oral or written request or application for the card; or

(2) As a renewal of, or substitute for, an accepted credit card.[21]

(b) *Liability of cardholder for unauthorized use.* (1)(i) *Definition of unauthorized use.* For purposes of this section, the term "unauthorized use" means the use of a credit card by a person, other than the cardholder, who does not have actual, implied, or apparent authority for such use, and from which the cardholder receives no benefit.

(ii) *Limitation on amount.* The liability of a cardholder for unauthorized use[22] of a credit card shall not exceed the lesser of $50 or the

[21] [Reserved].

[22] [Reserved].

amount of money, property, labor, or services obtained by the unauthorized use before notification to the card issuer under paragraph (b)(3) of this section.

(2) *Conditions of liability.* A cardholder shall be liable for unauthorized use of a credit card only if:

(i) The credit card is an accepted credit card;

(ii) The card issuer has provided adequate notice [23] of the cardholder's maximum potential liability and of means by which the card issuer may be notified of loss or theft of the card. The notice shall state that the cardholder's liability shall not exceed $50 (or any lesser amount) and that the cardholder may give oral or written notification, and shall describe a means of notification (for example, a telephone number, an address, or both); and

(iii) The card issuer has provided a means to identify the cardholder on the account or the authorized user of the card.

(3) *Notification to card issuer.* Notification to a card issuer is given when steps have been taken as may be reasonably required in the ordinary course of business to provide the card issuer with the pertinent information about the loss, theft, or possible unauthorized use of a credit card, regardless of whether any particular officer, employee, or agent of the card issuer does, in fact, receive the information. Notification may be given, at the option of the person giving it, in person, by telephone, or in writing. Notification in writing is considered given at the time of receipt or, whether or not received, at the expiration of the time ordinarily required for transmission, whichever is earlier.

(4) *Effect of other applicable law or agreement.* If state law or an agreement between a cardholder and the card issuer imposes lesser liability than that provided in this paragraph, the lesser liability shall govern.

(5) *Business use of credit cards.* If 10 or more credit cards are issued by one card issuer for use by the employees of an organization, this section does not prohibit the card issuer and the organization from agreeing to liability for unauthorized use without regard to this section. However, liability for unauthorized use may be imposed on an employee of the organization, by either the card issuer or the organization, only in accordance with this section.

(c) *Right of cardholder to assert claims or defenses against card issuer.*[24] (1) *General rule.* When a person who honors a credit card fails to resolve satisfactorily a dispute as to property or services purchased with the credit card in a consumer credit transaction, the cardholder may assert against the card issuer all claims (other than tort claims) and defenses arising out of the transaction and relating to the failure to resolve the dispute. The cardholder may withhold payment up to the amount of credit outstanding for the property or services that gave rise to the dispute and any finance or other charges imposed on that amount.[25]

(2) *Adverse credit reports prohibited.* If, in accordance with paragraph (c)(1) of this section, the cardholder withholds payment of the amount of credit outstanding for the disputed transaction, the card issuer shall not report that amount as delinquent until the dispute is settled or judgment is rendered.

(3) *Limitations.* (i) *General.* The rights stated in paragraphs (c)(1) and (c)(2) of this section apply only if:

(A) The cardholder has made a good faith attempt to resolve the dispute with the person honoring the credit card; and

(B) The amount of credit extended to obtain the property or services that result in the assertion of the claim or defense by the cardholder exceeds $50, and the disputed transaction occurred in the same state as the cardholder's current designated address or, if not within the same state, within 100 miles from that address.[26]

(ii) *Exclusion.* The limitations stated in paragraph (c)(3)(i)(B) of this section shall not apply when the person honoring the credit card:

(A) Is the same person as the card issuer;

(B) Is controlled by the card issuer directly or indirectly;

(C) Is under the direct or indirect control of a third person that also directly or indirectly controls the card issuer;

(D) Controls the card issuer directly or indirectly;

(E) Is a franchised dealer in the card issuer's products or services; or

(F) Has obtained the order for the disputed transaction through a mail solicitation made or participated in by the card issuer.

(d) *Offsets by card issuer prohibited.* (1) A card issuer may not take any action, either before or after termination of credit card privileges, to offset a cardholder's indebtedness arising from a consumer credit transaction under the relevant credit card plan against funds of the cardholder held on deposit with the card issuer.

(2) This paragraph does not alter or affect the right of a card issuer acting under state or federal law to do any of the following with regard to funds of a cardholder held on deposit with the card issuer if the same procedure is constitutionally available to creditors generally: Obtain or enforce a consensual security interest in the funds; attach or otherwise levy upon the funds; or obtain or enforce a court order relating to the funds.

(3) This paragraph does not prohibit a plan, if authorized in writing by the cardholder, under which the card issuer may periodically deduct all or part of the cardholder's credit card debt from a deposit account held with the card issuer (subject to the limitations in § 226.13(d)(1)).

(e) *Prompt notification of returns and crediting of refunds.* (1) When a creditor other than the card issuer accepts the return of property or forgives a debt for services that is to be reflected as a credit to the consumer's credit card account, that creditor shall, within 7 business days from accepting the return or forgiving the debt, transmit a credit statement to the card issuer through the card issuer's normal channels for credit statements.

(2) The card issuer shall, within 3 business days from receipt of a credit statement, credit the consumer's account with the amount of the refund.

(3) If a creditor other than a card issuer routinely gives cash refunds to consumers paying in cash, the creditor shall also give credit or cash refunds to consumers using credit cards, unless it discloses at the time the transaction is consummated that credit or cash refunds for returns are not given. This section does not require refunds for returns nor does it prohibit refunds in kind.

(f) *Discounts; tie-in arrangements.* No card issuer may, by contract or otherwise:

(1) Prohibit any person who honors a credit card from offering a discount to a consumer to induce the consumer to pay by cash, check, or similar means rather than by use of a credit card or its underlying account for the purchase of property or services; or

(2) Require any person who honors the card issuer's credit card to open or maintain any account or obtain any other service not essential to the operation of the credit card plan from the card issuer or any other person, as a condition of participation in a credit card plan. If maintenance of an account for clearing purposes is determined to be essential to the operation of the

[23] [Reserved].

[24] [Reserved].

[25] [Reserved].

[26] [Reserved].

credit card plan, it may be required only if no service charges or minimum balance requirements are imposed.

(g) *Relation to Electronic Fund Transfer Act and Regulation E.* For guidance on whether Regulation Z (12 CFR part 226) or Regulation E (12 CFR part 205) applies in instances involving both credit and electronic fund transfer aspects, refer to Regulation E, 12 CFR 205.12(a) regarding issuance and liability for unauthorized use. On matters other than issuance and liability, this section applies to the credit aspects of combined credit/electronic fund transfer transactions, as applicable.

■ 15. Section 226.13 is revised to read as follows:

**§ 226.13 Billing error resolution.**[27]

(a) *Definition of billing error.* For purposes of this section, the term billing error means:

(1) A reflection on or with a periodic statement of an extension of credit that is not made to the consumer or to a person who has actual, implied, or apparent authority to use the consumer's credit card or open-end credit plan.

(2) A reflection on or with a periodic statement of an extension of credit that is not identified in accordance with the requirements of §§ 226.7(a)(2) or (b)(2), as applicable, and 226.8.

(3) A reflection on or with a periodic statement of an extension of credit for property or services not accepted by the consumer or the consumer's designee, or not delivered to the consumer or the consumer's designee as agreed.

(4) A reflection on a periodic statement of the creditor's failure to credit properly a payment or other credit issued to the consumer's account.

(5) A reflection on a periodic statement of a computational or similar error of an accounting nature that is made by the creditor.

(6) A reflection on a periodic statement of an extension of credit for which the consumer requests additional clarification, including documentary evidence.

(7) The creditor's failure to mail or deliver a periodic statement to the consumer's last known address if that address was received by the creditor, in writing, at least 20 days before the end of the billing cycle for which the statement was required.

(b) *Billing error notice.*[28] A billing error notice is a written notice[29] from a consumer that:

(1) Is received by a creditor at the address disclosed under § 226.7(a)(9) or (b)(9), as applicable, no later than 60 days after the creditor transmitted the first periodic statement that reflects the alleged billing error;

(2) Enables the creditor to identify the consumer's name and account number; and

(3) To the extent possible, indicates the consumer's belief and the reasons for the belief that a billing error exists, and the type, date, and amount of the error.

(c) *Time for resolution; general procedures.* (1) The creditor shall mail or deliver written acknowledgment to the consumer within 30 days of receiving a billing error notice, unless the creditor has complied with the appropriate resolution procedures of paragraphs (e) and (f) of this section, as applicable, within the 30-day period; and

(2) The creditor shall comply with the appropriate resolution procedures of paragraphs (e) and (f) of this section, as applicable, within 2 complete billing cycles (but in no event later than 90 days) after receiving a billing error notice.

(d) *Rules pending resolution.* Until a billing error is resolved under paragraph (e) or (f) of this section, the following rules apply:

(1) *Consumer's right to withhold disputed amount; collection action prohibited.* The consumer need not pay (and the creditor may not try to collect) any portion of any required payment that the consumer believes is related to the disputed amount (including related finance or other charges).[30] If the cardholder has enrolled in an automatic payment plan offered by the card issuer and has agreed to pay the credit card indebtedness by periodic deductions from the cardholder's deposit account, the card issuer shall not deduct any part of the disputed amount or related finance or other charges if a billing error notice is received any time up to 3 business days before the scheduled payment date.

(2) *Adverse credit reports prohibited.* The creditor or its agent shall not (directly or indirectly) make or threaten to make an adverse report to any person about the consumer's credit standing, or report that an amount or account is delinquent, because the consumer failed to pay the disputed amount or related finance or other charges.

(3) *Acceleration of debt and restriction of account prohibited.* A creditor shall not accelerate any part of the consumer's indebtedness or restrict or close a consumer's account solely because the consumer has exercised in good faith rights provided by this section. A creditor may be subject to the forfeiture penalty under 15 U.S.C. 1666(e) for failure to comply with any of the requirements of this section.

(4) *Permitted creditor actions.* A creditor is not prohibited from taking action to collect any undisputed portion of the item or bill; from deducting any disputed amount and related finance or other charges from the consumer's credit limit on the account; or from reflecting a disputed amount and related finance or other charges on a periodic statement, provided that the creditor indicates on or with the periodic statement that payment of any disputed amount and related finance or other charges is not required pending the creditor's compliance with this section.

(e) *Procedures if billing error occurred as asserted.* If a creditor determines that a billing error occurred as asserted, it shall within the time limits in paragraph (c)(2) of this section:

(1) Correct the billing error and credit the consumer's account with any disputed amount and related finance or other charges, as applicable; and

(2) Mail or deliver a correction notice to the consumer.

(f) *Procedures if different billing error or no billing error occurred.* If, after conducting a reasonable investigation,[31] a creditor determines that no billing error occurred or that a different billing error occurred from that asserted, the creditor shall within the time limits in paragraph (c)(2) of this section:

(1) Mail or deliver to the consumer an explanation that sets forth the reasons for the creditor's belief that the billing error alleged by the consumer is incorrect in whole or in part;

(2) Furnish copies of documentary evidence of the consumer's indebtedness, if the consumer so requests; and

(3) If a different billing error occurred, correct the billing error and credit the consumer's account with any disputed amount and related finance or other charges, as applicable.

(g) *Creditor's rights and duties after resolution.* If a creditor, after complying with all of the requirements of this section, determines that a consumer owes all or part of the disputed amount and related finance or other charges, the creditor:

(1) Shall promptly notify the consumer in writing of the time when payment is due and the portion of the disputed amount and related finance or

[27] [Reserved].

[28] [Reserved].

[29] [Reserved].

[30] [Reserved].

[31] [Reserved].

other charges that the consumer still owes;

(2) Shall allow any time period disclosed under § 226.6(a)(1) or (b)(2)(v), as applicable, and § 226.7(a)(8) or (b)(8), as applicable, during which the consumer can pay the amount due under paragraph (g)(1) of this section without incurring additional finance or other charges;

(3) May report an account or amount as delinquent because the amount due under paragraph (g)(1) of this section remains unpaid after the creditor has allowed any time period disclosed under § 226.6(a)(1) or (b)(2)(v), as applicable, and § 226.7(a)(8) or (b)(8), as applicable or 10 days (whichever is longer) during which the consumer can pay the amount; but

(4) May not report that an amount or account is delinquent because the amount due under paragraph (g)(1) of the section remains unpaid, if the creditor receives (within the time allowed for payment in paragraph (g)(3) of this section) further written notice from the consumer that any portion of the billing error is still in dispute, unless the creditor also:

(i) Promptly reports that the amount or account is in dispute;

(ii) Mails or delivers to the consumer (at the same time the report is made) a written notice of the name and address of each person to whom the creditor makes a report; and

(iii) Promptly reports any subsequent resolution of the reported delinquency to all persons to whom the creditor has made a report.

(h) *Reassertion of billing error.* A creditor that has fully complied with the requirements of this section has no further responsibilities under this section (other than as provided in paragraph (g)(4) of this section) if a consumer reasserts substantially the same billing error.

(i) *Relation to Electronic Fund Transfer Act and Regulation E.* If an extension of credit is incident to an electronic fund transfer, under an agreement between a consumer and a financial institution to extend credit when the consumer's account is overdrawn or to maintain a specified minimum balance in the consumer's account, the creditor shall comply with the requirements of Regulation E, 12 CFR 205.11 governing error resolution rather than those of paragraphs (a), (b), (c), (e), (f), and (h) of this section.

■ 16. Section 226.14 is revised to read as follows:

**§ 226.14 Determination of annual percentage rate.**

(a) *General rule.* The annual percentage rate is a measure of the cost of credit, expressed as a yearly rate. An annual percentage rate shall be considered accurate if it is not more than ⅛th of 1 percentage point above or below the annual percentage rate determined in accordance with this section.[31a] An error in disclosure of the annual percentage rate or finance charge shall not, in itself, be considered a violation of this regulation if:

(1) The error resulted from a corresponding error in a calculation tool used in good faith by the creditor; and

(2) Upon discovery of the error, the creditor promptly discontinues use of that calculation tool for disclosure purposes, and notifies the Board in writing of the error in the calculation tool.

(b) *Annual percentage rate—in general.* Where one or more periodic rates may be used to compute the finance charge, the annual percentage rate(s) to be disclosed for purposes of §§ 226.5a, 226.5b, 226.6, 226.7(a)(4) or (b)(4), 226.9, 226.15, 226.16, 226.26, 226.55, and 226.56 shall be computed by multiplying each periodic rate by the number of periods in a year.

(c) *Optional effective annual percentage rate for periodic statements for creditors offering open-end plans subject to the requirements of § 226.5b.* A creditor offering an open-end plan subject to the requirements of § 226.5b need not disclose an effective annual percentage rate. Such a creditor may, at its option, disclose an effective annual percentage rate(s) pursuant to § 226.7(a)(7) and compute the effective annual percentage rate as follows:

(1) *Solely periodic rates imposed.* If the finance charge is determined solely by applying one or more periodic rates, at the creditor's option, either:

(i) By multiplying each periodic rate by the number of periods in a year; or

(ii) By dividing the total finance charge for the billing cycle by the sum of the balances to which the periodic rates were applied and multiplying the quotient (expressed as a percentage) by the number of billing cycles in a year.

(2) *Minimum or fixed charge, but not transaction charge, imposed.* If the finance charge imposed during the billing cycle is or includes a minimum, fixed, or other charge not due to the application of a periodic rate, other than a charge with respect to any specific transaction during the billing cycle, by dividing the total finance charge for the billing cycle by the amount of the balance(s) to which it is applicable[32] and multiplying the quotient (expressed as a percentage) by the number of billing cycles in a year.[33] If there is no balance to which the finance charge is applicable, an annual percentage rate cannot be determined under this section. Where the finance charge imposed during the billing cycle is or includes a loan fee, points, or similar charge that relates to opening, renewing, or continuing an account, the amount of such charge shall not be included in the calculation of the annual percentage rate.

(3) *Transaction charge imposed.* If the finance charge imposed during the billing cycle is or includes a charge relating to a specific transaction during the billing cycle (even if the total finance charge also includes any other minimum, fixed, or other charge not due to the application of a periodic rate), by dividing the total finance charge imposed during the billing cycle by the total of all balances and other amounts on which a finance charge was imposed during the billing cycle without duplication, and multiplying the quotient (expressed as a percentage) by the number of billing cycles in a year,[34] except that the annual percentage rate shall not be less than the largest rate determined by multiplying each periodic rate imposed during the billing cycle by the number of periods in a year.[35] Where the finance charge imposed during the billing cycle is or includes a loan fee, points, or similar charge that relates to the opening, renewing, or continuing an account, the amount of such charge shall not be included in the calculation of the annual percentage rate. See appendix F to this part regarding determination of the denominator of the fraction under this paragraph.

(4) If the finance charge imposed during the billing cycle is or includes a minimum, fixed, or other charge not due to the application of a periodic rate and the total finance charge imposed during the billing cycle does not exceed 50 cents for a monthly or longer billing cycle, or the pro rata part of 50 cents for a billing cycle shorter than monthly, at the creditor's option, by multiplying each applicable periodic rate by the number of periods in a year, notwithstanding the provisions of paragraphs (c)(2) and (c)(3) of this section.

(d) *Calculations where daily periodic rate applied.* If the provisions of

[31a] [Reserved].

[32] [Reserved].

[33] [Reserved].

[34] [Reserved].

[35] [Reserved].

paragraph (c)(1)(ii) or (c)(2) of this section apply and all or a portion of the finance charge is determined by the application of one or more daily periodic rates, the annual percentage rate may be determined either:

(1) By dividing the total finance charge by the average of the daily balances and multiplying the quotient by the number of billing cycles in a year; or

(2) By dividing the total finance charge by the sum of the daily balances and multiplying the quotient by 365.

■ 17. Section 226.16 is revised to read as follows:

**§ 226.16 Advertising.**

(a) *Actually available terms.* If an advertisement for credit states specific credit terms, it shall state only those terms that actually are or will be arranged or offered by the creditor.

(b) *Advertisement of terms that require additional disclosures.* (1) Any term required to be disclosed under § 226.6(b)(3) set forth affirmatively or negatively in an advertisement for an open-end (not home-secured) credit plan triggers additional disclosures under this section. Any term required to be disclosed under § 226.6(a)(1) or (a)(2) set forth affirmatively or negatively in an advertisement for a home-equity plan subject to the requirements of § 226.5b triggers additional disclosures under this section. If any of the terms that trigger additional disclosures under this paragraph is set forth in an advertisement, the advertisement shall also clearly and conspicuously set forth the following: [36d]

(i) Any minimum, fixed, transaction, activity or similar charge that is a finance charge under § 226.4 that could be imposed.

(ii) Any periodic rate that may be applied expressed as an annual percentage rate as determined under § 226.14(b). If the plan provides for a variable periodic rate, that fact shall be disclosed.

(iii) Any membership or participation fee that could be imposed.

(2) If an advertisement for credit to finance the purchase of goods or services specified in the advertisement states a periodic payment amount, the advertisement shall also state the total of payments and the time period to repay the obligation, assuming that the consumer pays only the periodic payment amount advertised. The disclosure of the total of payments and the time period to repay the obligation must be equally prominent to the statement of the periodic payment amount.

(c) *Catalogs or other multiple-page advertisements; electronic advertisements.* (1) If a catalog or other multiple-page advertisement, or an electronic advertisement (such as an advertisement appearing on an Internet Web site), gives information in a table or schedule in sufficient detail to permit determination of the disclosures required by paragraph (b) of this section, it shall be considered a single advertisement if:

(i) The table or schedule is clearly and conspicuously set forth; and

(ii) Any statement of terms set forth in § 226.6 appearing anywhere else in the catalog or advertisement clearly refers to the page or location where the table or schedule begins.

(2) A catalog or other multiple-page advertisement or an electronic advertisement (such as an advertisement appearing on an Internet Web site) complies with this paragraph if the table or schedule of terms includes all appropriate disclosures for a representative scale of amounts up to the level of the more commonly sold higher-priced property or services offered.

(d) *Additional requirements for home-equity plans.* (1) *Advertisement of terms that require additional disclosures.* If any of the terms required to be disclosed under § 226.6(a)(1) or (a)(2) or the payment terms of the plan are set forth, affirmatively or negatively, in an advertisement for a home-equity plan subject to the requirements of § 226.5b, the advertisement also shall clearly and conspicuously set forth the following:

(i) Any loan fee that is a percentage of the credit limit under the plan and an estimate of any other fees imposed for opening the plan, stated as a single dollar amount or a reasonable range.

(ii) Any periodic rate used to compute the finance charge, expressed as an annual percentage rate as determined under § 226.14(b).

(iii) The maximum annual percentage rate that may be imposed in a variable-rate plan.

(2) *Discounted and premium rates.* If an advertisement states an initial annual percentage rate that is not based on the index and margin used to make later rate adjustments in a variable-rate plan, the advertisement also shall state with equal prominence and in close proximity to the initial rate:

(i) The period of time such initial rate will be in effect; and

(ii) A reasonably current annual percentage rate that would have been in effect using the index and margin.

(3) *Balloon payment.* If an advertisement contains a statement of any minimum periodic payment and a balloon payment may result if only the minimum periodic payments are made, even if such a payment is uncertain or unlikely, the advertisement also shall state with equal prominence and in close proximity to the minimum periodic payment statement that a balloon payment may result, if applicable.[36e] A balloon payment results if paying the minimum periodic payments does not fully amortize the outstanding balance by a specified date or time, and the consumer is required to repay the entire outstanding balance at such time. If a balloon payment will occur when the consumer makes only the minimum payments required under the plan, an advertisement for such a program which contains any statement of any minimum periodic payment shall also state with equal prominence and in close proximity to the minimum periodic payment statement:

(i) That a balloon payment will result; and

(ii) The amount and timing of the balloon payment that will result if the consumer makes only the minimum payments for the maximum period of time that the consumer is permitted to make such payments.

(4) *Tax implications.* An advertisement that states that any interest expense incurred under the home-equity plan is or may be tax deductible may not be misleading in this regard. If an advertisement distributed in paper form or through the Internet (rather than by radio or television) is for a home-equity plan secured by the consumer's principal dwelling, and the advertisement states that the advertised extension of credit may exceed the fair market value of the dwelling, the advertisement shall clearly and conspicuously state that:

(i) The interest on the portion of the credit extension that is greater than the fair market value of the dwelling is not tax deductible for Federal income tax purposes; and

(ii) The consumer should consult a tax adviser for further information regarding the deductibility of interest and charges.

(5) *Misleading terms.* An advertisement may not refer to a home-equity plan as "free money" or contain a similarly misleading term.

(6) *Promotional rates and payments.* (i) *Definitions.* The following definitions apply for purposes of paragraph (d)(6) of this section:

[36d] [Reserved].

[36e] [Reserved].

(A) *Promotional rate.* The term "promotional rate" means, in a variable-rate plan, any annual percentage rate that is not based on the index and margin that will be used to make rate adjustments under the plan, if that rate is less than a reasonably current annual percentage rate that would be in effect under the index and margin that will be used to make rate adjustments under the plan.

(B) *Promotional payment.* The term "promotional payment" means:

(*1*) For a variable-rate plan, any minimum payment applicable for a promotional period that:

(*i*) Is not derived by applying the index and margin to the outstanding balance when such index and margin will be used to determine other minimum payments under the plan; and

(*ii*) Is less than other minimum payments under the plan derived by applying a reasonably current index and margin that will be used to determine the amount of such payments, given an assumed balance.

(*2*) For a plan other than a variable-rate plan, any minimum payment applicable for a promotional period if that payment is less than other payments required under the plan given an assumed balance.

(C) *Promotional period.* A "promotional period" means a period of time, less than the full term of the loan, that the promotional rate or promotional payment may be applicable.

(ii) *Stating the promotional period and post-promotional rate or payments.* If any annual percentage rate that may be applied to a plan is a promotional rate, or if any payment applicable to a plan is a promotional payment, the following must be disclosed in any advertisement, other than television or radio advertisements, in a clear and conspicuous manner with equal prominence and in close proximity to each listing of the promotional rate or payment:

(A) The period of time during which the promotional rate or promotional payment will apply;

(B) In the case of a promotional rate, any annual percentage rate that will apply under the plan. If such rate is variable, the annual percentage rate must be disclosed in accordance with the accuracy standards in §§ 226.5b or 226.16(b)(1)(ii) as applicable; and

(C) In the case of a promotional payment, the amounts and time periods of any payments that will apply under the plan. In variable-rate transactions, payments that will be determined based on application of an index and margin shall be disclosed based on a reasonably current index and margin.

(iii) *Envelope excluded.* The requirements in paragraph (d)(6)(ii) of this section do not apply to an envelope in which an application or solicitation is mailed, or to a banner advertisement or pop-up advertisement linked to an application or solicitation provided electronically.

(e) *Alternative disclosures—television or radio advertisements.* An advertisement made through television or radio stating any of the terms requiring additional disclosures under paragraphs (b)(1) or (d)(1) of this section may alternatively comply with paragraphs (b)(1) or (d)(1) of this section by stating the information required by paragraphs (b)(1)(ii) or (d)(1)(ii) of this section, as applicable, and listing a toll-free telephone number, or any telephone number that allows a consumer to reverse the phone charges when calling for information, along with a reference that such number may be used by consumers to obtain the additional cost information.

(f) *Misleading terms.* An advertisement may not refer to an annual percentage rate as "fixed," or use a similar term, unless the advertisement also specifies a time period that the rate will be fixed and the rate will not increase during that period, or if no such time period is provided, the rate will not increase while the plan is open.

(g) *Promotional rates.* (1) *Scope.* The requirements of this paragraph apply to any advertisement of an open-end (not home-secured) plan, including promotional materials accompanying applications or solicitations subject to § 226.5a(c) or accompanying applications or solicitations subject to § 226.5a(e).

(2) *Definitions.* (i) *Promotional rate* means any annual percentage rate applicable to one or more balances or transactions on an open-end (not home-secured) plan for a specified period of time that is lower than the annual percentage rate that will be in effect at the end of that period on such balances or transactions.

(ii) *Introductory rate* means a promotional rate offered in connection with the opening of an account.

(iii) *Promotional period* means the maximum time period for which the promotional rate may be applicable.

(3) *Stating the term "introductory".* If any annual percentage rate that may be applied to the account is an introductory rate, the term *introductory* or *intro* must be in immediate proximity to each listing of the introductory rate in a written or electronic advertisement.

(4) *Stating the promotional period and post-promotional rate.* If any annual percentage rate that may be applied to the account is a promotional rate under paragraph (g)(2)(i) of this section, the information in paragraphs (g)(4)(i) and (g)(4)(ii) of this section must be stated in a clear and conspicuous manner in the advertisement. If the rate is stated in a written or electronic advertisement, the information in paragraphs (g)(4)(i) and (g)(4)(ii) of this section must also be stated in a prominent location closely proximate to the first listing of the promotional rate.

(i) When the promotional rate will end; and

(ii) The annual percentage rate that will apply after the end of the promotional period. If such rate is variable, the annual percentage rate must comply with the accuracy standards in §§ 226.5a(c)(2), 226.5a(d)(3), 226.5a(e)(4), or 226.16(b)(1)(ii), as applicable. If such rate cannot be determined at the time disclosures are given because the rate depends at least in part on a later determination of the consumer's creditworthiness, the advertisement must disclose the specific rates or the range of rates that might apply.

(5) *Envelope excluded.* The requirements in paragraph (g)(4) of this section do not apply to an envelope or other enclosure in which an application or solicitation is mailed, or to a banner advertisement or pop-up advertisement, linked to an application or solicitation provided electronically.

(h) *Deferred interest or similar offers.* (1) *Scope.* The requirements of this paragraph apply to any advertisement of an open-end credit plan not subject to § 226.5b, including promotional materials accompanying applications or solicitations subject to § 226.5a(c) or accompanying applications or solicitations subject to § 226.5a(e).

(2) *Definitions.* "Deferred interest" means finance charges, accrued on balances or transactions, that a consumer is not obligated to pay or that will be waived or refunded to a consumer if those balances or transactions are paid in full by a specified date. The maximum period from the date the consumer becomes obligated for the balance or transaction until the specified date by which the consumer must pay the balance or transaction in full in order to avoid finance charges, or receive a waiver or refund of finance charges, is the "deferred interest period." "Deferred interest" does not include any finance charges the consumer avoids paying in connection with any recurring grace period.

(3) *Stating the deferred interest period.* If a deferred interest offer is advertised, the deferred interest period

must be stated in a clear and conspicuous manner in the advertisement. If the phrase "no interest" or similar term regarding the possible avoidance of interest obligations under the deferred interest program is stated, the term "if paid in full" must also be stated in a clear and conspicuous manner preceding the disclosure of the deferred interest period in the advertisement. If the deferred interest offer is included in a written or electronic advertisement, the deferred interest period and, if applicable, the term "if paid in full" must also be stated in immediate proximity to each statement of "no interest," "no payments," "deferred interest," "same as cash," or similar term regarding interest or payments during the deferred interest period.

(4) *Stating the terms of the deferred interest or similar offer.* If any deferred interest offer is advertised, the information in paragraphs (h)(4)(i) and (h)(4)(ii) of this section must be stated in the advertisement, in language similar to Sample G–24 in Appendix G to this part. If the deferred interest offer is included in a written or electronic advertisement, the information in paragraphs (h)(4)(i) and (h)(4)(ii) of this section must also be stated in a prominent location closely proximate to the first statement of "no interest," "no payments," "deferred interest," "same as cash," or similar term regarding interest or payments during the deferred interest period.

(i) A statement that interest will be charged from the date the consumer becomes obligated for the balance or transaction subject to the deferred interest offer if the balance or transaction is not paid in full within the deferred interest period; and

(ii) A statement, if applicable, that interest will be charged from the date the consumer incurs the balance or transaction subject to the deferred interest offer if the account is in default before the end of the deferred interest period.

(5) *Envelope excluded.* The requirements in paragraph (h)(4) of this section do not apply to an envelope or other enclosure in which an application or solicitation is mailed, or to a banner advertisement or pop-up advertisement linked to an application or solicitation provided electronically.

■ 18. Section 226.30 is revised to read as follows:

**§ 226.30 Limitation on rates.**

A creditor shall include in any consumer credit contract secured by a dwelling and subject to the act and this regulation the maximum interest rate that may be imposed during the term of the obligation [50] when:

(a) In the case of closed-end credit, the annual percentage rate may increase after consummation, or

(b) In the case of open-end credit, the annual percentage rate may increase during the plan.

■ 19. A new subpart G consisting of §§ 226.51 through 226.58 is added to read as follows:

**Subpart G—Special Rules Applicable to Credit Card Accounts and Open-End Credit Offered to College Students**

Sec.
226.51 Ability to pay.
226.52 Limitations on fees.
226.53 Allocation of payments.
226.54 Limitations on the imposition of finance charges.
226.55 Limitations on increasing annual percentage rates, fees, and charges.
226.56 Requirements for over-the-limit transactions.
226.57 Reporting and marketing rules for college student open-end credit.
226.58 Internet posting of credit card agreements.

## Subpart G—Special Rules Applicable to Credit Card Accounts and Open-End Credit Offered to College Students

**§ 226.51 Ability to Pay.**

(a) *General rule.* (1)(i) *Consideration of ability to pay.* A card issuer must not open a credit card account for a consumer under an open-end (not home-secured) consumer credit plan, or increase any credit limit applicable to such account, unless the card issuer considers the ability of the consumer to make the required minimum periodic payments under the terms of the account based on the consumer's income or assets and current obligations.

(ii) *Reasonable policies and procedures.* Card issuers must establish and maintain reasonable written policies and procedures to consider a consumer's income or assets and current obligations. Reasonable policies and procedures to consider a consumer's ability to make the required payments include a consideration of at least one of the following: The ratio of debt obligations to income; the ratio of debt obligations to assets; or the income the consumer will have after paying debt obligations. It would be unreasonable for a card issuer to not review any information about a consumer's income, assets, or current obligations, or to issue a credit card to a consumer who does not have any income or assets.

(2) *Minimum periodic payments.* (i) *Reasonable method.* For purposes of paragraph (a)(1) of this section, a card issuer must use a reasonable method for estimating the minimum periodic payments the consumer would be required to pay under the terms of the account.

(ii) *Safe harbor.* A card issuer complies with paragraph (a)(2)(i) of this section if it estimates required minimum periodic payments using the following method:

(A) The card issuer assumes utilization, from the first day of the billing cycle, of the full credit line that the issuer is considering offering to the consumer; and

(B) The card issuer uses a minimum payment formula employed by the issuer for the product the issuer is considering offering to the consumer or, in the case of an existing account, the minimum payment formula that currently applies to that account, provided that:

(*1*) If the applicable minimum payment formula includes interest charges, the card issuer estimates those charges using an interest rate that the issuer is considering offering to the consumer for purchases or, in the case of an existing account, the interest rate that currently applies to purchases; and

(*2*) If the applicable minimum payment formula includes mandatory fees, the card issuer must assume that such fees have been charged to the account.

(b) *Rules affecting young consumers.* (1) *Applications from young consumers.* A card issuer may not open a credit card account under an open-end (not home-secured) consumer credit plan for a consumer less than 21 years old, unless the consumer has submitted a written application and the card issuer has:

(i) Financial information indicating the consumer has an independent ability to make the required minimum periodic payments on the proposed extension of credit in connection with the account, consistent with paragraph (a) of this section; or

(ii)(A) A signed agreement of a cosigner, guarantor, or joint applicant who is at least 21 years old to be either secondarily liable for any debt on the account incurred by the consumer before the consumer has attained the age of 21 or jointly liable with the consumer for any debt on the account, and

(B) Financial information indicating such cosigner, guarantor, or joint applicant has the ability to make the required minimum periodic payments on such debts, consistent with paragraph (a) of this section.

(2) *Credit line increases for young consumers.* If a credit card account has been opened pursuant to paragraph

[50] [Reserved].

(b)(1)(ii) of this section, no increase in the credit limit may be made on such account before the consumer attains the age of 21 unless the cosigner, guarantor, or joint accountholder who assumed liability at account opening agrees in writing to assume liability on the increase.

**§ 226.52 Limitations on fees.**

(a) *Limitations during first year after account opening.* (1) *General rule.* Except as provided in paragraph (a)(2) of this section, if a card issuer charges any fees to a credit card account under an open-end (not home-secured) consumer credit plan during the first year after the account is opened, the total amount of fees the consumer is required to pay with respect to the account during that year must not exceed 25 percent of the credit limit in effect when the account is opened.

(2) *Fees not subject to limitations.* Paragraph (a) of this section does not apply to:

(i) Late payment fees, over-the-limit fees, and returned-payment fees; or

(ii) Fees that the consumer is not required to pay with respect to the account.

(3) *Rule of construction.* This paragraph (a) does not authorize the imposition or payment of fees or charges otherwise prohibited by law.

(b) [Reserved].

**§ 226.53 Allocation of payments.**

(a) *General rule.* Except as provided in paragraph (b) of this section, when a consumer makes a payment in excess of the required minimum periodic payment for a credit card account under an open-end (not home-secured) consumer credit plan, the card issuer must allocate the excess amount first to the balance with the highest annual percentage rate and any remaining portion to the other balances in descending order based on the applicable annual percentage rate.

(b) *Special rule for accounts with balances subject to deferred interest or similar programs.* When a balance on a credit card account under an open-end (not home-secured) consumer credit plan is subject to a deferred interest or similar program that provides that a consumer will not be obligated to pay interest that accrues on the balance if the balance is paid in full prior to the expiration of a specified period of time:

(1) *Last two billing cycles.* The card issuer must allocate any amount paid by the consumer in excess of the required minimum periodic payment consistent with paragraph (a) of this section, except that, during the two billing cycles immediately preceding expiration of the specified period, the excess amount must be allocated first to the balance subject to the deferred interest or similar program and any remaining portion allocated to any other balances consistent with paragraph (a) of this section; or

(2) *Consumer request.* The card issuer may at its option allocate any amount paid by the consumer in excess of the required minimum periodic payment among the balances on the account in the manner requested by the consumer.

**§ 226.54 Limitations on the imposition of finance charges.**

(a) *Limitations on imposing finance charges as a result of the loss of a grace period.* (1) *General rule.* Except as provided in paragraph (b) of this section, a card issuer must not impose finance charges as a result of the loss of a grace period on a credit card account under an open-end (not home-secured) consumer credit plan if those finance charges are based on:

(i) Balances for days in billing cycles that precede the most recent billing cycle; or

(ii) Any portion of a balance subject to a grace period that was repaid prior to the expiration of the grace period.

(2) *Definition of grace period.* For purposes of paragraph (a)(1) of this section, "grace period" has the same meaning as in § 226.5(b)(2)(ii)(B)(*3*).

(b) *Exceptions.* Paragraph (a) of this section does not apply to:

(1) Adjustments to finance charges as a result of the resolution of a dispute under § 226.12 or § 226.13; or

(2) Adjustments to finance charges as a result of the return of a payment.

**§ 226.55 Limitations on increasing annual percentage rates, fees, and charges.**

(a) *General rule.* Except as provided in paragraph (b) of this section, a card issuer must not increase an annual percentage rate or a fee or charge required to be disclosed under § 226.6(b)(2)(ii), (b)(2)(iii), or (b)(2)(xii) on a credit card account under an open-end (not home-secured) consumer credit plan.

(b) *Exceptions.* A card issuer may increase an annual percentage rate or a fee or charge required to be disclosed under § 226.6(b)(2)(ii), (b)(2)(iii), or (b)(2)(xii) pursuant to an exception set forth in this paragraph even if that increase would not be permitted under a different exception.

(1) *Temporary rate exception.* A card issuer may increase an annual percentage rate upon the expiration of a specified period of six months or longer, provided that:

(i) Prior to the commencement of that period, the card issuer disclosed in writing to the consumer, in a clear and conspicuous manner, the length of the period and the annual percentage rate that would apply after expiration of the period; and

(ii) Upon expiration of the specified period:

(A) The card issuer must not apply an annual percentage rate to transactions that occurred prior to the period that exceeds the annual percentage rate that applied to those transactions prior to the period;

(B) If the disclosures required by paragraph (b)(1)(i) of this section are provided pursuant to § 226.9(c), the card issuer must not apply an annual percentage rate to transactions that occurred within 14 days after provision of the notice that exceeds the annual percentage rate that applied to that category of transactions prior to provision of the notice; and

(C) The card issuer must not apply an annual percentage rate to transactions that occurred during the period that exceeds the increased annual percentage rate disclosed pursuant to paragraph (b)(1)(i) of this section.

(2) *Variable rate exception.* A card issuer may increase an annual percentage rate when:

(i) The annual percentage rate varies according to an index that is not under the card issuer's control and is available to the general public; and

(ii) The increase in the annual percentage rate is due to an increase in the index.

(3) *Advance notice exception.* A card issuer may increase an annual percentage rate or a fee or charge required to be disclosed under § 226.6(b)(2)(ii), (b)(2)(iii), or (b)(2)(xii) after complying with the applicable notice requirements in § 226.9(b), (c), or (g), provided that:

(i) If a card issuer discloses an increased annual percentage rate, fee, or charge pursuant to § 226.9(b), the card issuer must not apply that rate, fee, or charge to transactions that occurred prior to provision of the notice;

(ii) If a card issuer discloses an increased annual percentage rate, fee, or charge pursuant to § 226.9(c) or (g), the card issuer must not apply that rate, fee, or charge to transactions that occurred prior to or within 14 days after provision of the notice; and

(iii) This exception does not permit a card issuer to increase an annual percentage rate or a fee or charge required to be disclosed under § 226.6(b)(2)(ii), (b)(2)(iii), or (b)(2)(xii) during the first year after the account is opened.

(4) *Delinquency exception.* A card issuer may increase an annual

percentage rate or a fee or charge required to be disclosed under § 226.6(b)(2)(ii), (b)(2)(iii), or (b)(2)(xii) due to the card issuer not receiving the consumer's required minimum periodic payment within 60 days after the due date for that payment, provided that:

(i) The card issuer must disclose in a clear and conspicuous manner in the notice of the increase pursuant to § 226.9(c) or (g):

(A) A statement of the reason for the increase; and

(B) That the increased annual percentage rate, fee, or charge will cease to apply if the card issuer receives six consecutive required minimum periodic payments on or before the payment due date beginning with the first payment due following the effective date of the increase; and

(ii) If the card issuer receives six consecutive required minimum periodic payments on or before the payment due date beginning with the first payment due following the effective date of the increase, the card issuer must reduce any annual percentage rate, fee, or charge increased pursuant to this exception to the annual percentage rate, fee, or charge that applied prior to the increase with respect to transactions that occurred prior to or within 14 days after provision of the § 226.9(c) or (g) notice.

(5) *Workout and temporary hardship arrangement exception.* A card issuer may increase an annual percentage rate or a fee or charge required to be disclosed under § 226.6(b)(2)(ii), (b)(2)(iii), or (b)(2)(xii) due to the consumer's completion of a workout or temporary hardship arrangement or the consumer's failure to comply with the terms of such an arrangement, provided that:

(i) Prior to commencement of the arrangement (except as provided in § 226.9(c)(2)(v)(D)), the card issuer has provided the consumer with a clear and conspicuous written disclosure of the terms of the arrangement (including any increases due to the completion or failure of the arrangement); and

(ii) Upon the completion or failure of the arrangement, the card issuer must not apply to any transactions that occurred prior to commencement of the arrangement an annual percentage rate, fee, or charge that exceeds the annual percentage rate, fee, or charge that applied to those transactions prior to commencement of the arrangement.

(6) *Servicemembers Civil Relief Act exception.* If an annual percentage rate has been decreased pursuant to 50 U.S.C. app. 527, a card issuer may increase that annual percentage rate once 50 U.S.C. app. 527 no longer applies, provided that the card issuer must not apply to any transactions that occurred prior to the decrease an annual percentage rate that exceeds the annual percentage rate that applied to those transactions prior to the decrease.

(c) *Treatment of protected balances.* (1) *Definition of protected balance.* For purposes of this paragraph, "protected balance" means the amount owed for a category of transactions to which an increased annual percentage rate or an increased fee or charge required to be disclosed under § 226.6(b)(2)(ii), (b)(2)(iii), or (b)(2)(xii) cannot be applied after the annual percentage rate, fee, or charge for that category of transactions has been increased pursuant to paragraph (b)(3) of this section.

(2) *Repayment of protected balance.* The card issuer must not require repayment of the protected balance using a method that is less beneficial to the consumer than one of the following methods:

(i) The method of repayment for the account before the effective date of the increase;

(ii) An amortization period of not less than five years, beginning no earlier than the effective date of the increase; or

(iii) A required minimum periodic payment that includes a percentage of the balance that is equal to no more than twice the percentage required before the effective date of the increase.

(d) *Continuing application.* This section continues to apply to a balance on a credit card account under an open-end (not home-secured) consumer credit plan after:

(1) The account is closed or acquired by another creditor; or

(2) The balance is transferred from a credit card account under an open-end (not home-secured) consumer credit plan issued by a creditor to another credit account issued by the same creditor or its affiliate or subsidiary (unless the account to which the balance is transferred is subject to § 226.5b).

**§ 226.56 Requirements for over-the-limit transactions.**

(a) *Definition.* For purposes of this section, the term "over-the-limit transaction" means any extension of credit by a card issuer to complete a transaction that causes a consumer's credit card account balance to exceed the credit limit.

(b) *Opt-in requirement.* (1) *General.* A card issuer shall not assess a fee or charge on a consumer's credit card account under an open-end (not home-secured) consumer credit plan for an over-the-limit transaction unless the card issuer:

(i) Provides the consumer with an oral, written or electronic notice, segregated from all other information, describing the consumer's right to affirmatively consent, or opt in, to the card issuer's payment of an over-the-limit transaction;

(ii) Provides a reasonable opportunity for the consumer to affirmatively consent, or opt in, to the card issuer's payment of over-the-limit transactions;

(iii) Obtains the consumer's affirmative consent, or opt-in, to the card issuer's payment of such transactions;

(iv) Provides the consumer with confirmation of the consumer's consent in writing, or if the consumer agrees, electronically; and

(v) Provides the consumer notice in writing of the right to revoke that consent following the assessment of an over-the-limit fee or charge.

(2) *Completion of over-the-limit transactions without consumer consent.* Notwithstanding the absence of a consumer's affirmative consent under paragraph (b)(1)(iii) of this section, a card issuer may pay any over-the-limit transaction on a consumer's account provided that the card issuer does not impose any fee or charge on the account for paying that over-the-limit transaction.

(c) *Method of election.* A card issuer may permit a consumer to consent to the card issuer's payment of any over-the-limit transaction in writing, orally, or electronically, at the card issuer's option. The card issuer must also permit the consumer to revoke his or her consent using the same methods available to the consumer for providing consent.

(d) *Timing and placement of notices.* (1) *Initial notice.* (i) *General.* The notice required by paragraph (b)(1)(i) of this section shall be provided prior to the assessment of any over-the-limit fee or charge on a consumer's account.

(ii) *Oral or electronic consent.* If a consumer consents to the card issuer's payment of any over-the-limit transaction by oral or electronic means, the card issuer must provide the notice required by paragraph (b)(1)(i) of this section immediately prior to obtaining that consent.

(2) *Confirmation of opt-in.* The notice required by paragraph (b)(1)(iv) of this section may be provided no later than the first periodic statement sent after the consumer has consented to the card issuer's payment of over-the-limit transactions.

(3) *Notice of right of revocation.* The notice required by paragraph (b)(1)(v) of

this section shall be provided on the front of any page of each periodic statement that reflects the assessment of an over-the-limit fee or charge on a consumer's account.

(e) *Content.* (1) *Initial notice.* The notice required by paragraph (b)(1)(i) of this section shall include all applicable items in this paragraph (e)(1) and may not contain any information not specified in or otherwise permitted by this paragraph.

(i) *Fees.* The dollar amount of any fees or charges assessed by the card issuer on a consumer's account for an over-the-limit transaction;

(ii) *APRs.* Any increased periodic rate(s) (expressed as an annual percentage rate(s)) that may be imposed on the account as a result of an over-the-limit transaction; and

(iii) *Disclosure of opt-in right.* An explanation of the consumer's right to affirmatively consent to the card issuer's payment of over-the-limit transactions, including the method(s) by which the consumer may consent.

(2) *Subsequent notice.* The notice required by paragraph (b)(1)(v) of this section shall describe the consumer's right to revoke any consent provided under paragraph (b)(1)(iii) of this section, including the method(s) by which the consumer may revoke.

(3) *Safe harbor.* Use of Model Forms G–25(A) or G–25(B) of Appendix G to this part, or substantially similar notices, constitutes compliance with the notice content requirements of paragraph (e) of this section.

(f) *Joint relationships.* If two or more consumers are jointly liable on a credit card account under an open-end (not home-secured) consumer credit plan, the card issuer shall treat the affirmative consent of any of the joint consumers as affirmative consent for that account. Similarly, the card issuer shall treat a revocation of consent by any of the joint consumers as revocation of consent for that account.

(g) *Continuing right to opt in or revoke opt-in.* A consumer may affirmatively consent to the card issuer's payment of over-the-limit transactions at any time in the manner described in the notice required by paragraph (b)(1)(i) of this section. Similarly, the consumer may revoke the consent at any time in the manner described in the notice required by paragraph (b)(1)(v) of this section.

(h) *Duration of opt-in.* A consumer's affirmative consent to the card issuer's payment of over-the-limit transactions is effective until revoked by the consumer, or until the card issuer decides for any reason to cease paying over-the-limit transactions for the consumer.

(i) *Time to comply with revocation request.* A card issuer must comply with a consumer's revocation request as soon as reasonably practicable after the card issuer receives it.

(j) *Prohibited practices.* Notwithstanding a consumer's affirmative consent to a card issuer's payment of over-the-limit transactions, a card issuer is prohibited from engaging in the following practices:

(1) *Fees or charges imposed per cycle.* (i) *General rule.* A card issuer may not impose more than one over-the-limit fee or charge on a consumer's credit card account per billing cycle, and, in any event, only if the credit limit was exceeded during the billing cycle. In addition, except as provided in paragraph (j)(1)(ii) of this section, a card issuer may not impose an over-the-limit fee or charge on the consumer's credit card account for more than three billing cycles for the same over-the-limit transaction where the consumer has not reduced the account balance below the credit limit by the payment due date for either of the last two billing cycles.

(ii) *Exception.* The prohibition in paragraph (j)(1)(i) of this section on imposing an over-the-limit fee or charge in more than three billing cycles for the same over-the-limit transaction(s) does not apply if another over-the-limit transaction occurs during either of the last two billing cycles.

(2) *Failure to promptly replenish.* A card issuer may not impose an over-the-limit fee or charge solely because of the card issuer's failure to promptly replenish the consumer's available credit following the crediting of the consumer's payment under § 226.10.

(3) *Conditioning.* A card issuer may not condition the amount of a consumer's credit limit on the consumer affirmatively consenting to the card issuer's payment of over-the-limit transactions if the card issuer assesses a fee or charge for such service.

(4) *Over-the-limit fees attributed to fees or interest.* A card issuer may not impose an over-the-limit fee or charge for a billing cycle if a consumer exceeds a credit limit solely because of fees or interest charged by the card issuer to the consumer's account during that billing cycle. For purposes of this paragraph (j)(4), the relevant fees or interest charges are charges imposed as part of the plan under § 226.6(b)(3).

**§ 226.57 Reporting and marketing rules for college student open-end credit.**

(a) *Definitions:*

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

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

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

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

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

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

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

(1) On the campus of an institution of higher education;

(2) Near the campus of an institution of higher education; or

(3) At an event sponsored by or related to an institution of higher education.

(d) *Annual report to the Board.* (1) *Requirement to report.* Any card issuer that was a party to one or more college credit card agreements in effect at any time during a calendar year must submit to the Board an annual report regarding those agreements in the form and manner prescribed by the Board.

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

(i) Identifying information about the card issuer and the agreements submitted, including the issuer's name, address, and identifying number (such as an RSSD ID number or tax identification number);

(ii) A copy of any college credit card agreement to which the card issuer was

a party that was in effect at any time during the period covered by the report;

(iii) A copy of any memorandum of understanding in effect at any time during the period covered by the report between the card issuer and an institution of higher education or affiliated organization that directly or indirectly relates to the college credit card agreement or that controls or directs any obligations or distribution of benefits between any such entities;

(iv) The total dollar amount of any payments pursuant to a college credit card agreement from the card issuer to an institution of higher education or affiliated organization during the period covered by the report, and the method or formula used to determine such amounts;

(v) The total number of credit card accounts opened pursuant to any college credit card agreement during the period covered by the report; and

(vi) The total number of credit card accounts opened pursuant to any such agreement that were open at the end of the period covered by the report.

(3) *Timing of reports.* Except for the initial report described in this § 226.57(d)(3), a card issuer must submit its annual report for each calendar year to the Board by the first business day on or after March 31 of the following calendar year. Card issuers must submit the first report following the effective date of this section, providing information for the 2009 calendar year, to the Board by February 22, 2010.

**§ 226.58 Internet posting of credit card agreements.**

(a) *Applicability.* The requirements of this section apply to any card issuer that issues credit cards under a credit card account under an open-end (not home-secured) consumer credit plan.

(b) *Definitions.* (1) *Agreement.* For purposes of this section, "agreement" or "credit card agreement" means the written document or documents evidencing the terms of the legal obligation, or the prospective legal obligation, between a card issuer and a consumer for a credit card account under an open-end (not home-secured) consumer credit plan. "Agreement" or "credit card agreement" also includes the pricing information, as defined in § 226.58(b)(6).

(2) *Amends.* For purposes of this section, an issuer "amends" an agreement if it makes a substantive change (an "amendment") to the agreement. A change is substantive if it alters the rights or obligations of the card issuer or the consumer under the agreement. Any change in the pricing information, as defined in § 226.58(b)(6), is deemed to be substantive.

(3) *Business day.* For purposes of this section, "business day" means a day on which the creditor's offices are open to the public for carrying on substantially all of its business functions.

(4) *Offers.* For purposes of this section, an issuer "offers" or "offers to the public" an agreement if the issuer is soliciting or accepting applications for accounts that would be subject to that agreement.

(5) *Open account.* For purposes of this section, an account is an "open account" or "open credit card account" if it is a credit card account under an open-end (not home-secured) consumer credit plan and either:

(i) The cardholder can obtain extensions of credit on the account; or

(ii) There is an outstanding balance on the account that has not been charged off. An account that has been suspended temporarily (for example, due to a report by the cardholder of unauthorized use of the card) is considered an "open account" or "open credit card account."

(6) *Pricing information.* For purposes of this section, "pricing information" means the information listed in § 226.6(b)(2)(i) through (b)(2)(xii) and (b)(4). Pricing information does not include temporary or promotional rates and terms or rates and terms that apply only to protected balances.

(7) *Private label credit card account and private label credit card plan.* For purposes of this section:

(i) "private label credit card account" means a credit card account under an open-end (not home-secured) consumer credit plan with a credit card that can be used to make purchases only at a single merchant or an affiliated group of merchants; and

(ii) "private label credit card plan" means all of the private label credit card accounts issued by a particular issuer with credit cards usable at the same single merchant or affiliated group of merchants.

(c) *Submission of agreements to Board.* (1) *Quarterly submissions.* A card issuer must make quarterly submissions to the Board, in the form and manner specified by the Board, that contain:

(i) Identifying information about the card issuer and the agreements submitted, including the issuer's name, address, and identifying number (such as an RSSD ID number or tax identification number);

(ii) The credit card agreements that the card issuer offered to the public as of the last business day of the preceding calendar quarter that the card issuer has not previously submitted to the Board;

(iii) Any credit card agreement previously submitted to the Board that was amended during the preceding calendar quarter, as described in § 226.58(c)(3); and

(iv) Notification regarding any credit card agreement previously submitted to the Board that the issuer is withdrawing, as described in § 226.58(c)(4) and (c)(5).

(2) *Timing of first two submissions.* The first submission following the effective date of this section must be sent to the Board no later than February 22, 2010, and must contain the credit card agreements that the card issuer offered to the public as of December 31, 2009. The next submission must be sent to the Board no later than August 2, 2010, and must contain:

(i) Any credit card agreement that the card issuer offered to the public as of June 30, 2010, that the card issuer has not previously submitted to the Board;

(ii) Any credit card agreement previously submitted to the Board that was amended after December 31, 2009, and on or before June 30, 2010, as described in § 226.58(c)(3); and

(iii) Notification regarding any credit card agreement previously submitted to the Board that the issuer is withdrawing as of June 30, 2010, as described in § 226.58(c)(4) and (c)(5).

(3) *Amended agreements.* If a credit card agreement has been submitted to the Board, the agreement has not been amended and the card issuer continues to offer the agreement to the public, no additional submission regarding that agreement is required. If a credit card agreement that previously has been submitted to the Board is amended, the card issuer must submit the entire amended agreement to the Board, in the form and manner specified by the Board, by the first quarterly submission deadline after the last day of the calendar quarter in which the change became effective.

(4) *Withdrawal of agreements.* If a card issuer no longer offers to the public a credit card agreement that previously has been submitted to the Board, the card issuer must notify the Board, in the form and manner specified by the Board, by the first quarterly submission deadline after the last day of the calendar quarter in which the issuer ceased to offer the agreement.

(5) *De minimis exception.* (i) A card issuer is not required to submit any credit card agreements to the Board if the card issuer had fewer than 10,000 open credit card accounts as of the last business day of the calendar quarter.

(ii) If an issuer that previously qualified for the de minimis exception ceases to qualify, the card issuer must begin making quarterly submissions to the Board no later than the first quarterly submission deadline after the date as of which the issuer ceased to qualify.

(iii) If a card issuer that did not previously qualify for the de minimis exception qualifies for the de minimis exception, the card issuer must continue to make quarterly submissions to the Board until the issuer notifies the Board that the card issuer is withdrawing all agreements it previously submitted to the Board.

(6) *Private label credit card exception.* (i) A card issuer is not required to submit to the Board a credit card agreement if, as of the last business day of the calendar quarter, the agreement:

(A) is offered for accounts under one or more private label credit card plans each of which has fewer than 10,000 open accounts; and

(B) is not offered to the public other than for accounts under such a plan.

(ii) If an agreement that previously qualified for the private label credit card exception ceases to qualify, the card issuer must submit the agreement to the Board no later than the first quarterly submission deadline after the date as of which the agreement ceased to qualify.

(iii) If an agreement that did not previously qualify for the private label credit card exception qualifies for the exception, the card issuer must continue to make quarterly submissions to the Board with respect to that agreement until the issuer notifies the Board that the agreement is being withdrawn.

(7) *Product testing exception.* (i) A card issuer is not required to submit to the Board a credit card agreement if, as of the last business day of the calendar quarter, the agreement:

(A) is offered as part of a product test offered to only a limited group of consumers for a limited period of time;

(B) is used for fewer than 10,000 open accounts; and

(C) is not offered to the public other than in connection with such a product test.

(ii) If an agreement that previously qualified for the product testing exception ceases to qualify, the card issuer must submit the agreement to the Board no later than the first quarterly submission deadline after the date as of which the agreement ceased to qualify.

(iii) If an agreement that did not previously qualify for the product testing exception qualifies for the exception, the card issuer must continue to make quarterly submissions to the Board with respect to that agreement until the issuer notifies the Board that the agreement is being withdrawn.

(8) *Form and content of agreements submitted to the Board.* (i) *Form and content generally.* (A) Each agreement must contain the provisions of the agreement and the pricing information in effect as of the last business day of the preceding calendar quarter.

(B) Agreements must not include any personally identifiable information relating to any cardholder, such as name, address, telephone number, or account number.

(C) The following are not deemed to be part of the agreement for purposes of § 226.58, and therefore are not required to be included in submissions to the Board:

(*1*) disclosures required by state or federal law, such as affiliate marketing notices, privacy policies, or disclosures under the E-Sign Act;

(*2*) solicitation materials;

(*3*) periodic statements;

(*4*) ancillary agreements between the issuer and the consumer, such as debt cancellation contracts or debt suspension agreements;

(*5*) offers for credit insurance or other optional products and other similar advertisements; and

(*6*) documents that may be sent to the consumer along with the credit card or credit card agreement such as a cover letter, a validation sticker on the card, or other information about card security.

(D) Agreements must be presented in a clear and legible font.

(ii) *Pricing information.* (A) Pricing information must be set forth in a single addendum to the agreement that contains only the pricing information.

(B) Pricing information that may vary from one cardholder to another depending on the cardholder's creditworthiness or state of residence or other factors must be disclosed either by setting forth all the possible variations (such as purchase APRs of 13 percent, 15 percent, 17 percent, and 19 percent) or by providing a range of possible variations (such as purchase APRs ranging from 13 percent to 19 percent).

(C) If a rate included in the pricing information is a variable rate, the issuer must identify the index or formula used in setting the rate and the margin. Rates that may vary from one cardholder to another must be disclosed by providing the index and the possible margins (such as the prime rate plus 5 percent, 8 percent, 10 percent, or 12 percent) or range of margins (such as the prime rate plus from 5 to 12 percent). The value of the rate and the value of the index are not required to be disclosed.

(iii) *Optional variable terms addendum.* Provisions of the agreement other than the pricing information that may vary from one cardholder to another depending on the cardholder's creditworthiness or state of residence or other factors may be set forth in a single addendum to the agreement separate from the pricing information addendum.

(iv) *Integrated agreement.* Issuers may not provide provisions of the agreement or pricing information in the form of change-in-terms notices or riders (other than the pricing information addendum and the optional variable terms addendum). Changes in provisions or pricing information must be integrated into the text of the agreement, the pricing information addendum or the optional variable terms addendum, as appropriate.

(d) *Posting of agreements offered to the public.* (1) Except as provided below, a card issuer must post and maintain on its publicly available Web site the credit card agreements that the issuer is required to submit to the Board under § 226.58(c). With respect to an agreement offered solely for accounts under one or more private label credit card plans, an issuer may fulfill this requirement by posting and maintaining the agreement in accordance with the requirements of this section on the publicly available Web site of at least one of the merchants at which credit cards issued under each private label credit card plan with 10,000 or more open accounts may be used.

(2) Except as provided in § 226.58(d), agreements posted pursuant to § 226.58(d) must conform to the form and content requirements for agreements submitted to the Board specified in § 226.58(c)(8).

(3) Agreements posted pursuant to § 226.58(d) may be posted in any electronic format that is readily usable by the general public. Agreements must be placed in a location that is prominent and readily accessible by the public and must be accessible without submission of personally identifiable information.

(4) The card issuer must update the agreements posted on its Web site pursuant to § 226.58(d) at least as frequently as the quarterly schedule required for submission of agreements to the Board under § 226.58(c). If the issuer chooses to update the agreements on its Web site more frequently, the agreements posted on the issuer's Web site may contain the provisions of the agreement and the pricing information in effect as of a date other than the last business day of the preceding calendar quarter.

(e) *Agreements for all open accounts.* (1) *Availability of individual cardholder's agreement.* With respect to

any open credit card account, a card issuer must either:

(i) Post and maintain the cardholder's agreement on its Web site; or

(ii) Promptly provide a copy of the cardholder's agreement to the cardholder upon the cardholder's request. If the card issuer makes an agreement available upon request, the issuer must provide the cardholder with the ability to request a copy of the agreement both by using the issuer's Web site (such as by clicking on a clearly identified box to make the request) and by calling a readily available telephone line the number for which is displayed on the issuer's Web site and clearly identified as to purpose. The card issuer must send to the cardholder or otherwise make available to the cardholder a copy of the cardholder's agreement in electronic or paper form no later than 30 days after the issuer receives the cardholder's request.

(2) *Special rule for issuers without interactive Web sites.* An issuer that does not maintain a Web site from which cardholders can access specific information about their individual accounts, instead of complying with § 226.58(e)(1), may make agreements available upon request by providing the cardholder with the ability to request a copy of the agreement by calling a readily available telephone line, the number for which is displayed on the issuer's Web site and clearly identified as to purpose or included on each periodic statement sent to the cardholder and clearly identified as to purpose. The issuer must send to the cardholder or otherwise make available to the cardholder a copy of the cardholder's agreement in electronic or paper form no later than 30 days after the issuer receives the cardholder's request.

(3) *Form and content of agreements.* (i) Except as provided in § 226.58(e), agreements posted on the card issuer's Web site pursuant to § 226.58(e)(1)(i) or made available upon the cardholder's request pursuant to § 226.58(e)(1)(ii) or (e)(2) must conform to the form and content requirements for agreements submitted to the Board specified in § 226.58(c)(8).

(ii) If the card issuer posts an agreement on its Web site or otherwise provides an agreement to a cardholder electronically under § 226.58(e), the agreement may be posted or provided in any electronic format that is readily usable by the general public and must be placed in a location that is prominent and readily accessible to the cardholder.

(iii) Agreements posted or otherwise provided pursuant to § 226.58(e) may contain personally identifiable information relating to the cardholder, such as name, address, telephone number, or account number, provided that the issuer takes appropriate measures to make the agreement accessible only to the cardholder or other authorized persons.

(iv) Agreements posted or otherwise provided pursuant to § 226.58(e) must set forth the specific provisions and pricing information applicable to the particular cardholder. Provisions and pricing information must be complete and accurate as of a date no more than 60 days prior to: (1) the date on which the agreement is posted on the card issuer's Web site under § 226.58(e)(1)(i); or (2) the date the cardholder's request is received under § 226.58(e)(1)(ii) or (e)(2).

(v) Agreements provided upon cardholder request pursuant to § 226.58(e)(1)(ii) or (e)(2) may be provided by the issuer in either electronic or paper form, regardless of the form of the cardholder's request.

(f) *E-Sign Act requirements.* Card issuers may provide credit card agreements in electronic form under § 226.58(d) and (e) without regard to the consumer notice and consent requirements of section 101(c) of the Electronic Signatures in Global and National Commerce Act (E-Sign Act) (15 U.S.C. 7001 *et seq.*).

■ 20. Appendix E to part 226 is revised to read as follows:

## Appendix E to Part 226—Rules for Card Issuers That Bill on a Transaction-by-Transaction Basis

The following provisions of Subpart B apply if credit cards are issued and the card issuer and the seller are the same or related persons; no finance charge is imposed; consumers are billed in full for each use of the card on a transaction-by-transaction basis, by means of an invoice or other statement reflecting each use of the card; and no cumulative account is maintained which reflects the transactions by each consumer during a period of time, such as a month. The term "related person" refers to, for example, a franchised or licensed seller of a creditor's product or service or a seller who assigns or sells sales accounts to a creditor or arranges for credit under a plan that allows the consumer to use the credit only in transactions with that seller. A seller is not related to the creditor merely because the seller and the creditor have an agreement authorizing the seller to honor the creditor's credit card.

1. *Section 226.6(a)(5) or § 226.6(b)(5)(iii).*

2. *Section 226.6(a)(2) or § 226.6(b)(3)(ii)(B), as applicable.* The disclosure required by § 226.6(a)(2) or § 226.6(b)(3)(ii)(B) shall be limited to those charges that are or may be imposed as a result of the deferral of payment by use of the card, such as late payment or delinquency charges. A tabular format is not required.

3. *Section 226.6(a)(4) or § 226.6(b)(5)(ii).*

4. *Section 226.7(a)(2) or § 226.7(b)(2), as applicable; § 226.7(a)(9) or § 226.7(b)(9), as applicable.* Creditors may comply by placing the required disclosures on the invoice or statement sent to the consumer for each transaction.

5. *Section 226.9(a).* Creditors may comply by mailing or delivering the statement required by § 226.6(a)(5) or § 226.6(b)(5)(iii) (see appendix G–3 and G–3(A) to this part) to each consumer receiving a transaction invoice during a one-month period chosen by the card issuer or by sending either the statement prescribed by § 226.6(a)(5) or § 226.6(b)(5)(iii), or an alternative billing error rights statement substantially similar to that in appendix G–4 and G–4(A) to this part, with each invoice sent to a consumer.

6. *Section 226.9(c).* A tabular format is not required.

7. *Section 226.10.*

8. *Section 226.11(a).* This section applies when a card issuer receives a payment or other credit that exceeds by more than $1 the amount due, as shown on the transaction invoice. The requirement to credit amounts to an account may be complied with by other reasonable means, such as by a credit memorandum. Since no periodic statement is provided, a notice of the credit balance shall be sent to the consumer within a reasonable period of time following its occurrence unless a refund of the credit balance is mailed or delivered to the consumer within seven business days of its receipt by the card issuer.

9. *Section 226.12 including § 226.12(c) and (d), as applicable.* Section 226.12(e) is inapplicable.

10. *Section 226.13, as applicable.* All references to "periodic statement" shall be read to indicate the invoice or other statement for the relevant transaction. All actions with regard to correcting and adjusting a consumer's account may be taken by issuing a refund or a new invoice, or by other appropriate means consistent with the purposes of the section.

11. *Section 226.15, as applicable.*

■ 21. Appendix F to part 226 is revised to read as follows:

## Appendix F to Part 226—Optional Annual Percentage Rate Computations for Creditors Offering Open-End Plans Subject to the Requirements of § 226.5b

In determining the denominator of the fraction under § 226.14(c)(3), no amount will be used more than once when adding the sum of the balances [1] subject to periodic rates to the sum of the amounts subject to specific transaction charges. (Where a portion of the finance charge is determined by application of one or more daily periodic rates, the phrase "sum of the balances" shall also mean the "average of daily balances.") In every case, the full amount of transactions subject to specific transaction charges shall be included in the denominator. Other balances or parts of balances shall be included

[1] [Reserved].

according to the manner of determining the balance subject to a periodic rate, as illustrated in the following examples of accounts on monthly billing cycles:

1. Previous balance—none.

A specific transaction of $100 occurs on the first day of the billing cycle. The average daily balance is $100. A specific transaction charge of 3 percent is applicable to the specific transaction. The periodic rate is 1½ percent applicable to the average daily balance. The numerator is the amount of the finance charge, which is $4.50. The denominator is the amount of the transaction (which is $100), plus the amount by which the balance subject to the periodic rate exceeds the amount of the specific transactions (such excess in this case is 0), totaling $100.

The annual percentage rate is the quotient (which is 4½ percent) multiplied by 12 (the number of months in a year), i.e., 54 percent.

2. Previous balance—$100.

A specific transaction of $100 occurs at the midpoint of the billing cycle. The average daily balance is $150. A specific transaction charge of 3 percent is applicable to the specific transaction. The periodic rate is 1½ percent applicable to the average daily balance. The numerator is the amount of the finance charge which is $5.25. The denominator is the amount of the transaction (which is $100), plus the amount by which the balance subject to the periodic rate exceeds the amount of the specific transaction (such excess in this case is $50), totaling $150. As explained in example 1, the annual percentage rate is 3½ percent × 12 = 42 percent.

3. If, in example 2, the periodic rate applies only to the previous balance, the numerator is $4.50 and the denominator is $200 (the amount of the transaction, $100, plus the balance subject only to the periodic rate, the $100 previous balance). As explained in example 1, the annual percentage rate is 2¼ percent × 12 = 27 percent.

4. If, in example 2, the periodic rate applies only to an adjusted balance (previous balance less payments and credits) and the consumer made a payment of $50 at the midpoint of the billing cycle, the numerator is $3.75 and the denominator is $150 (the amount of the transaction, $100, plus the balance subject to the periodic rate, the $50 adjusted balance). As explained in example 1, the annual percentage rate is 2½ percent × 12 = 30 percent.

5. Previous balance—$100.

A specific transaction (check) of $100 occurs at the midpoint of the billing cycle. The average daily balance is $150. The specific transaction charge is $.25 per check. The periodic rate is 1½ percent applied to the average daily balance. The numerator is the amount of the finance charge, which is $2.50 and includes the $.25 check charge and the $2.25 resulting from the application of the periodic rate. The denominator is the full amount of the specific transaction (which is $100) plus the amount by which the average daily balance exceeds the amount of the specific transaction (which in this case is $50), totaling $150. As explained in example 1, the annual percentage rate would be 1⅔ percent × 12 = 20 percent.

6. Previous balance—none.

A specific transaction of $100 occurs at the midpoint of the billing cycle. The average daily balance is $50. The specific transaction charge is 3 percent of the transaction amount or $3.00. The periodic rate is 1½ percent per month applied to the average daily balance. The numerator is the amount of the finance charge, which is $3.75, including the $3.00 transaction charge and $.75 resulting from application of the periodic rate. The denominator is the full amount of the specific transaction ($100) plus the amount by which the balance subject to the periodic rate exceeds the amount of the transaction ($0). Where the specific transaction amount exceeds the balance subject to the periodic rate, the resulting number is considered to be zero rather than a negative number ($50 − $100 = −$50). The denominator, in this case, is $100. As explained in example 1, the annual percentage rate is 3¾ percent × 12 = 45 percent.

■ 22. Appendix G to part 226 is amended by:

■ A. Revising the table of contents at the beginning of the appendix;

■ B. Revising Forms G–1, G–2, G–3, G–4, G–10(A), G–10(B), G–10(C), G–11, and G–13(A) and (B);

■ D. Adding new Forms G–1(A), G–2(A), G–3(A), G–4(A), G–10(D) and (E), G–16(A) and (B), G–17(A) through (D), G–18(A) through (D), and G–18(F) through (H), G–19, G–20, G–21, G–22, G–23, G–24, G–25(A) and (B) in numerical order; and

■ E. Removing and reserving Form G–12.

■ F. Adding and reserving Form G–18(E).

## Appendix G to Part 226—Open-End Model Forms and Clauses


G–1 Balance Computation Methods Model Clauses (Home-equity Plans) (§§ 226.6 and 226.7)
G–1(A) Balance Computation Methods Model Clauses (Plans other than Home-equity Plans) (§§ 226.6 and 226.7)
G–2 Liability for Unauthorized Use Model Clause (Home-equity Plans) (§ 226.12)
G–2(A) Liability for Unauthorized Use Model Clause (Plans Other Than Home-equity Plans) (§ 226.12)
G–3 Long-Form Billing-Error Rights Model Form (Home-equity Plans) (§§ 226.6 and 226.9)
G–3(A) Long-Form Billing-Error Rights Model Form (Plans Other Than Home-equity Plans) (§§ 226.6 and 226.9)
G–4 Alternative Billing-Error Rights Model Form (Home-equity Plans) (§ 226.9)
G–4(A) Alternative Billing-Error Rights Model Form (Plans Other Than Home-equity Plans) (§ 226.9)
G–5 Rescission Model Form (When Opening an Account) (§ 226.15)
G–6 Rescission Model Form (For Each Transaction) (§ 226.15)
G–7 Rescission Model Form (When Increasing the Credit Limit) (§ 226.15)
G–8 Rescission Model Form (When Adding a Security Interest) (§ 226.15)
G–9 Rescission Model Form (When Increasing the Security) (§ 226.15)
G–10(A) Applications and Solicitations Model Form (Credit Cards) (§ 226.5a(b))
G–10(B) Applications and Solicitations Sample (Credit Cards) (§ 226.5a(b))
G–10(C) Applications and Solicitations Sample (Credit Cards) (§ 226.5a(b))
G–10(D) Applications and Solicitations Model Form (Charge Cards) (§ 226.5a(b))
G–10(E) Applications and Solicitations Sample (Charge Cards) (§ 226.5a(b))
G–11 Applications and Solicitations Made Available to General Public Model Clauses (§ 226.5a(e))
G–12 Reserved
G–13(A) Change in Insurance Provider Model Form (Combined Notice) (§ 226.9(f))
G–13(B) Change in Insurance Provider Model Form (§ 226.9(f)(2))
G–14A Home-equity Sample
G–14B Home-equity Sample
G–15 Home-equity Model Clauses
G–16(A) Debt Suspension Model Clause (§ 226.4(d)(3))
G–16(B) Debt Suspension Sample (§ 226.4(d)(3))
G–17(A) Account-opening Model Form (§ 226.6(b)(2))
G–17(B) Account-opening Sample (§ 226.6(b)(2))
G–17(C) Account-opening Sample (§ 226.6(b)(2))
G–17(D) Account-opening Sample (§ 226.6(b)(2))
G–18(A) Transactions; Interest Charges; Fees Sample (§ 226.7(b))
G–18(B) Late Payment Fee Sample (§ 226.7(b))
G–18(C)(1) Minimum Payment Warning (When Amortization Occurs and the 36-Month Disclosures Are Required) (§ 226.7(b))
G–18(C)(2) Minimum Payment Warning (When Amortization Occurs and the 36-Month Disclosures Are Not Required) (§ 226.7(b))
G–18(C)(3) Minimum Payment Warning (When Negative or No Amortization Occurs) (§ 226.7(b))
G–18(D) Periodic Statement New Balance, Due Date, Late Payment and Minimum Payment Sample (Credit cards) (§ 226.7(b))
G–18(E) [Reserved]
G–18(F) Periodic Statement Form
G–18(G) Periodic Statement Form
G–18(H) Deferred Interest Periodic Statement Clause
G–19 Checks Accessing a Credit Card Account Sample (§ 226.9(b)(3))
G–20 Change-in-Terms Sample (Increase in Annual Percentage Rate) (§ 226.9(c)(2))
G–21 Change-in-Terms Sample (Increase in Fees) (§ 226.9(c)(2))
G–22 Penalty Rate Increase Sample (Payment 60 or Fewer Days Late) (§ 226.9(g)(3))
G–23 Penalty Rate Increase Sample (Payment More Than 60 Days Late) (§ 226.9(g)(3))
G–24 Deferred Interest Offer Clauses (§ 226.16(h))
G–25(A) Consent Form for Over-the-Limit Transactions (§ 226.56)

G–25(B) Revocation Notice for Periodic Statement Regarding Over-the-Limit Transactions (§ 226.56)

**G–1—Balance Computation Methods Model Clauses (Home-Equity Plans)**

(a) Adjusted balance method

We figure [a portion of] the finance charge on your account by applying the periodic rate to the "adjusted balance" of your account. We get the "adjusted balance" by taking the balance you owed at the end of the previous billing cycle and subtracting [any unpaid finance charges and] any payments and credits received during the present billing cycle.

(b) Previous balance method

We figure [a portion of] the finance charge on your account by applying the periodic rate to the amount you owe at the beginning of each billing cycle [minus any unpaid finance charges]. We do not subtract any payments or credits received during the billing cycle. [The amount of payments and credits to your account this billing cycle was $ ___.]

(c) Average daily balance method (excluding current transactions)

We figure [a portion of] the finance charge on your account by applying the periodic rate to the "average daily balance" of your account (excluding current transactions). To get the "average daily balance" we take the beginning balance of your account each day and subtract any payments or credits [and any unpaid finance charges]. We do not add in any new [purchases/advances/loans]. This gives us the daily balance. Then, we add all the daily balances for the billing cycle together and divide the total by the number of days in the billing cycle. This gives us the "average daily balance."

(d) Average daily balance method (including current transactions)

We figure [a portion of] the finance charge on your account by applying the periodic rate to the "average daily balance" of your account (including current transactions). To get the "average daily balance" we take the beginning balance of your account each day, add any new [purchases/advances/loans], and subtract any payments or credits, [and unpaid finance charges]. This gives us the daily balance. Then, we add up all the daily balances for the billing cycle and divide the total by the number of days in the billing cycle. This gives us the "average daily balance."

(e) Ending balance method

We figure [a portion of] the finance charge on your account by applying the periodic rate to the amount you owe at the end of each billing cycle (including new purchases and deducting payments and credits made during the billing cycle).

(f) Daily balance method (including current transactions)

We figure [a portion of] the finance charge on your account by applying the periodic rate to the "daily balance" of your account for each day in the billing cycle. To get the "daily balance" we take the beginning balance of your account each day, add any new [purchases/advances/fees], and subtract [any unpaid finance charges and] any payments or credits. This gives us the daily balance.

**G–1(A)—Balance Computation Methods Model Clauses (Plans Other Than Home-Equity Plans)**

(a) Adjusted balance method

We figure the interest charge on your account by applying the periodic rate to the "adjusted balance" of your account. We get the "adjusted balance" by taking the balance you owed at the end of the previous billing cycle and subtracting [any unpaid interest or other finance charges and] any payments and credits received during the present billing cycle.

(b) Previous balance method

We figure the interest charge on your account by applying the periodic rate to the amount you owe at the beginning of each billing cycle. We do not subtract any payments or credits received during the billing cycle.

(c) Average daily balance method (excluding current transactions)

We figure the interest charge on your account by applying the periodic rate to the "average daily balance" of your account. To get the "average daily balance" we take the beginning balance of your account each day and subtract [any unpaid interest or other finance charges and] any payments or credits. We do not add in any new [purchases/advances/fees]. This gives us the daily balance. Then, we add all the daily balances for the billing cycle together and divide the total by the number of days in the billing cycle. This gives us the "average daily balance."

(d) Average daily balance method (including current transactions)

We figure the interest charge on your account by applying the periodic rate to the "average daily balance" of your account. To get the "average daily balance" we take the beginning balance of your account each day, add any new [purchases/advances/fees], and subtract [any unpaid interest or other finance charges and] any payments or credits. This gives us the daily balance. Then, we add up all the daily balances for the billing cycle and divide the total by the number of days in the billing cycle. This gives us the "average daily balance."

(e) Ending balance method

We figure the interest charge on your account by applying the periodic rate to the amount you owe at the end of each billing cycle (including new [purchases/advances/fees] and deducting payments and credits made during the billing cycle).

(f) Daily balance method (including current transactions)

We figure the interest charge on your account by applying the periodic rate to the "daily balance" of your account for each day in the billing cycle. To get the "daily balance" we take the beginning balance of your account each day, add any new [purchases/advances/fees], and subtract [any unpaid interest or other finance charges and] any payments or credits. This gives us the daily balance.

**G–2—Liability for Unauthorized Use Model Clause (Home-Equity Plans)**

You may be liable for the unauthorized use of your credit card [or other term that describes the credit card]. You will not be liable for unauthorized use that occurs after you notify [name of card issuer or its designee] at [address], orally or in writing, of the loss, theft, or possible unauthorized use. [You may also contact us on the Web: [Creditor Web or email address]] In any case, your liability will not exceed [insert $50 or any lesser amount under agreement with the cardholder].

**G–2(A)—Liability for Unauthorized Use Model Clause (Plans Other Than Home-Equity Plans)**

If you notice the loss or theft of your credit card or a possible unauthorized use of your card, you should write to us immediately at: [address] [address listed on your bill], or call us at [telephone number].

[You may also contact us on the Web: [Creditor Web or email address]]

You will not be liable for any unauthorized use that occurs after you notify us. You may, however, be liable for unauthorized use that occurs before your notice to us. In any case, your liability will not exceed [insert $50 or any lesser amount under agreement with the cardholder].

**G–3—Long-Form Billing-Error Rights Model Form (Home-Equity Plans)**

YOUR BILLING RIGHTS

KEEP THIS NOTICE FOR FUTURE USE

This notice contains important information about your rights and our responsibilities under the Fair Credit Billing Act.

**Notify Us in Case of Errors or Questions About Your Bill**

If you think your bill is wrong, or if you need more information about a transaction on your bill, write us [on a separate sheet] at [address] [the address listed on your bill]. Write to us as soon as possible. We must hear from you no later than 60 days after we sent you the first bill on which the error or problem appeared. [You may also contact us on the Web: [Creditor Web or email address]] You can telephone us, but doing so will not preserve your rights.

In your letter, give us the following information:

- Your name and account number.
- The dollar amount of the suspected error.
- Describe the error and explain, if you can, why you believe there is an error. If you need more information, describe the item you are not sure about.

If you have authorized us to pay your credit card bill automatically from your savings or checking account, you can stop the payment on any amount you think is wrong. To stop the payment your letter must reach us three business days before the automatic payment is scheduled to occur.

**Your Rights and Our Responsibilities After We Receive Your Written Notice**

We must acknowledge your letter within 30 days, unless we have corrected the error by then. Within 90 days, we must either correct the error or explain why we believe the bill was correct.

After we receive your letter, we cannot try to collect any amount you question, or report you as delinquent. We can continue to bill

you for the amount you question, including finance charges, and we can apply any unpaid amount against your credit limit. You do not have to pay any questioned amount while we are investigating, but you are still obligated to pay the parts of your bill that are not in question.

If we find that we made a mistake on your bill, you will not have to pay any finance charges related to any questioned amount. If we didn't make a mistake, you may have to pay finance charges, and you will have to make up any missed payments on the questioned amount. In either case, we will send you a statement of the amount you owe and the date that it is due.

If you fail to pay the amount that we think you owe, we may report you as delinquent. However, if our explanation does not satisfy you and you write to us within ten days telling us that you still refuse to pay, we must tell anyone we report you to that you have a question about your bill. And, we must tell you the name of anyone we reported you to. We must tell anyone we report you to that the matter has been settled between us when it finally is.

If we don't follow these rules, we can't collect the first $50 of the questioned amount, even if your bill was correct.

**Special Rule for Credit Card Purchases**

If you have a problem with the quality of property or services that you purchased with a credit card, and you have tried in good faith to correct the problem with the merchant, you may have the right not to pay the remaining amount due on the property or services.

There are two limitations on this right:

(a) You must have made the purchase in your home state or, if not within your home state within 100 miles of your current mailing address; and

(b) The purchase price must have been more than $50.

These limitations do not apply if we own or operate the merchant, or if we mailed you the advertisement for the property or services.

**G–3(A)—Long-Form Billing-Error Rights Model Form (Plans Other Than Home-Equity Plans)**

*Your Billing Rights: Keep This Document For Future Use*

This notice tells you about your rights and our responsibilities under the Fair Credit Billing Act.

*What To Do If You Find A Mistake On Your Statement*

If you think there is an error on your statement, write to us at:

[Creditor Name]

[Creditor Address]

[You may also contact us on the Web: [Creditor Web or email address]]

In your letter, give us the following information:

- *Account information:* Your name and account number.
- *Dollar amount:* The dollar amount of the suspected error.
- *Description of problem:* If you think there is an error on your bill, describe what you believe is wrong and why you believe it is a mistake.

You must contact us:

- Within 60 days after the error appeared on your statement.
- At least 3 business days before an automated payment is scheduled, if you want to stop payment on the amount you think is wrong.

You must notify us of any potential errors *in writing* [or electronically]. You may call us, but if you do we are not required to investigate any potential errors and you may have to pay the amount in question.

*What Will Happen After We Receive Your Letter*

When we receive your letter, we must do two things:

1. Within 30 days of receiving your letter, we must tell you that we received your letter. We will also tell you if we have already corrected the error.

2. Within 90 days of receiving your letter, we must either correct the error or explain to you why we believe the bill is correct.

While we investigate whether or not there has been an error:

- We cannot try to collect the amount in question, or report you as delinquent on that amount.
- The charge in question may remain on your statement, and we may continue to charge you interest on that amount.
- While you do not have to pay the amount in question, you are responsible for the remainder of your balance.
- We can apply any unpaid amount against your credit limit.

After we finish our investigation, one of two things will happen:

- *If we made a mistake:* You will not have to pay the amount in question or any interest or other fees related to that amount.
- *If we do not believe there was a mistake:* You will have to pay the amount in question, along with applicable interest and fees. We will send you a statement of the amount you owe and the date payment is due. We may then report you as delinquent if you do not pay the amount we think you owe.

If you receive our explanation but still believe your bill is wrong, you must write to us within *10 days* telling us that you still refuse to pay. If you do so, we cannot report you as delinquent without also reporting that you are questioning your bill. We must tell you the name of anyone to whom we reported you as delinquent, and we must let those organizations know when the matter has been settled between us.

If we do not follow all of the rules above, you do not have to pay the first $50 of the amount you question even if your bill is correct.

*Your Rights If You Are Dissatisfied With Your Credit Card Purchases*

If you are dissatisfied with the goods or services that you have purchased with your credit card, and you have tried in good faith to correct the problem with the merchant, you may have the right not to pay the remaining amount due on the purchase.

To use this right, all of the following must be true:

1. The purchase must have been made in your home state or within 100 miles of your current mailing address, and the purchase price must have been more than $50. (Note: Neither of these are necessary if your purchase was based on an advertisement we mailed to you, or if we own the company that sold you the goods or services.)

2. You must have used your credit card for the purchase. Purchases made with cash advances from an ATM or with a check that accesses your credit card account do not qualify.

3. You must not yet have fully paid for the purchase.

If all of the criteria above are met and you are still dissatisfied with the purchase, contact us *in writing* [or electronically] at:

[Creditor Name]

[Creditor Address]

[[Creditor Web or e-mail address]]

While we investigate, the same rules apply to the disputed amount as discussed above. After we finish our investigation, we will tell you our decision. At that point, if we think you owe an amount and you do not pay, we may report you as delinquent.

**G–4—Alternative Billing-Error Rights Model Form (Home-Equity Plans)**

BILLING RIGHTS SUMMARY

*In Case of Errors or Questions About Your Bill*

If you think your bill is wrong, or if you need more information about a transaction on your bill, write us [on a separate sheet] at [address] [the address shown on your bill] as soon as possible. [You may also contact us on the Web: [Creditor Web or e-mail address]] We must hear from you no later than 60 days after we sent you the first bill on which the error or problem appeared. You can telephone us, but doing so will not preserve your rights.

In your letter, give us the following information:

- Your name and account number.
- The dollar amount of the suspected error.
- Describe the error and explain, if you can, why you believe there is an error. If you need more information, describe the item you are unsure about.

You do not have to pay any amount in question while we are investigating, but you are still obligated to pay the parts of your bill that are not in question. While we investigate your question, we cannot report you as delinquent or take any action to collect the amount you question.

*Special Rule for Credit Card Purchases*

If you have a problem with the quality of goods or services that you purchased with a credit card, and you have tried in good faith to correct the problem with the merchant, you may not have to pay the remaining amount due on the goods or services. You have this protection only when the purchase price was more than $50 and the purchase was made in your home state or within 100 miles of your mailing address. (If we own or operate the merchant, or if we mailed you the advertisement for the property or services, all purchases are covered regardless of amount or location of purchase.)

**G–4(A)—Alternative Billing-Error Rights Model Form (Plans Other Than Home-Equity Plans)**

*What To Do If You Think You Find A Mistake On Your Statement*

If you think there is an error on your statement, write to us at:

[Creditor Name]
[Creditor Address]

[You may also contact us on the Web: [Creditor Web or e-mail address]]

In your letter, give us the following information:

- *Account information:* Your name and account number.
- *Dollar amount:* The dollar amount of the suspected error.
- *Description of Problem:* If you think there is an error on your bill, describe what you believe is wrong and why you believe it is a mistake.

You must contact us within 60 days after the error appeared on your statement.

You must notify us of any potential errors *in writing* [or electronically]. You may call us, but if you do we are not required to investigate any potential errors and you may have to pay the amount in question.

While we investigate whether or not there has been an error, the following are true:

- We cannot try to collect the amount in question, or report you as delinquent on that amount.
- The charge in question may remain on your statement, and we may continue to charge you interest on that amount. But, if we determine that we made a mistake, you will not have to pay the amount in question or any interest or other fees related to that amount.
- While you do not have to pay the amount in question, you are responsible for the remainder of your balance.
- We can apply any unpaid amount against your credit limit.

*Your Rights If You Are Dissatisfied With Your Credit Card Purchases*

If you are dissatisfied with the goods or services that you have purchased with your credit card, and you have tried in good faith to correct the problem with the merchant, you may have the right not to pay the remaining amount due on the purchase.

To use this right, all of the following must be true:

1. The purchase must have been made in your home state or within 100 miles of your current mailing address, and the purchase price must have been more than $50. (**Note:** Neither of these are necessary if your purchase was based on an advertisement we mailed to you, or if we own the company that sold you the goods or services.)

2. You must have used your credit card for the purchase. Purchases made with cash advances from an ATM or with a check that accesses your credit card account do not qualify.

3. You must not yet have fully paid for the purchase.

If all of the criteria above are met and you are still dissatisfied with the purchase, contact us *in writing* [or electronically] at:

[Creditor Name]
[Creditor Address]
[[Creditor Web address]]

While we investigate, the same rules apply to the disputed amount as discussed above. After we finish our investigation, we will tell you our decision. At that point, if we think you owe an amount and you do not pay we may report you as delinquent.

* * * * *

BILLING CODE 6210–01–P

## G-10(A) Applications and Solicitations Model Form (Credit Cards)

| Interest Rates and Interest Charges | |
|---|---|
| Annual Percentage Rate (APR) for Purchases | [Purchase rate]<br><br>[Description that rate varies and how it is determined, if applicable] |
| APR for Balance Transfers | [Balance transfer rate]<br><br>[Description that rate varies and how it is determined, if applicable] |
| APR for Cash Advances | [Cash advance rate]<br><br>[Description that rate varies and how it is determined, if applicable] |
| Penalty APR and When it Applies | [Penalty rate]<br><br>[Description of events that may result in the penalty rate]<br><br>[Description of how long penalty rate may apply] |
| [How to Avoid Paying Interest on Purchases/ Paying Interest] | [Description of grace period for purchases or statement that no grace period applies] |
| [Minimum Interest Charge]/[Minimum Charge] | [Description of minimum interest charge or minimum charge] |
| For Credit Card Tips from the Federal Reserve Board | [Reference to Board's website] |

| Fees | |
|---|---|
| [Annual Fee]/[Set-up and Maintenance Fees] | [Notice of available credit, if applicable]<br><br>[Description of fees for availability or issuance of credit, such as an annual fee, if applicable] |
| Transaction Fees | |
| • Balance Transfer | [Description of balance transfer fee] |
| • Cash Advance | [Description of cash advance fee] |
| • Foreign Transaction | [Description of foreign transaction fee] |
| Penalty Fees | |
| • Late Payment | [Description of late payment fee] |
| • Over-the-Credit Limit | [Description of over-the-credit limit fee] |
| • Returned Payment | [Description of returned payment fee] |
| Other Fees | |
| • Required [insert name of required insurance, or debt cancellation or suspension coverage] | [Description of cost of insurance, or debt cancellation or suspension plans] [Cross reference to additional information, if applicable] |

How We Will Calculate Your Balance: [Description of balance computation method]

Loss of Introductory APR [Circumstances in which introductory rate may be revoked and rate that applies if introductory rate is revoked, if applicable]

[Description that rate that applies after introductory rate is revoked varies and how it is determined, if applicable]

## G-10(B) Applications and Solicitations Sample (Credit Cards)

| Interest Rates and Interest Charges | |
|---|---|
| **Annual Percentage Rate (APR) for Purchases** | **8.99%** to **19.99%** when you open your account, based on your creditworthiness.<br>After that, your APR will vary with the market based on the Prime Rate. |
| **APR for Balance Transfers** | **15.99%**<br>This APR will vary with the market based on the Prime Rate. |
| **APR for Cash Advances** | **21.99%**<br>This APR will vary with the market based on the Prime Rate. |
| **Penalty APR and When it Applies** | **28.99%**<br>This APR may be applied to your account if you:<br>1) Make a late payment;<br>2) Go over your credit limit twice in a six-month period;<br>3) Make a payment that is returned; or<br>4) Do any of the above on another account that you have with us.<br>**How Long Will the Penalty APR Apply?:** If your APRs are increased for any of these reasons, the Penalty APR will apply until you make six consecutive minimum payments when due. |
| **How to Avoid Paying Interest on Purchases** | Your due date is at least 25 days after the close of each billing cycle. We will not charge you any interest on purchases if you pay your entire balance by the due date each month. |
| **Minimum Interest Charge** | If you are charged interest, the charge will be no less than $1.50. |
| **For Credit Card Tips from the Federal Reserve Board** | To learn more about factors to consider when applying for or using a credit card, visit the website of the Federal Reserve Board at **http://www.federalreserve.gov/creditcard**. |

| Fees | |
|---|---|
| **Annual Fee** | **None** |
| **Transaction Fees** | |
| • Balance Transfer | Either **$5** or **3%** of the amount of each transfer, whichever is greater (maximum fee: $100). |
| • Cash Advance | Either **$5** or **3%** of the amount of each cash advance, whichever is greater. |
| • Foreign Transaction | **2%** of each transaction in U.S. dollars |
| **Penalty Fees** | |
| • Late Payment | **$29** if balance is less than or equal to $1,000;<br>**$35** if balance is more than $1,000 |
| • Over-the-Credit Limit | **$29** |
| • Returned Payment | **$35** |
| **Other Fees** | |
| • Required Account Protector Plan | **$0.79** per $100 of balance at the end of each statement period. See back for details. |

**How We Will Calculate Your Balance:** We use a method called "average daily balance (including new purchases)."

## G-10(C) Applications and Solicitations (Credit Cards)

| Interest Rates and Interest Charges | |
|---|---|
| **Annual Percentage Rate (APR) for Purchases** | **8.99%, 10.99%, or 12.99%** introductory APR for one year, based on your creditworthiness.<br><br>After that, your APR will be **14.99%** This APR will vary with the market based on the Prime Rate. |
| **APR for Balance Transfers** | **15.99%**<br><br>This APR will vary with the market based on the Prime Rate |
| **APR for Cash Advances** | **21.99%**<br><br>This APR will vary with the market based on the Prime Rate. |
| **Penalty APR and When it Applies** | **28.99%**<br><br>This APR may be applied to your account if you:<br>1) Make a late payment,<br>2) Go over your credit limit;<br>3) Make a payment that is returned; or<br>4) Do any of the above on another account that you have with us.<br><br>**How Long Will the Penalty APR Apply?:** If your APRs are increased for any of these reasons, the Penalty APR will apply until you make six consecutive minimum payments when due. |
| **How to Avoid Paying Interest on Purchases** | Your due date is at least 25 days after the close of each billing cycle. We will not charge you any interest on purchases if you pay your entire balance by the due date each month |
| **Minimum Interest Charge** | If you are charged interest, the charge will be no less than $1 50. |
| **For Credit Card Tips from the Federal Reserve Board** | To learn more about factors to consider when applying for or using a credit card, visit the website of the Federal Reserve Board at **http://www.federalreserve.gov/creditcard** |

| Fees | |
|---|---|
| **Set-up and Maintenance Fees** | NOTICE: Some of these set-up and maintenance fees will be assessed before you begin using your card and will reduce the amount of credit you initially have available For example, if you are assigned the minimum credit limit of $250, your initial available credit will be only about $209 (or about $204 if you choose to have an additional card). |
| • Annual Fee | **$20** |
| • Account Set-up Fee | **$20** (one-time fee) |
| • Participation Fee | **$12** annually ($1 per month) |
| • Additional Card Fee | **$5** annually (if applicable) |
| **Transaction Fees** | |
| • Balance Transfer | Either **$5** or **3%** of the amount of each transfer, whichever is greater (maximum fee $100) |
| • Cash Advance | Either **$5** or **3%** of the amount of each cash advance, whichever is greater. |
| • Foreign Transaction | **2%** of each transaction in U.S. dollars |
| **Penalty Fees** | |
| • Late Payment | **$29** if balance is less than or equal to $1,000;<br>**$35** if balance is more than $1,000 |
| • Over-the-Credit Limit | **$29** |
| • Returned Payment | **$35** |

**How We Will Calculate Your Balance:** We use a method called "average daily balance (including new purchases)."

**Loss of Introductory APR:** We may end your introductory APR and apply the Penalty APR if you make a late payment.

## G-10(D) Applications and Solicitations Model Form (Charge Cards)

| Payment Information |
|---|
| [A statement that charges incurred through use of the charge card are due when the periodic statement is received] |

| Fees | |
|---|---|
| [Annual Fee]/[Set-up and Maintenance Fees] | [Notice of available credit, if applicable]<br>[Description of fees for availability or issuance of credit, such as an annual fee, if applicable] |
| Transaction Fees | |
| • Balance Transfer | [Description of balance transfer fee] |
| • Cash Advance | [Description of cash advance fee] |
| • Foreign Transaction | [Description of foreign transaction fee] |
| Penalty Fees | |
| • Late Payment | [Description of late payment fee] |
| • Over-the-Credit Limit | [Description of over-the-credit limit fee] |
| • Returned Payment | [Description of returned payment fee] |

## G-10(E) Applications and Solicitations Sample (Charge Cards)

| Payment Information |
|---|
| All charges made on this charge card are due and payable when you receive your periodic statement. |

| Fees | |
|---|---|
| **Annual Fee** | **$50** |
| **Transaction Fees** | |
| • Balance Transfer | Either **$5** or **3%** of the amount of each transfer, whichever is greater (maximum fee: $100). |
| • Cash Advance | Either **$5** or **3%** of the amount of each cash advance, whichever is greater. |
| **Penalty Fees** | |
| • Late Payment | **$31** if balance is less than or equal to $1,000;<br>**$35** if balance is more than $1,000 |
| • Over-the-Credit Limit | **$30** |
| • Returned Payment | **$30** |

BILLING CODE 6210–01–C

### G–11—Applications and Solicitations Made Available to the General Public Model Clauses

(a) Disclosure of Required Credit Information

The information about the costs of the card described in this [application]/[solicitation] is accurate as of (*month/year*). This information may have changed after that date. To find out what may have changed, [call us at (*telephone number*)][write to us at (*address*)].

(b) No Disclosure of Credit Information

There are costs associated with the use of this card. To obtain information about these costs, call us at (*telephone number*) or write to us at (*address*).

### G–12 [Reserved]

### G–13(A)—Change in Insurance Provider Model Form (Combined Notice)

The credit card account you have with us is insured. This is to notify you that we plan to replace your current coverage with insurance coverage from a different insurer.

If we obtain insurance for your account from a different insurer, you may cancel the insurance.

[Your premium rate will increase to $ ____ per ____.]

[Your coverage will be affected by the following:

[ ] The elimination of a type of coverage previously provided to you. [(explanation)] [See ____ of the attached policy for details.]

[ ] A lowering of the age at which your coverage will terminate or will become more restrictive. [(explanation)] [See ____ of the attached policy or certificate for details.]

[ ] A decrease in your maximum insurable loan balance, maximum periodic benefit payment, maximum number of payments, or any other decrease in the dollar amount of your coverage or benefits. [(explanation)] [See ____ of the attached policy or certificate for details.]

[ ] A restriction on the eligibility for benefits for you or others. [(explanation)] [See ____ of the attached policy or certificate for details.]

[ ] A restriction in the definition of "disability" or other key term of coverage. [(explanation)] [See ____ of the attached policy or certificate for details.]

[ ] The addition of exclusions or limitations that are broader or other than those under the current coverage. [(explanation)] [See ____ of the attached policy or certificate for details.]

[ ] An increase in the elimination (waiting) period or a change to nonretroactive coverage. [(explanation)] [See ____ of the attached policy or certificate for details).]

[The name and mailing address of the new insurer providing the coverage for your account is (name and address).]

**G–13(B)—Change in Insurance Provider Model Form**

We have changed the insurer providing the coverage for your account. The new insurer's name and address are (name and address). A copy of the new policy or certificate is attached.

You may cancel the insurance for your account.

* * * * *

**G–16(A) Debt Suspension Model Clause**

Please enroll me in the optional [insert name of program], and bill my account the fee of [how cost is determined]. I understand that enrollment is not required to obtain credit. I also understand that depending on the event, the protection may only temporarily suspend my duty to make minimum payments, not reduce the balance I owe. I understand that my balance will actually grow during the suspension period as interest continues to accumulate.

[To Enroll, Sign Here]/[To Enroll, Initial Here]. X _____

**G–16(B) Debt Suspension Sample**

Please enroll me in the optional [name of program], and bill my account the fee of $.83 per $100 of my month-end account balance. I understand that enrollment is not required to obtain credit. I also understand that depending on the event, the protection may only temporarily suspend my duty to make minimum payments, not reduce the balance I owe. I understand that my balance will actually grow during the suspension period as interest continues to accumulate.

To Enroll, Initial Here. X _____

BILLING CODE 6210–01–P

## G-17(A) Account-Opening Model Form

| Interest Rates and Interest Charges | |
|---|---|
| Annual Percentage Rate (APR) for Purchases | [Purchase rate]<br><br>[Description that rate varies and how it is determined, if applicable] |
| APR for Balance Transfers | [Balance transfer rate]<br><br>[Description that rate varies and how it is determined, if applicable] |
| APR for Cash Advances | [Cash advance rate]<br><br>[Description that rate varies and how it is determined, if applicable] |
| Penalty APR and When it Applies | [Penalty rate]<br><br>[Description of events that may result in the penalty rate]<br><br>[Description of how long penalty rate may apply] |
| [How to Avoid Paying Interest]/[Paying Interest] | [Description of grace period for purchases, cash advances, balance transfers, or any other credit extended or statement that no grace period applies] |
| [Minimum Interest Charge]/[Minimum Charge] | [Description of minimum interest charge or minimum charge, if applicable] |
| For Credit Card Tips from the Federal Reserve Board | [Reference to Board's website] |

| Fees | |
|---|---|
| [Annual Fee]/[Set-up and Maintenance Fees] | [Notice of available credit, if applicable]<br><br>[Notice of right to reject plan, if applicable]<br><br>[Description of fees for availability or issuance of credit, such as an annual fee, if applicable] |
| Transaction Fees<br>• Balance Transfer<br>• Cash Advance<br>• Foreign Transaction | <br>[Description of balance transfer fee]<br>[Description of cash advance fee]<br>[Description of foreign transaction fee] |
| Penalty Fees<br>• Late Payment<br>• Over-the-Credit Limit<br>• Returned Payment | <br>[Description of late payment fee]<br>[Description of over-the-credit limit fee]<br>[Description of returned payment fee] |
| Other Fees<br>• Required [insert name of required insurance, or debt cancellation or suspension coverage] | <br>[Description of cost of insurance, or debt cancellation or suspension plans] [Cross reference to additional information, if applicable] |

How We Will Calculate Your Balance: [Description of balance computation method]

Loss of Introductory APR: [Circumstances in which introductory rate may be revoked and rate that applies if introductory rate is revoked, if applicable]

[Description that rate that applies after introductory rate is revoked varies and how it is determined, if applicable]

Billing Rights: [Reference to account agreement for details on billing-error rights]

## G-17(B) Account-Opening Sample

| Interest Rates and Interest Charges | |
|---|---|
| **Annual Percentage Rate (APR) for Purchases** | **8.99%**<br>This APR will vary with the market based on the Prime Rate. |
| **APR for Balance Transfers** | **15.99%**<br>This APR will vary with the market based on the Prime Rate. |
| **APR for Cash Advances** | **21.99%**<br>This APR will vary with the market based on the Prime Rate. |
| **Penalty APR and When It Applies** | **28.99%**<br>This APR may be applied to your account if you:<br>1) Make a late payment;<br>2) Go over your credit limit twice in a six-month period;<br>3) Make a payment that is returned; or<br>4) Do any of the above on another account that you have with us.<br>**How Long Will the Penalty APR Apply?:** If your APRs are increased for any of these reasons, the Penalty APR will apply until you make six consecutive minimum payments when due. |
| **Paying Interest** | Your due date is at least 25 days after the close of each billing cycle. We will not charge you any interest on purchases if you pay your entire balance by the due date each month. We will begin charging interest on cash advances and balance transfers on the transaction date |
| **Minimum Interest Charge** | If you are charged interest, the charge will be no less than $1.50. |
| **For Credit Card Tips from the Federal Reserve Board** | To learn more about factors to consider when applying for or using a credit card, visit the website of the Federal Reserve Board at **http://www.federalreserve.gov/creditcard**. |

| Fees | |
|---|---|
| **Annual Fee** | **None** |
| **Transaction Fees** | |
| • Balance Transfer | Either **$5** or **3%** of the amount of each transfer, whichever is greater (maximum fee: $100). |
| • Cash Advance | Either **$5** or **3%** of the amount of each cash advance, whichever is greater. |
| • Foreign Transaction | **2%** of each transaction in U.S. dollars. |
| **Penalty Fees** | |
| • Late Payment | **$29** if balance is less than or equal to $1,000;<br>**$35** if balance is more than $1,000 |
| • Over-the-Credit Limit | **$29** |
| • Returned Payment | **$35** |
| **Other Fees** | |
| • Required Account Protector Plan | **$0.79** per $100 of balance at the end of each statement period. See back for details. |

**How We Will Calculate Your Balance:** We use a method called "average daily balance (including new purchases)." See your account agreement for more details.

**Billing Rights:** Information on your rights to dispute transactions and how to exercise those rights is provided in your account agreement.

## G-17(C) Account-Opening Sample

| Interest Rates and Interest Charges | |
|---|---|
| **Annual Percentage Rate (APR) for Purchases** | **8.99%** introductory APR for one year.<br>After that, your APR will be **14.99%**. This APR will vary with the market based on the Prime Rate. |
| **APR for Balance Transfers** | **15.99%**<br>This APR will vary with the market based on the Prime Rate. |
| **APR for Cash Advances** | **21.99%**<br>This APR will vary with the market based on the Prime Rate. |
| **Penalty APR and When it Applies** | **28.99%**<br>This APR may be applied to your account if you:<br>1) Make a late payment;<br>2) Go over your credit limit;<br>3) Make a payment that is returned; or<br>4) Do any of the above on another account that you have with us.<br>**How Long Will the Penalty APR Apply?:** If your APRs are increased for any of these reasons, the Penalty APR will apply until you make six consecutive minimum payments when due. |
| **Paying Interest** | Your due date is at least 25 days after the close of each billing cycle. We will not charge you any interest on purchases if you pay your entire balance by the due date each month. We will begin charging interest on cash advances and balance transfers on the transaction date. |
| **Minimum Interest Charge** | If you are charged interest, the charge will be no less than $1.50. |
| **For Credit Card Tips from the Federal Reserve Board** | To learn more about factors to consider when applying for or using a credit card, visit the website of the Federal Reserve Board at **http://www.federalreserve.gov/creditcard**. |

| Fees | |
|---|---|
| **Set-up and Maintenance Fees** | NOTICE: Some of these set-up and maintenance fees will be assessed before you begin using your card and will reduce the amount of credit you initially have available. Based on your initial credit limit of $250, your initial available credit will be only about $209 (or about $204 if you choose to have an additional card).<br>You may still reject this plan, provided that you have not yet used the account or paid a fee after receiving a billing statement. If you do reject the plan, you are not responsible for any fees or charges. |
| • Annual Fee | **$20** |
| • Account Set-up Fee | **$20** (one-time fee) |
| • Participation Fee | **$12** annually ($1 per month) |
| • Additional Card Fee | **$5** annually (if applicable) |
| **Transaction Fees** | |
| • Balance Transfer | Either **$5** or **3%** of the amount of each transfer, whichever is greater (maximum fee: $100). |
| • Cash Advance | Either **$5** or **3%** of the amount of each cash advance, whichever is greater. |
| • Foreign Transaction | **2%** of each transaction in U.S. dollars. |
| **Penalty Fees** | |
| • Late Payment | **$29** if balance is less than or equal to $1,000;<br>**$35** if balance is more than $1,000 |
| • Over-the-Credit Limit | **$29** |
| • Returned Payment | **$35** |

**How We Will Calculate Your Balance:** We use a method called "average daily balance (including new purchases)." See your account agreement for more details.

**Loss of Introductory APR:** We may end your introductory APR and apply the Penalty APR if you make a late payment.

**Billing Rights:** Information on your rights to dispute transactions and how to exercise those rights is provided in your account agreement.

## G-17(D) Account-Opening Sample (Line of Credit)

| Interest Rate and Interest Charges | |
|---|---|
| **APR for Cash Advances** | **18.00%.** |
| **Minimum Interest Charge** | If you are charged interest, the charge will be no less than $1.50. |
| **Paying Interest** | You will be charged interest from the transaction date. |

| Fees | |
|---|---|
| **Annual Fee** | **$20** |
| **Penalty Fees** | |
| • Late Payment | **$10** |
| • Over-the-Credit Limit | **$29** |

How We Will Calculate Your Balance: We use a method called "average daily balance (including new purchases)." See your account agreement for more details.

Billing Rights: Information on your rights to dispute transactions and how to exercise those rights is provided in your account agreement.

## G-18(A) Periodic Statement Transactions; Interest Charges; Fees Sample

| Transactions | | | | |
|---|---|---|---|---|
| **Reference Number** | **Trans Date** | **Post Date** | **Description of Transaction or Credit** | **Amount** |
| 5884186PS0388W6YM | 2/22 | 2/23 | Store #1 | $2.05 |
| 0544400060ZLV7ZVL | 2/24 | 2/25 | Store #2 | $12.11 |
| 854338203FS8OO0Z5 | 2/25 | 2/25 | Pymt Thank You | $450.00– |
| 55541860705RDYD0X | 2/25 | 2/26 | Store #3 | $4.63 |
| 554328608008W90M0 | 2/25 | 2/26 | Store #4 | $114.95 |
| 054830709LYMRPT4L | 2/25 | 2/26 | Store #5 | $7.35 |
| 564891561545KOSHD | 2/25 | 2/26 | Store #6 | $14.35 |
| 841517877845AKOJIO | 2/25 | 2/26 | Store #7 | $40.35 |
| 895848561561894KOH | 2/26 | 2/27 | Store #8 | $27.68 |
| 1871556189456SAMKL | 2/26 | 2/27 | Store #9 | $124.76 |
| 1542202074TWWZV48 | 2/26 | 2/26 | Cash Advance | $121.50 |
| 2564894185189LKDFID | 2/27 | 2/28 | Store #10 | $32.87 |
| 4545754784KOHUIOS | 2/27 | 3/1 | Balance Transfer | $785.00 |
| 2564561023184102315 | 2/28 | 3/1 | Store #11 | $14.78 |
| 14547847586KDDL564 | 2/28 | 2/28 | Cash Advance | $196.50 |
| 55542818705RASD0X | 3/1 | 3/2 | Store #12 | $3.76 |
| 289189194ASDS8744 | 3/1 | 3/3 | Store #13 | $13.45 |
| 178105417841045784 | 3/2 | 3/4 | Store #14 | $2.35 |
| 045148714518979874 | 3/4 | 3/5 | Store #13 | $13.45– |
| 8456152156181SDSA | 3/5 | 3/6 | Store #15 | $25.00 |
| 31289105205648AWD | 3/11 | 3/12 | Store #16 | $7.34 |
| 045184784415815ASD | 3/11 | 3/16 | Store #17 | $10.56 |
| 0547810544898718AF | 3/15 | 3/17 | Store #18 | $24.50 |
| 056489413216848OP | 3/16 | 3/17 | Store #19 | $8.76 |
| 054894561564ASDW | 3/17 | 3/18 | Store #20 | $14.23 |
| 5648974891AD98156 | 3/19 | 3/20 | Store #21 | $23.76 |
| **Fees** | | | | |
| 9525156489SFD4545Q | 2/23 | 2/23 | Late Fee | $35.00 |
| 56415615647OJSNDS | 2/26 | 2/26 | Cash Advance Fee | $5.00 |
| 84151564SADS8745H | 2/27 | 2/27 | Balance Transfer Fee | $23.55 |
| 2564891561894515 16L | 2/28 | 2/28 | Cash Advance Fee | $5.90 |
| | | | **TOTAL FEES FOR THIS PERIOD** | **$69.45** |
| **Interest Charged** | | | | |
| | | | Interest Charge on Purchases | $6.31 |
| | | | Interest Charge on Cash Advances | $4.58 |
| | | | **TOTAL INTEREST FOR THIS PERIOD** | **$10.89** |

| 2012 Totals Year-to-Date | |
|---|---|
| Total fees charged in 2012 | $90.14 |
| Total interest charged in 2012 | $18.27 |

G-18(B)—Late Payment Fee Sample

**Late Payment Warning**: If we do not receive your minimum payment by the date listed above, you may have to pay a $35 late fee and your APRs may be increased up to the Penalty APR of 28.99%.

**Form G-18(C)(1) Minimum Payment Warming (When Amortization Occurs and the 36-Month Disclosures Are Required)**

**G-18(C)(1) Minimum Payment Warning (When Amortization Occurs and the 36-month Disclosures Are Required)**

**Minimum Payment Warning:** If you make only the minimum payment each period, you will pay more in interest and it will take you longer to pay off your balance. For example:

| If you make no additional charges using this card and each month you pay... | You will pay off the balance shown on this statement in about... | And you will end up paying an estimated total of... |
|---|---|---|
| Only the minimum payment | 10 years | $3,284 |
| $62 | 3 years | $2,232 (*Savings=$1,052*) |

If you would like information about credit counseling services, call 1-800-xxx-xxxx.

**Form G-18(C)(2) Minimum Payment Warning (When Amortization Occurs and the 36-Month Disclosures Are Not Required);**

**G-18(C)(2) Minimum Payment Warning (When Amortization Occurs and the 36-month Disclosures Are Not Required)**

**Minimum Payment Warning:** If you make only the minimum payment each period, you will pay more in interest and it will take you longer to pay off your balance. For example:

| If you make no additional charges using this card and each month you pay... | You will pay off the balance shown on this statement in about... | And you will end up paying an estimated total of... |
|---|---|---|
| Only the minimum payment | 14 months | $130 |

If you would like information about credit counseling services, call 1-800-xxx-xxxx.

## Form G-18(C)(3) Minimum Payment Warning (When Negative or No Amortization Occurs);

### G-18(C)(3) Minimum Payment Warning (When Negative or No Amortization Occurs)

**Minimum Payment Warning:** Even if you make no more charges using this card, if you make only the minimum payment each month we estimate you will never pay off the balance shown on this statement because your payment will be less than the interest charged each month.

If you make more than the minimum payment each period, you will pay less in interest and pay off your balance sooner. For example, if you instead paid $74 per month, you would pay off the balance shown on this statement in around 3 years.

If you would like information about credit counseling services, call 1-800-xxx-xxxx.

### G-18(D) Periodic Statement New Balance, Due Date, Late Payment and Minimum Payment Sample (Credit Cards)

| Payment Information | |
|---|---|
| New Balance | $1,784.53 |
| Minimum Payment Due | $53.00 |
| Payment Due Date | 4/20/12 |

**Late Payment Warning:** If we do not receive your minimum payment by the date listed above, you may have to pay a $35 late fee and your APRs may be increased up to the Penalty APR of 28.99%.

**Minimum Payment Warning:** If you make only the minimum payment each period, you will pay more in interest and it will take you longer to pay off your balance. For example:

| If you make no additional charges using this card and each month you pay... | You will pay off the balance shown on this statement in about... | And you will end up paying an estimated total of... |
|---|---|---|
| Only the minimum payment | 10 years | $3,284 |
| $62 | 3 years | $2,232 *(Savings=$1,052)* |

If you would like information about credit counseling services, call 1-800-xxx-xxxx.

### G-18(E)

[Reserved.]

# G-18(F) Periodic Statement Form

## G-18(F) Periodic Statement Form

Page 1 of 2

**XXX Bank Credit Card Account Statement**
**Account Number XXXX XXXX XXXX XXXX**
**February 21, 2012 to March 22, 2012**

### Summary of Account Activity

| | |
|---|---|
| Previous Balance | $535.07 |
| Payments | -$450.00 |
| Other Credits | -$13.45 |
| Purchases | +$529.57 |
| Balance Transfers | +$785.00 |
| Cash Advances | +$318.00 |
| Past Due Amount | +$0.00 |
| Fees Charged | +$69.45 |
| Interest Charged | +$10.89 |
| New Balance | $1,784.53 |
| Credit limit | $2,000.00 |
| Available credit | $215.47 |
| Statement closing date | 3/22/2012 |
| Days in billing cycle | 30 |

**QUESTIONS?**
Call Customer Service 1-XXX-XXX-XXXX
Lost or Stolen Credit Card 1-XXX-XXX-XXXX

### Payment Information

| | |
|---|---|
| New Balance | $1,784.53 |
| Minimum Payment Due | $53.00 |
| Payment Due Date | 4/20/12 |

**Late Payment Warning:** If we do not receive your minimum payment by the date listed above, you may have to pay a $35 late fee and your APRs may be increased up to the Penalty APR of 28.99%.

**Minimum Payment Warning:** If you make only the minimum payment each period, you will pay more in interest and it will take you longer to pay off your balance. For example:

| If you make no additional charges using this card and each month you pay... | You will pay off the balance shown on this statement in about... | And you will end up paying an estimated total of... |
|---|---|---|
| Only the minimum payment | 10 years | $3,284 |
| $62 | 3 years | $2,232 *(Savings=$1,052)* |

If you would like information about credit counseling services, call 1-800-XXX-XXXX.

Please send billing inquiries and correspondence to:
PO Box XXXX, Anytown, Anystate XXXXX

### Important Changes to Your Account Terms

The following is a summary of changes that are being made to your account terms. For more detailed information, please refer to the booklet enclosed with this statement.

These changes will impact your account as follows:

Transactions made on or after 4/9/12: As of 5/10/12, any changes to APRs described below will apply to these transactions.

Transactions made before 4/9/12: Current APRs will continue to apply to these transactions.

If you are already being charged a higher Penalty APR for purchases: In this case, any changes to APRs described below will not go into effect at this time. These changes will go into effect when the Penalty APR no longer applies to your account.

| Revised Terms, as of 5/10/12 | |
|---|---|
| APR for Purchases | 16.99% |

### Transactions

| Reference Number | Trans Date | Post Date | Description of Transaction or Credit | Amount |
|---|---|---|---|---|
| 5884186PS0388W6YM | 2/22 | 2/23 | Store #1 | $2.05 |
| 05444000802LV7ZVL | 2/24 | 2/25 | Store #2 | $12.11 |
| 55541880795RDYD0X | 2/24 | 2/25 | Store #3 | $4.63 |
| 55432860808W90M0 | 2/24 | 2/25 | Store #4 | $114.95 |
| 054830709LYMRPT4L | 2/24 | 2/25 | Store #5 | $7.35 |
| 854338203FS8OO0Z5 | 2/25 | 2/25 | Pymt Thank You | $450.00– |

(transactions continued on next page)

NOTICE: SEE REVERSE SIDE FOR IMPORTANT INFORMATION

Page 1 of 2

Please detach this portion and return with your payment to insure proper credit. Retain upper portion for your records.

| | |
|---|---|
| Account Number: | XXXX XXXX XXXX XXXX |
| New Balance | $1,784.53 |
| Minimum Payment Due | $53.00 |
| Payment Due Date | 4/20/12 |
| AMOUNT ENCLOSED: | $ |

Please indicate address change and additional cardholder requests on the reverse side.

XXX Bank
P.O. Box XXXX
Anytown, Anystate XXXXX

## G-18(F) Periodic Statement Form ( contd.)

XXX Bank Credit Card Account Statement
Account Number XXXX XXXX XXXX XXXX
February 21, 2012 to March 22, 2012

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**Transactions (cont.)**

| Reference Number | Trans Date | Post Date | Description of Transaction or Credit | Amount |
|---|---|---|---|---|
| 564891561545KOSHD | 2/25 | 2/26 | Store #6 | $14.35 |
| 841517877845AKOJIO | 2/25 | 2/26 | Store #7 | $40.35 |
| 895848561561894KOH | 2/26 | 2/27 | Store #8 | $27.68 |
| 1871556189456SAMKL | 2/26 | 2/27 | Store #9 | $124.78 |
| 1542202074TWWZV48 | 2/26 | 2/26 | Cash Advance | $121.50 |
| 2564894185189LKDFID | 2/27 | 2/28 | Store #10 | $32.87 |
| 4545754784KOHUIOS | 2/27 | 3/1 | Balance Transfer | $785.00 |
| 14547847586KDDL564 | 2/28 | 2/28 | Cash Advance | $196.50 |
| 2564561023184102315 | 2/28 | 3/1 | Store #11 | $14.76 |
| 55542818705RASD0X | 3/1 | 3/2 | Store #12 | $3.76 |
| 289189194ASDS8744 | 3/1 | 3/3 | Store #13 | $13.45 |
| 178105417841045784 | 3/2 | 3/6 | Store #14 | $2.35 |
| 045148714518979874 | 3/4 | 3/5 | Store #13 | $13.45– |
| 84561521561815DSA | 3/5 | 3/12 | Store #15 | $25.00 |
| 31289105205648AWD | 3/11 | 3/12 | Store #16 | $7.34 |
| 04518478415615ASD | 3/11 | 3/16 | Store #17 | $10.56 |
| 0547810544898718AF | 3/15 | 3/17 | Store #18 | $24.50 |
| 056489413216848OP | 3/16 | 3/17 | Store #19 | $6.76 |
| 054894561564ASDW | 3/17 | 3/18 | Store #20 | $14.23 |
| 5648974891AD96156 | 3/19 | 3/20 | Store #21 | $23.76 |
| | | | **Fees** | |
| 9525156489SFD4545Q | 2/23 | 2/23 | Late Fee | $35.00 |
| 56415615647OJSNDS | 2/28 | 2/28 | Cash Advance Fee | $5.00 |
| 84151564SADS8745H | 2/27 | 2/27 | Balance Transfer Fee | $23.55 |
| 2564891561894515 16L | 2/28 | 2/28 | Cash Advance Fee | $5.90 |
| | | | **TOTAL FEES FOR THIS PERIOD** | **$69.45** |
| | | | **Interest Charged** | |
| | | | Interest Charge on Purchases | $6.31 |
| | | | Interest Charge on Cash Advances | $4.58 |
| | | | **TOTAL INTEREST FOR THIS PERIOD** | **$10.89** |

| 2012 Totals Year-to-Date | |
|---|---|
| Total fees charged in 2012 | $90.14 |
| Total interest charged in 2012 | $18.27 |

**Interest Charge Calculation**

Your Annual Percentage Rate (APR) is the annual interest rate on your account.

| Type of Balance | Annual Percentage Rate (APR) | Balance Subject to Interest Rate | Interest Charge |
|---|---|---|---|
| Purchases | 14.99% (v) | $512.14 | $6.31 |
| Cash Advances | 21.99% (v) | $253.50 | $4.58 |
| Balance Transfers | 0.00% | $637.50 | $0.00 |

(v) = Variable Rate

# G-18(G) Periodic Statement Form

## G-18(G) Periodic Statement Form

Page 1 of 2

**XXX Bank Credit Card Account Statement**
**Account Number XXXX XXXX XXXX XXXX**
**February 21, 2012 to March 22, 2012**

**Summary of Account Activity**

| | |
|---|---|
| Previous Balance | $80.52 |
| Payments | -$50.00 |
| Other Credits | +$0.00 |
| Purchases | +$52.13 |
| Balance Transfers | +$0.00 |
| Cash Advances | +$0.00 |
| Past Due Amount | +$0.00 |
| **Fees Charged** | **+$37.00** |
| **Interest Charged** | **+$0.00** |
| New Balance | $119.65 |
| Credit limit | $2,000.00 |
| Available credit | $1,880.35 |
| Statement closing date | 3/22/2012 |
| Days in billing cycle | 30 |

**QUESTIONS?**

| | |
|---|---|
| Call Customer Service | 1-XXX-XXX-XXXX |
| Lost or Stolen Credit Card | 1-XXX-XXX-XXXX |

**Payment Information**

| | |
|---|---|
| New Balance | $119.65 |
| Minimum Payment Due | $10.00 |
| Payment Due Date | 4/20/12 |

**Late Payment Warning:** If we do not receive your minimum payment by the date listed above, you may have to pay a $35 late fee and your APRs may be increased up to the Penalty APR of 28.99%.

**Minimum Payment Warning:** If you make only the minimum payment each period, you will pay more in interest and it will take you longer to pay off your balance. For example:

| If you make no additional charges using this card and each month you pay... | You will pay off the balance shown on this statement in about... | And you will end up paying an estimated total of... |
|---|---|---|
| Only the minimum payment | 14 months | $130 |

If you would like information about credit counseling services, call 1-800-XXX-XXXX.

Please send billing inquiries and correspondence to:
PO Box XXXX, Anytown, Anystate XXXXX

**Notice of Changes to Your Interest Rates**

You have triggered the Penalty APR of 28.99%. This change will impact your account as follows:

Transactions made on or after 4/9/12: As of 5/10/12, the Penalty APR will apply to these transactions. We may keep the APR at this level indefinitely.

Transactions made before 4/9/12: Current rates will continue to apply to these transactions. However, if you become more than 60 days late on your account, the Penalty APR will apply to those transactions as well.

**Transactions**

| Reference Number | Trans Date | Post Date | Description of Transaction or Credit | Amount |
|---|---|---|---|---|
| | | | **Payments and Other Credits** | |
| 854338203FS8OO0Z5 | 2/25 | 2/25 | Pymt Thank You | $50.00-- |
| | | | **Purchases** | |
| 5884186PS0385W6YM | 2/22 | 2/23 | Store #1 | $2.05 |
| 0544400060ZLV72VL | 2/24 | 2/25 | Store #2 | $2.11 |
| 55541860705RDYD0X | 2/24 | 2/25 | Store #3 | $4.63 |
| 5543286808008W90M0 | 2/24 | 2/25 | Store #4 | $4.95 |
| 054830709LYMRPT4L | 2/24 | 2/25 | Store #5 | $7.35 |
| 564891561345KOSHD | 2/25 | 2/26 | Store #6 | $4.35 |
| 841517877845AKOJIO | 2/25 | 2/26 | Store #7 | $2.35 |
| 895848561561894KOH | 2/26 | 2/27 | Store #8 | $7.68 |
| 1871556189456SAMKL | 2/26 | 2/27 | Store #9 | $4.76 |
| 256489418518 9LKDFID | 2/27 | 2/28 | Store #10 | $2.87 |
| 55542818705RASD0X | 3/1 | 3/2 | Store #11 | $3.76 |
| 178105417841045784 | 3/2 | 3/6 | Store #12 | $2.35 |
| 84561521561815DSA | 3/5 | 3/12 | Store #13 | $2.92 |

(transactions continued on next page)

NOTICE: SEE REVERSE SIDE FOR IMPORTANT INFORMATION

Page 1 of 2

Please detach this portion and return with your payment to insure proper credit. Retain upper portion for your records.

| | |
|---|---|
| **Account Number:** | **XXXX XXXX XXXX XXXX** |
| **New Balance** | **$119.55** |
| **Minimum Payment Due** | **$10.00** |
| **Payment Due Date** | **4/20/12** |
| **AMOUNT ENCLOSED:** | **$** |

Please indicate address change and additional cardholder requests on the reverse side.

XXX Bank
P.O. Box XXXX
Anytown, Anystate XXXXX

## G-18(G) Periodic Statement Form ( contd.)

XXX Bank Credit Card Account Statement
Account Number XXXX XXXX XXXX XXXX
February 21, 2012 to March 22, 2012

Page 2 of 2

**Transactions (cont.)**

| Reference Number | Trans Date | Post Date | Description of Transaction or Credit | Amount |
|---|---|---|---|---|
| **Fees** | | | | |
| 95251564898FD4545Q | 2/23 | 2/23 | Late Fee | $35.00 |
| 56415615647OJSNDS | 3/22 | 3/22 | Minimum Charge | $2.00 |
| | | | TOTAL FEES FOR THIS PERIOD | $37.00 |
| **Interest Charged** | | | | |
| | | | Interest Charge on Purchases | $0.00 |
| | | | Interest Charge on Cash Advances | $0.00 |
| | | | TOTAL INTEREST FOR THIS PERIOD | $0.00 |

| 2012 Totals Year-to-Date | |
|---|---|
| Total fees charged in 2012 | $90.14 |
| Total interest charged in 2012 | $18.27 |

**Interest Charge Calculation**

Your Annual Percentage Rate (APR) is the annual interest rate on your account.

| Type of Balance | Annual Percentage Rate (APR) | Balance Subject to Interest Rate | Interest Charge |
|---|---|---|---|
| Purchases | 14.99% (v) | $113.80 | $0.00 |
| Cash Advances | 21.99% (v) | $0.00 | $0.00 |
| Balance Transfers | 0.00% | $0.00 | $0.00 |

(v) = Variable Rate

BILLING CODE 6210–01–C

### G–18(H)—Deferred Interest Periodic Statement Clause

[You must pay your promotional balance in full by [date] to avoid paying accrued interest charges.]

BILLING CODE 6210–01–P

## Form G-19 Checks Accessing a Credit Card Sample

### G-19 Checks Accessing a Credit Card Sample

| Interest and Fee information | |
|---|---|
| **APR for Check Transactions** | 1.7% (Promotional APR through your November 2012 billing cycle)<br>After November 2012, you will be charged the APR for Cash Advances, currently 21.99%. |
| **Use by Date** | You must use the check by 4/1/12 for the promotional APR to apply. If you use the check after that date, we may still honor the check but you will not receive the promotional APR. Instead, the standard APR for Cash Advances will apply. |
| **Fee** | Either $5 or 3% of the amount of each transaction, whichever is greater. |
| **Paying Interest** | We will begin charging interest on these checks on the transaction date. |

## Form G-20 Change- in- Terms Sample (Increase in Annual Percentage Rate)

### G-20 Change-in-Terms Sample (Increase in Annual Percentage Rate)

**Important Changes to Your Account Terms**

The following is a summary of changes that are being made to your account terms. For more detailed information, please refer to the booklet enclosed with this statement.

These changes will impact your account as follows:

Transactions made on or after 4/9/12: As of 5/10/12, any changes to APRs described below will apply to these transactions.

Transactions made before 4/9/12: Current APRs will continue to apply to these transactions.

If you are already being charged a higher Penalty APR for purchases: In this case, any changes to APRs described below will not go into effect at this time. These changes will go into effect when the Penalty APR no longer applies to your account.

| Revised Terms, as of 5/10/12 | |
|---|---|
| **APR for Purchases** | 16.99% |

## Form G-21 Change-in-Terms Sample (Increase in Fees)

### G-21 Change-in-Terms Sample (Increase in Fees)

**Important Changes to Your Account Terms**

The following is a summary of changes that are being made to your account terms. These changes will take effect on 5/10/12. For more detailed information, please refer to the booklet enclosed with this statement.

You have the right to reject these changes, unless you become more than 60 days late on your account. However, if you do reject these changes you will not be able to use your account for new transactions. You can reject the changes by calling us at 1-800-xxx-xxxx.

| Revised Terms, as of 5/10/12 | |
|---|---|
| **Late Payment Fee** | $32 if your balance is less than or equal to $1,000; $39 if your balance is more than $1,000 |
| **Returned Payment Fee** | $39 |

## Form G-22 Penalty Rate Increase Sample (Payment 60 or Fewer Days Late)

**G-22 Penalty Rate Increase Sample (Payment 60 or Fewer Days Late)**

Notice of Changes to Your Interest Rates

You have triggered the Penalty APR of 28.99%. This change will impact your account as follows:

Transactions made on or after 4/9/12: As of 5/10/12, the Penalty APR will apply to these transactions. We may keep the APR at this level indefinitely.

Transactions made before 4/9/12: Current rates will continue to apply to these transactions. However, if you become more than 60 days late on your account, the Penalty APR will apply to those transactions as well.

## Form G-23 Penalty Rate Increase Sample (Payment More Than 60 Days Late)

**G-23 Penalty Rate Increase Sample (Payment More Than 60 Days Late)**

Notice of Changes to Your Interest Rates

You have triggered the Penalty APR of 28.99% because we did not receive your minimum payment within 60 days of the due date. As of 5/10/12, the Penalty APR will apply to all existing balances and new transactions on your account.

If you make six consecutive minimum payments starting with your first payment due after 5/10/12, your rate for transactions made before 4/9/12 will return to the Standard APR. If you do not make these six consecutive minimum payments, we may keep the Penalty APR on your account indefinitely.

BILLING CODE 6210–01–C

### G–24—Deferred Interest Offer Clauses

(a) For Credit Card Accounts Under an Open-End (Not Home-Secured) Consumer Credit Plan

[Interest will be charged to your account from the purchase date if the purchase balance is not paid in full within the/by [deferred interest period/date] or if you make a late payment.]

(b) For Other Open-End Plans

[Interest will be charged to your account from the purchase date if the purchase balance is not paid in full within the/by [deferred interest period/date] or if your account is otherwise in default.]

### G–25(A)—Consent Form for Over-the-Credit Limit Transactions

*Your choice regarding over-the-credit limit coverage*

Unless you tell us otherwise, we will decline any transaction that causes you to go over your credit limit. If you want us to authorize these transactions, you can request over-the-credit limit coverage.

If you have over-the-credit limit coverage and you go over your credit limit, we will charge you a fee of $XX and may increase your APRs to the Penalty APR of XX.XX%. You will only pay one fee per billing cycle, even if you go over your limit multiple times in the same cycle.

Even if you request over-the-credit limit coverage, in some cases we may still decline a transaction that would cause you to go over your limit, such as if you are past due or significantly over your credit limit.

If you want over-the-limit coverage and to allow us to authorize transactions that go over your credit limit, please:

—Call us at [telephone number];
—Visit [Web site]; or
—Check or initial the box below, and return the form to us at [address].

__ I want over-the-limit coverage. I understand that if I go over my credit limit, I will be charged a fee of $__ and my APRs may be increased. [I have the right to cancel this coverage at any time.]

[__ I *do not* want over-the-limit coverage. I understand that transactions that exceed my credit limit will not be authorized.]

Printed Name: _____
Date: _____
[Account Number]: _____

### G–25(B)—Revocation Notice for Periodic Statement Regarding Over-the-Credit Limit Transactions

You currently have over-the-credit limit coverage on your account, which means that we pay transactions that cause you go to over your credit limit. If you do go over your credit limit, we will charge you a fee of $XX and your APRs may be increased. To remove over-the-credit-limit coverage from your account, call us at 1–800-xxxxxxx or visit [insert Web site]. [You may also write us at: [insert address].]

[You may also check or initial the box below and return this form to us at: [insert address].]

__ I want to cancel over-the-limit coverage for my account.

Printed Name: _____
Date: _____
[Account Number]: _____

■ 23. Appendix H to part 226 is amended by revising the table of

contents, and adding new forms H–17(A) and H–17(B) to read as follows:

## Appendix H to Part 226—Closed-End Model Forms and Clauses

H–1 Credit Sale Model Form (§ 226.18)
H–2 Loan Model Form (§ 226.18)
H–3 Amount Financed Itemization Model Form (§ 226.18(c))
H–4(A) Variable-Rate Model Clauses (§ 226.18(f)(1))
H–4(B) Variable-Rate Model Clauses (§ 226.18(f)(2))
H–4(C) Variable-Rate Model Clauses (§ 226.19(b))
H–4(D) Variable-Rate Model Clauses (§ 226.20(c))
H–5 Demand Feature Model Clauses (§ 226.18(i))
H–6 Assumption Policy Model Clause (§ 226.18(q))
H–7 Required Deposit Model Clause (§ 226.18(r))
H–8 Rescission Model Form (General) (§ 226.23)
H–9 Rescission Model Form (Refinancing (with Original Creditor)) (§ 226.23)
H–10 Credit Sale Sample
H–11 Installment Loan Sample
H–12 Refinancing Sample
H–13 Mortgage with Demand Feature Sample
H–14 Variable-Rate Mortgage Sample (§ 226.19(b))
H–15 Graduated-Payment Mortgage Sample
H–16 Mortgage Sample
H–17(A) Debt Suspension Model Clause
H–17(B) Debt Suspension Sample

* * * * *

### H–17(A) Debt Suspension Model Clause

Please enroll me in the optional [insert name of program], and bill my account the fee of [insert charge for the initial term of coverage]. I understand that enrollment is not required to obtain credit. I also understand that depending on the event, the protection may only temporarily suspend my duty to make minimum payments, not reduce the balance I owe. I understand that my balance will actually grow during the suspension period as interest continues to accumulate.

[To Enroll, Sign Here]/[To Enroll, Initial Here]. X _____

### H–17(B) Debt Suspension Sample

Please enroll me in the optional [name of program], and bill my account the fee of $200.00. I understand that enrollment is not required to obtain credit. I also understand that depending on the event, the protection may only temporarily suspend my duty to make minimum payments, not reduce the balance I owe. I understand that my balance will actually grow during the suspension period as interest continues to accumulate.

To Enroll, Initial Here.
X _____

■ 24. Appendix M1 is added to part 226 to read as follows:

## Appendix M1 to Part 226—Repayment Disclosures

(a) *Definitions.* (1) "Promotional terms" means terms of a cardholder's account that will expire in a fixed period of time, as set forth by the card issuer.

(2) "Deferred interest or similar plan" means a plan where a consumer will not be obligated to pay interest that accrues on balances or transactions if those balances or transactions are paid in full prior to the expiration of a specified period of time.

(b) *Calculating minimum payment repayment estimates.* (1) *Minimum payment formulas.* When calculating the minimum payment repayment estimate, card issuers must use the minimum payment formula(s) that apply to a cardholder's account. If more than one minimum payment formula applies to an account, the issuer must apply each minimum payment formula to the portion of the balance to which the formula applies. In this case, the issuer must disclose the longest repayment period calculated. For example, assume that an issuer uses one minimum payment formula to calculate the minimum payment amount for a general revolving feature, and another minimum payment formula to calculate the minimum payment amount for special purchases, such as a "club plan purchase." Also, assume that based on a consumer's balances in these features and the annual percentage rates that apply to such features, the repayment period calculated pursuant to this Appendix for the general revolving feature is 5 years, while the repayment period calculated for the special purchase feature is 3 years. This issuer must disclose 5 years as the repayment period for the entire balance to the consumer. If any promotional terms related to payments apply to a cardholder's account, such as a deferred billing plan where minimum payments are not required for 12 months, card issuers may assume no promotional terms apply to the account. For example, assume that a promotional minimum payment of $10 applies to an account for six months, and then after the promotional period expires, the minimum payment is calculated as 2 percent of the outstanding balance on the account or $20 whichever is greater. An issuer may assume during the promotional period that the $10 promotional minimum payment does not apply, and instead calculate the minimum payment disclosures based on the minimum payment formula of 2 percent of the outstanding balance or $20, whichever is greater. Alternatively, during the promotional period, an issuer in calculating the minimum payment repayment estimate may apply the promotional minimum payment until it expires and then apply the minimum payment formula that applies after the promotional minimum payment expires. In the above example, an issuer could calculate the minimum payment repayment estimate during the promotional period by applying the $10 promotional minimum payment for the first six months and then applying the 2 percent or $20 (whichever is greater) minimum payment formula after the promotional minimum payment expires. In calculating the minimum payment repayment estimate during a promotional period, an issuer may not assume that the promotional minimum payment will apply until the outstanding balance is paid off by making only minimum payments (assuming the repayment estimate is longer than the promotional period). In the above example, the issuer may not calculate the minimum payment repayment estimate during the promotional period by assuming that the $10 promotional minimum payment will apply beyond the six months until the outstanding balance is repaid.

(2) *Annual percentage rate.* When calculating the minimum payment repayment estimate, a card issuer must use the annual percentage rates that apply to a cardholder's account, based on the portion of the balance to which the rate applies. If any promotional terms related to annual percentage rates apply to a cardholder's account, other than deferred interest or similar plans, a card issuer in calculating the minimum payment repayment estimate during the promotional period must apply the promotional annual percentage rate(s) until it expires and then must apply the rate that applies after the promotional rate(s) expires. If the rate that applies after the promotional rate(s) expires is a variable rate, a card issuer must calculate that rate based on the applicable index or formula. This variable rate is accurate if it was in effect within the last 30 days before the minimum payment repayment estimate is provided. For deferred interest plans or similar plans, if minimum payments under the deferred interest or similar plan will repay the balances or transactions in full prior to the expiration of the specified period of time, a card issuer must assume that the consumer will not be obligated to pay the accrued interest. This means, in calculating the minimum payment repayment estimate, the card issuer must apply a zero percent annual percentage rate to the balance subject to the deferred interest or similar plan. If, however, minimum payments under the deferred interest plan or similar plan may not repay the balances or transactions in full prior to the expiration of the specified period of time, a card issuer must assume that a consumer will not repay the balances or transactions in full prior to the expiration of the specified period of time and thus the consumer will be obligated to pay the accrued interest. This means, in calculating the minimum payment repayment estimate, the card issuer must apply the annual percentage rate at which interest is accruing to the balance subject to the deferred interest or similar plan.

(3) *Beginning balance.* When calculating the minimum payment repayment estimate, a card issuer must use as the beginning balance the outstanding balance on a consumer's account as of the closing date of the last billing cycle. When calculating the minimum payment repayment estimate, a card issuer may round the beginning balance as described above to the nearest whole dollar.

(4) *Assumptions.* When calculating the minimum payment repayment estimate, a card issuer for each of the terms below, may either make the following assumption about that term, or use the account term that applies to a consumer's account.

(i) Only minimum monthly payments are made each month. In addition, minimum monthly payments are made each month—for example, a debt cancellation or suspension agreement, or skip payment feature does not apply to the account.

(ii) No additional extensions of credit are obtained, such as new purchases, transactions, fees, charges or other activity. No refunds or rebates are given.

(iii) The annual percentage rate or rates that apply to a cardholder's account will not change, through either the operation of a variable rate or the change to a rate, except as provided in paragraph (b)(2) of this Appendix. For example, if a penalty annual percentage rate currently applies to a consumer's account, a card issuer may assume that the penalty annual percentage rate will apply to the consumer's account indefinitely, even if the consumer may potentially return to a non-penalty annual percentage rate in the future under the account agreement.

(iv) There is no grace period.

(v) The final payment pays the account in full (*i.e.,* there is no residual finance charge after the final month in a series of payments).

(vi) The average daily balance method is used to calculate the balance.

(vii) All months are the same length and leap year is ignored. A monthly or daily periodic rate may be assumed. If a daily periodic rate is assumed, the issuer may either assume (1) a year is 365 days long, and all months are 30.41667 days long, or (2) a year is 360 days long, and all months are 30 days long.

(viii) Payments are credited either on the last day of the month or the last day of the billing cycle.

(ix) Payments are allocated to lower annual percentage rate balances before higher annual percentage rate balances.

(x) The account is not past due and the account balance does not exceed the credit limit.

(xi) When calculating the minimum payment repayment estimate, the assumed payments, current balance and interest charges for each month may be rounded to the nearest cent, as shown in Appendix M2 to this part.

(5) *Tolerance.* A minimum payment repayment estimate shall be considered accurate if it is not more than 2 months above or below the minimum payment repayment estimate determined in accordance with the guidance in this Appendix (prior to rounding described in § 226.7(b)(12)(i)(B) and without use of the assumptions listed in paragraph (b)(4) of this Appendix to the extent a card issuer chooses instead to use the account terms that apply to a consumer's account). For example, assume the minimum payment repayment estimate calculated using the guidance in this Appendix is 28 months (2 years, 4 months), and the minimum payment repayment estimate calculated by the issuer is 30 months (2 years, 6 months). The minimum payment repayment estimate should be disclosed as 2 years, due to the rounding rule set forth in § 226.7(b)(12)(i)(B). Nonetheless, based on the 30-month estimate, the issuer disclosed 3 years, based on that rounding rule. The issuer would be in compliance with this guidance by disclosing 3 years, instead of 2 years, because the issuer's estimate is within the 2 months' tolerance, prior to rounding. In addition, even if an issuer's estimate is more than 2 months above or below the minimum payment repayment estimate calculated using the guidance in this Appendix, so long as the issuer discloses the correct number of years to the consumer based on the rounding rule set forth in § 226.7(b)(12)(i)(B), the issuer would be in compliance with this guidance. For example, assume the minimum payment repayment estimate calculated using the guidance in this Appendix is 32 months (2 years, 8 months), and the minimum payment repayment estimate calculated by the issuer is 38 months (3 years, 2 months). Under the rounding rule set forth in § 226.7(b)(12)(i)(B), both of these estimates would be rounded and disclosed to the consumer as 3 years. Thus, if the issuer disclosed 3 years to the consumer, the issuer would be in compliance with this guidance even though the minimum payment repayment estimate calculated by the issuer is outside the 2 months' tolerance amount.

(c) *Calculating the minimum payment total cost estimate.* When calculating the minimum payment total cost estimate, a card issuer must total the dollar amount of the interest and principal that the consumer would pay if he or she made minimum payments for the length of time calculated as the minimum payment repayment estimate under paragraph (b) of this Appendix. The minimum payment total cost estimate is deemed to be accurate if it is based on a minimum payment repayment estimate that is within the tolerance guidance set forth in paragraph (b)(5) of this Appendix. For example, assume the minimum payment repayment estimate calculated using the guidance in this Appendix is 28 months (2 years, 4 months), and the minimum payment repayment estimate calculated by the issuer is 30 months (2 years, 6 months). The minimum payment total cost estimate will be deemed accurate even if it is based on the 30 month estimate for length of repayment, because the issuer's minimum payment repayment estimate is within the 2 months' tolerance, prior to rounding. In addition, assume the minimum payment repayment estimate calculated under this Appendix is 32 months (2 years, 8 months), and the minimum payment repayment estimate calculated by the issuer is 38 months (3 years, 2 months). Under the rounding rule set forth in § 226.7(b)(12)(i)(B), both of these estimates would be rounded and disclosed to the consumer as 3 years. If the issuer based the minimum payment total cost estimate on 38 months (or any other minimum payment repayment estimate that would be rounded to 3 years), the minimum payment total cost estimate would be deemed to be accurate.

(d) *Calculating the estimated monthly payment for repayment in 36 months.* (1) *In general.* When calculating the estimated monthly payment for repayment in 36 months, a card issuer must calculate the estimated monthly payment amount that would be required to pay off the outstanding balance shown on the statement within 36 months, assuming the consumer paid the same amount each month for 36 months.

(2) *Weighted annual percentage rate.* In calculating the estimated monthly payment for repayment in 36 months, an issuer may use a weighted annual percentage rate that is based on the annual percentage rates that apply to a cardholder's account and the portion of the balance to which the rate applies, as shown in Appendix M2 to this part. If a card issuer uses a weighted annual percentage rate and any promotional terms related to annual percentage rates apply to a cardholder's account, other than deferred interest plans or similar plans, in calculating the weighted annual percentage rate, the issuer must calculate a weighted average of the promotional rate and the rate that will apply after the promotional rate expires based on the percentage of 36 months each rate will apply, as shown in Appendix M2 to this part. For deferred interest plans or similar plans, if minimum payments under the deferred interest or similar plan will repay the balances or transactions in full prior to the expiration of the specified period of time, if a card issuer uses a weighted annual percentage rate, the card issuer must assume that the consumer will not be obligated to pay the accrued interest. This means, in calculating the weighted annual percentage rate, the card issuer must apply a zero percent annual percentage rate to the balance subject to the deferred interest or similar plan. If, however, minimum payments under the deferred interest plan or similar plan may not repay the balances or transactions in full prior to the expiration of the specified period of time, a card issuer in calculating the weighted annual percentage rate must assume that a consumer will not repay the balances or transactions in full prior to the expiration of the specified period of time and thus the consumer will be obligated to pay the accrued interest. This means, in calculating the weighted annual percentage rate, the card issuer must apply the annual percentage rate at which interest is accruing to the balance subject to the deferred interest or similar plan. A card issuer may use a method of calculating the estimated monthly payment for repayment in 36 months other than a weighted annual percentage rate, so long as the calculation results in the same payment amount each month and so long as the total of the payments would pay off the outstanding balance shown on the periodic statement within 36 months.

(3) *Assumptions.* In calculating the estimated monthly payment for repayment in 36 months, a card issuer must use the same terms described in paragraph (b) of this Appendix, as appropriate.

(4) *Tolerance.* An estimated monthly payment for repayment in 36 months shall be considered accurate if it is not more than 10 percent above or below the estimated monthly payment for repayment in 36 months determined in accordance with the guidance in this Appendix (after rounding described in § 226.7(b)(12)(i)(F)(*1*)(*i*)).

(e) *Calculating the total cost estimate for repayment in 36 months.* When calculating the total cost estimate for repayment in 36 months, a card issuer must total the dollar amount of the interest and principal that the consumer would pay if he or she made the estimated monthly payment calculated under paragraph (d) of this Appendix each month for 36 months. The total cost estimate for repayment in 36 months shall be considered accurate if it is based on the estimated

monthly payment for repayment in 36 months that is calculated in accordance with paragraph (d) of this Appendix.

(f) *Calculating the savings estimate for repayment in 36 months.* When calculating the saving estimate for repayment in 36 months, a card issuer must subtract the total cost estimate for repayment in 36 months calculated under paragraph (e) of this Appendix (rounded to the nearest whole dollar as set forth in § 226.7(b)(12)(i)(F)(*1*)(*iii*)) from the minimum payment total cost estimate calculated under paragraph (c) of this Appendix (rounded to the nearest whole dollar as set forth in § 226.7(b)(12)(i)(C)). The savings estimate for repayment in 36 months shall be considered accurate if it is based on the total cost estimate for repayment in 36 months that is calculated in accordance with paragraph (e) of this Appendix and the minimum payment total cost estimate calculated under paragraph (c) of this Appendix.

■ 24a. Appendix M2 is added to part 226 to read as follows:

## Appendix M2 to Part 226—Sample Calculations of Repayment Disclosures

The following is an example of how to calculate the minimum payment repayment estimate, the minimum payment total cost estimate, the estimated monthly payment for repayment in 36 months, the total cost estimate for repayment in 36 months, and the savings estimate for repayment in 36 months using the guidance in Appendix M1 to this part where three annual percentage rates apply (where one of the rates is a promotional APR), the total outstanding balance is $1000, and the minimum payment formula is 2 percent of the outstanding balance or $20, whichever is greater. The following calculation is written in SAS code.

```
data one;
/*
Note: pmt01 = estimated monthly payment to repay balance in 36 months sumpmts36 = sum of payments for repayment in 36 months
month = number of months to repay total balance if making only minimum payments
pmt = minimum monthly payment
fc = monthly finance charge
sumpmts = sum of payments for minimum payments
*/
* inputs;
* annual percentage rates; apr1=0.0; apr2=0.17; apr3=0.21; * insert in ascending order;
* outstanding balances; cbal1=500; cbal2=250; cbal3=250;
* dollar minimum payment; dmin=20;
* percent minimum payment; pmin=0.02; * (0.02+perrate);
* promotional rate information;
* last month for promotional rate; expm=6; * = 0 if no promotional rate;
* regular rate; rrate=.17; * = 0 if no promotional rate;
array apr(3); array perrate(3);
days=365/12; * calculate days in month;
* calculate estimated monthly payment to pay off balances in 36 months, and total cost of repaying balance in 36 months;
array xperrate(3);
do I=1 to 3;
xperrate(I)=(apr(I)/365)*days; * calculate periodic rate;
end;
if expm gt 0 then xperrate1a=(expm/36)*xperrate1+(1-(expm/36))*(rrate/365)*days; else xperrate1a=xperrate1;
tbal=cbal1+cbal2+cbal3;
perrate36=(cbal1*xperrate1a+cbal2*xperrate2+cbal3*xperrate3)/(cbal1+cbal2+cbal3);
* months to repay; dmonths=36;
* initialize counters for sum of payments for repayment in 36 months; Sumpmts36=0;
pvaf=(1-(1+perrate36)**-dmonths)/perrate36; * calculate present value of annuity factor;
pmt01=round(tbal/pvaf,0.01); * calculate monthly payment for designated number of months;
sumpmts36 = pmt01 * 36;
* calculate time to repay and total cost of making minimum payments each month;
* initialize counter for months, and sum of payments;
month=0;
sumpmts=0;
do I=1 to 3;
perrate(I)=(apr(I)/365)*days; * calculate periodic rate;
end;
put perrate1=perrate2=perrate3=;
eins:
month=month+1; * increment month counter;
pmt=round(pmin*tbal,0.01); * calculate payment as percentage of balance;
if month ge expm and expm ne 0 then perrate1=(rrate/365)*days;
if pmt lt dmin then pmt=dmin; * set dollar minimum payment;
array xxxbal(3); array cbal(3);
do I=1 to 3;
xxxbal(I)=round(cbal(I)*(1+perrate(I)),0.01);
end;
fc=xxxbal1+xxxbal2+xxxbal3 – tbal;
if pmt gt (tbal+fc) then do;
do I=1 to 3;
if cbal(I) gt 0 then pmt=round(cbal(I)*(1+perrate(I)),0.01); * set final payment amount;
end;
end;
if pmt le xxxbal1 then do;
cbal1=xxxbal1 – pmt;
cbal2=xxxbal2;
cbal3=xxxbal3;
end;
if pmt gt xxxbal1 and xxxbal2 gt 0 and pmt le (xxxbal1+xxxbal2) then do;
cbal2=xxxbal2 – (pmt – xxxbal1);
cbal1=0;
cbal3=xxxbal3;
end;
if pmt gt xxxbal2 and xxxbal3 gt 0 then do;
cbal3=xxxbal3 – (pmt – xxxbal1 – xxxbal2);
cbal2=0;
end;
sumpmts=sumpmts+pmt; * increment sum of payments;
tbal=cbal1+cbal2+cbal3; * calculate new total balance;
* print month, balance, payment amount, and finance charge;
put month=tbal=cbal1=cbal2=cbal3=pmt=fc=;
if tbal gt 0 then go to eins; * go to next month if balance is greater than zero;
* initialize total cost savings;
savtot=0;
savtot= round(sumpmts,1)—round(sumpmts36,1);
* print number of months to repay debt if minimum payments made, final balance (zero), total cost if minimum payments made, estimated monthly payment for repayment in 36 months, total cost for repayment in 36 months, and total savings if repaid in 36 months;
put title=' ';
put title='number of months to repay debt if minimum payment made, final balance, total cost if minimum payments made, estimated monthly payment for repayment in 36 months, total cost for repayment in 36 months, and total savings if repaid in 36 months';
put month=tbal=sumpmts=pmt01=sumpmts36=savtot=;
put title=' ';
run;
```

■ 25. In Supplement I to Part 226:

■ A. Revise the Introduction.

■ B. Revise Subpart A.

■ C. In Subpart B, revise sections 226.5 and 226.5a and sections 226.6 through 226.14 and section 226.16.

■ D. Under *Section 226.5b—Requirements for Home-equity Plans*, under *5b(a) Form of Disclosures*, under 5b(a)(1) *General*, paragraph 1. is revised.

■ E. Under *Section 226.5b—Requirements for Home-equity Plans*, under *5b(f) Limitations on Home-equity Plans*, under *5b(f)(3)(vi)*, paragraph 4. is revised.

■ F. Under *Section 226.26—Use of Annual Percentage Rate in Oral Disclosures*, under *26(a) Open-end credit.*, paragraph 1. is revised.

■ G. Under *Section 226.27—Language of Disclosures*, paragraph 1. is revised.

■ H. Under *Section 226.28—Effect on State Laws*, under *28(a) Inconsistent disclosure requirements.*, paragraph 6. is revised.

■ I. Under *Section 226.30—Limitation on Rates*, paragraph 8. is revised and paragraph 13. is removed.

■ J. Add a new Subpart G, consisting of sections 226.51 through 226.58.

■ K. Revise Appendix F.

■ L. Amend Appendix G by revising paragraphs 1. through 3. and 5. and 6., and adding paragraphs 8. through 12.

■ M. Remove the References paragraph at the end of sections 226.1, 226.2, 226.3, 226.4, 226.5, 226.6, 226.7, 226.8,

226.9, 226.10, 226.11, 226.12, 226.13, 226.14, 226.16, and Appendix F.

The additions and revisions read as follows:

## Supplement I to Part 226—Official Staff Interpretations

*Introduction*

1. *Official status.* This commentary is the vehicle by which the staff of the Division of Consumer and Community Affairs of the Federal Reserve Board issues official staff interpretations of Regulation Z. Good faith compliance with this commentary affords protection from liability under 130(f) of the Truth in Lending Act. Section 130(f) (15 U.S.C. 1640) protects creditors from civil liability for any act done or omitted in good faith in conformity with any interpretation issued by a duly authorized official or employee of the Federal Reserve System.

2. *Procedure for requesting interpretations.* Under appendix C of the regulation, anyone may request an official staff interpretation. Interpretations that are adopted will be incorporated in this commentary following publication in the **Federal Register**. No official staff interpretations are expected to be issued other than by means of this commentary.

3. *Rules of construction.* (a) Lists that appear in the commentary may be exhaustive or illustrative; the appropriate construction should be clear from the context. In most cases, illustrative lists are introduced by phrases such as "including, but not limited to," "among other things," "for example," or "such as."

(b) Throughout the commentary, reference to "this section" or "this paragraph" means the section or paragraph in the regulation that is the subject of the comment.

4. *Comment designations.* Each comment in the commentary is identified by a number and the regulatory section or paragraph which it interprets. The comments are designated with as much specificity as possible according to the particular regulatory provision addressed. For example, some of the comments to § 226.18(b) are further divided by subparagraph, such as comment 18(b)(1)–1 and comment 18(b)(2)–1. In other cases, comments have more general application and are designated, for example, as comment 18–1 or comment 18(b)–1. This introduction may be cited as comments I–1 through I–4. Comments to the appendices may be cited, for example, as comment app. A–1.

## Subpart A—General

### *Section 226.1—Authority, Purpose, Coverage, Organization, Enforcement and Liability*

*1(c) Coverage.*

1. *Foreign applicability.* Regulation Z applies to all persons (including branches of foreign banks and sellers located in the United States) that extend consumer credit to residents (including resident aliens) of any state as defined in § 226.2. If an account is located in the United States and credit is extended to a U.S. resident, the transaction is subject to the regulation. This will be the case whether or not a particular advance or purchase on the account takes place in the United States and whether or not the extender of credit is chartered or based in the United States or a foreign country. For example, if a U.S. resident has a credit card account located in the consumer's state issued by a bank (whether U.S. or foreign-based), the account is covered by the regulation, including extensions of credit under the account that occur outside the United States. In contrast, if a U.S. resident residing or visiting abroad, or a foreign national abroad, opens a credit card account issued by a foreign branch of a U.S. bank, the account is not covered by the regulation.

*1(d) Organization.*

*Paragraph 1(d)(1).*

1. [Reserved].

*Paragraph 1(d)(2).*

1. [Reserved].

*Paragraph 1(d)(3).*

1. *Effective date.* The Board's amendments to Regulation Z published on May 19, 2009 apply to covered loans (including refinance loans and assumptions considered new transactions under § 226.20) for which the creditor receives an application on or after July 30, 2009.

*Paragraph 1(d)(4).*

1. [Reserved].

*Paragraph 1(d)(5).*

1. *Effective dates.* The Board's revisions published on July 30, 2008 (the "final rules") apply to covered loans (including refinance loans and assumptions considered new transactions under § 226.20) for which the creditor receives an application on or after October 1, 2009, except for the final rules on advertising, escrows, and loan servicing. But see comment 1(d)(3)–1. The final rules on escrow in § 226.35(b)(3) are effective for covered loans (including refinancings and assumptions in § 226.20) for which the creditor receives an application on or after April 1, 2010; but for such loans secured by manufactured housing on or after October 1, 2010. The final rules applicable to servicers in § 226.36(c) apply to all covered loans serviced on or after October 1, 2009. The final rules on advertising apply to advertisements occurring on or after October 1, 2009. For example, a radio ad occurs on the date it is first broadcast; a solicitation occurs on the date it is mailed to the consumer. The following examples illustrate the application of the effective dates for the final rules.

i. *General.* A refinancing or assumption as defined in § 226.20(a) or (b) is a new transaction and is covered by a provision of the final rules if the creditor receives an application for the transaction on or after that provision's effective date. For example, if a creditor receives an application for a refinance loan covered by § 226.35(a) on or after October 1, 2009, and the refinance loan is consummated on October 15, 2009, the provision restricting prepayment penalties in § 226.35(b)(2) applies. However, if the transaction were a modification of an existing obligation's terms that does not constitute a refinance loan under § 226.20(a), the final rules, including for example the restriction on prepayment penalties, would not apply.

ii. *Escrows.* Assume a consumer applies for a refinance loan to be secured by a dwelling (that is not a manufactured home) on March 15, 2010, and the loan is consummated on April 2, 2010. The escrow rule in § 226.35(b)(3) does not apply.

iii. *Servicing.* Assume that a consumer applies for a new loan on August 1, 2009. The loan is consummated on September 1, 2009. The servicing rules in § 226.36(c) apply to the servicing of that loan as of October 1, 2009.

*Paragraph 1(d)(6).*

1. *Mandatory compliance dates.* Compliance with the Board's revisions to Regulation Z published on August 14, 2009 is mandatory for private education loans for which the creditor receives an application on or after February 14, 2010. Compliance with the final rules on co-branding in § § 226.48(a) and (b) is mandatory for marketing occurring on or after February 14, 2010. Compliance with the final rules is optional for private education loan transactions for which an application was received prior to February 14, 2010, even if consummated after the mandatory compliance date.

2. *Optional compliance.* A creditor may, at its option, provide the approval and final disclosures required under §§ 226.47(b) or (c) for private education loans where an application was received prior to the mandatory compliance date. If the creditor opts to provide the disclosures, the creditor must also comply with the applicable timing and other rules in §§ 226.46 and 226.48 (including providing the consumer with the 30-day acceptance period under § 226.48(c), and the right to cancel under § 226.48(d)). For example if the creditor receives an application on January 25, 2010 and approves the consumer's application on or after February 14, 2010, the creditor may, at its option, provide the approval disclosures under § 226.47(b), the final disclosures under § 226.47(c) and comply with the applicable requirements §§ 226.46 and 226.48. The creditor must also obtain the self-certification form as required in § 226.48(e), if applicable. Or, for example, if the creditor receives an application on January 25, 2010 and approves the consumer's application before February 14, 2010, the creditor may, at its option, provide the final disclosure under § 226.47(c) and comply with the applicable timing and other requirements of §§ 226.46 and 226.48, including providing the consumer with the right to cancel under § 226.48(d). The creditor must also obtain the self-certification form as required in § 226.48(e), if applicable.

*Paragraph 1(d)(7).*

1. [Reserved].

### *Section 226.2—Definitions and Rules of Construction*

*2(a)(2) Advertisement.*

1. *Coverage.* Only commercial messages that promote consumer credit transactions requiring disclosures are advertisements. Messages inviting, offering, or otherwise announcing generally to prospective customers the availability of credit transactions, whether in visual, oral, or print media, are covered by Regulation Z (12 CFR part 226).

i. Examples include:

A. Messages in a newspaper, magazine, leaflet, promotional flyer, or catalog.

B. Announcements on radio, television, or public address system.

C. Electronic advertisements, such as on the Internet.

D. Direct mail literature or other printed material on any exterior or interior sign.

E. Point of sale displays.

F. Telephone solicitations.

G. Price tags that contain credit information.

H. Letters sent to customers or potential customers as part of an organized solicitation of business.

I. Messages on checking account statements offering auto loans at a stated annual percentage rate.

J. Communications promoting a new open-end plan or closed-end transaction.

ii. The term does not include:

A. Direct personal contacts, such as follow-up letters, cost estimates for individual consumers, or oral or written communication relating to the negotiation of a specific transaction.

B. Informational material, for example, interest-rate and loan-term memos, distributed only to business entities.

C. Notices required by federal or state law, if the law mandates that specific information be displayed and only the information so mandated is included in the notice.

D. News articles the use of which is controlled by the news medium.

E. Market-research or educational materials that do not solicit business.

F. Communications about an existing credit account (for example, a promotion encouraging additional or different uses of an existing credit card account).

2. *Persons covered.* All *persons* must comply with the advertising provisions in §§ 226.16 and 226.24, not just those that meet the definition of creditor in § 226.2(a)(17). Thus, home builders, merchants, and others who are not themselves creditors must comply with the advertising provisions of the regulation if they advertise consumer credit transactions. However, under section 145 of the act, the owner and the personnel of the medium in which an advertisement appears, or through which it is disseminated, are not subject to civil liability for violations.

*2(a)(3) Reserved.*

*2(a)(4) Billing cycle or cycle.*

1. *Intervals.* In open-end credit plans, the billing cycle determines the intervals for which periodic disclosure statements are required; these intervals are also used as measuring points for other duties of the creditor. Typically, billing cycles are monthly, but they may be more frequent or less frequent (but not less frequent than quarterly).

2. *Creditors that do not bill.* The term *cycle* is interchangeable with *billing cycle* for definitional purposes, since some creditors' cycles do not involve the sending of bills in the traditional sense but only statements of account activity. This is commonly the case with financial institutions when periodic payments are made through payroll deduction or through automatic debit of the consumer's asset account.

3. *Equal cycles.* Although cycles must be equal, there is a permissible variance to account for weekends, holidays, and differences in the number of days in months. If the actual date of each statement does not vary by more than four days from a fixed "day" (for example, the third Thursday of each month) or "date" (for example, the 15th of each month) that the creditor regularly uses, the intervals between statements are considered equal. The requirement that cycles be equal applies even if the creditor applies a daily periodic rate to determine the finance charge. The requirement that intervals be equal does not apply to the first billing cycle on an open-end account (i.e., the time period between account opening and the generation of the first periodic statement) or to a transitional billing cycle that can occur if the creditor occasionally changes its billing cycles so as to establish a new statement day or date. (*See* comments 9(c)(1)–3 and 9(c)(2)–3.)

4. *Payment reminder.* The sending of a regular payment reminder (rather than a late payment notice) establishes a cycle for which the creditor must send periodic statements.

*2(a)(6) Business day.*

1. *Business function test.* Activities that indicate that the creditor is open for substantially all of its business functions include the availability of personnel to make loan disbursements, to open new accounts, and to handle credit transaction inquiries. Activities that indicate that the creditor is not open for substantially all of its business functions include a retailer's merely accepting credit cards for purchases or a bank's having its customer-service windows open only for limited purposes such as deposits and withdrawals, bill paying, and related services.

2. *Rule for rescission, disclosures for certain mortgage transactions, and private education loans.* A more precise rule for what is a business day (all calendar days except Sundays and the Federal legal holidays specified in 5 U.S.C. 6103(a)) applies when the right of rescission, the receipt of disclosures for certain dwelling-secured mortgage transactions under §§ 226.19(a)(1)(ii), 226.19(a)(2), 226.31(c), or the receipt of disclosures for private education loans under § 226.46(d)(4) is involved. Four Federal legal holidays are identified in 5 U.S.C. 6103(a) by a specific date: New Year's Day, January 1; Independence Day, July 4; Veterans Day, November 11; and Christmas Day, December 25. When one of these holidays (July 4, for example) falls on a Saturday, Federal offices and other entities might observe the holiday on the preceding Friday (July 3). In cases where the more precise rule applies, the observed holiday (in the example, July 3) is a business day.

*2(a)(7) Card issuer.*

1. *Agent.* An agent of a card issuer is considered a card issuer. Because agency relationships are traditionally defined by contract and by state or other applicable law, the regulation does not define agent. Merely providing services relating to the production of credit cards or data processing for others, however, does not make one the agent of the card issuer. In contrast, a financial institution may become the agent of the card issuer if an agreement between the institution and the card issuer provides that the cardholder may use a line of credit with the financial institution to pay obligations incurred by use of the credit card.

*2(a)(8) Cardholder.*

1. *General rule.* A cardholder is a natural person at whose request a card is issued for consumer credit purposes or who is a co-obligor or guarantor for such a card issued to another. The second category does not include an employee who is a co-obligor or guarantor on a card issued to the employer for business purposes, nor does it include a person who is merely the authorized user of a card issued to another.

2. *Limited application of regulation.* For the limited purposes of the rules on issuance of credit cards and liability for unauthorized use, a cardholder includes *any* person, including an organization, to whom a card is issued for *any* purpose—including a business, agricultural, or commercial purpose.

3. *Issuance.* See the commentary to § 226.12(a).

4. *Dual-purpose cards and dual-card systems.* Some card issuers offer dual-purpose cards that are for business as well as consumer purposes. If a card is issued to an individual for consumer purposes, the fact that an organization has guaranteed to pay the debt does not make it business credit. On the other hand, if a card is issued for business purposes, the fact that an individual sometimes uses it for consumer purchases does not subject the card issuer to the provisions on periodic statements, billing-error resolution, and other protections afforded to consumer credit. Some card issuers offer dual-card systems—that is, they issue two cards to the same individual, one intended for business use, the other for consumer or personal use. With such a system, the same person may be a cardholder for general purposes when using the card issued for consumer use, and a cardholder only for the limited purposes of the restrictions on issuance and liability when using the card issued for business purposes.

*2(a)(9) Cash price.*

1. *Components.* This amount is a starting point in computing the amount financed and the total sale price under § 226.18 for credit sales. Any charges imposed equally in cash and credit transactions may be included in the cash price, or they may be treated as other amounts financed under § 226.18(b)(2).

2. *Service contracts.* Service contracts include contracts for the repair or the servicing of goods, such as mechanical breakdown coverage, even if such a contract is characterized as insurance under state law.

3. *Rebates.* The creditor has complete flexibility in the way it treats rebates for purposes of disclosure and calculation. (See the commentary to § 226.18(b).)

*2(a)(10) Closed-end credit.*

1. *General.* The coverage of this term is defined by exclusion. That is, it includes any credit arrangement that does not fall within the definition of open-end credit. Subpart C contains the disclosure rules for closed-end credit when the obligation is subject to a finance charge or is payable by written agreement in more than four installments.

*2(a)(11) Consumer.*

1. *Scope.* Guarantors, endorsers, and sureties are not generally consumers for

purposes of the regulation, but they may be entitled to rescind under certain circumstances and they may have certain rights if they are obligated on credit card plans.

2. *Rescission rules.* For purposes of rescission under §§ 226.15 and 226.23, a consumer includes any natural person whose ownership interest in his or her principal dwelling is subject to the risk of loss. Thus, if a security interest is taken in A's ownership interest in a house and that house is A's principal dwelling, A is a consumer for purposes of rescission, even if A is not liable, either primarily or secondarily, on the underlying consumer credit transaction. An ownership interest does not include, for example, leaseholds or inchoate rights, such as dower.

3. *Land trusts.* Credit extended to land trusts, as described in the commentary to § 226.3(a), is considered to be extended to a natural person for purposes of the definition of consumer.

*2(a)(12) Consumer credit.*

1. *Primary purpose.* There is no precise test for what constitutes credit offered or extended for personal, family, or household purposes, nor for what constitutes the primary purpose. (See, however, the discussion of business purposes in the commentary to § 226.3(a).)

*2(a)(13) Consummation.*

1. *State law governs.* When a contractual obligation on the consumer's part is created is a matter to be determined under applicable law; Regulation Z does not make this determination. A contractual commitment agreement, for example, that under applicable law binds the consumer to the credit terms would be consummation. Consummation, however, does not occur merely because the consumer has made some financial investment in the transaction (for example, by paying a nonrefundable fee) unless, of course, applicable law holds otherwise.

2. *Credit v. sale.* Consummation does not occur when the consumer becomes contractually committed to a sale transaction, unless the consumer also becomes legally obligated to accept a particular credit arrangement. For example, when a consumer pays a nonrefundable deposit to purchase an automobile, a purchase contract may be created, but consummation for purposes of the regulation does not occur unless the consumer also contracts for financing at that time.

*2(a)(14) Credit.*

1. *Exclusions.* The following situations are not considered credit for purposes of the regulation:

i. Layaway plans, unless the consumer is contractually obligated to continue making payments. Whether the consumer is so obligated is a matter to be determined under applicable law. The fact that the consumer is not entitled to a refund of any amounts paid towards the cash price of the merchandise does not bring layaways within the definition of credit.

ii. Tax liens, tax assessments, court judgments, and court approvals of reaffirmation of debts in bankruptcy. However, third-party financing of such obligations (for example, a bank loan obtained to pay off a tax lien) is credit for purposes of the regulation.

iii. Insurance premium plans that involve payment in installments with each installment representing the payment for insurance coverage for a certain future period of time, unless the consumer is contractually obligated to continue making payments.

iv. Home improvement transactions that involve progress payments, if the consumer pays, as the work progresses, only for work completed and has no contractual obligation to continue making payments.

v. Borrowing against the accrued cash value of an insurance policy or a pension account, if there is no independent obligation to repay.

vi. Letters of credit.

vii. The execution of option contracts. However, there may be an extension of credit when the option is exercised, if there is an agreement at that time to defer payment of a debt.

viii. Investment plans in which the party extending capital to the consumer risks the loss of the capital advanced. This includes, for example, an arrangement with a home purchaser in which the investor pays a portion of the downpayment and of the periodic mortgage payments in return for an ownership interest in the property, and shares in any gain or loss of property value.

ix. Mortgage assistance plans administered by a government agency in which a portion of the consumer's monthly payment amount is paid by the agency. No finance charge is imposed on the subsidy amount, and that amount is due in a lump-sum payment on a set date or upon the occurrence of certain events. (If payment is not made when due, a new note imposing a finance charge may be written, which may then be subject to the regulation.)

2. *Payday loans; deferred presentment.* Credit includes a transaction in which a cash advance is made to a consumer in exchange for the consumer's personal check, or in exchange for the consumer's authorization to debit the consumer's deposit account, and where the parties agree either that the check will not be cashed or deposited, or that the consumer's deposit account will not be debited, until a designated future date. This type of transaction is often referred to as a "payday loan" or "payday advance" or "deferred-presentment loan." A fee charged in connection with such a transaction may be a finance charge for purposes of § 226.4, regardless of how the fee is characterized under state law. Where the fee charged constitutes a finance charge under § 226.4 and the person advancing funds regularly extends consumer credit, that person is a creditor and is required to provide disclosures consistent with the requirements of Regulation Z. (See § 226.2(a)(17).)

*2(a)(15) Credit card.*

1. *Usable from time to time.* A credit card must be usable from time to time. Since this involves the possibility of repeated use of a single device, checks and similar instruments that can be used only once to obtain a single credit extension are not credit cards.

2. *Examples.* i. Examples of credit cards include:

A. A card that guarantees checks or similar instruments, if the asset account is also tied to an overdraft line or if the instrument directly accesses a line of credit.

B. A card that accesses both a credit and an asset account (that is, a debit-credit card).

C. An identification card that permits the consumer to defer payment on a purchase.

D. An identification card indicating loan approval that is presented to a merchant or to a lender, whether or not the consumer signs a separate promissory note for each credit extension.

E. A card or device that can be activated upon receipt to access credit, even if the card has a substantive use other than credit, such as a purchase-price discount card. Such a card or device is a credit card notwithstanding the fact that the recipient must first contact the card issuer to access or activate the credit feature.

ii. In contrast, credit card does not include, for example:

A. A check-guarantee or debit card with no credit feature or agreement, even if the creditor occasionally honors an inadvertent overdraft.

B. Any card, key, plate, or other device that is used in order to obtain petroleum products for business purposes from a wholesale distribution facility or to gain access to that facility, and that is required to be used without regard to payment terms.

3. *Charge card.* Generally, charge cards are cards used in connection with an account on which outstanding balances cannot be carried from one billing cycle to another and are payable when a periodic statement is received. Under the regulation, a reference to credit cards generally includes charge cards. The term *charge card* is, however, distinguished from *credit card* in §§ 226.5a, 226.7(b)(11), 226.7(b)(12), 226.9(e), 226.9(f) and 226.28(d), and appendices G–10 through G–13. When the term *credit card* is used in those provisions, it refers to credit cards other than charge cards.

*2(a)(16) Credit sale.*

1. *Special disclosure.* If the seller is a creditor in the transaction, the transaction is a credit sale and the special credit sale disclosures (that is, the disclosures under § 226.18(j)) must be given. This applies even if there is more than one creditor in the transaction and the creditor making the disclosures is not the seller. (See the commentary to § 226.17(d).)

2. *Sellers who arrange credit.* If the seller of the property or services involved arranged for financing but is not a creditor as to that sale, the transaction is not a credit sale. Thus, if a seller assists the consumer in obtaining a direct loan from a financial institution and the consumer's note is payable to the financial institution, the transaction is a loan and only the financial institution is a creditor.

3. *Refinancings.* Generally, when a credit sale is refinanced within the meaning of § 226.20(a), loan disclosures should be made. However, if a new sale of goods or services is also involved, the transaction is a credit sale.

4. *Incidental sales.* Some lenders *sell* a product or service—such as credit, property, or health insurance—as part of a loan

transaction. Section 226.4 contains the rules on whether the cost of credit life, disability or property insurance is part of the finance charge. If the insurance is financed, it may be disclosed as a separate credit-sale transaction or disclosed as part of the primary transaction; if the latter approach is taken, either loan or credit-sale disclosures may be made. (See the commentary to § 226.17(c)(1) for further discussion of this point.)

5. *Credit extensions for educational purposes.* A credit extension for educational purposes in which an educational institution is the creditor may be treated as either a credit sale or a loan, regardless of whether the funds are given directly to the student, credited to the student's account, or disbursed to other persons on the student's behalf. The disclosure of the total sale price need not be given if the transaction is treated as a loan.

*2(a)(17) Creditor.*

1. *General.* The definition contains four independent tests. If any one of the tests is met, the person is a creditor for purposes of that particular test.

*Paragraph 2(a)(17)(i).*

1. *Prerequisites.* This test is composed of two requirements, both of which must be met in order for a particular credit extension to be subject to the regulation and for the credit extension to count towards satisfaction of the numerical tests mentioned in § 226.2(a)(17)(v).

i. *First,* there must be either or both of the following:

A. A written (rather than oral) agreement to pay in more than four installments. A letter that merely confirms an oral agreement does not constitute a written agreement for purposes of the definition.

B. A finance charge imposed for the credit. The obligation to pay the finance charge need not be in writing.

ii. *Second,* the obligation must be payable to the person in order for that person to be considered a creditor. If an obligation is made payable to *bearer,* the creditor is the one who initially accepts the obligation.

2. *Assignees.* If an obligation is initially payable to one person, that person is the creditor even if the obligation by its terms is simultaneously assigned to another person. For example:

i. An auto dealer and a bank have a business relationship in which the bank supplies the dealer with credit sale contracts that are initially made payable to the dealer and provide for the immediate assignment of the obligation to the bank. The dealer and purchaser execute the contract only after the bank approves the creditworthiness of the purchaser. Because the obligation is initially payable on its face to the dealer, the dealer is the only creditor in the transaction.

3. *Numerical tests.* The examples below illustrate how the numerical tests of § 226.2(a)(17)(v) are applied. The examples assume that consumer credit with a finance charge or written agreement for more than 4 installments was extended in the years in question and that the person did not extend such credit in 2006.

4. *Counting transactions.* For purposes of closed-end credit, the creditor counts each credit transaction. For open-end credit, *transactions* means accounts, so that outstanding accounts are counted instead of individual credit extensions. Normally the number of transactions is measured by the preceding calendar year; if the requisite number is met, then the person is a creditor for all transactions in the current year. However, if the person did not meet the test in the preceding year, the number of transactions is measured by the current calendar year. For example, if the person extends consumer credit 26 times in 2007, it is a creditor for purposes of the regulation for the last extension of credit in 2007 and for all extensions of consumer credit in 2008. On the other hand, if a business begins in 2007 and extends consumer credit 20 times, it is not a creditor for purposes of the regulation in 2007. If it extends consumer credit 75 times in 2008, however, it becomes a creditor for purposes of the regulation (and must begin making disclosures) after the 25th extension of credit in that year and is a creditor for all extensions of consumer credit in 2009.

5. *Relationship between consumer credit in general and credit secured by a dwelling.* Extensions of credit secured by a dwelling are counted towards the 25-extensions test. For example, if in 2007 a person extends unsecured consumer credit 23 times and consumer credit secured by a dwelling twice, it becomes a creditor for the succeeding extensions of credit, whether or not they are secured by a dwelling. On the other hand, extensions of consumer credit not secured by a dwelling are *not* counted towards the number of credit extensions secured by a dwelling. For example, if in 2007 a person extends credit not secured by a dwelling 8 times and credit secured by a dwelling 3 times, it is not a creditor.

6. *Effect of satisfying one test.* Once one of the numerical tests is satisfied, the person is also a creditor for the other type of credit. For example, in 2007 a person extends consumer credit secured by a dwelling 5 times. That person is a creditor for all succeeding credit extensions, whether they involve credit secured by a dwelling or not.

7. *Trusts.* In the case of credit extended by trusts, each individual trust is considered a separate entity for purposes of applying the criteria. For example:

i. A bank is the trustee for three trusts. Trust A makes 15 extensions of consumer credit annually; Trust B makes 10 extensions of consumer credit annually; and Trust C makes 30 extensions of consumer credit annually. Only Trust C is a creditor for purposes of the regulation.

*Paragraph 2(a)(17)(ii).* [Reserved]

Paragraph 2(a)(17)(iii).

1. *Card issuers subject to Subpart B.* Section 226.2(a)(17)(iii) makes certain card issuers creditors for purposes of the open-end credit provisions of the regulation. This includes, for example, the issuers of so-called travel and entertainment cards that expect repayment at the first billing and do not impose a finance charge. Since all disclosures are to be made only as applicable, such card issuers would omit finance charge disclosures. Other provisions of the regulation regarding such areas as scope, definitions, determination of which charges are finance charges, Spanish language disclosures, record retention, and use of model forms, also apply to such card issuers.

*Paragraph 2(a)(17)(iv).*

1. *Card issuers subject to Subparts B and C.* Section 226.2(a)(17)(iv) includes as creditors card issuers extending closed-end credit in which there is a finance charge or an agreement to pay in more than four installments. These card issuers are subject to the appropriate provisions of Subparts B and C, as well as to the general provisions.

*2(a)(18) Downpayment.*

1. *Allocation.* If a consumer makes a lump-sum payment, partially to reduce the cash price and partially to pay prepaid finance charges, only the portion attributable to reducing the cash price is part of the downpayment. (See the commentary to § 226.2(a)(23).)

2. *Pick-up payments.* i. Creditors may treat the deferred portion of the downpayment, often referred to as *pick-up payments,* in a number of ways. If the pick-up payment is treated as part of the downpayment:

A. It is subtracted in arriving at the amount financed under § 226.18(b).

B. It may, but need not, be reflected in the payment schedule under § 226.18(g).

ii. If the pick-up payment does not meet the definition (for example, if it is payable after the second regularly scheduled payment) or if the creditor chooses not to treat it as part of the downpayment:

A. It must be included in the amount financed.

B. It must be shown in the payment schedule.

iii. Whichever way the pick-up payment is treated, the total of payments under § 226.18(h) must equal the sum of the payments disclosed under § 226.18(g).

3. *Effect of existing liens.*

i. *No cash payment.* In a credit sale, the "downpayment" may only be used to reduce the cash price. For example, when a trade-in is used as the downpayment and the existing lien on an automobile to be traded in exceeds the value of the automobile, creditors must disclose a zero on the downpayment line rather than a negative number. To illustrate, assume a consumer owes $10,000 on an existing automobile loan and that the trade-in value of the automobile is only $8,000, leaving a $2,000 deficit. The creditor should disclose a downpayment of $0, not −$2,000.

ii. *Cash payment.* If the consumer makes a cash payment, creditors may, at their option, disclose the entire cash payment as the downpayment, or apply the cash payment first to any excess lien amount and disclose any remaining cash as the downpayment. In the above example:

A. If the downpayment disclosed is equal to the cash payment, the $2,000 deficit must be reflected as an additional amount financed under § 226.18(b)(2).

B. If the consumer provides $1,500 in cash (which does not extinguish the $2,000 deficit), the creditor may disclose a downpayment of $1,500 or of $0.

C. If the consumer provides $3,000 in cash, the creditor may disclose a downpayment of $3,000 or of $1,000.

*2(a)(19) Dwelling.*

1. *Scope.* A dwelling need not be the consumer's *principal* residence to fit the definition, and thus a vacation or second home could be a dwelling. However, for purposes of the definition of residential mortgage transaction and the right to rescind, a dwelling must be the principal residence of the consumer. (*See* the commentary to §§ 226.2(a)(24), 226.15, and 226.23.)

2. *Use as a residence.* Mobile homes, boats, and trailers are dwellings if they are in fact used as residences, just as are condominium and cooperative units. Recreational vehicles, campers, and the like not used as residences are not dwellings.

3. *Relation to exemptions.* Any transaction involving a security interest in a consumer's principal dwelling (as well as in any real property) remains subject to the regulation despite the general exemption in § 226.3(b) for credit extensions over $25,000.

*2(a)(20) Open-end credit.*

1. *General.* This definition describes the characteristics of open-end credit (for which the applicable disclosure and other rules are contained in Subpart B), as distinct from closed-end credit. Open-end credit is consumer credit that is extended under a plan and meets *all 3* criteria set forth in the definition.

2. *Existence of a plan.* The definition requires that there be a plan, which connotes a contractual arrangement between the creditor and the consumer. Some creditors offer programs containing a number of different credit features. The consumer has a single account with the institution that can be accessed repeatedly via a number of sub-accounts established for the different program features and rate structures. Some features of the program might be used repeatedly (for example, an overdraft line) while others might be used infrequently (such as the part of the credit line available for secured credit). If the program as a whole is subject to prescribed terms and otherwise meets the definition of open-end credit, such a program would be considered a single, multifeatured plan.

3. *Repeated transactions.* Under this criterion, the creditor must reasonably contemplate repeated transactions. This means that the credit plan must be usable from time to time and the creditor must legitimately expect that there will be repeat business rather than a one-time credit extension. The creditor must expect repeated dealings with consumers under the credit plan as a whole and need not believe a consumer will reuse a particular feature of the plan. The determination of whether a creditor can reasonably contemplate repeated transactions requires an objective analysis. Information that much of the creditor's customer base with accounts under the plan make repeated transactions over some period of time is relevant to the determination, particularly when the plan is opened primarily for the financing of infrequently purchased products or services. A standard based on reasonable belief by a creditor necessarily includes some margin for judgmental error. The fact that particular consumers do not return for further credit extensions does not prevent a plan from having been properly characterized as open-end. For example, if much of the customer base of a clothing store makes repeat purchases, the fact that some consumers use the plan only once would not affect the characterization of the store's plan as open-end credit. The criterion regarding repeated transactions is a question of fact to be decided in the context of the creditor's type of business and the creditor's relationship with its customers. For example, it would be more reasonable for a bank or depository institution to contemplate repeated transactions with a customer than for a seller of aluminum siding to make the same assumption about its customers.

4. *Finance charge on an outstanding balance.* The requirement that a finance charge may be computed and imposed from time to time on the outstanding balance means that there is no specific amount financed for the plan for which the finance charge, total of payments, and payment schedule can be calculated. A plan may meet the definition of open-end credit even though a finance charge is not normally imposed, provided the creditor has the right, under the plan, to impose a finance charge from time to time on the outstanding balance. For example, in some plans, a finance charge is not imposed if the consumer pays all or a specified portion of the outstanding balance within a given time period. Such a plan could meet the finance charge criterion, if the creditor has the right to impose a finance charge, even though the consumer actually pays no finance charges during the existence of the plan because the consumer takes advantage of the option to pay the balance (either in full or in installments) within the time necessary to avoid finance charges.

5. *Reusable line.* The total amount of credit that may be extended during the existence of an open-end plan is unlimited because available credit is generally replenished as earlier advances are repaid. A line of credit is self-replenishing even though the plan itself has a fixed expiration date, as long as during the plan's existence the consumer may use the line, repay, and reuse the credit. The creditor may occasionally or routinely verify credit information such as the consumer's continued income and employment status or information for security purposes but, to meet the definition of open-end credit, such verification of credit information may not be done as a condition of granting a consumer's request for a particular advance under the plan. In general, a credit line is self-replenishing if the consumer can take further advances as outstanding balances are repaid without being required to separately apply for those additional advances. A credit card account where the plan as a whole replenishes meets the self-replenishing criterion, notwithstanding the fact that a credit card issuer may verify credit information from time to time in connection with specific transactions. This criterion of unlimited credit distinguishes open-end credit from a series of advances made pursuant to a closed-end credit loan commitment. For example:

i. Under a closed-end commitment, the creditor might agree to lend a total of $10,000 in a series of advances as needed by the consumer. When a consumer has borrowed the full $10,000, no more is advanced under that particular agreement, even if there has been repayment of a portion of the debt. (*See* § 226.2(a)(17)(iv) for disclosure requirements when a credit card is used to obtain the advances.)

ii. This criterion does not mean that the creditor must establish a specific credit limit for the line of credit or that the line of credit must always be replenished to its original amount. The creditor may reduce a credit limit or refuse to extend new credit in a particular case due to changes in the creditor's financial condition or the consumer's creditworthiness. (The rules in § 226.5b(f), however, limit the ability of a creditor to suspend credit advances for home equity plans.) While consumers should have a reasonable expectation of obtaining credit as long as they remain current and within any preset credit limits, further extensions of credit need not be an absolute right in order for the plan to meet the self-replenishing criterion.

6. *Verifications of collateral value.* Creditors that otherwise meet the requirements of § 226.2(a)(20) extend open-end credit notwithstanding the fact that the creditor must verify collateral values to comply with federal, state, or other applicable law or verifies the value of collateral in connection with a particular advance under the plan.

7. *Open-end real estate mortgages.* Some credit plans call for negotiated advances under so-called open-end real estate mortgages. Each such plan must be independently measured against the definition of open-end credit, regardless of the terminology used in the industry to describe the plan. The fact that a particular plan is called an open-end real estate mortgage, for example, does not, by itself, mean that it is open-end credit under the regulation.

*2(a)(21) Periodic rate.*

1. *Basis.* The periodic rate may be stated as a percentage (for example, 1½% per month) or as a decimal equivalent (for example, .015 monthly). It may be based on any portion of a year the creditor chooses. Some creditors use 1/360 of an annual rate as their periodic rate. These creditors:

i. May disclose a 1/360 rate as a *daily* periodic rate, without further explanation, if it is in fact only applied 360 days per year. But if the creditor applies that rate for 365 days, the creditor must note that fact and, of course, disclose the true annual percentage rate.

ii. Would have to apply the rate to the balance to disclose the annual percentage rate with the degree of accuracy required in the regulation (that is, within ⅛th of 1 percentage point of the rate based on the actual 365 days in the year).

2. *Transaction charges. Periodic rate* does not include initial one-time transaction charges, even if the charge is computed as a percentage of the transaction amount.

*2(a)(22) Person.*

1. *Joint ventures.* A joint venture is an organization and is therefore a person.

2. *Attorneys.* An attorney and his or her client are considered to be the same person

for purposes of this regulation when the attorney is acting within the scope of the attorney-client relationship with regard to a particular transaction.

3. *Trusts.* A trust and its trustee are considered to be the same person for purposes of this regulation.

*2(a)(23) Prepaid finance charge.*

1. *General.* Prepaid finance charges must be taken into account under § 226.18(b) in computing the disclosed amount financed, and must be disclosed if the creditor provides an itemization of the amount financed under § 226.18(c).

2. *Examples.* i. Common examples of prepaid finance charges include:

A. Buyer's points.

B. Service fees.

C. Loan fees.

D. Finder's fees.

E. Loan-guarantee insurance.

F. Credit-investigation fees.

ii. However, in order for these or any other finance charges to be considered prepaid, they must be either paid separately in cash or check or withheld from the proceeds. Prepaid finance charges include any portion of the finance charge paid prior to or at closing or settlement.

3. *Exclusions. Add-on* and *discount* finance charges are not prepaid finance charges for purposes of this regulation. Finance charges are not *prepaid* merely because they are precomputed, whether or not a portion of the charge will be rebated to the consumer upon prepayment. (*See* the commentary to § 226.18(b).)

4. *Allocation of lump-sum payments.* In a credit sale transaction involving a lump-sum payment by the consumer and a discount or other item that is a finance charge under § 226.4, the discount or other item is a prepaid finance charge to the extent the lump-sum payment is not applied to the cash price. For example, a seller sells property to a consumer for $10,000, requires the consumer to pay $3,000 at the time of the purchase, and finances the remainder as a closed-end credit transaction. The cash price of the property is $9,000. The seller is the creditor in the transaction and therefore the $1,000 difference between the credit and cash prices (the discount) is a finance charge. (See the commentary to § 226.4(b)(9) and (c)(5).) If the creditor applies the entire $3,000 to the cash price and adds the $1,000 finance charge to the interest on the $6,000 to arrive at the total finance charge, all of the $3,000 lump-sum payment is a downpayment and the discount is not a prepaid finance charge. However, if the creditor only applies $2,000 of the lump-sum payment to the cash price, then $2,000 of the $3,000 is a downpayment and the $1,000 discount is a prepaid finance charge.

*2(a)(24) Residential mortgage transaction.*

1. *Relation to other sections.* This term is important in five provisions in the regulation:

i. Section 226.4(c)(7)—exclusions from the finance charge.

ii. Section 226.15(f)—exemption from the right of rescission.

iii. Section 226.18(q)—whether or not the obligation is assumable.

iv. Section 226.20(b)—disclosure requirements for assumptions.

v. Section 226.23(f)—exemption from the right of rescission.

2. *Lien status.* The definition is not limited to first lien transactions. For example, a consumer might assume a paid-down first mortgage (or borrow part of the purchase price) and borrow the balance of the purchase price from a creditor who takes a second mortgage. The second mortgage transaction is a *residential mortgage transaction* if the dwelling purchased is the consumer's principal residence.

3. *Principal dwelling.* A consumer can have only *one* principal dwelling at a time. Thus, a vacation or other second home would not be a principal dwelling. However, if a consumer buys or builds a new dwelling that will become the consumer's principal dwelling within a year or upon the completion of construction, the new dwelling is considered the principal dwelling for purposes of applying this definition to a particular transaction. (*See* the commentary to §§ 226.15(a) and 226.23(a).)

4. *Construction financing.* If a transaction meets the definition of a residential mortgage transaction and the creditor chooses to disclose it as several transactions under § 226.17(c)(6), each one is considered to be a residential mortgage transaction, even if different creditors are involved. For example:

i. The creditor makes a construction loan to finance the initial construction of the consumer's principal dwelling, and the loan will be disbursed in five advances. The creditor gives six sets of disclosures (five for the construction phase and one for the permanent phase). Each one is a residential mortgage transaction.

ii. One creditor finances the initial construction of the consumer's principal dwelling and another creditor makes a loan to satisfy the construction loan and provide permanent financing. Both transactions are residential mortgage transactions.

5. *Acquisition.* i. A residential mortgage transaction finances the acquisition of a consumer's principal dwelling. The term does not include a transaction involving a consumer's principal dwelling if the consumer had previously purchased and acquired some interest to the dwelling, even though the consumer had not acquired full legal title.

ii. Examples of new transactions involving a previously acquired dwelling include the financing of a balloon payment due under a land sale contract and an extension of credit made to a joint owner of property to buy out the other joint owner's interest. In these instances, disclosures are not required under § 226.18(q) (assumability policies). However, the rescission rules of §§ 226.15 and 226.23 do apply to these new transactions.

iii. In other cases, the disclosure and rescission rules do not apply. For example, where a buyer enters into a written agreement with the creditor holding the seller's mortgage, allowing the buyer to assume the mortgage, if the buyer had previously purchased the property and agreed with the seller to make the mortgage payments, § 226.20(b) does not apply (assumptions involving residential mortgages).

6. *Multiple purpose transactions.* A transaction meets the definition of this section if any part of the loan proceeds will be used to finance the acquisition or initial construction of the consumer's principal dwelling. For example, a transaction to finance the initial construction of the consumer's principal dwelling is a residential mortgage transaction even if a portion of the funds will be disbursed directly to the consumer or used to satisfy a loan for the purchase of the land on which the dwelling will be built.

7. *Construction on previously acquired vacant land.* A residential mortgage transaction includes a loan to finance the construction of a consumer's principal dwelling on a vacant lot previously acquired by the consumer.

*2(a)(25) Security interest.*

1. *Threshold test.* The threshold test is whether a particular interest in property is recognized as a security interest under applicable law. The regulation does not determine whether a particular interest is a security interest under applicable law. If the creditor is unsure whether a particular interest is a security interest under applicable law (for example, if statutes and case law are either silent or inconclusive on the issue), the creditor may at its option consider such interests as security interests for Truth in Lending purposes. However, the regulation and the commentary do exclude specific interests, such as after-acquired property and accessories, from the scope of the definition regardless of their categorization under applicable law, and these named exclusions may not be disclosed as security interests under the regulation. (But see the discussion of exclusions elsewhere in the commentary to § 226.2(a)(25).)

2. *Exclusions.* The general definition of security interest excludes three groups of interests: incidental interests, interests in after-acquired property, and interests that arise solely by operation of law. These interests may not be disclosed with the disclosures required under § 226.18, but the creditor is not precluded from preserving these rights elsewhere in the contract documents, or invoking and enforcing such rights, if it is otherwise lawful to do so. If the creditor is unsure whether a particular interest is one of the excluded interests, the creditor may, at its option, consider such interests as security interests for Truth in Lending purposes.

3. *Incidental interests.* i. Incidental interests in property that are not security interests include, among other things:

A. Assignment of rents.

B. Right to condemnation proceeds.

C. Interests in accessories and replacements.

D. Interests in escrow accounts, such as for taxes and insurance.

E. Waiver of homestead or personal property rights.

ii. The notion of an *incidental interest* does not encompass an explicit security interest in an insurance policy if that policy is the primary collateral for the transaction—for example, in an insurance premium financing transaction.

4. *Operation of law.* Interests that arise solely by operation of law are excluded from the general definition. Also excluded are

interests arising by operation of law that are merely repeated or referred to in the contract. However, if the creditor has an interest that arises by operation of law, such as a vendor's lien, and takes an independent security interest in the same property, such as a UCC security interest, the latter interest is a disclosable security interest unless otherwise provided.

5. *Rescission rules.* Security interests that arise solely by operation of law are security interests for purposes of rescission. Examples of such interests are mechanics' and materialmen's liens.

6. *Specificity of disclosure.* A creditor need not separately disclose multiple security interests that it may hold in the same collateral. The creditor need only disclose that the transaction is secured by the collateral, even when security interests from prior transactions remain of record and a new security interest is taken in connection with the transaction. In disclosing the fact that the transaction is secured by the collateral, the creditor also need not disclose how the security interest arose. For example, in a closed-end credit transaction, a rescission notice need not specifically state that a new security interest is "acquired" or an existing security interest is "retained" in the transaction. The acquisition or retention of a security interest in the consumer's principal dwelling instead may be disclosed in a rescission notice with a general statement such as the following: "Your home is the security for the new transaction."

*2(b) Rules of construction.*

1. *Footnotes.* Footnotes are used extensively in the regulation to provide special exceptions and more detailed explanations and examples. Material that appears in a footnote has the same legal weight as material in the body of the regulation.

2. *Amount.* The numerical amount must be a dollar amount unless otherwise indicated. For example, in a closed-end transaction (Subpart C), the amount financed and the amount of any payment must be expressed as a dollar amount. In some cases, an amount should be expressed as a percentage. For example, in disclosures provided before the first transaction under an open-end plan (Subpart B), creditors are permitted to explain how the amount of any finance charge will be determined; where a cash-advance fee (which is a finance charge) is a percentage of each cash advance, the amount of the finance charge for that fee is expressed as a percentage.

*Section 226.3—Exempt Transactions*

1. *Relationship to § 226.12.* The provisions in § 226.12(a) and (b) governing the issuance of credit cards and the limitations on liability for their unauthorized use apply to all credit cards, even if the credit cards are issued for use in connection with extensions of credit that otherwise are exempt under this section.

*3(a) Business, commercial, agricultural, or organizational credit.*

1. *Primary purposes.* A creditor must determine in each case if the transaction is primarily for an exempt purpose. If some question exists as to the primary purpose for a credit extension, the creditor is, of course, free to make the disclosures, and the fact that disclosures are made under such circumstances is not controlling on the question of whether the transaction was exempt. (See comment 3(a)–2, however, with respect to credit cards.)

2. *Business purpose purchases.*

i. *Business-purpose credit cards—extensions of credit for consumer purposes.* If a business-purpose credit card is issued to a person, the provisions of the regulation do not apply, other than as provided in §§ 226.12(a) and 226.12(b), even if extensions of credit for consumer purposes are occasionally made using that business-purpose credit card. For example, the billing error provisions set forth in § 226.13 do not apply to consumer-purpose extensions of credit using a business-purpose credit card.

ii. *Consumer-purpose credit cards—extensions of credit for business purposes.* If a consumer-purpose credit card is issued to a person, the provisions of the regulation apply, even to occasional extensions of credit for business purposes made using that consumer-purpose credit card. For example, a consumer may assert a billing error with respect to any extension of credit using a consumer-purpose credit card, even if the specific extension of credit on such credit card or open-end credit plan that is the subject of the dispute was made for business purposes.

3. *Factors.* In determining whether credit to finance an acquisition—such as securities, antiques, or art—is primarily for business or commercial purposes (as opposed to a consumer purpose), the following factors should be considered:

i. *General.*

A. The relationship of the borrower's primary occupation to the acquisition. The more closely related, the more likely it is to be business purpose.

B. The degree to which the borrower will personally manage the acquisition. The more personal involvement there is, the more likely it is to be business purpose.

C. The ratio of income from the acquisition to the total income of the borrower. The higher the ratio, the more likely it is to be business purpose.

D. The size of the transaction. The larger the transaction, the more likely it is to be business purpose.

E. The borrower's statement of purpose for the loan.

ii. *Business-purpose examples.* Examples of business-purpose credit include:

A. A loan to expand a business, even if it is secured by the borrower's residence or personal property.

B. A loan to improve a principal residence by putting in a business office.

C. A business account used occasionally for consumer purposes.

iii. *Consumer-purpose examples.* Examples of consumer-purpose credit include:

A. Credit extensions by a company to its employees or agents if the loans are used for personal purposes.

B. A loan secured by a mechanic's tools to pay a child's tuition.

C. A personal account used occasionally for business purposes.

4. *Non-owner-occupied rental property.* Credit extended to acquire, improve, or maintain rental property (regardless of the number of housing units) that is not owner-occupied is deemed to be for business purposes. This includes, for example, the acquisition of a warehouse that will be leased or a single-family house that will be rented to another person to live in. If the owner expects to occupy the property for more than 14 days during the coming year, the property cannot be considered non-owner-occupied and this special rule will not apply. For example, a beach house that the owner will occupy for a month in the coming summer and rent out the rest of the year is owner occupied and is not governed by this special rule. (*See* comment 3(a)–5, however, for rules relating to owner-occupied rental property.)

5. *Owner-occupied rental property.* If credit is extended to acquire, improve, or maintain rental property that is or will be owner-occupied within the coming year, different rules apply:

i. Credit extended to acquire the rental property is deemed to be for business purposes if it contains more than 2 housing units.

ii. Credit extended to improve or maintain the rental property is deemed to be for business purposes if it contains more than 4 housing units. Since the amended statute defines dwelling to include 1 to 4 housing units, this rule preserves the right of rescission for credit extended for purposes other than acquisition. Neither of these rules means that an extension of credit for property containing fewer than the requisite number of units is necessarily consumer credit. In such cases, the determination of whether it is business or consumer credit should be made by considering the factors listed in comment 3(a)–3.

6. *Business credit later refinanced.* Business-purpose credit that is exempt from the regulation may later be rewritten for consumer purposes. Such a transaction is consumer credit requiring disclosures only if the existing obligation is satisfied and replaced by a new obligation made for consumer purposes undertaken by the same obligor.

7. *Credit card renewal.* A consumer-purpose credit card that is subject to the regulation may be converted into a business-purpose credit card at the time of its renewal, and the resulting business-purpose credit card would be exempt from the regulation. Conversely, a business-purpose credit card that is exempt from the regulation may be converted into a consumer-purpose credit card at the time of its renewal, and the resulting consumer-purpose credit card would be subject to the regulation.

8. *Agricultural purpose.* An agricultural purpose includes the planting, propagating, nurturing, harvesting, catching, storing, exhibiting, marketing, transporting, processing, or manufacturing of food, beverages (including alcoholic beverages), flowers, trees, livestock, poultry, bees, wildlife, fish, or shellfish by a natural person engaged in farming, fishing, or growing crops, flowers, trees, livestock, poultry, bees, or wildlife. The exemption also applies to a transaction involving real property that includes a dwelling (for example, the purchase of a farm with a homestead) if the

transaction is primarily for agricultural purposes.

9. *Organizational credit.* The exemption for transactions in which the borrower is not a natural person applies, for example, to loans to corporations, partnerships, associations, churches, unions, and fraternal organizations. The exemption applies regardless of the purpose of the credit extension and regardless of the fact that a natural person may guarantee or provide security for the credit.

10. *Land trusts.* Credit extended for consumer purposes to a land trust is considered to be credit extended to a natural person rather than credit extended to an organization. In some jurisdictions, a financial institution financing a residential real estate transaction for an individual uses a land trust mechanism. Title to the property is conveyed to the land trust for which the financial institution itself is trustee. The underlying installment note is executed by the financial institution in its capacity as trustee and payment is secured by a trust deed, reflecting title in the financial institution as trustee. In some instances, the consumer executes a personal guaranty of the indebtedness. The note provides that it is payable only out of the property specifically described in the trust deed and that the trustee has no personal liability on the note. Assuming the transactions are for personal, family, or household purposes, these transactions are subject to the regulation since in substance (if not form) consumer credit is being extended.

*3(b) Credit over $25,000 not secured by real property or a dwelling.*

1. *Coverage.* Since a mobile home can be a dwelling under § 226.2(a)(19), this exemption does not apply to a credit extension secured by a mobile home used or expected to be used as the principal dwelling of the consumer, even if the credit exceeds $25,000. A loan commitment for closed-end credit in excess of $25,000 is exempt even though the amounts actually drawn never actually reach $25,000.

2. *Open-end credit.* i. An open-end credit plan is exempt under § 226.3(b) (unless secured by real property or personal property used or expected to be used as the consumer's principal dwelling) if either of the following conditions is met:

A. The creditor makes a firm commitment to lend over $25,000 with no requirement of additional credit information for any advances (except as permitted from time to time pursuant to § 226.2(a)(20)).

B. The initial extension of credit on the line exceeds $25,000.

ii. If a security interest is taken at a later time in any real property, or in personal property used or expected to be used as the consumer's principal dwelling, the plan would no longer be exempt. The creditor must comply with all of the requirements of the regulation including, for example, providing the consumer with an initial disclosure statement. If the security interest being added is in the consumer's principal dwelling, the creditor must also give the consumer the right to rescind the security interest. (*See* the commentary to § 226.15 concerning the right of rescission.)

3. *Closed-end credit—subsequent changes.* A closed-end loan for over $25,000 may later be rewritten for $25,000 or less, or a security interest in real property or in personal property used or expected to be used as the consumer's principal dwelling may be added to an extension of credit for over $25,000. Such a transaction is consumer credit requiring disclosures only if the existing obligation is satisfied and replaced by a new obligation made for consumer purposes undertaken by the same obligor. (*See* the commentary to § 226.23(a)(1) regarding the right of rescission when a security interest in a consumer's principal dwelling is added to a previously exempt transaction.)

*3(c) Public utility credit.*

1. *Examples.* Examples of public utility services include:

i. *General.*

A. Gas, water, or electrical services.

B. Cable television services.

C. Installation of new sewer lines, water lines, conduits, telephone poles, or metering equipment in an area not already serviced by the utility.

ii. *Extensions of credit not covered.* The exemption does not apply to extensions of credit, for example:

A. To purchase appliances such as gas or electric ranges, grills, or telephones.

B. To finance home improvements such as new heating or air conditioning systems.

*3(d) Securities or commodities accounts.*

1. *Coverage.* This exemption does not apply to a transaction with a broker registered solely with the state, or to a separate credit extension in which the proceeds are used to purchase securities.

*3(e) Home fuel budget plans.*

1. *Definition.* Under a typical home fuel budget plan, the fuel dealer estimates the total cost of fuel for the season, bills the customer for an average monthly payment, and makes an adjustment in the final payment for any difference between the estimated and the actual cost of the fuel. Fuel is delivered as needed, no finance charge is assessed, and the customer may withdraw from the plan at any time. Under these circumstances, the arrangement is exempt from the regulation, even if a charge to cover the billing costs is imposed.

*3(f) Student loan programs.*

1. *Coverage.* This exemption applies to loans made, insured, or guaranteed under title IV of the Higher Education Act of 1965 (20 U.S.C. 1070 *et seq.*). This exemption does not apply to private education loans as defined by § 226.46(b)(5).

*Section 226.4—Finance Charge*

*4(a) Definition.*

1. *Charges in comparable cash transactions.* Charges imposed uniformly in cash and credit transactions are not finance charges. In determining whether an item is a finance charge, the creditor should compare the credit transaction in question with a similar cash transaction. A creditor financing the sale of property or services may compare charges with those payable in a similar cash transaction by the seller of the property or service.

i. For example, the following items are not finance charges:

A. Taxes, license fees, or registration fees paid by both cash and credit customers.

B. Discounts that are available to cash and credit customers, such as quantity discounts.

C. Discounts available to a particular group of consumers because they meet certain criteria, such as being members of an organization or having accounts at a particular financial institution. This is the case even if an individual must pay cash to obtain the discount, provided that credit customers who are members of the group and do not qualify for the discount pay no more than the nonmember cash customers.

D. Charges for a service policy, auto club membership, or policy of insurance against latent defects offered to or required of both cash and credit customers for the same price.

ii. In contrast, the following items are finance charges:

A. Inspection and handling fees for the staged disbursement of construction-loan proceeds.

B. Fees for preparing a Truth in Lending disclosure statement, if permitted by law (for example, the Real Estate Settlement Procedures Act prohibits such charges in certain transactions secured by real property).

C. Charges for a required maintenance or service contract imposed only in a credit transaction.

iii. If the charge in a credit transaction exceeds the charge imposed in a comparable cash transaction, only the difference is a finance charge. For example:

A. If an escrow agent is used in both cash and credit sales of real estate and the agent's charge is $100 in a cash transaction and $150 in a credit transaction, only $50 is a finance charge.

2. *Costs of doing business.* Charges absorbed by the creditor as a cost of doing business are not finance charges, even though the creditor may take such costs into consideration in determining the interest rate to be charged or the cash price of the property or service sold. However, if the creditor separately imposes a charge on the consumer to cover certain costs, the charge is a finance charge if it otherwise meets the definition. For example:

i. A discount imposed on a credit obligation when it is assigned by a seller-creditor to another party is not a finance charge as long as the discount is not separately imposed on the consumer. (*See* § 226.4(b)(6).)

ii. A tax imposed by a state or other governmental body on a creditor is not a finance charge if the creditor absorbs the tax as a cost of doing business and does not separately impose the tax on the consumer. (For additional discussion of the treatment of taxes, see other commentary to § 226.4(a).)

3. *Forfeitures of interest.* If the creditor reduces the interest rate it pays or stops paying interest on the consumer's deposit account or any portion of it for the term of a credit transaction (including, for example, an overdraft on a checking account or a loan secured by a certificate of deposit), the interest lost is a finance charge. (See the commentary to § 226.4(c)(6).) For example:

A. A consumer borrows $5,000 for 90 days and secures it with a $10,000 certificate of

deposit paying 15% interest. The creditor charges the consumer an interest rate of 6% on the loan and stops paying interest on $5,000 of the $10,000 certificate for the term of the loan. The interest lost is a finance charge and must be reflected in the annual percentage rate on the loan.

B. However, the consumer must be entitled to the interest that is not paid in order for the lost interest to be a finance charge. For example:

iii. A consumer wishes to buy from a financial institution a $10,000 certificate of deposit paying 15% interest but has only $4,000. The financial institution offers to lend the consumer $6,000 at an interest rate of 6% but will pay the 15% interest only on the amount of the consumer's deposit, $4,000. The creditor's failure to pay interest on the $6,000 does not result in an additional finance charge on the extension of credit, provided the consumer is entitled by the deposit agreement with the financial institution to interest only on the amount of the consumer's deposit.

iv. A consumer enters into a combined time deposit/credit agreement with a financial institution that establishes a time deposit account and an open-end line of credit. The line of credit may be used to borrow against the funds in the time deposit. The agreement provides for an interest rate on any credit extension of, for example, 1%. In addition, the agreement states that the creditor will pay 0% interest on the amount of the time deposit that corresponds to the amount of the credit extension(s). The interest that is not paid on the time deposit by the financial institution is not a finance charge (and therefore does not affect the annual percentage rate computation).

4. *Treatment of transaction fees on credit card plans.* Any transaction charge imposed on a cardholder by a card issuer is a finance charge, regardless of whether the issuer imposes the same, greater, or lesser charge on withdrawals of funds from an asset account such as a checking or savings account. For example:

i. Any charge imposed on a credit cardholder by a card issuer for the use of an automated teller machine (ATM) to obtain a cash advance (whether in a proprietary, shared, interchange, or other system) is a finance charge regardless of whether the card issuer imposes a charge on its debit cardholders for using the ATM to withdraw cash from a consumer asset account, such as a checking or savings account.

ii. Any charge imposed on a credit cardholder for making a purchase or obtaining a cash advance outside the United States, with a foreign merchant, or in a foreign currency is a finance charge, regardless of whether a charge is imposed on debit cardholders for such transactions. The following principles apply in determining what is a foreign transaction fee and the amount of the fee:

A. Included are (1) fees imposed when transactions are made in a foreign currency and converted to U.S. dollars; (2) fees imposed when transactions are made in U.S. dollars outside the U.S.; and (3) fees imposed when transactions are made (whether in a foreign currency or in U.S. dollars) with a foreign merchant, such as via a merchant's Web site. For example, a consumer may use a credit card to make a purchase in Bermuda, in U.S. dollars, and the card issuer may impose a fee because the transaction took place outside the United States.

B. Included are fees imposed by the card issuer and fees imposed by a third party that performs the conversion, such as a credit card network or the card issuer's corporate parent. (For example, in a transaction processed through a credit card network, the network may impose a 1 percent charge and the card-issuing bank may impose an additional 2 percent charge, for a total of a 3 percentage point foreign transaction fee being imposed on the consumer.)

C. Fees imposed by a third party are included only if they are directly passed on to the consumer. For example, if a credit card network imposes a 1 percent fee on the card issuer, but the card issuer absorbs the fee as a cost of doing business (and only passes it on to consumers in the general sense that the interest and fees are imposed on all its customers to recover its costs), then the fee is not a foreign transaction fee and need not be disclosed. In another example, if the credit card network imposes a 1 percent fee for a foreign transaction on the card issuer, and the card issuer imposes this same fee on the consumer who engaged in the foreign transaction, then the fee is a foreign transaction fee and a finance charge.

D. A card issuer is not required to disclose a fee imposed by a merchant. For example, if the merchant itself performs the currency conversion and adds a fee, this fee need not be disclosed by the card issuer. Under § 226.9(d), a card issuer is not obligated to disclose finance charges imposed by a party honoring a credit card, such as a merchant, although the merchant is required to disclose such a finance charge if the merchant is subject to the Truth in Lending Act and Regulation Z.

E. The foreign transaction fee is determined by first calculating the dollar amount of the transaction by using a currency conversion rate outside the card issuer's and third party's control. Any amount in excess of that dollar amount is a foreign transaction fee. Conversion rates outside the card issuer's and third party's control include, for example, a rate selected from the range of rates available in the wholesale currency exchange markets, an average of the highest and lowest rates available in such markets, or a government-mandated or government-managed exchange rate (or a rate selected from a range of such rates).

F. The rate used for a particular transaction need not be the same rate that the card issuer (or third party) itself obtains in its currency conversion operations. In addition, the rate used for a particular transaction need not be the rate in effect on the date of the transaction (purchase or cash advance).

5. *Taxes.*

i. Generally, a tax imposed by a state or other governmental body solely on a creditor is a finance charge if the creditor separately imposes the charge on the consumer.

ii. In contrast, a tax is not a finance charge (even if it is collected by the creditor) if applicable law imposes the tax:

A. Solely on the consumer;

B. On the creditor and the consumer jointly;

C. On the credit transaction, without indicating which party is liable for the tax; or

D. On the creditor, if applicable law directs or authorizes the creditor to pass the tax on to the consumer. (For purposes of this section, if applicable law is silent as to passing on the tax, the law is deemed not to authorize passing it on.)

iii. For example, a stamp tax, property tax, intangible tax, or any other state or local tax imposed on the consumer, or on the credit transaction, is not a finance charge even if the tax is collected by the creditor.

iv. In addition, a tax is not a finance charge if it is excluded from the finance charge by another provision of the regulation or commentary (for example, if the tax is imposed uniformly in cash and credit transactions).

*4(a)(1) Charges by third parties.*

1. *Choosing the provider of a required service.* An example of a third-party charge included in the finance charge is the cost of required mortgage insurance, even if the consumer is allowed to choose the insurer.

2. *Annuities associated with reverse mortgages.* Some creditors offer annuities in connection with a reverse-mortgage transaction. The amount of the premium is a finance charge if the creditor requires the purchase of the annuity incident to the credit. Examples include the following:

i. The credit documents reflect the purchase of an annuity from a specific provider or providers.

ii. The creditor assesses an additional charge on consumers who do not purchase an annuity from a specific provider.

iii. The annuity is intended to replace in whole or in part the creditor's payments to the consumer either immediately or at some future date.

*4(a)(2) Special rule; closing agent charges.*

1. *General.* This rule applies to charges by a third party serving as the closing agent for the particular loan. An example of a closing agent charge included in the finance charge is a courier fee where the creditor requires the use of a courier.

2. *Required closing agent.* If the creditor requires the use of a closing agent, fees charged by the closing agent are included in the finance charge only if the creditor requires the particular service, requires the imposition of the charge, or retains a portion of the charge. Fees charged by a third-party closing agent may be otherwise excluded from the finance charge under § 226.4. For example, a fee that would be paid in a comparable cash transaction may be excluded under § 226.4(a). A charge for conducting or attending a closing is a finance charge and may be excluded only if the charge is included in and is incidental to a lump-sum fee excluded under § 226.4(c)(7).

*4(a)(3) Special rule; mortgage broker fees.*

1. *General.* A fee charged by a mortgage broker is excluded from the finance charge if it is the type of fee that is also excluded when charged by the creditor. For example, to exclude an application fee from the finance charge under § 226.4(c)(1), a

mortgage broker must charge the fee to all applicants for credit, whether or not credit is extended.

2. *Coverage.* This rule applies to charges paid by consumers to a mortgage broker in connection with a consumer credit transaction secured by real property or a dwelling.

3. *Compensation by lender.* The rule requires all mortgage broker fees to be included in the finance charge. Creditors sometimes compensate mortgage brokers under a separate arrangement with those parties. Creditors may draw on amounts paid by the consumer, such as points or closing costs, to fund their payment to the broker. Compensation paid by a creditor to a mortgage broker under an agreement is not included as a separate component of a consumer's total finance charge (although this compensation may be reflected in the finance charge if it comes from amounts paid by the consumer to the creditor that are finance charges, such as points and interest).

*4(b) Examples of finance charges.*

1. *Relationship to other provisions.* Charges or fees shown as examples of finance charges in § 226.4(b) may be excludable under § 226.4(c), (d), or (e). For example:

i. Premiums for credit life insurance, shown as an example of a finance charge under § 226.4(b)(7), may be excluded if the requirements of § 226.4(d)(1) are met.

ii. Appraisal fees mentioned in § 226.4(b)(4) are excluded for real property or residential mortgage transactions under § 226.4(c)(7).

*Paragraph 4(b)(2).*

1. *Checking account charges.* A checking or transaction account charge imposed in connection with a credit feature is a finance charge under § 226.4(b)(2) to the extent the charge exceeds the charge for a similar account without a credit feature. If a charge for an account with a credit feature does not exceed the charge for an account without a credit feature, the charge is not a finance charge under § 226.4(b)(2). To illustrate:

i. A $5 service charge is imposed on an account with an overdraft line of credit (where the institution has agreed in writing to pay an overdraft), while a $3 service charge is imposed on an account without a credit feature; the $2 difference is a finance charge. (If the difference is not related to account activity, however, it may be excludable as a participation fee. See the commentary to § 226.4(c)(4).)

ii. A $5 service charge is imposed for each item that results in an overdraft on an account with an overdraft line of credit, while a $25 service charge is imposed for paying or returning each item on a similar account without a credit feature; the $5 charge is not a finance charge.

*Paragraph 4(b)(3).*

1. *Assumption fees.* The assumption fees mentioned in § 226.4(b)(3) are finance charges only when the assumption occurs and the fee is imposed on the new buyer. The assumption fee is a finance charge in the new buyer's transaction.

*Paragraph 4(b)(5).*

1. *Credit loss insurance.* Common examples of the insurance against credit loss mentioned in § 226.4(b)(5) are mortgage guaranty insurance, holder in due course insurance, and repossession insurance. Such premiums must be included in the finance charge only for the period that the creditor requires the insurance to be maintained.

2. *Residual value insurance.* Where a creditor requires a consumer to maintain residual value insurance or where the creditor is a beneficiary of a residual value insurance policy written in connection with an extension of credit (as is the case in some forms of automobile balloon-payment financing, for example), the premiums for the insurance must be included in the finance charge for the period that the insurance is to be maintained. If a creditor pays for residual-value insurance and absorbs the payment as a cost of doing business, such costs are not considered finance charges. (See comment 4(a)–2.)

*Paragraphs 4(b)(7) and (b)(8).*

1. *Pre-existing insurance policy.* The insurance discussed in § 226.4(b)(7) and (b)(8) does not include an insurance policy (such as a life or an automobile collision insurance policy) that is already owned by the consumer, even if the policy is assigned to or otherwise made payable to the creditor to satisfy an insurance requirement. Such a policy is not "written in connection with" the transaction, as long as the insurance was not purchased for use in that credit extension, since it was previously owned by the consumer.

2. *Insurance written in connection with a transaction.* Credit insurance sold before or after an open-end (not home-secured) plan is opened is considered "written in connection with a credit transaction." Insurance sold after consummation in closed-end credit transactions or after the opening of a home-equity plan subject to the requirements of § 226.5b is not considered "written in connection with" the credit transaction if the insurance is written because of the consumer's default (for example, by failing to obtain or maintain required property insurance) or because the consumer requests insurance after consummation or the opening of a home-equity plan subject to the requirements of § 226.5b (although credit-sale disclosures may be required for the insurance sold after consummation if it is financed).

3. *Substitution of life insurance.* The premium for a life insurance policy purchased and assigned to satisfy a credit life insurance requirement must be included in the finance charge, but only to the extent of the cost of the credit life insurance if purchased from the creditor or the actual cost of the policy (if that is less than the cost of the insurance available from the creditor). If the creditor does not offer the required insurance, the premium to be included in the finance charge is the cost of a policy of insurance of the type, amount, and term required by the creditor.

4. *Other insurance.* Fees for required insurance not of the types described in § 226.4(b)(7) and (b)(8) are finance charges and are not excludable. For example:

i. The premium for a hospitalization insurance policy, if it is required to be purchased only in a credit transaction, is a finance charge.

*Paragraph 4(b)(9).*

1. *Discounts for payment by other than credit.* The discounts to induce payment by other than credit mentioned in § 226.4(b)(9) include, for example, the following situation:

i. The seller of land offers individual tracts for $10,000 each. If the purchaser pays cash, the price is $9,000, but if the purchaser finances the tract with the seller the price is $10,000. The $1,000 difference is a finance charge for those who buy the tracts on credit.

2. *Exception for cash discounts.*

i. Creditors may exclude from the finance charge discounts offered to consumers for using cash or another means of payment instead of using a credit card or an open-end plan. The discount may be in whatever amount the seller desires, either as a percentage of the regular price (as defined in section 103(z) of the act, as amended) or a dollar amount. Pursuant to section 167(b) of the act, this provision applies only to transactions involving an open-end credit plan or a credit card (whether open-end or closed-end credit is extended on the card). The merchant must offer the discount to prospective buyers whether or not they are cardholders or members of the open-end credit plan. The merchant may, however, make other distinctions. For example:

A. The merchant may limit the discount to payment by cash and not offer it for payment by check or by use of a debit card.

B. The merchant may establish a discount plan that allows a 15% discount for payment by cash, a 10% discount for payment by check, and a 5% discount for payment by a particular credit card. None of these discounts is a finance charge.

ii. Pursuant to section 171(c) of the act, discounts excluded from the finance charge under this paragraph are also excluded from treatment as a finance charge or other charge for credit under any state usury or disclosure laws.

3. *Determination of the regular price.*

i. The *regular price* is critical in determining whether the difference between the price charged to cash customers and credit customers is a *discount* or a *surcharge,* as these terms are defined in amended section 103 of the act. The *regular price* is defined in section 103 of the act as—

* * * the tag or posted price charged for the property or service if a single price is tagged or posted, or the price charged for the property or service when payment is made by use of an open-end credit account or a credit card if either (1) no price is tagged or posted, or (2) two prices are tagged or posted. * * *

ii. For example, in the sale of motor vehicle fuel, the tagged or posted price is the price displayed at the pump. As a result, the higher price (the open-end credit or credit card price) must be displayed at the pump, either alone or along with the cash price. Service station operators may designate separate pumps or separate islands as being for either cash or credit purchases and display only the appropriate prices at the various pumps. If a pump is capable of displaying on its meter either a cash or a credit price depending upon the consumer's means of payment, both the cash price and the credit price must be displayed at the pump. A service station operator may display the cash price of fuel by itself on a curb sign, as long as the sign

clearly indicates that the price is limited to cash purchases.

*4(b)(10) Debt cancellation and debt suspension fees.*

1. *Definition.* Debt cancellation coverage provides for payment or satisfaction of all or part of a debt when a specified event occurs. The term "debt cancellation coverage" includes guaranteed automobile protection, or "GAP," agreements, which pay or satisfy the remaining debt after property insurance benefits are exhausted. Debt suspension coverage provides for suspension of the obligation to make one or more payments on the date(s) otherwise required by the credit agreement, when a specified event occurs. The term "debt suspension" does not include loan payment deferral arrangements in which the triggering event is the bank's unilateral decision to allow a deferral of payment and the borrower's unilateral election to do so, such as by skipping or reducing one or more payments ("skip payments").

2. *Coverage written in connection with a transaction.* Coverage sold after consummation in closed-end credit transactions or after the opening of a home-equity plan subject to the requirements of § 226.5b is not "written in connection with" the credit transaction if the coverage is written because the consumer requests coverage after consummation or the opening of a home-equity plan subject to the requirements of § 226.5b (although credit-sale disclosures may be required for the coverage sold after consummation if it is financed). Coverage sold before or after an open-end (not home-secured) plan is opened is considered "written in connection with a credit transaction."

*4(c) Charges excluded from the finance charge.*

*Paragraph 4(c)(1).*

1. *Application fees.* An application fee that is excluded from the finance charge is a charge to recover the costs associated with processing applications for credit. The fee may cover the costs of services such as credit reports, credit investigations, and appraisals. The creditor is free to impose the fee in only certain of its loan programs, such as mortgage loans. However, if the fee is to be excluded from the finance charge under § 226.4(c)(1), it must be charged to all applicants, not just to applicants who are approved or who actually receive credit.

*Paragraph 4(c)(2).*

1. *Late payment charges.*

i. Late payment charges can be excluded from the finance charge under § 226.4(c)(2) whether or not the person imposing the charge continues to extend credit on the account or continues to provide property or services to the consumer. In determining whether a charge is for actual unanticipated late payment on a 30-day account, for example, factors to be considered include:

A. The terms of the account. For example, is the consumer required by the account terms to pay the account balance in full each month? If not, the charge may be a finance charge.

B. The practices of the creditor in handling the accounts. For example, regardless of the terms of the account, does the creditor allow consumers to pay the accounts over a period of time without demanding payment in full or taking other action to collect? If no effort is made to collect the full amount due, the charge may be a finance charge.

ii. Section 226.4(c)(2) applies to late payment charges imposed for failure to make payments as agreed, as well as failure to pay an account in full when due.

2. *Other excluded charges.* Charges for "delinquency, default, or a similar occurrence" include, for example, charges for reinstatement of credit privileges or for submitting as payment a check that is later returned unpaid.

*Paragraph 4(c)(3).*

1. *Assessing interest on an overdraft balance.* A charge on an overdraft balance computed by applying a rate of interest to the amount of the overdraft is not a finance charge, even though the consumer agrees to the charge in the account agreement, unless the financial institution agrees in writing that it will pay such items.

*Paragraph 4(c)(4).*

1. *Participation fees—periodic basis.* The participation fees described in § 226.4(c)(4) do not necessarily have to be formal membership fees, nor are they limited to credit card plans. The provision applies to any credit plan in which payment of a fee is a condition of access to the plan itself, but it does not apply to fees imposed separately on individual closed-end transactions. The fee may be charged on a monthly, annual, or other periodic basis; a one-time, non-recurring fee imposed at the time an account is opened is not a fee that is charged on a periodic basis, and may not be treated as a participation fee.

2. *Participation fees—exclusions.* Minimum monthly charges, charges for non-use of a credit card, and other charges based on either account activity or the amount of credit available under the plan are not excluded from the finance charge by § 226.4(c)(4). Thus, for example, a fee that is charged and then refunded to the consumer based on the extent to which the consumer uses the credit available would be a finance charge. (See the commentary to § 226.4(b)(2). Also, see comment 14(c)–2 for treatment of certain types of fees excluded in determining the annual percentage rate for the periodic statement.)

*Paragraph 4(c)(5).*

1. *Seller's points.* The seller's points mentioned in § 226.4(c)(5) include any charges imposed by the creditor upon the noncreditor seller of property for providing credit to the buyer or for providing credit on certain terms. These charges are excluded from the finance charge even if they are passed on to the buyer, for example, in the form of a higher sales price. Seller's points are frequently involved in real estate transactions guaranteed or insured by governmental agencies. A *commitment fee* paid by a noncreditor seller (such as a real estate developer) to the creditor should be treated as seller's points. Buyer's points (that is, points charged to the buyer by the creditor), however, are finance charges.

2. *Other seller-paid amounts.* Mortgage insurance premiums and other finance charges are sometimes paid at or before consummation or settlement on the borrower's behalf by a noncreditor seller. The creditor should treat the payment made by the seller as seller's points and exclude it from the finance charge if, based on the seller's payment, the consumer is not legally bound to the creditor for the charge. A creditor who gives disclosures before the payment has been made should base them on the best information reasonably available.

*Paragraph 4(c)(6).*

1. *Lost interest.* Certain federal and state laws mandate a percentage differential between the interest rate paid on a deposit and the rate charged on a loan secured by that deposit. In some situations, because of usury limits the creditor must reduce the interest rate paid on the deposit and, as a result, the consumer loses some of the interest that would otherwise have been earned. Under § 226.4(c)(6), such "lost interest" need not be included in the finance charge. This rule applies only to an interest reduction imposed because a rate differential is required by law and a usury limit precludes compliance by any other means. If the creditor imposes a differential that exceeds that required, only the lost interest attributable to the excess amount is a finance charge. (See the commentary to § 226.4(a).)

*Paragraph 4(c)(7).*

1. *Real estate or residential mortgage transaction charges.* The list of charges in § 226.4(c)(7) applies both to residential mortgage transactions (which may include, for example, the purchase of a mobile home) and to other transactions secured by real estate. The fees are excluded from the finance charge even if the services for which the fees are imposed are performed by the creditor's employees rather than by a third party. In addition, the cost of verifying or confirming information connected to the item is also excluded. For example, credit-report fees cover not only the cost of the report but also the cost of verifying information in the report. In all cases, charges excluded under § 226.4(c)(7) must be bona fide and reasonable.

2. *Lump-sum charges.* If a lump sum charged for several services includes a charge that is not excludable, a portion of the total should be allocated to that service and included in the finance charge. However, a lump sum charged for conducting or attending a closing (for example, by a lawyer or a title company) is excluded from the finance charge if the charge is primarily for services related to items listed in § 226.4(c)(7) (for example, reviewing or completing documents), even if other incidental services such as explaining various documents or disbursing funds for the parties are performed. The entire charge is excluded even if a fee for the incidental services would be a finance charge if it were imposed separately.

3. *Charges assessed during the loan term.* Real estate or residential mortgage transaction charges excluded under § 226.4(c)(7) are those charges imposed solely in connection with the initial decision to grant credit. This would include, for example, a fee to search for tax liens on the property or to determine if flood insurance is required. The exclusion does not apply to fees for services to be performed periodically

during the loan term, regardless of when the fee is collected. For example, a fee for one or more determinations during the loan term of the current tax-lien status or flood-insurance requirements is a finance charge, regardless of whether the fee is imposed at closing, or when the service is performed. If a creditor is uncertain about what portion of a fee to be paid at consummation or loan closing is related to the initial decision to grant credit, the entire fee may be treated as a finance charge.

*4(d) Insurance and debt cancellation and debt suspension coverage.*

1. *General.* Section 226.4(d) permits insurance premiums and charges and debt cancellation and debt suspension charges to be excluded from the finance charge. The required disclosures must be made in writing, except as provided in § 226.4(d)(4). The rules on location of insurance and debt cancellation and debt suspension disclosures for closed-end transactions are in § 226.17(a). For purposes of § 226.4(d), all references to insurance also include debt cancellation and debt suspension coverage unless the context indicates otherwise.

2. *Timing of disclosures.* If disclosures are given early, for example under § 226.17(f) or § 226.19(a), the creditor need not redisclose if the actual premium is different at the time of consummation. If insurance disclosures are not given at the time of early disclosure and insurance is in fact written in connection with the transaction, the disclosures under § 226.4(d) must be made in order to exclude the premiums from the finance charge.

3. *Premium rate increases.* The creditor should disclose the premium amount based on the rates currently in effect and need not designate it as an estimate even if the premium rates may increase. An increase in insurance rates after consummation of a closed-end credit transaction or during the life of an open-end credit plan does not require redisclosure in order to exclude the additional premium from treatment as a finance charge.

4. *Unit-cost disclosures.*

i. *Open-end credit.* The premium or fee for insurance or debt cancellation or debt suspension for the initial term of coverage may be disclosed on a unit-cost basis in open-end credit transactions. The cost per unit should be based on the initial term of coverage, unless one of the options under comment 4(d)–12 is available.

ii. *Closed-end credit.* One of the transactions for which unit-cost disclosures (such as 50 cents per year for each $100 of the amount financed) may be used in place of the total insurance premium involves a particular kind of insurance plan. For example, a consumer with a current indebtedness of $8,000 is covered by a plan of credit life insurance coverage with a maximum of $10,000. The consumer requests an additional $4,000 loan to be covered by the same insurance plan. Since the $4,000 loan exceeds, in part, the maximum amount of indebtedness that can be covered by the plan, the creditor may properly give the insurance-cost disclosures on the $4,000 loan on a unit-cost basis.

5. *Required credit life insurance; debt cancellation or suspension coverage.* Credit life, accident, health, or loss-of-income insurance, and debt cancellation and suspension coverage described in § 226.4(b)(10), must be voluntary in order for the premium or charges to be excluded from the finance charge. Whether the insurance or coverage is in fact required or optional is a factual question. If the insurance or coverage is required, the premiums must be included in the finance charge, whether the insurance or coverage is purchased from the creditor or from a third party. If the consumer is required to elect one of several options—such as to purchase credit life insurance, or to assign an existing life insurance policy, or to pledge security such as a certificate of deposit—and the consumer purchases the credit life insurance policy, the premium must be included in the finance charge. (If the consumer assigns a preexisting policy or pledges security instead, no premium is included in the finance charge. The security interest would be disclosed under § 226.6(a)(4), § 226.6(b)(5)(ii), or § 226.18(m). See the commentary to § 226.4(b)(7) and (b)(8).)

6. *Other types of voluntary insurance.* Insurance is not credit life, accident, health, or loss-of-income insurance if the creditor or the credit account of the consumer is not the beneficiary of the insurance coverage. If the premium for such insurance is not imposed by the creditor as an incident to or a condition of credit, it is not covered by § 226.4.

7. *Signatures.* If the creditor offers a number of insurance options under § 226.4(d), the creditor may provide a means for the consumer to sign or initial for each option, or it may provide for a single authorizing signature or initial with the options selected designated by some other means, such as a check mark. The insurance authorization may be signed or initialed by any consumer, as defined in § 226.2(a)(11), or by an authorized user on a credit card account.

8. *Property insurance.* To exclude property insurance premiums or charges from the finance charge, the creditor must allow the consumer to choose the insurer and disclose that fact. This disclosure must be made whether or not the property insurance is available from or through the creditor. The requirement that an option be given does not require that the insurance be readily available from other sources. The premium or charge must be disclosed only if the consumer elects to purchase the insurance from the creditor; in such a case, the creditor must also disclose the term of the property insurance coverage if it is less than the term of the obligation.

9. *Single-interest insurance.* Blanket and specific single-interest coverage are treated the same for purposes of the regulation. A charge for either type of single-interest insurance may be excluded from the finance charge if:

i. The insurer waives any right of subrogation.

ii. The other requirements of § 226.4(d)(2) are met. This includes, of course, giving the consumer the option of obtaining the insurance from a person of the consumer's choice. The creditor need not ascertain whether the consumer is able to purchase the insurance from someone else.

10. *Single-interest insurance defined.* The term *single-interest insurance* as used in the regulation refers only to the types of coverage traditionally included in the term *vendor's single-interest insurance* (or *VSI*), that is, protection of tangible property against normal property damage, concealment, confiscation, conversion, embezzlement, and skip. Some comprehensive insurance policies may include a variety of additional coverages, such as repossession insurance and holder-in-due-course insurance. These types of coverage do not constitute single-interest insurance for purposes of the regulation, and premiums for them do not qualify for exclusion from the finance charge under § 226.4(d). If a policy that is primarily VSI also provides coverages that are not VSI or other property insurance, a portion of the premiums must be allocated to the nonexcludable coverages and included in the finance charge. However, such allocation is not required if the total premium in fact attributable to all of the non-VSI coverages included in the policy is $1.00 or less (or $5.00 or less in the case of a multiyear policy).

11. *Initial term.*

i. The initial term of insurance or debt cancellation or debt suspension coverage determines the period for which a premium amount must be disclosed, unless one of the options discussed under comment 4(d)–12 is available. For purposes of § 226.4(d), the initial term is the period for which the insurer or creditor is obligated to provide coverage, even though the consumer may be allowed to cancel the coverage or coverage may end due to nonpayment before that term expires.

ii. For example:

A. The initial term of a property insurance policy on an automobile that is written for one year is one year even though premiums are paid monthly and the term of the credit transaction is four years.

B. The initial term of an insurance policy is the full term of the credit transaction if the consumer pays or finances a single premium in advance.

12. *Initial term; alternative.*

i. *General.* A creditor has the option of providing cost disclosures on the basis of one year of insurance or debt cancellation or debt suspension coverage instead of a longer initial term (provided the premium or fee is clearly labeled as being for one year) if:

A. The initial term is indefinite or not clear, or

B. The consumer has agreed to pay a premium or fee that is assessed periodically but the consumer is under no obligation to continue the coverage, whether or not the consumer has made an initial payment.

ii. *Open-end plans.* For open-end plans, a creditor also has the option of providing unit-cost disclosure on the basis of a period that is less than one year if the consumer has agreed to pay a premium or fee that is assessed periodically, for example monthly, but the consumer is under no obligation to continue the coverage.

iii. *Examples.* To illustrate:

A. A credit life insurance policy providing coverage for a 30-year mortgage loan has an

initial term of 30 years, even though premiums are paid monthly and the consumer is not required to continue the coverage. Disclosures may be based on the initial term, but the creditor also has the option of making disclosures on the basis of coverage for an assumed initial term of one year.

13. *Loss-of-income insurance.* The loss-of-income insurance mentioned in § 226.4(d) includes involuntary unemployment insurance, which provides that some or all of the consumer's payments will be made if the consumer becomes unemployed involuntarily.

*4(d)(3) Voluntary debt cancellation or debt suspension fees.*

1. *General.* Fees charged for the specialized form of debt cancellation agreement known as guaranteed automobile protection ("GAP") agreements must be disclosed according to § 226.4(d)(3) rather than according to § 226.4(d)(2) for property insurance.

2. *Disclosures.* Creditors can comply with § 226.4(d)(3) by providing a disclosure that refers to debt cancellation or debt suspension coverage whether or not the coverage is considered insurance. Creditors may use the model credit insurance disclosures only if the debt cancellation or debt suspension coverage constitutes insurance under state law. (See Model Clauses and Samples at G–16 and H–17 in appendix G and appendix H to part 226 for guidance on how to provide the disclosure required by § 226.4(d)(3)(iii) for debt suspension products.)

3. *Multiple events.* If debt cancellation or debt suspension coverage for two or more events is provided at a single charge, the entire charge may be excluded from the finance charge if at least one of the events is accident or loss of life, health, or income and the conditions specified in § 226.4(d)(3) or, as applicable, § 226.4(d)(4), are satisfied.

4. *Disclosures in programs combining debt cancellation and debt suspension features.* If the consumer's debt can be cancelled under certain circumstances, the disclosure may be modified to reflect that fact. The disclosure could, for example, state (in addition to the language required by § 226.4(d)(3)(iii)) that "In some circumstances, my debt may be cancelled." However, the disclosure would not be permitted to list the specific events that would result in debt cancellation.

*4(d)(4) Telephone purchases.*

1. *Affirmative request.* A creditor would not satisfy the requirement to obtain a consumer's affirmative request if the "request" was a response to a script that uses leading questions or negative consent. A question asking whether the consumer wishes to enroll in the credit insurance or debt cancellation or suspension plan and seeking a yes-or-no response (such as "Do you want to enroll in this optional debt cancellation plan?") would not be considered leading.

*4(e) Certain security interest charges.*

1. *Examples.*

i. *Excludable charges.* Sums must be actually paid to public officials to be excluded from the finance charge under § 226.4(e)(1) and (e)(3). Examples are charges or other fees required for filing or recording security agreements, mortgages, continuation statements, termination statements, and similar documents, as well as intangible property or other taxes even when the charges or fees are imposed by the state solely on the creditor and charged to the consumer (if the tax must be paid to record a security agreement). (See comment 4(a)–5 regarding the treatment of taxes, generally.)

ii. *Charges not excludable.* If the obligation is between the creditor and a third party (an assignee, for example), charges or other fees for filing or recording security agreements, mortgages, continuation statements, termination statements, and similar documents relating to that obligation are not excludable from the finance charge under this section.

2. *Itemization.* The various charges described in § 226.4(e)(1) and (e)(3) may be totaled and disclosed as an aggregate sum, or they may be itemized by the specific fees and taxes imposed. If an aggregate sum is disclosed, a general term such as security interest fees or filing fees may be used.

3. *Notary fees.* In order for a notary fee to be excluded under § 226.4(e)(1), all of the following conditions must be met:

i. The document to be notarized is one used to perfect, release, or continue a security interest.

ii. The document is required by law to be notarized.

iii. A notary is considered a public official under applicable law.

iv. The amount of the fee is set or authorized by law.

4. *Nonfiling insurance.* The exclusion in § 226.4(e)(2) is available only if nonfiling insurance is purchased. If the creditor collects and simply retains a fee as a sort of "self-insurance" against nonfiling, it may not be excluded from the finance charge. If the nonfiling insurance premium exceeds the amount of the fees excludable from the finance charge under § 226.4(e)(1), only the excess is a finance charge. For example:

i. The fee for perfecting a security interest is $5.00 and the fee for releasing the security interest is $3.00. The creditor charges $10.00 for nonfiling insurance. Only $8.00 of the $10.00 is excludable from the finance charge.

*4(f) Prohibited offsets.*

1. *Earnings on deposits or investments.* The rule that the creditor shall not deduct any earnings by the consumer on deposits or investments applies whether or not the creditor has a security interest in the property.

## Subpart B—Open-End Credit

### *Section 226.5—General Disclosure Requirements*

*5(a) Form of disclosures.*

*5(a)(1) General.*

1. *Clear and conspicuous standard.* The "clear and conspicuous" standard generally requires that disclosures be in a reasonably understandable form. Disclosures for credit card applications and solicitations under § 226.5a, highlighted account-opening disclosures under § 226.6(b)(1), highlighted disclosure on checks that access a credit card under § 226.9(b)(3), highlighted change-in-terms disclosures under § 226.9(c)(2)(iv)(D), and highlighted disclosures when a rate is increased due to delinquency, default or for a penalty under § 226.9(g)(3)(ii) must also be readily noticeable to the consumer.

2. *Clear and conspicuous—reasonably understandable form.* Except where otherwise provided, the reasonably understandable form standard does not require that disclosures be segregated from other material or located in any particular place on the disclosure statement, or that numerical amounts or percentages be in any particular type size. For disclosures that are given orally, the standard requires that they be given at a speed and volume sufficient for a consumer to hear and comprehend them. (See comment 5(b)(1)(ii)–1.) Except where otherwise provided, the standard does not prohibit:

i. Pluralizing required terminology ("finance charge" and "annual percentage rate").

ii. Adding to the required disclosures such items as contractual provisions, explanations of contract terms, state disclosures, and translations.

iii. Sending promotional material with the required disclosures.

iv. Using commonly accepted or readily understandable abbreviations (such as "mo." for "month" or "Tx." for "Texas") in making any required disclosures.

v. Using codes or symbols such as "APR" (for annual percentage rate), "FC" (for finance charge), or "Cr" (for credit balance), so long as a legend or description of the code or symbol is provided on the disclosure statement.

3. *Clear and conspicuous—readily noticeable standard.* To meet the readily noticeable standard, disclosures for credit card applications and solicitations under § 226.5a, highlighted account-opening disclosures under § 226.6(b)(1), highlighted disclosures on checks that access a credit card account under § 226.9(b)(3), highlighted change-in-terms disclosures under § 226.9(c)(2)(iv)(D), and highlighted disclosures when a rate is increased due to delinquency, default or penalty pricing under § 226.9(g)(3)(ii) must be given in a minimum of 10-point font. (See special rule for font size requirements for the annual percentage rate for purchases under §§ 226.5a(b)(1) and 226.6(b)(2)(i).)

4. *Integrated document.* The creditor may make both the account-opening disclosures (§ 226.6) and the periodic-statement disclosures (§ 226.7) on more than one page, and use both the front and the reverse sides, except where otherwise indicated, so long as the pages constitute an integrated document. An integrated document would not include disclosure pages provided to the consumer at different times or disclosures interspersed on the same page with promotional material. An integrated document would include, for example:

i. Multiple pages provided in the same envelope that cover related material and are folded together, numbered consecutively, or clearly labeled to show that they relate to one another; or

ii. A brochure that contains disclosures and explanatory material about a range of services the creditor offers, such as credit, checking account, and electronic fund transfer features.

5. *Disclosures covered.* Disclosures that must meet the "clear and conspicuous" standard include all required communications under this subpart. Therefore, disclosures made by a person other than the card issuer, such as disclosures of finance charges imposed at the time of honoring a consumer's credit card under § 226.9(d), and notices, such as the correction notice required to be sent to the consumer under § 226.13(e), must also be clear and conspicuous.

*Paragraph 5(a)(1)(ii)(A).*

1. *Electronic disclosures.* Disclosures that need not be provided in writing under § 226.5(a)(1)(ii)(A) may be provided in writing, orally, or in electronic form. If the consumer requests the service in electronic form, such as on the creditor's Web site, the specified disclosures may be provided in electronic form without regard to the consumer consent or other provisions of the Electronic Signatures in Global and National Commerce Act (E-Sign Act) (15 U.S.C. 7001 et seq.).

*Paragraph 5(a)(1)(iii).*

1. *Disclosures not subject to E-Sign Act.* See the commentary to § 226.5(a)(1)(ii)(A) regarding disclosures (in addition to those specified under § 226.5(a)(1)(iii)) that may be provided in electronic form without regard to the consumer consent or other provisions of the E-Sign Act.

*5(a)(2) Terminology.*

1. *When disclosures must be more conspicuous.* For home-equity plans subject to § 226.5b, the terms *finance charge* and *annual percentage rate,* when required to be used with a number, must be disclosed more conspicuously than other required disclosures, except in the cases provided in § 226.5(a)(2)(ii). At the creditor's option, *finance charge* and *annual percentage rate* may also be disclosed more conspicuously than the other required disclosures even when the regulation does not so require. The following examples illustrate these rules:

i. In disclosing the annual percentage rate as required by § 226.6(a)(1)(ii), the term *annual percentage rate* is subject to the *more conspicuous* rule.

ii. In disclosing the amount of the finance charge, required by § 226.7(a)(6)(i), the term *finance charge* is subject to the *more conspicuous* rule.

iii. Although neither *finance charge* nor *annual percentage rate* need be emphasized when used as part of general informational material or in textual descriptions of other terms, emphasis is permissible in such cases. For example, when the terms appear as part of the explanations required under § 226.6(a)(1)(iii) and (a)(1)(iv), they may be equally conspicuous as the disclosures required under §§ 226.6(a)(1)(ii) and 226.7(a)(7).

2. *Making disclosures more conspicuous.* In disclosing the terms *finance charge* and *annual percentage rate* more conspicuously for home-equity plans subject to § 226.5b, only the words *finance charge* and *annual percentage rate* should be accentuated. For example, if the term *total finance charge* is used, only *finance charge* should be emphasized. The disclosures may be made more conspicuous by, for example:

i. Capitalizing the words when other disclosures are printed in lower case.

ii. Putting them in bold print or a contrasting color.

iii. Underlining them.

iv. Setting them off with asterisks.

v. Printing them in larger type.

3. *Disclosure of figures—exception to more conspicuous rule.* For home-equity plans subject to § 226.5b, the terms *annual percentage rate* and *finance charge* need not be more conspicuous than figures (including, for example, numbers, percentages, and dollar signs).

4. *Consistent terminology.* Language used in disclosures required in this subpart must be close enough in meaning to enable the consumer to relate the different disclosures; however, the language need not be identical.

*5(b) Time of disclosures.*

*5(b)(1) Account-opening disclosures.*

*5(b)(1)(i) General rule.*

1. *Disclosure before the first transaction.* When disclosures must be furnished "before the first transaction," account-opening disclosures must be delivered before the consumer becomes obligated on the plan. Examples include:

i. *Purchases.* The consumer makes the first purchase, such as when a consumer opens a credit plan and makes purchases contemporaneously at a retail store, except when the consumer places a telephone call to make the purchase and opens the plan contemporaneously. (See commentary to § 226.5(b)(1)(iii) below.)

ii. *Advances.* The consumer receives the first advance. If the consumer receives a cash advance check at the same time the account-opening disclosures are provided, disclosures are still timely if the consumer can, after receiving the disclosures, return the cash advance check to the creditor without obligation (for example, without paying finance charges).

2. *Reactivation of suspended account.* If an account is temporarily suspended (for example, because the consumer has exceeded a credit limit, or because a credit card is reported lost or stolen) and then is reactivated, no new account-opening disclosures are required.

3. *Reopening closed account.* If an account has been closed (for example, due to inactivity, cancellation, or expiration) and then is reopened, new account-opening disclosures are required. No new account-opening disclosures are required, however, when the account is closed merely to assign it a new number (for example, when a credit card is reported lost or stolen) and the "new" account then continues on the same terms.

4. *Converting closed-end to open-end credit.* If a closed-end credit transaction is converted to an open-end credit account under a written agreement with the consumer, account-opening disclosures under § 226.6 must be given before the consumer becomes obligated on the open-end credit plan. (See the commentary to § 226.17 on converting open-end credit to closed-end credit.)

5. *Balance transfers.* A creditor that solicits the transfer by a consumer of outstanding balances from an existing account to a new open-end plan must furnish the disclosures required by § 226.6 so that the consumer has an opportunity, after receiving the disclosures, to contact the creditor before the balance is transferred and decline the transfer. For example, assume a consumer responds to a card issuer's solicitation for a credit card account subject to § 226.5a that offers a range of balance transfer annual percentage rates, based on the consumer's creditworthiness. If the creditor opens an account for the consumer, the creditor would comply with the timing rules of this section by providing the consumer with the annual percentage rate (along with the fees and other required disclosures) that would apply to the balance transfer in time for the consumer to contact the creditor and withdraw the request. A creditor that permits consumers to withdraw the request by telephone has met this timing standard if the creditor does not effect the balance transfer until 10 days after the creditor has sent account-opening disclosures to the consumer, assuming the consumer has not contacted the creditor to withdraw the request. Card issuers that are subject to the requirements of § 226.5a may establish procedures that comply with both §§ 226.5a and 226.6 in a single disclosure statement.

6. *Substitution or replacement of credit card accounts.*

i. *Generally.* When a card issuer substitutes or replaces an existing credit card account with another credit card account, the card issuer must either provide notice of the terms of the new account consistent with § 226.6(b) or provide notice of the changes in the terms of the existing account consistent with § 226.9(c)(2). Whether a substitution or replacement results in the opening of a new account or a change in the terms of an existing account for purposes of the disclosure requirements in §§ 226.6(b) and 226.9(c)(2) is determined in light of all the relevant facts and circumstances. For additional requirements and limitations related to the substitution or replacement of credit card accounts, see §§ 226.12(a) and 226.55(d) and comments 12(a)(1)–1 through –8, 12(a)(2)–1 through –9, 55(b)(3)–3, and 55(d)–1 through –3.

ii. *Relevant facts and circumstances.* Listed below are facts and circumstances that are relevant to whether a substitution or replacement results in the opening of a new account or a change in the terms of an existing account for purposes of the disclosure requirements in §§ 226.6(b) and 226.9(c)(2). When most of the facts and circumstances listed below are present, the substitution or replacement likely constitutes the opening of a new account for which § 226.6(b) disclosures are appropriate. When few of the facts and circumstances listed below are present, the substitution or replacement likely constitutes a change in the terms of an existing account for which § 226.9(c)(2) disclosures are appropriate.

A. Whether the card issuer provides the consumer with a new credit card;

B. Whether the card issuer provides the consumer with a new account number;

C. Whether the account provides new features or benefits after the substitution or replacement (such as rewards on purchases);

D. Whether the account can be used to conduct transactions at a greater or lesser

number of merchants after the substitution or replacement (such as when a retail card is replaced with a cobranded general purpose credit card that can be used at a wider number of merchants);

E. Whether the card issuer implemented the substitution or replacement on an individualized basis (such as in response to a consumer's request); and

F. Whether the account becomes a different type of open-end plan after the substitution or replacement (such as when a charge card is replaced by a credit card).

iii. *Replacement as a result of theft or unauthorized use.* Notwithstanding paragraphs i. and ii. above, a card issuer that replaces a credit card or provides a new account number because the consumer has reported the card stolen or because the account appears to have been used for unauthorized transactions is not required to provide a notice under §§ 226.6(b) or 226.9(c)(2) unless the card issuer has changed a term of the account that is subject to §§ 226.6(b) or 226.9(c)(2).

*5(b)(1)(ii) Charges imposed as part of an open-end (not home-secured) plan.*

1. *Disclosing charges before the fee is imposed.* Creditors may disclose charges imposed as part of an open-end (not home-secured) plan orally or in writing at any time before a consumer agrees to pay the fee or becomes obligated for the charge, unless the charge is specified under § 226.6(b)(2). (Charges imposed as part of an open-end (not home-secured plan) that are not specified under § 226.6(b)(2) may alternatively be disclosed in electronic form; see the commentary to § 226.5(a)(1)(ii)(A).) Creditors must provide such disclosures at a time and in a manner that a consumer would be likely to notice them. For example, if a consumer telephones a card issuer to discuss a particular service, a creditor would meet the standard if the creditor clearly and conspicuously discloses the fee associated with the service that is the topic of the telephone call orally to the consumer. Similarly, a creditor providing marketing materials in writing to a consumer about a particular service would meet the standard if the creditor provided a clear and conspicuous written disclosure of the fee for that service in those same materials. A creditor that provides written materials to a consumer about a particular service but provides a fee disclosure for another service not promoted in such materials would not meet the standard. For example, if a creditor provided marketing materials promoting payment by Internet, but included the fee for a replacement card on such materials with no explanation, the creditor would not be disclosing the fee at a time and in a manner that the consumer would be likely to notice the fee.

*5(b)(1)(iii) Telephone purchases.*

1. *Return policies.* In order for creditors to provide disclosures in accordance with the timing requirements of this paragraph, consumers must be permitted to return merchandise purchased at the time the plan was established without paying mailing or return-shipment costs. Creditors may impose costs to return subsequent purchases of merchandise under the plan, or to return merchandise purchased by other means such as a credit card issued by another creditor. A reasonable return policy would be of sufficient duration that the consumer is likely to have received the disclosures and had sufficient time to make a decision about the financing plan before his or her right to return the goods expires. Return policies need not provide a right to return goods if the consumer consumes or damages the goods, or for installed appliances or fixtures, provided there is a reasonable repair or replacement policy to cover defective goods or installations. If the consumer chooses to reject the financing plan, creditors comply with the requirements of this paragraph by permitting the consumer to pay for the goods with another reasonable form of payment acceptable to the merchant and keep the goods although the creditor cannot require the consumer to do so.

*5(b)(1)(iv) Membership fees.*

1. *Membership fees.* See § 226.5a(b)(2) and related commentary for guidance on fees for issuance or availability of a credit or charge card.

2. *Rejecting the plan.* If a consumer has paid or promised to pay a membership fee including an application fee excludable from the finance charge under § 226.4(c)(1) before receiving account-opening disclosures, the consumer may, after receiving the disclosures, reject the plan and not be obligated for the membership fee, application fee, or any other fee or charge. A consumer who has received the disclosures and uses the account, or makes a payment on the account after receiving a billing statement, is deemed not to have rejected the plan.

3. *Using the account.* A consumer uses an account by obtaining an extension of credit after receiving the account-opening disclosures, such as by making a purchase or obtaining an advance. A consumer does not "use" the account by activating the account. A consumer also does not "use" the account when the creditor assesses fees on the account (such as start-up fees or fees associated with credit insurance or debt cancellation or suspension programs agreed to as a part of the application and before the consumer receives account-opening disclosures). For example, the consumer does not "use" the account when a creditor sends a billing statement with start-up fees, there is no other activity on the account, the consumer does not pay the fees, and the creditor subsequently assesses a late fee or interest on the unpaid fee balances. A consumer also does not "use" the account by paying an application fee excludable from the finance charge under § 226.4(c)(1) prior to receiving the account-opening disclosures.

4. *Home-equity plans.* Creditors offering home-equity plans subject to the requirements of § 226.5b are subject to the requirements of § 226.5b(h) regarding the collection of fees.

*5(b)(2) Periodic statements.*

*Paragraph 5(b)(2)(i).*

1. *Periodic statements not required.* Periodic statements need not be sent in the following cases:

i. If the creditor adjusts an account balance so that at the end of the cycle the balance is less than $1—so long as no finance charge has been imposed on the account for that cycle.

ii. If a statement was returned as undeliverable. If a new address is provided, however, within a reasonable time before the creditor must send a statement, the creditor must resume sending statements. Receiving the address at least 20 days before the end of a cycle would be a reasonable amount of time to prepare the statement for that cycle. For example, if an address is received 22 days before the end of the June cycle, the creditor must send the periodic statement for the June cycle. (*See* § 226.13(a)(7).)

2. *Termination of draw privileges.* When a consumer's ability to draw on an open-end account is terminated without being converted to closed-end credit under a written agreement, the creditor must continue to provide periodic statements to those consumers entitled to receive them under § 226.5(b)(2)(i), for example, when the draw period of an open-end credit plan ends and consumers are paying off outstanding balances according to the account agreement or under the terms of a workout agreement that is not converted to a closed-end transaction. In addition, creditors must continue to follow all of the other open-end credit requirements and procedures in subpart B.

3. *Uncollectible accounts.* An account is deemed uncollectible for purposes of § 226.5(b)(2)(i) when a creditor has ceased collection efforts, either directly or through a third party.

4. *Instituting collection proceedings.* Creditors institute a delinquency collection proceeding by filing a court action or initiating an adjudicatory process with a third party. Assigning a debt to a debt collector or other third party would not constitute instituting a collection proceeding.

*Paragraph 5(b)(2)(ii).*

1. *Mailing or delivery of periodic statements.* A creditor is not required to determine the specific date on which a periodic statement is mailed or delivered to an individual consumer for purposes of § 226.5(b)(2)(ii). A creditor complies with § 226.5(b)(2)(ii) if it has adopted reasonable procedures designed to ensure that periodic statements are mailed or delivered to consumers no later than a certain number of days after the closing date of the billing cycle and adds that number of days to the 21-day period required by § 226.5(b)(2)(ii) when determining the payment due date and the date on which any grace period expires for purposes of § 226.5(b)(2)(ii)(A)(*1*) and (b)(2)(ii)(B)(*1*). For example, if a creditor has adopted reasonable procedures designed to ensure that periodic statements are mailed or delivered to consumers no later than three days after the closing date of the billing cycle, the payment due date and the date on which any grace period expires must be no less than 24 days after the closing date of the billing cycle. Similarly, in these circumstances, the limitations in § 226.5(b)(2)(ii)(A)(*2*) and (b)(2)(ii)(B)(*2*) on treating a payment as late and imposing finance charges apply for 24 days after the closing date of the billing cycle.

2. *Treating a payment as late for any purpose.* Treating a payment as late for any

purpose includes increasing the annual percentage rate as a penalty, reporting the consumer as delinquent to a credit reporting agency, assessing a late fee or any other fee, initiating collection activities, or terminating benefits (such as rewards on purchases) based on the consumer's failure to make a payment within a specified amount of time or by a specified date. The prohibition in § 226.5(b)(2)(ii)(A)(*2*) on treating a payment as late for any purpose applies only during the 21-day period following mailing or delivery of the periodic statement stating the due date for that payment and only if the required minimum periodic payment is received within that period. For example:

i. Assume that a periodic statement mailed on April 4 states that a required minimum periodic payment of $50 is due on April 25. If the card issuer does not receive any payment on or before April 25, § 226.5(b)(2)(ii)(A)(*2*) does not prohibit the card issuer from treating the required minimum periodic payment as late.

ii. Same facts as in paragraph i. above. On April 20, the card issuer receives a payment of $30 and no additional payment is received on or before April 25. Section 226.5(b)(2)(ii)(A)(*2*) does not prohibit the card issuer from treating the required minimum periodic payment as late.

iii. Same facts as in paragraph i. above. On May 4, the card issuer has not received the $50 required minimum periodic payment that was due on April 25. The periodic statement mailed on May 4 states that a required minimum periodic payment of $150 is due on May 25. Section 226.5(b)(2)(ii)(A)(*2*) does not permit the card issuer to treat the $150 required minimum periodic payment as late until April 26. However, the card issuer may continue to treat the $50 required minimum periodic payment as late during this period.

3. *Grace periods.*

i. *Definition of grace period.* For purposes of § 226.5(b)(2)(ii)(B), "grace period" means a period within which any credit extended may be repaid without incurring a finance charge due to a periodic interest rate. A deferred interest or similar promotional program under which the consumer is not obligated to pay interest that accrues on a balance if that balance is paid in full prior to the expiration of a specified period of time is not a grace period for purposes of § 226.5(b)(2)(ii)(B). Similarly, a period following the payment due date during which a late payment fee will not be imposed is not a grace period for purposes of § 226.5(b)(2)(ii)(B). *See* comments 7(b)(11)–1, 7(b)(11)–2, and 54(a)(1)–2.

ii. *Applicability of § 226.5(b)(2)(ii)(B).* Section 226.5(b)(2)(ii)(B) applies if an account is eligible for a grace period when the periodic statement is mailed or delivered. Section 226.5(b)(2)(ii)(B) does not require the creditor to provide a grace period or prohibit the creditor from placing limitations and conditions on a grace period to the extent consistent with § 226.5(b)(2)(ii)(B) and § 226.54. *See* comment 54(a)(1)–1. Furthermore, the prohibition in § 226.5(b)(2)(ii)(B)(*2*) applies only during the 21-day period following mailing or delivery of the periodic statement and applies only when the creditor receives a payment within that 21-day period that satisfies the terms of the grace period.

iii. *Example.* Assume that the billing cycles for an account begin on the first day of the month and end on the last day of the month and that the payment due date for the account is the twenty-fifth of the month. Assume also that, under the terms of the account, the balance at the end of a billing cycle must be paid in full by the following payment due date in order for the account to remain eligible for the grace period. At the end of the April billing cycle, the balance on the account is $500. The grace period applies to the $500 balance because the balance for the March billing cycle was paid in full on April 25. Accordingly, § 226.5(b)(2)(ii)(B)(*1*) requires the creditor to have reasonable procedures designed to ensure that the periodic statement reflecting the $500 balance is mailed or delivered on or before May 4. Furthermore, § 226.5(b)(2)(ii)(B)(*2*) requires the creditor to have reasonable procedures designed to ensure that the creditor does not impose finance charges as a result of the loss of the grace period if a $500 payment is received on or before May 25. However, if the creditor receives a payment of $300 on April 25, § 226.5(b)(2)(ii)(B)(*2*) would not prohibit the creditor from imposing finance charges as a result of the loss of the grace period (to the extent permitted by § 226.54).

4. *Application of § 226.5(b)(2)(ii) to charge card and charged-off accounts.*

i. *Charge card accounts.* For purposes of § 226.5(b)(2)(ii)(A)(*1*), the payment due date is the date the card issuer is required to disclose on the periodic statement pursuant to § 226.7(b)(11)(i)(A). Because § 226.7(b)(11)(ii) provides that § 226.7(b)(11)(i) does not apply to periodic statements provided solely for charge card accounts, § 226.5(b)(2)(ii)(A)(*1*) also does not apply to the mailing or delivery of periodic statements provided solely for such accounts. However, in these circumstances, § 226.5(b)(2)(ii)(A)(*2*) requires the card issuer to have reasonable procedures designed to ensure that a payment is not treated as late for any purpose during the 21-day period following mailing or delivery of the statement. Section 226.5(b)(2)(ii)(B) does not apply to charge card accounts because, for purposes of § 226.5(b)(2)(ii)(B), a grace period is a period within which any credit extended may be repaid without incurring a finance charge due to a periodic interest rate and, consistent with § 226.2(a)(15)(iii), charge card accounts do not impose a finance charge based on a periodic rate.

ii. *Charged-off accounts.* For purposes of § 226.5(b)(2)(ii)(A)(*1*), the payment due date is the date the card issuer is required to disclose on the periodic statement pursuant to § 226.7(b)(11)(i)(A). Because § 226.7(b)(11)(ii) provides that § 226.7(b)(11)(i) does not apply to periodic statements provided for charged-off accounts where full payment of the entire account balance is due immediately, § 226.5(b)(2)(ii)(A)(*1*) also does not apply to the mailing or delivery of periodic statements provided solely for such accounts. Furthermore, although § 226.5(b)(2)(ii)(A)(*2*) requires the card issuer to have reasonable procedures designed to ensure that a payment is not treated as late for any purpose during the 21-day period following mailing or delivery of the statement, § 226.5(b)(2)(ii)(A)(*2*) does not prohibit a card issuer from continuing to treat prior payments as late during that period. See comment 5(b)(2)(ii)–2. Section 226.5(b)(2)(ii)(B) does not apply to charged-off accounts where full payment of the entire account balance is due immediately because such accounts do not provide a grace period.

5. *Consumer request to pick up periodic statements.* When a consumer initiates a request, the creditor may permit, but may not require, the consumer to pick up periodic statements. If the consumer wishes to pick up a statement, the statement must be made available in accordance with § 226.5(b)(2)(ii).

6. *Deferred interest and similar promotional programs.* See comment 7(b)–1.iv.

*Paragraph 5(b)(2)(iii).*

1. *Computer malfunction.* The exceptions identified in § 226.5(b)(2)(iii) of this section do not extend to the failure to provide a periodic statement because of computer malfunction.

*5(c) Basis of disclosures and use of estimates.*

1. *Legal obligation.* The disclosures should reflect the credit terms to which the parties are legally bound at the time of giving the disclosures.

i. The legal obligation is determined by applicable state or other law.

ii. The fact that a term or contract may later be deemed unenforceable by a court on the basis of equity or other grounds does not, by itself, mean that disclosures based on that term or contract did not reflect the legal obligation.

iii. The legal obligation normally is presumed to be contained in the contract that evidences the agreement. But this may be rebutted if another agreement between the parties legally modifies that contract.

2. *Estimates—obtaining information.* Disclosures may be estimated when the exact information is unknown at the time disclosures are made. Information is unknown if it is not reasonably available to the creditor at the time disclosures are made. The reasonably available standard requires that the creditor, acting in good faith, exercise due diligence in obtaining information. In using estimates, the creditor is not required to disclose the basis for the estimated figures, but may include such explanations as additional information. The creditor normally may rely on the representations of other parties in obtaining information. For example, the creditor might look to insurance companies for the cost of insurance.

3. *Estimates—redisclosure.* If the creditor makes estimated disclosures, redisclosure is not required for that consumer, even though more accurate information becomes available before the first transaction. For example, in an open-end plan to be secured by real estate, the creditor may estimate the appraisal fees to be charged; such an estimate might reasonably be based on the prevailing market rates for similar appraisals. If the exact

appraisal fee is determinable after the estimate is furnished but before the consumer receives the first advance under the plan, no new disclosure is necessary.

*5(d) Multiple creditors; multiple consumers.*

1. *Multiple creditors.* Under § 226.5(d):

i. Creditors must choose which of them will make the disclosures.

ii. A single, complete set of disclosures must be provided, rather than partial disclosures from several creditors.

iii. All disclosures for the open-end credit plan must be given, even if the disclosing creditor would not otherwise have been obligated to make a particular disclosure.

2. *Multiple consumers.* Disclosures may be made to either obligor on a joint account. Disclosure responsibilities are not satisfied by giving disclosures to only a surety or guarantor for a principal obligor or to an authorized user. In rescindable transactions, however, separate disclosures must be given to each consumer who has the right to rescind under § 226.15.

3. *Card issuer and person extending credit not the same person.* Section 127(c)(4)(D) of the Truth in Lending Act (15 U.S.C. 1637(c)(4)(D)) contains rules pertaining to charge card issuers with plans that allow access to an open-end credit plan that is maintained by a person other than the charge card issuer. These rules are not implemented in Regulation Z (although they were formerly implemented in § 226.5a(f)). However, the statutory provisions remain in effect and may be used by charge card issuers with plans meeting the specified criteria.

*5(e) Effect of subsequent events.*

1. *Events causing inaccuracies.* Inaccuracies in disclosures are not violations if attributable to events occurring after disclosures are made. For example, when the consumer fails to fulfill a prior commitment to keep the collateral insured and the creditor then provides the coverage and charges the consumer for it, such a change does not make the original disclosures inaccurate. The creditor may, however, be required to provide a new disclosure(s) under § 226.9(c).

2. *Use of inserts.* When changes in a creditor's plan affect required disclosures, the creditor may use inserts with outdated disclosure forms. Any insert:

i. Should clearly refer to the disclosure provision it replaces.

ii. Need not be physically attached or affixed to the basic disclosure statement.

iii. May be used only until the supply of outdated forms is exhausted.

*Section 226.5a—Credit and Charge Card Applications and Solicitations*

1. *General.* Section 226.5a generally requires that credit disclosures be contained in application forms and solicitations initiated by a card issuer to open a credit or charge card account. (See § 226.5a(a)(5) and (e)(2) for exceptions; see § 226.5a(a)(1) and accompanying commentary for the definition of solicitation; see also § 226.2(a)(15) and accompanying commentary for the definition of charge card.)

2. *Substitution of account-opening summary table for the disclosures required by § 226.5a.* In complying with § 226.5a(c), (e)(1) or (f), a card issuer may provide the account-opening summary table described in § 226.6(b)(1) in lieu of the disclosures required by § 226.5a, if the issuer provides the disclosures required by § 226.6 on or with the application or solicitation.

3. *Clear and conspicuous standard.* See comment 5(a)(1)–1 for the clear and conspicuous standard applicable to § 226.5a disclosures.

*5a(a) General rules.*

*5a(a)(1) Definition of solicitation.*

1. *Invitations to apply.* A card issuer may contact a consumer who has not been preapproved for a card account about opening an account (whether by direct mail, telephone, or other means) and invite the consumer to complete an application. Such a contact does not meet the definition of *solicitation,* nor is it covered by this section, unless the contact itself includes an application form in a direct mailing, electronic communication or "take-one"; an oral application in a telephone contact initiated by the card issuer; or an application in an in-person contact initiated by the card issuer.

*5a(a)(2) Form of disclosures; tabular format.*

1. *Location of table.* i. *General.* Except for disclosures given electronically, disclosures in § 226.5a(b) that are required to be provided in a table must be prominently located on or with the application or solicitation. Disclosures are deemed to be prominently located, for example, if the disclosures are on the same page as an application or solicitation reply form. If the disclosures appear elsewhere, they are deemed to be prominently located if the application or solicitation reply form contains a clear and conspicuous reference to the location of the disclosures and indicates that they contain rate, fee, and other cost information, as applicable.

ii. *Electronic disclosures.* If the table is provided electronically, the table must be provided in close proximity to the application or solicitation. Card issuers have flexibility in satisfying this requirement. Methods card issuers could use to satisfy the requirement include, but are not limited to, the following examples:

A. The disclosures could automatically appear on the screen when the application or reply form appears;

B. The disclosures could be located on the same Web page as the application or reply form (whether or not they appear on the initial screen), if the application or reply form contains a clear and conspicuous reference to the location of the disclosures and indicates that the disclosures contain rate, fee, and other cost information, as applicable;

C. Card issuers could provide a link to the electronic disclosures on or with the application (or reply form) as long as consumers cannot bypass the disclosures before submitting the application or reply form. The link would take the consumer to the disclosures, but the consumer need not be required to scroll completely through the disclosures; or

D. The disclosures could be located on the same Web page as the application or reply form without necessarily appearing on the initial screen, immediately preceding the button that the consumer will click to submit the application or reply.

Whatever method is used, a card issuer need not confirm that the consumer has read the disclosures.

2. *Multiple accounts.* If a tabular format is required to be used, card issuers offering several types of accounts may disclose the various terms for the accounts in a single table or may provide a separate table for each account.

3. *Information permitted in the table. See* the commentary to § 226.5a(b), (d), and (e)(1) for guidance on additional information permitted in the table.

4. *Deletion of inapplicable disclosures.* Generally, disclosures need only be given as applicable. Card issuers may, therefore, omit inapplicable headings and their corresponding boxes in the table. For example, if no foreign transaction fee is imposed on the account, the heading *Foreign transaction* and disclosure may be deleted from the table or the disclosure form may contain the heading *Foreign transaction* and a disclosure showing *none.* There is an exception for the grace period disclosure; even if no grace period exists, that fact must be stated.

5. *Highlighting of annual percentage rates and fee amounts.* i. *In general.* See Samples G–10(B) and G–10(C) for guidance on providing the disclosures described in § 226.5a(a)(2)(iv) in bold text. Other annual percentage rates or fee amounts disclosed in the table may not be in bold text. Samples G–10(B) and G–10(C) also provide guidance to issuers on how to disclose the rates and fees described in § 226.5a(a)(2)(iv) in a clear and conspicuous manner, by including these rates and fees generally as the first text in the applicable rows of the table so that the highlighted rates and fees generally are aligned vertically in the table.

ii. *Maximum limits on fees.* Section 226.5a(a)(2)(iv) provides that any maximum limits on fee amounts unrelated to fees that vary by state may not be disclosed in bold text. For example, assume an issuer will charge a cash advance fee of $5 or 3 percent of the cash advance transaction amount, whichever is greater, but the fee will not exceed $100. The maximum limit of $100 for the cash advance fee must not be highlighted in bold. Nonetheless, assume that the amount of the late fee varies by state, and the range of amount of late fees disclosed is $15–$25. In this case, the maximum limit of $25 on the late fee amounts must be highlighted in bold. In both cases, the minimum fee amount (e.g. $5 or $15) must be disclosed in bold text.

iii. *Periodic fees.* Section 226.5a(a)(2)(iv) provides that any periodic fee disclosed pursuant to § 226.5a(b)(2) that is not an annualized amount must not be disclosed in bold. For example, if an issuer imposes a $10 monthly maintenance fee for a card account, the issuer must disclose in the table that there is a $10 monthly maintenance fee, and that the fee is $120 on an annual basis. In this example, the $10 fee disclosure would not be disclosed in bold, but the $120 annualized amount must be disclosed in bold. In addition, if an issuer must disclose any

annual fee in the table, the amount of the annual fee must be disclosed in bold.

6. *Form of disclosures.* Whether disclosures must be in electronic form depends upon the following:

i. If a consumer accesses a credit card application or solicitation electronically (other than as described under ii. below), such as on-line at a home computer, the card issuer must provide the disclosures in electronic form (such as with the application or solicitation on its Web site) in order to meet the requirement to provide disclosures in a timely manner on or with the application or solicitation. If the issuer instead mailed paper disclosures to the consumer, this requirement would not be met.

ii. In contrast, if a consumer is physically present in the card issuer's office, and accesses a credit card application or solicitation electronically, such as via a terminal or kiosk (or if the consumer uses a terminal or kiosk located on the premises of an affiliate or third party that has arranged with the card issuer to provide applications or solicitations to consumers), the issuer may provide disclosures in either electronic or paper form, provided the issuer complies with the timing and delivery ("on or with") requirements of the regulation.

7. *Terminology.* Section 226.5a(a)(2)(i) generally requires that the headings, content and format of the tabular disclosures be substantially similar, but need not be identical, to the applicable tables in appendix G–10 to part 226; but *see* § 226.5(a)(2) for terminology requirements applicable to § 226.5a disclosures.

*5a(a)(4) Fees that vary by state.*

1. *Manner of disclosing range.* If the card issuer discloses a range of fees instead of disclosing the amount of the specific fee applicable to the consumer's account, the range may be stated as the lowest authorized fee (zero, if there are one or more states where no fee applies) to the highest authorized fee.

*5a(a)(5) Exceptions.*

1. *Noncoverage of consumer-initiated requests.* Applications provided to a consumer upon request are not covered by § 226.5a, even if the request is made in response to the card issuer's invitation to apply for a card account. To illustrate, if a card issuer invites consumers to call a toll-free number or to return a response card to obtain an application, the application sent in response to the consumer's request need not contain the disclosures required under § 226.5a. Similarly, if the card issuer invites consumers to call and make an oral application on the telephone, § 226.5a does not apply to the application made by the consumer. If, however, the card issuer calls a consumer or initiates a telephone discussion with a consumer about opening a card account and contemporaneously takes an oral application, such applications are subject to § 226.5a, specifically § 226.5a(d). Likewise, if the card issuer initiates an in-person discussion with a consumer about opening a card account and contemporaneously takes an application, such applications are subject to § 226.5a, specifically § 226.5a(f).

*5a(b) Required disclosures.*

1. *Tabular format.* Provisions in § 226.5a(b) and its commentary provide that certain information must appear or is permitted to appear in a table. The tabular format is required for § 226.5a(b) disclosures given pursuant to § 226.5a(c), (d)(2), (e)(1) and (f). The tabular format does not apply to oral disclosures given pursuant to § 226.5a(d)(1). (See § 226.5a(a)(2).)

2. *Accuracy.* Rules concerning accuracy of the disclosures required by § 226.5a(b), including variable rate disclosures, are stated in § 226.5a(c)(2), (d)(3), and (e)(4), as applicable.

*5a(b)(1) Annual percentage rate.*

1. *Variable-rate accounts—definition.* For purposes of § 226.5a(b)(1), a variable-rate account exists when rate changes are part of the plan and are tied to an index or formula. (*See* the commentary to § 226.6(b)(4)(ii) for examples of variable-rate plans.)

2. *Variable-rate accounts—fact that rate varies and how the rate will be determined.* In describing how the applicable rate will be determined, the card issuer must identify in the table the type of index or formula used, such as the prime rate. In describing the index, the issuer may not include in the table details about the index. For example, if the issuer uses a prime rate, the issuer must disclose the rate as a "prime rate" and may not disclose in the table other details about the prime rate, such as the fact that it is the highest prime rate published in the *Wall Street Journal* two business days before the closing date of the statement for each billing period. The issuer may not disclose in the table the current value of the index (such as that the prime rate is currently 7.5 percent) or the amount of the margin or spread added to the index or formula in setting the applicable rate. A card issuer may not disclose any applicable limitations on rate increases or decreases in the table, such as describing that the rate will not go below a certain rate or higher than a certain rate. (*See* Samples G–10(B) and G–10(C) for guidance on how to disclose the fact that the applicable rate varies and how it is determined.)

3. *Discounted initial rates.* i. *Immediate proximity.* If the term "introductory" is in the same phrase as the introductory rate, as that term is defined in § 226.16(g)(2)(ii), it will be deemed to be in immediate proximity of the listing. For example, an issuer that uses the phrase "introductory balance transfer APR X percent" has used the word "introductory" within the same phrase as the rate. (*See* Sample G–10(C) for guidance on how to disclose clearly and conspicuously the expiration date of the introductory rate and the rate that will apply after the introductory rate expires, if an introductory rate is disclosed in the table.)

ii. *Subsequent changes in terms.* The fact that an issuer may reserve the right to change a rate subsequent to account opening, pursuant to the notice requirements of § 226.9(c) and the limitations in § 226.55, does not, by itself, make that rate an introductory rate. For example, assume an issuer discloses an annual percentage rate for purchases of 12.99% but does not specify a time period during which that rate will be in effect. Even if that issuer subsequently increases the annual percentage rate for purchases to 15.99%, pursuant to a change-in-terms notice provided under § 226.9(c), the 12.99% is not an introductory rate.

iii. *More than one introductory rate.* If more than one introductory rate may apply to a particular balance in succeeding periods, the term "introductory" need only be used to describe the first introductory rate. For example, if an issuer offers a rate of 8.99% on purchases for six months, 10.99% on purchases for the following six months, and 14.99% on purchases after the first year, the term "introductory" need only be used to describe the 8.99% rate.

4. *Premium initial rates—subsequent changes in terms.* The fact that an issuer may reserve the right to change a rate subsequent to account opening, pursuant to the notice requirements of § 226.9(c) and the limitations in § 226.55 (as applicable), does not, by itself, make that rate a premium initial rate. For example, assume an issuer discloses an annual percentage rate for purchases of 18.99% but does not specify a time period during which that rate will be in effect. Even if that issuer subsequently reduces the annual percentage rate for purchases to 15.99%, the 18.99% is not a premium initial rate. If the rate decrease is the result of a change from a non-variable rate to a variable rate or from a variable rate to a non-variable rate, see comments 9(c)(2)(v)–3 and 9(c)(2)(v)–4 for guidance on the notice requirements under § 226.9(c).

5. *Increased penalty rates.* i. *In general.* For rates that are not introductory rates, if a rate may increase as a penalty for one or more events specified in the account agreement, such as a late payment or an extension of credit that exceeds the credit limit, the card issuer must disclose the increased rate that would apply, a brief description of the event or events that may result in the increased rate, and a brief description of how long the increased rate will remain in effect. The description of the specific event or events that may result in an increased rate should be brief. For example, if an issuer may increase a rate to the penalty rate because the consumer does not make the minimum payment by 5 p.m., Eastern Time, on its payment due date, the issuer should describe this circumstance in the table as "make a late payment." Similarly, if an issuer may increase a rate that applies to a particular balance because the account is more than 60 days late, the issuer should describe this circumstance in the table as "make a late payment." An issuer may not distinguish between the events that may result in an increased rate for existing balances and the events that may result in an increased rate for new transactions. (*See* Samples G–10(B) and G–10(C) (in the row labeled "Penalty APR and When it Applies") for additional guidance on the level of detail in which the specific event or events should be described.) The description of how long the increased rate will remain in effect also should be brief. If a card issuer reserves the right to apply the increased rate indefinitely, that fact should be stated. (*See* Samples G–10(B) and G–10(C) (in the row labeled "Penalty APR and When it Applies") for additional guidance on the level of detail which the issuer should use to

describe how long the increased rate will remain in effect.) A card issuer will be deemed to meet the standard to clearly and conspicuously disclose the information required by § 226.5a(b)(1)(iv)(A) if the issuer uses the format shown in Samples G–10(B) and G–10(C) (in the row labeled "Penalty APR and When it Applies") to disclose this information.

ii. *Introductory rates—general.* An issuer is required to disclose directly beneath the table the circumstances under which an introductory rate, as that term is defined in § 226.16(g)(2)(ii), may be revoked, and the rate that will apply after the revocation. This information about revocation of an introductory rate and the rate that will apply after revocation must be provided even if the rate that will apply after the introductory rate is revoked is the rate that would have applied at the end of the promotional period. In a variable-rate account, the rate that would have applied at the end of the promotional period is a rate based on the applicable index or formula in accordance with the accuracy requirements set forth in § 226.5a(c)(2) or (e)(4). In describing the rate that will apply after revocation of the introductory rate, if the rate that will apply after revocation of the introductory rate is already disclosed in the table, the issuer is not required to repeat the rate, but may refer to that rate in a clear and conspicuous manner. For example, if the rate that will apply after revocation of an introductory rate is the standard rate that applies to that type of transaction (such as a purchase or balance transfer transaction), and the standard rates are labeled in the table as "standard APRs," the issuer may refer to the "standard APR" when describing the rate that will apply after revocation of an introductory rate. (*See* Sample G–10(C) in the disclosure labeled "Loss of Introductory APR" directly beneath the table.) The description of the circumstances in which an introductory rate could be revoked should be brief. For example, if an issuer may increase an introductory rate because the account is more than 60 days late, the issuer should describe this circumstance in the table as "make a late payment." In addition, if the circumstances in which an introductory rate could be revoked are already listed elsewhere in the table, the issuer is not required to repeat the circumstances again, but may refer to those circumstances in a clear and conspicuous manner. For example, if the circumstances in which an introductory rate could be revoked are the same as the event or events that may trigger a "penalty rate" as described in § 226.5a(b)(1)(iv)(A), the issuer may refer to the actions listed in the Penalty APR row, in describing the circumstances in which the introductory rate could be revoked. (*See* Sample G–10(C) in the disclosure labeled "Loss of Introductory APR" directly beneath the table for additional guidance on the level of detail in which to describe the circumstances in which an introductory rate could be revoked.) A card issuer will be deemed to meet the standard to clearly and conspicuously disclose the information required by § 226.5a(b)(1)(iv)(B) if the issuer uses the format shown in Sample G–10(C) to disclose this information.

iii. *Introductory rates—limitations on revocation.* Issuers that are disclosing an introductory rate are prohibited by § 226.55 from increasing or revoking the introductory rate before it expires unless the consumer fails to make a required minimum periodic payment within 60 days after the due date for the payment. In making the required disclosure pursuant to § 226.5a(b)(1)(iv)(B), issuers should describe this circumstance directly beneath the table as "make a late payment."

6. *Rates that depend on consumer's creditworthiness.* i. *In general.* The card issuer, at its option, may disclose the possible rates that may apply as either specific rates, or a range of rates. For example, if there are three possible rates that may apply (9.99, 12.99 or 17.99 percent), an issuer may disclose specific rates (9.99, 12.99 or 17.99 percent) or a range of rates (9.99 to 17.99 percent). The card issuer may not disclose only the lowest, highest or median rate that could apply. (*See* Samples G–10(B) and G–10(C) for guidance on how to disclose a range of rates.)

ii. *Penalty rates.* If the rate is a penalty rate, as described in § 226.5a(b)(1)(iv), the card issuer at its option may disclose the highest rate that could apply, instead of disclosing the specific rates or the range of rates that could apply. For example, if the penalty rate could be up to 28.99 percent, but the issuer may impose a penalty rate that is less than that rate depending on factors at the time the penalty rate is imposed, the issuer may disclose the penalty rate as "up to" 28.99 percent. The issuer also must include a statement that the penalty rate for which the consumer may qualify will depend on the consumer's creditworthiness, and other factors if applicable.

iii. *Other factors.* Section 226.5a(b)(1)(v) applies even if other factors are used in combination with a consumer's creditworthiness to determine the rate for which a consumer may qualify at account opening. For example, § 226.5a(b)(1)(v) would apply if the issuer considers the type of purchase the consumer is making at the time the consumer opens the account, in combination with the consumer's creditworthiness, to determine the rate for which the consumer may qualify at account opening. If other factors are considered, the issuer should amend the statement about creditworthiness, to indicate that the rate for which the consumer may qualify at account opening will depend on the consumer's creditworthiness and other factors. Nonetheless, § 226.5a(b)(1)(v) does not apply if a consumer's creditworthiness is not one of the factors that will determine the rate for which the consumer may qualify at account opening (for example, if the rate is based solely on the type of purchase that the consumer is making at the time the consumer opens the account, or is based solely on whether the consumer has other banking relationships with the card issuer).

7. *Rate based on another rate on the account.* In some cases, one rate may be based on another rate on the account. For example, assume that a penalty rate as described in § 226.5a(b)(1)(iv)(A) is determined by adding 5 percentage points to the current purchase rate, which is 10 percent. In this example, the card issuer in disclosing the penalty rate must disclose 15 percent as the current penalty rate. If the purchase rate is a variable rate, then the penalty rate also is a variable rate. In that case, the card issuer also must disclose the fact that the penalty rate may vary and how the rate is determined, such as "This APR may vary with the market based on the Prime Rate." In describing the penalty rate, the issuer shall not disclose in the table the amount of the margin or spread added to the current purchase rate to determine the penalty rate, such as describing that the penalty rate is determined by adding 5 percentage points to the purchase rate. (*See* § 226.5a(b)(1)(i) and comment 5a(b)(1)–2 for further guidance on describing a variable rate.)

8. *Rates.* The only rates that shall be disclosed in the table are annual percentage rates determined under § 226.14(b). Periodic rates shall not be disclosed in the table.

9. *Deferred interest or similar transactions.* An issuer offering a deferred interest or similar plan, such as a promotional program that provides that a consumer will not be obligated to pay interest that accrues on a balance if that balance is paid in full prior to the expiration of a specified period of time, may not disclose a 0% rate as the rate applicable to deferred interest or similar transactions if there are any circumstances under which the consumer will be obligated for interest on such transactions for the deferred interest or similar period.

*5a(b)(2) Fees for issuance or availability.*

1. *Membership fees.* Membership fees for opening an account must be disclosed under this paragraph. A membership fee to join an organization that provides a credit or charge card as a privilege of membership must be disclosed only if the card is issued automatically upon membership. Such a fee shall not be disclosed in the table if membership results merely in eligibility to apply for an account.

2. *Enhancements.* Fees for optional services in addition to basic membership privileges in a credit or charge card account (for example, travel insurance or card-registration services) shall not be disclosed in the table if the basic account may be opened without paying such fees. Issuing a card to each primary cardholder (not authorized users) is considered a basic membership privilege and fees for additional cards, beyond the first card on the account, must be disclosed as a fee for issuance or availability. Thus, a fee to obtain an additional card on the account beyond the first card (so that each cardholder would have his or her own card) must be disclosed in the table as a fee for issuance or availability under § 226.5a(b)(2). This fee must be disclosed even if the fee is optional; that is, if the fee is charged only if the cardholder requests one or more additional cards. (*See* the available credit disclosure in § 226.5a(b)(14).)

3. *One-time fees.* Disclosure of non-periodic fees is limited to fees related to opening the account, such as one-time membership or participation fees, or an application fee that is excludable from the finance charge under § 226.4(c)(1). The following are examples of fees that shall not be disclosed in the table:

i. Fees for reissuing a lost or stolen card.

ii. Statement reproduction fees.

4. *Waived or reduced fees.* If fees required to be disclosed are waived or reduced for a limited time, the introductory fees or the fact of fee waivers may be provided in the table in addition to the required fees if the card issuer also discloses how long the reduced fees or waivers will remain in effect.

5. *Periodic fees and one-time fees.* A card issuer disclosing a periodic fee must disclose the amount of the fee, how frequently it will be imposed, and the annualized amount of the fee. A card issuer disclosing a non-periodic fee must disclose that the fee is a one-time fee. (*See* Sample G–10(C) for guidance on how to meet these requirements.)

*5a(b)(3) Fixed finance charge; minimum interest charge.*

1. *Example of brief statement. See* Samples G–10(B) and G–10(C) for guidance on how to provide a brief description of a minimum interest charge.

2. *Adjustment of $1.00 threshold amount.* Consistent with § 226.5a(b)(3), the Board will publish adjustments to the $1.00 threshold amount, as appropriate.

*5a(b)(4) Transaction charges.*

1. *Charges imposed by person other than card issuer.* Charges imposed by a third party, such as a seller of goods, shall not be disclosed in the table under this section; the third party would be responsible for disclosing the charge under § 226.9(d)(1).

2. *Foreign transaction fees.* A transaction charge imposed by the card issuer for the use of the card for purchases includes any fee imposed by the issuer for purchases in a foreign currency or that take place outside the United States or with a foreign merchant. (See comment 4(a)–4 for guidance on when a foreign transaction fee is considered charged by the card issuer.) If an issuer charges the same foreign transaction fee for purchases and cash advances in a foreign currency, or that take place outside the United States or with a foreign merchant, the issuer may disclose this foreign transaction fee as shown in Samples G–10(B) and G–10(C). Otherwise, the issuer must revise the foreign transaction fee language shown in Samples G–10(B) and G–10(C) to disclose clearly and conspicuously the amount of the foreign transaction fee that applies to purchases and the amount of the foreign transaction fee that applies to cash advances.

*5a(b)(5) Grace period.*

1. *How grace period disclosure is made.* The card issuer must state any conditions on the applicability of the grace period. An issuer that offers a grace period on all purchases and conditions the grace period on the consumer paying his or her outstanding balance in full by the due date each billing cycle, or on the consumer paying the outstanding balance in full by the due date in the previous and/or the current billing cycle(s) will be deemed to meet these requirements by providing the following disclosure, as applicable: "Your due date is [at least] ____ days after the close of each billing cycle. We will not charge you any interest on purchases if you pay your entire balance by the due date each month."

2. *No grace period.* The issuer may use the following language to describe that no grace period on any purchases is offered, as applicable: "We will begin charging interest on purchases on the transaction date."

3. *Grace period on some purchases.* If the issuer provides a grace period on some types of purchases but no grace period on others, the issuer may combine and revise the language in comments 5a(b)(5)–1 and –2 as appropriate to describe to which types of purchases a grace period applies and to which types of purchases no grace period is offered.

4. *Limitations on the imposition of finance charges in § 226.54.* Section 226.5a(b)(5) does not require a card issuer to disclose the limitations on the imposition of finance charges in § 226.54.

*5a(b)(6) Balance computation method.*

1. *Form of disclosure.* In cases where the card issuer uses a balance computation method that is identified by name in the regulation, the card issuer must disclose below the table only the name of the method. In cases where the card issuer uses a balance computation method that is not identified by name in the regulation, the disclosure below the table must clearly explain the method in as much detail as set forth in the descriptions of balance methods in § 226.5a(g). The explanation need not be as detailed as that required for the disclosures under § 226.6(b)(4)(i)(D). (*See* the commentary to § 226.5a(g) for guidance on particular methods.)

2. *Determining the method.* In determining which balance computation method to disclose for purchases, the card issuer must assume that a purchase balance will exist at the end of any grace period. Thus, for example, if the average daily balance method will include new purchases only if purchase balances are not paid within the grace period, the card issuer would disclose the name of the average daily balance method that includes new purchases. The card issuer must not assume the existence of a purchase balance, however, in making other disclosures under § 226.5a(b).

*5a(b)(7) Statement on charge card payments.*

1. *Applicability and content.* The disclosure that charges are payable upon receipt of the periodic statement is applicable only to charge card accounts. In making this disclosure, the card issuer may make such modifications as are necessary to more accurately reflect the circumstances of repayment under the account. For example, the disclosure might read, "Charges are due and payable upon receipt of the periodic statement and must be paid no later than 15 days after receipt of such statement."

*5a(b)(8) Cash advance fee.*

1. *Content. See* Samples G–10(B) and G–10(C) for guidance on how to disclose clearly and conspicuously the cash advance fee.

2. *Foreign cash advances.* Cash advance fees required to be disclosed under § 226.5a(b)(8) include any charge imposed by the card issuer for cash advances in a foreign currency or that take place outside the United States or with a foreign merchant. (*See* comment 4(a)–4 for guidance on when a foreign transaction fee is considered charged by the card issuer.) If an issuer charges the same foreign transaction fee for purchases and cash advances in a foreign currency or that take place outside the United States or with a foreign merchant, the issuer may disclose this foreign transaction fee as shown in Samples G–10(B) and (C). Otherwise, the issuer must revise the foreign transaction fee language shown in Samples G–10(B) and (C) to disclose clearly and conspicuously the amount of the foreign transaction fee that applies to purchases and the amount of the foreign transaction fee that applies to cash advances.

3. *ATM fees.* An issuer is not required to disclose pursuant to § 226.5a(b)(8) any charges imposed on a cardholder by an institution other than the card issuer for the use of the other institution's ATM in a shared or interchange system.

*5a(b)(9) Late payment fee.*

1. *Applicability.* The disclosure of the fee for a late payment includes only those fees that will be imposed for actual, unanticipated late payments. (*See* the commentary to § 226.4(c)(2) for additional guidance on late payment fees. *See* Samples G–10(B) and G–10(C) for guidance on how to disclose clearly and conspicuously the late payment fee.)

*5a(b)(10) Over-the-limit fee.*

1. *Applicability.* The disclosure of fees for exceeding a credit limit does not include fees for other types of default or for services related to exceeding the limit. For example, no disclosure is required of fees for reinstating credit privileges or fees for the dishonor of checks on an account that, if paid, would cause the credit limit to be exceeded. (*See* Samples G–10(B) and G–10(C) for guidance on how to disclose clearly and conspicuously the over-the-limit fee.)

*5a(b)(13) Required insurance, debt cancellation, or debt suspension coverage.*

1. *Content. See* Sample G–10(B) for guidance on how to comply with the requirements in § 226.5a(b)(13).

*5a(b)(14) Available credit.*

1. *Calculating available credit.* If the 15 percent threshold test is met, the issuer must disclose the available credit excluding optional fees, and the available credit including optional fees. In calculating the available credit to disclose in the table, the issuer must consider all fees for the issuance or availability of credit described in § 226.5a(b)(2), and any security deposit, that will be imposed and charged to the account when the account is opened, such as one-time issuance and set-up fees. For example, in calculating the available credit, issuers must consider the first year's annual fee and the first month's maintenance fee (as applicable) if they are charged to the account on the first billing statement. In calculating the amount of the available credit including optional fees, if optional fees could be charged multiple times, the issuer shall assume that the optional fee is only imposed once. For example, if an issuer charges a fee for each additional card issued on the account, the issuer in calculating the amount of the available credit including optional fees may assume that the cardholder requests only one additional card. In disclosing the available credit, the issuer shall round down the available credit amount to the nearest whole dollar.

2. *Content.* See Sample G–10(C) for guidance on how to provide the disclosure

required by § 226.5a(b)(14) clearly and conspicuously.

*5a(b)(15) Web site reference.*

1. *Content. See* Samples G–10(B) and G–10(C) for guidance on disclosing a reference to the Web site established by the Board and a statement that consumers may obtain on the Web site information about shopping for and using credit card accounts.

*5a(c) Direct mail and electronic applications and solicitations.*

1. *Mailed publications.* Applications or solicitations contained in generally available publications mailed to consumers (such as subscription magazines) are subject to the requirements applicable to *take-ones* in § 226.5a(e), rather than the direct mail requirements of § 226.5a(c). However, if a primary purpose of a card issuer's mailing is to offer credit or charge card accounts—for example, where a card issuer "prescreens" a list of potential cardholders using credit criteria, and then mails to the targeted group its catalog containing an application or a solicitation for a card account—the direct mail rules apply. In addition, a card issuer may use a single application form as a *take-one* (in racks in public locations, for example) and for direct mailings, if the card issuer complies with the requirements of § 226.5a(c) even when the form is used as a *take-one*—that is, by presenting the required § 226.5a disclosures in a tabular format. When used in a direct mailing, the credit term disclosures must be accurate as of the mailing date whether or not the § 226.5a(e)(1)(ii) and (e)(1)(iii) disclosures are included; when used in a *take-one,* the disclosures must be accurate for as long as the *take-one* forms remain available to the public if the § 226.5a(e)(1)(ii) and (e)(1)(iii) disclosures are omitted. (If those disclosures are included in the take-one, the credit term disclosures need only be accurate as of the printing date.)

*5a(d) Telephone applications and solicitations.*

1. *Coverage.* i. This paragraph applies if:

A. A telephone conversation between a card issuer and consumer may result in the issuance of a card as a consequence of an issuer-initiated offer to open an account for which the issuer does not require any application (that is, a *prescreened* telephone solicitation).

B. The card issuer initiates the contact and at the same time takes application information over the telephone.

ii. This paragraph does not apply to:

A. Telephone applications initiated by the consumer.

B. Situations where no card will be issued—because, for example, the consumer indicates that he or she does not want the card, or the card issuer decides either during the telephone conversation or later not to issue the card.

2. *Right to reject the plan.* The right to reject the plan referenced in this paragraph is the same as the right to reject the plan described in § 226.5(b)(1)(iv). If an issuer substitutes the account-opening summary table described in § 226.6(b)(1) in lieu of the disclosures specified in § 226.5a(d)(2)(ii), the disclosure specified in § 226.5a(d)(2)(ii)(B) must appear in the table, if the issuer is required to do so pursuant to § 226.6(b)(2)(xiii). Otherwise, the disclosure specified in § 226.5a(d)(2)(ii)(B) may appear either in or outside the table containing the required credit disclosures.

3. *Substituting account-opening table for alternative written disclosures.* An issuer may substitute the account-opening summary table described in § 226.6(b)(1) in lieu of the disclosures specified in § 226.5a(d)(2)(ii).

*5a(e) Applications and solicitations made available to general public.*

1. *Coverage.* Applications and solicitations made available to the general public include what are commonly referred to as *take-one* applications typically found at counters in banks and retail establishments, as well as applications contained in catalogs, magazines and other generally available publications. In the case of credit unions, this paragraph applies to applications and solicitations to open card accounts made available to those in the general field of membership.

2. *In-person applications and solicitations.* In-person applications and solicitations initiated by a card issuer are subject to § 226.5a(f), not § 226.5a(e). (*See* § 226.5a(f) and accompanying commentary for rules relating to in-person applications and solicitations.)

3. *Toll-free telephone number.* If a card issuer, in complying with any of the disclosure options of § 226.5a(e), provides a telephone number for consumers to call to obtain credit information, the number must be toll-free for nonlocal calls made from an area code other than the one used in the card issuer's dialing area. Alternatively, a card issuer may provide any telephone number that allows a consumer to call for information and reverse the telephone charges.

*5a(e)(1) Disclosure of required credit information.*

1. *Date of printing.* Disclosure of the month and year fulfills the requirement to disclose the date an application was printed.

2. *Form of disclosures.* The disclosures specified in § 226.5a(e)(1)(ii) and (e)(1)(iii) may appear either in or outside the table containing the required credit disclosures.

*5a(e)(2) No disclosure of credit information.*

1. *When disclosure option available.* A card issuer may use this option only if the issuer does not include on or with the application or solicitation any statement that refers to the credit disclosures required by § 226.5a(b). Statements such as *no annual fee, low interest rate, favorable rates,* and *low costs* are deemed to refer to the required credit disclosures and, therefore, may not be included on or with the solicitation or application, if the card issuer chooses to use this option.

*5a(e)(3) Prompt response to requests for information.*

1. *Prompt disclosure.* Information is promptly disclosed if it is given within 30 days of a consumer's request for information but in no event later than delivery of the credit or charge card.

2. *Information disclosed.* When a consumer requests credit information, card issuers need not provide all the required credit disclosures in all instances. For example, if disclosures have been provided in accordance with § 226.5a(e)(1) and a consumer calls or writes a card issuer to obtain information about changes in the disclosures, the issuer need only provide the items of information that have changed from those previously disclosed on or with the application or solicitation. If a consumer requests information about particular items, the card issuer need only provide the requested information. If, however, the card issuer has made disclosures in accordance with the option in § 226.5a(e)(2) and a consumer calls or writes the card issuer requesting information about costs, all the required disclosure information must be given.

3. *Manner of response.* A card issuer's response to a consumer's request for credit information may be provided orally or in writing, regardless of the manner in which the consumer's request is received by the issuer. Furthermore, the card issuer must provide the information listed in § 226.5a(e)(1). Information provided in writing need not be in a tabular format.

*5a(f) In-person applications and solicitations.*

1. *Coverage.* i. This paragraph applies if:

A. An in-person conversation between a card issuer and a consumer may result in the issuance of a card as a consequence of an issuer-initiated offer to open an account for which the issuer does not require any application (that is, a *preapproved* in-person solicitation).

B. The card issuer initiates the contact and at the same time takes application information in person. For example, the following are covered:

*1.* A consumer applies in person for a car loan at a financial institution and the loan officer invites the consumer to apply for a credit or charge card account; the consumer accepts the invitation and submits an application.

*2.* An employee of a retail establishment, in the course of processing a sales transaction using a bank credit card, asks a customer if he or she would like to apply for the retailer's credit or charge card; the customer responds affirmatively and submits an application.

ii. This paragraph does not apply to:

A. In-person applications initiated by the consumer.

B. Situations where no card will be issued—because, for example, the consumer indicates that he or she does not want the card, or the card issuer decides during the in-person conversation not to issue the card.

*Section 226.5b—Requirements for Home-equity Plans*

* * * * *

*5b(a) Form of Disclosure*

*5b(a)(1) General*

1. *Written disclosures.* The disclosures required under this section must be clear and conspicuous and in writing, but need not be in a form the consumer can keep. (*See* the commentary to § 226.6(a)(3) for special rules when disclosures required under § 226.5b(d) are given in a retainable form.)

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*5b(f) Limitations on Home-equity Plans*

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*Paragraph 5b(f)(3)(vi).*

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4. *Reinstatement of credit privileges.* Creditors are responsible for ensuring that credit privileges are restored as soon as reasonably possible after the condition that permitted the creditor's action ceases to exist. One way a creditor can meet this responsibility is to monitor the line on an ongoing basis to determine when the condition ceases to exist. The creditor must investigate the condition frequently enough to assure itself that the condition permitting the freeze continues to exist. The frequency with which the creditor must investigate to determine whether a condition continues to exist depends upon the specific condition permitting the freeze. As an alternative to such monitoring, the creditor may shift the duty to the consumer to request reinstatement of credit privileges by providing a notice in accordance with § 226.9(c)(1)(iii). A creditor may require a reinstatement request to be in writing if it notifies the consumer of this requirement on the notice provided under § 226.9(c)(1)(iii). Once the consumer requests reinstatement, the creditor must promptly investigate to determine whether the condition allowing the freeze continues to exist. Under this alternative, the creditor has a duty to investigate only upon the consumer's request.

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*Section 226.6—Account-Opening Disclosures*

*6(a) Rules affecting home-equity plans.*

*6(a)(1) Finance charge.*

*Paragraph 6(a)(1)(i).*

1. *When finance charges accrue.* Creditors are not required to disclose a specific date when finance charges will begin to accrue. Creditors may provide a general explanation such as that the consumer has 30 days from the closing date to pay the new balance before finance charges will accrue on the account.

2. *Grace periods.* In disclosing whether or not a grace period exists, the creditor need not use "free period," "free-ride period," "grace period" or any other particular descriptive phrase or term. For example, a statement that "the finance charge begins on the date the transaction is posted to your account" adequately discloses that no grace period exists. In the same fashion, a statement that "finance charges will be imposed on any new purchases only if they are not paid in full within 25 days after the close of the billing cycle" indicates that a grace period exists in the interim.

*Paragraph 6(a)(1)(ii).*

1. *Range of balances.* The range of balances disclosure is inapplicable:

i. If only one periodic rate may be applied to the entire account balance.

ii. If only one periodic rate may be applied to the entire balance for a feature (for example, cash advances), even though the balance for another feature (purchases) may be subject to two rates (a 1.5% monthly periodic rate on purchase balances of $0–$500, and a 1% monthly periodic rate for balances above $500). In this example, the creditor must give a range of balances disclosure for the purchase feature.

2. *Variable-rate disclosures—coverage.*

i. *Examples.* This section covers open-end credit plans under which rate changes are specifically set forth in the account agreement and are tied to an index or formula. A creditor would use variable-rate disclosures for plans involving rate changes such as the following:

A. Rate changes that are tied to the rate the creditor pays on its six-month certificates of deposit.

B. Rate changes that are tied to Treasury bill rates.

C. Rate changes that are tied to changes in the creditor's commercial lending rate.

ii. An open-end credit plan in which the employee receives a lower rate contingent upon employment (that is, with the rate to be increased upon termination of employment) is not a variable-rate plan.

3. *Variable-rate plan—rate(s) in effect.* In disclosing the rate(s) in effect at the time of the account-opening disclosures (as is required by § 226.6(a)(1)(ii)), the creditor may use an insert showing the current rate; may give the rate as of a specified date and then update the disclosure from time to time, for example, each calendar month; or may disclose an estimated rate under § 226.5(c).

4. *Variable-rate plan—additional disclosures required.* In addition to disclosing the rates in effect at the time of the account-opening disclosures, the disclosures under § 226.6(a)(1)(ii) also must be made.

5. *Variable-rate plan—index.* The index to be used must be clearly identified; the creditor need not give, however, an explanation of how the index is determined or provide instructions for obtaining it.

6. *Variable-rate plan—circumstances for increase.*

i. Circumstances under which the rate(s) may increase include, for example:

A. An increase in the Treasury bill rate.

B. An increase in the Federal Reserve discount rate.

ii. The creditor must disclose when the increase will take effect; for example:

A. "An increase will take effect on the day that the Treasury bill rate increases," or

B. "An increase in the Federal Reserve discount rate will take effect on the first day of the creditor's billing cycle."

7. *Variable-rate plan—limitations on increase.* In disclosing any limitations on rate increases, limitations such as the maximum increase per year or the maximum increase over the duration of the plan must be disclosed. When there are no limitations, the creditor may, but need not, disclose that fact. (A maximum interest rate must be included in dwelling-secured open-end credit plans under which the interest rate may be changed. *See* § 226.30 and the commentary to that section.) Legal limits such as usury or rate ceilings under state or federal statutes or regulations need not be disclosed. Examples of limitations that must be disclosed include:

i. "The rate on the plan will not exceed 25% annual percentage rate."

ii. "Not more than ½% increase in the annual percentage rate per year will occur."

8. *Variable-rate plan—effects of increase.* Examples of effects of rate increases that must be disclosed include:

i. Any requirement for additional collateral if the annual percentage rate increases beyond a specified rate.

ii. Any increase in the scheduled minimum periodic payment amount.

9. *Variable-rate plan—change-in-terms notice not required.* No notice of a change in terms is required for a rate increase under a variable-rate plan as defined in comment 6(a)(1)(ii)–2.

10. *Discounted variable-rate plans.* In some variable-rate plans, creditors may set an initial interest rate that is not determined by the index or formula used to make later interest rate adjustments. Typically, this initial rate is lower than the rate would be if it were calculated using the index or formula.

i. For example, a creditor may calculate interest rates according to a formula using the six-month Treasury bill rate plus a 2 percent margin. If the current Treasury bill rate is 10 percent, the creditor may forgo the 2 percent spread and charge only 10 percent for a limited time, instead of setting an initial rate of 12 percent, or the creditor may disregard the index or formula and set the initial rate at 9 percent.

ii. When creditors use an initial rate that is not calculated using the index or formula for later rate adjustments, the account-opening disclosure statement should reflect:

A. The initial rate (expressed as a periodic rate and a corresponding annual percentage rate), together with a statement of how long the initial rate will remain in effect;

B. The current rate that would have been applied using the index or formula (also expressed as a periodic rate and a corresponding annual percentage rate); and

C. The other variable-rate information required in § 226.6(a)(1)(ii).

iii. In disclosing the current periodic and annual percentage rates that would be applied using the index or formula, the creditor may use any of the disclosure options described in comment 6(a)(1)(ii)–3.

11. *Increased penalty rates.* If the initial 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 creditor must disclose the initial rate and the increased penalty rate that may apply. If the penalty rate is based on an index and an increased margin, the issuer must disclose the index and the margin. The creditor must also disclose the specific event or events that may result in the increased rate, such as "22% APR, if 60 days late." If the penalty rate cannot be determined at the time disclosures are given, the creditor must provide an explanation of the specific event or events that may result in the increased rate. At the creditor's option, the creditor may disclose the period for which the increased rate will remain in effect, such as "until you make three timely payments." The creditor need not disclose an increased rate that is imposed when credit privileges are permanently terminated.

*Paragraph 6(a)(1)(iii).*

1. *Explanation of balance computation method.* A shorthand phrase such as "previous balance method" does not suffice in explaining the balance computation

method. (See Model Clauses G–1 and G–1(A) to part 226.)

2. *Allocation of payments.* Creditors may, but need not, explain how payments and other credits are allocated to outstanding balances. For example, the creditor need not disclose that payments are applied to late charges, overdue balances, and finance charges before being applied to the principal balance; or in a multifeatured plan, that payments are applied first to finance charges, then to purchases, and then to cash advances. (*See* comment 7–1 for definition of multifeatured plan.)

*Paragraph 6(a)(1)(iv).*

1. *Finance charges.* In addition to disclosing the periodic rate(s) under § 226.6(a)(1)(ii), creditors must disclose any other type of finance charge that may be imposed, such as minimum, fixed, transaction, and activity charges; required insurance; or appraisal or credit report fees (unless excluded from the finance charge under § 226.4(c)(7)). Creditors are not required to disclose the fact that no finance charge is imposed when the outstanding balance is less than a certain amount or the balance below which no finance charge will be imposed.

*6(a)(2) Other charges.*

1. *General; examples of other charges.* Under § 226.6(a)(2), significant charges related to the plan (that are not finance charges) must also be disclosed. For example:

i. Late-payment and over-the-credit-limit charges.

ii. Fees for providing documentary evidence of transactions requested under § 226.13 (billing error resolution).

iii. Charges imposed in connection with residential mortgage transactions or real estate transactions such as title, appraisal, and credit-report fees (see § 226.4(c)(7)).

iv. A tax imposed on the credit transaction by a state or other governmental body, such as a documentary stamp tax on cash advances. (*See* the commentary to § 226.4(a)).

v. A membership or participation fee for a package of services that includes an open-end credit feature, unless the fee is required whether or not the open-end credit feature is included. For example, a membership fee to join a credit union is not an "other charge," even if membership is required to apply for credit. For example, if the primary benefit of membership in an organization is the opportunity to apply for a credit card, and the other benefits offered (such as a newsletter or a member information hotline) are merely incidental to the credit feature, the membership fee would be disclosed as an "other charge."

vi. Charges imposed for the termination of an open-end credit plan.

2. *Exclusions.* The following are examples of charges that are not "other charges"

i. Fees charged for documentary evidence of transactions for income tax purposes.

ii. Amounts payable by a consumer for collection activity after default; attorney's fees, whether or not automatically imposed; foreclosure costs; post-judgment interest rates imposed by law; and reinstatement or reissuance fees.

iii. Premiums for voluntary credit life or disability insurance, or for property insurance, that are not part of the finance charge.

iv. Application fees under § 226.4(c)(1).

v. A monthly service charge for a checking account with overdraft protection that is applied to all checking accounts, whether or not a credit feature is attached.

vi. Charges for submitting as payment a check that is later returned unpaid (See commentary to § 226.4(c)(2)).

vii. Charges imposed on a cardholder by an institution other than the card issuer for the use of the other institution's ATM in a shared or interchange system. (*See* also comment 7(a)(2)–2.)

viii. Taxes and filing or notary fees excluded from the finance charge under § 226.4(e).

ix. A fee to expedite delivery of a credit card, either at account opening or during the life of the account, provided delivery of the card is also available by standard mail service (or other means at least as fast) without paying a fee for delivery.

x. A fee charged for arranging a single payment on the credit account, upon the consumer's request (regardless of how frequently the consumer requests the service), if the credit plan provides that the consumer may make payments on the account by another reasonable means, such as by standard mail service, without paying a fee to the creditor.

*6(a)(3) Home-equity plan information.*

1. *Additional disclosures required.* For home-equity plans, creditors must provide several of the disclosures set forth in § 226.5b(d) along with the disclosures required under § 226.6. Creditors also must disclose a list of the conditions that permit the creditor to terminate the plan, freeze or reduce the credit limit, and implement specified modifications to the original terms. (*See* comment 5b(d)(4)(iii)–1.)

2. *Form of disclosures.* The home-equity disclosures provided under this section must be in a form the consumer can keep, and are governed by § 226.5(a)(1). The segregation standard set forth in § 226.5b(a) does not apply to home-equity disclosures provided under § 226.6.

3. *Disclosure of payment and variable-rate examples.*

i. The payment-example disclosure in § 226.5b(d)(5)(iii) and the variable-rate information in § 226.5b(d)(12)(viii), (d)(12)(x), (d)(12)(xi), and (d)(12)(xii) need not be provided with the disclosures under § 226.6 if the disclosures under § 226.5b(d) were provided in a form the consumer could keep; and the disclosures of the payment example under § 226.5b(d)(5)(iii), the maximum-payment example under § 226.5b(d)(12)(x) and the historical table under § 226.5b(d)(12)(xi) included a representative payment example for the category of payment options the consumer has chosen.

ii. For example, if a creditor offers three payment options (one for each of the categories described in the commentary to § 226.5b(d)(5)), describes all three options in its early disclosures, and provides all of the disclosures in a retainable form, that creditor need not provide the § 226.5b(d)(5)(iii) or (d)(12) disclosures again when the account is opened. If the creditor showed only one of the three options in the early disclosures (which would be the case with a separate disclosure form rather than a combined form, as discussed under § 226.5b(a)), the disclosures under § 226.5b(d)(5)(iii), (d)(12)(viii), (d)(12)(x), (d)(12)(xi) and (d)(12)(xii) must be given to any consumer who chooses one of the other two options. If the § 226.5b(d)(5)(iii) and (d)(12) disclosures are provided with the second set of disclosures, they need not be transaction-specific, but may be based on a representative example of the category of payment option chosen.

4. *Disclosures for the repayment period.* The creditor must provide disclosures about both the draw and repayment phases when giving the disclosures under § 226.6. Specifically, the creditor must make the disclosures in § 226.6(a)(3), state the corresponding annual percentage rate, and provide the variable-rate information required in § 226.6(a)(1)(ii) for the repayment phase. To the extent the corresponding annual percentage rate, the information in § 226.6(a)(1)(ii), and any other required disclosures are the same for the draw and repayment phase, the creditor need not repeat such information, as long as it is clear that the information applies to both phases.

*6(a)(4) Security interests.*

1. *General.* Creditors are not required to use specific terms to describe a security interest, or to explain the type of security or the creditor's rights with respect to the collateral.

2. *Identification of property.* Creditors sufficiently identify collateral by type by stating, for example, *motor vehicle* or *household appliances.* (Creditors should be aware, however, that the federal credit practices rules, as well as some state laws, prohibit certain security interests in household goods.) The creditor may, at its option, provide a more specific identification (for example, a model and serial number.)

3. *Spreader clause.* If collateral for preexisting credit with the creditor will secure the plan being opened, the creditor must disclose that fact. (Such security interests may be known as "spreader" or "dragnet" clauses, or as "cross-collateralization" clauses.) The creditor need not specifically identify the collateral; a reminder such as "collateral securing other loans with us may also secure this loan" is sufficient. At the creditor's option, a more specific description of the property involved may be given.

4. *Additional collateral.* If collateral is required when advances reach a certain amount, the creditor should disclose the information available at the time of the account-opening disclosures. For example, if the creditor knows that a security interest will be taken in household goods if the consumer's balance exceeds $1,000, the creditor should disclose accordingly. If the creditor knows that security will be required if the consumer's balance exceeds $1,000, but the creditor does not know what security will be required, the creditor must disclose on the initial disclosure statement that security will be required if the balance exceeds $1,000, and the creditor must provide a change-in-

terms notice under § 226.9(c) at the time the security is taken. (See comment 6(a)(4)–2.)

5. *Collateral from third party.* Security interests taken in connection with the plan must be disclosed, whether the collateral is owned by the consumer or a third party.

*6(a)(5) Statement of billing rights.*

1. *See* the commentary to Model Forms G–3, G–3(A), G–4, and G–4(A).

*6(b) Rules affecting open-end (not home-secured) plans.*

6(b)(1) Form of disclosures; tabular format for open-end (not home-secured) plans.

1. *Relation to tabular summary for applications and solicitations.* See commentary to § 226.5a(a), (b), and (c) regarding format and content requirements, except for the following:

i. Creditors must use the accuracy standard for annual percentage rates in § 226.6(b)(4)(ii)(G).

ii. Generally, creditors must disclose the specific rate for each feature that applies to the account. If the rates on an open-end (not home-secured) plan vary by state and the creditor is providing the account-opening table in person at the time the plan is established in connection with financing the purchase of goods or services the creditor may, at its option, disclose in the account-opening table (A) the rate applicable to the consumer's account, or (B) the range of rates, if the disclosure includes a statement that the rate varies by state and refers the consumer to the account agreement or other disclosure provided with the account-opening table where the rate applicable to the consumer's account is disclosed.

iii. Creditors must explain whether or not a grace period exists for all features on the account. The row heading "Paying Interest" must be used if any one feature on the account does not have a grace period.

iv. Creditors must name the balance computation method used for each feature of the account and state that an explanation of the balance computation method(s) is provided in the account-opening disclosures.

v. Creditors must state that consumers' billing rights are provided in the account-opening disclosures.

vi. If fees on an open-end (not home-secured) plan vary by state and the creditor is providing the account-opening table in person at the time the plan is established in connection with financing the purchase of goods or services the creditor may, at its option, disclose in the account-opening table (A) the specific fee applicable to the consumer's account, or (B) the range of fees, if the disclosure includes a statement that the amount of the fee varies by state and refers the consumer to the account agreement or other disclosure provided with the account-opening table where the fee applicable to the consumer's account is disclosed.

vii. Creditors that must disclose the amount of available credit must state the initial credit limit provided on the account.

viii. Creditors must disclose directly beneath the table the circumstances under which an introductory rate may be revoked and the rate that will apply after the introductory rate is revoked. Issuers of credit card accounts under an open-end (not home-secured) consumer credit plan are subject to limitations on the circumstances under which an introductory rate may be revoked. (See comment 5a(b)(1)–5 for guidance on how a card issuer may disclose the circumstances under which an introductory rate may be revoked.)

ix. The applicable forms providing safe harbors for account-opening tables are under appendix G–17 to part 226.

2. *Clear and conspicuous standard.* See comment 5(a)(1)–1 for the clear and conspicuous standard applicable to § 226.6 disclosures.

3. *Terminology.* Section 226.6(b)(1) generally requires that the headings, content, and format of the tabular disclosures be substantially similar, but need not be identical, to the tables in appendix G to part 226; but see § 226.5(a)(2) for terminology requirements applicable to § 226.6(b).

*6(b)(2) Required disclosures for account-opening table for open-end (not home-secured) plans.*

*6(b)(2)(iii) Fixed finance charge; minimum interest charge.*

1. *Example of brief statement.* See Samples G–17(B), G–17(C), and G–17(D) for guidance on how to provide a brief description of a minimum interest charge.

*6(b)(2)(v) Grace period.*

1. *Grace period.* Creditors must state any conditions on the applicability of the grace period. A creditor that offers a grace period on all types of transactions for the account and conditions the grace period on the consumer paying his or her outstanding balance in full by the due date each billing cycle, or on the consumer paying the outstanding balance in full by the due date in the previous and/or the current billing cycle(s) will be deemed to meet these requirements by providing the following disclosure, as applicable: "Your due date is [at least] __ days after the close of each billing cycle. We will not charge you any interest on your account if you pay your entire balance by the due date each month."

2. *No grace period.* Creditors may use the following language to describe that no grace period is offered, as applicable: "We will begin charging interest on [applicable transactions] on the transaction date."

3. *Grace period on some features.* See Samples G–17(B) and G–17(C) for guidance on complying with § 226.6(b)(2)(v) when a creditor offers a grace period for purchases but no grace period on balance transfers and cash advances.

4. *Limitations on the imposition of finance charges in § 226.54.* Section 226.6(b)(2)(v) does not require a card issuer to disclose the limitations on the imposition of finance charges in § 226.54.

*6(b)(2)(vi) Balance computation method.*

1. *Content.* See Samples G–17(B) and G–17(C) for guidance on how to disclose the balance computation method where the same method is used for all features on the account.

*6(b)(2)(xiii) Available credit.*

1. *Right to reject the plan.* Creditors may use the following language to describe consumers' right to reject a plan after receiving account-opening disclosures: "You may still reject this plan, provided that you have not yet used the account or paid a fee after receiving a billing statement. If you do reject the plan, you are not responsible for any fees or charges."

*6(b)(3) Disclosure of charges imposed as part of open-end (not home-secured) plans.*

1. *When finance charges accrue.* Creditors are not required to disclose a specific date when a cost that is a finance charge under § 226.4 will begin to accrue.

2. *Grace periods.* In disclosing in the account agreement or disclosure statement whether or not a grace period exists, the creditor need not use any particular descriptive phrase or term. However, the descriptive phrase or term must be sufficiently similar to the disclosures provided pursuant to §§ 226.5a(b)(5) and 226.6(b)(2)(v) to satisfy a creditor's duty to provide consistent terminology under § 226.5(a)(2).

3. *No finance charge imposed below certain balance.* Creditors are not required to disclose the fact that no finance charge is imposed when the outstanding balance is less than a certain amount or the balance below which no finance charge will be imposed.

*Paragraph 6(b)(3)(ii).*

1. *Failure to use the plan as agreed.* Late payment fees, over-the-limit fees, and fees for payments returned unpaid are examples of charges resulting from consumers' failure to use the plan as agreed.

2. *Examples of fees that affect the plan.* Examples of charges the payment, or nonpayment, of which affects the consumer's account are:

i. *Access to the plan.* Fees for using the card at the creditor's ATM to obtain a cash advance, fees to obtain additional cards including replacements for lost or stolen cards, fees to expedite delivery of cards or other credit devices, application and membership fees, and annual or other participation fees identified in § 226.4(c)(4).

ii. *Amount of credit extended.* Fees for increasing the credit limit on the account, whether at the consumer's request or unilaterally by the creditor.

iii. *Timing or method of billing or payment.* Fees to pay by telephone or via the Internet.

3. *Threshold test.* If the creditor is unsure whether a particular charge is a cost imposed as part of the plan, the creditor may at its option consider such charges as a cost imposed as part of the plan for purposes of the Truth in Lending Act.

*Paragraph 6(b)(3)(iii)(B).*

1. *Fees for package of services.* A fee to join a credit union is an example of a fee for a package of services that is not imposed as part of the plan, even if the consumer must join the credit union to apply for credit. In contrast, a membership fee is an example of a fee for a package of services that is considered to be imposed as part of a plan where the primary benefit of membership in the organization is the opportunity to apply for a credit card, and the other benefits offered (such as a newsletter or a member information hotline) are merely incidental to the credit feature.

*6(b)(4) Disclosure of rates for open-end (not home-secured) plans.*

*Paragraph 6(b)(4)(i)(B).*

1. *Range of balances.* Creditors are not required to disclose the range of balances:

i. If only one periodic interest rate may be applied to the entire account balance.

ii. If only one periodic interest rate may be applied to the entire balance for a feature (for example, cash advances), even though the balance for another feature (purchases) may be subject to two rates (a 1.5% monthly periodic interest rate on purchase balances of $0–$500, and a 1% periodic interest rate for balances above $500). In this example, the creditor must give a range of balances disclosure for the purchase feature.

*Paragraph 6(b)(4)(i)(D).*

1. *Explanation of balance computation method.* Creditors do not provide a sufficient explanation of a balance computation method by using a shorthand phrase such as "previous balance method" or the name of a balance computation method listed in § 226.5a(g). (*See* Model Clauses G–1(A) in appendix G to part 226. *See* § 226.6(b)(2)(vi) regarding balance computation descriptions in the account-opening summary.)

2. *Allocation of payments.* Creditors may, but need not, explain how payments and other credits are allocated to outstanding balances.

*6(b)(4)(ii) Variable-rate accounts.*

1. *Variable-rate disclosures—coverage.*

i. *Examples.* Examples of open-end plans that permit the rate to change and are considered variable-rate plans include:

A. Rate changes that are tied to the rate the creditor pays on its six-month certificates of deposit.

B. Rate changes that are tied to Treasury bill rates.

C. Rate changes that are tied to changes in the creditor's commercial lending rate.

ii. Examples of open-end plans that permit the rate to change and are not considered variable-rate include:

A. Rate changes that are invoked under a creditor's contract reservation to increase the rate without reference to such an index or formula (for example, a plan that simply provides that the creditor reserves the right to raise its rates).

B. Rate changes that are triggered by a specific event such as an open-end credit plan in which the employee receives a lower rate contingent upon employment, and the rate increases upon termination of employment.

2. *Variable-rate plan—circumstances for increase.*

i. The following are examples that comply with the requirement to disclose circumstances under which the rate(s) may increase:

A. "The Treasury bill rate increases."

B. "The Federal Reserve discount rate increases."

ii. Disclosing the frequency with which the rate may increase includes disclosing when the increase will take effect; for example:

A. "An increase will take effect on the day that the Treasury bill rate increases."

B. "An increase in the Federal Reserve discount rate will take effect on the first day of the creditor's billing cycle."

3. *Variable-rate plan—limitations on increase.* In disclosing any limitations on rate increases, limitations such as the maximum increase per year or the maximum increase over the duration of the plan must be disclosed. When there are no limitations, the creditor may, but need not, disclose that fact. Legal limits such as usury or rate ceilings under state or federal statutes or regulations need not be disclosed. Examples of limitations that must be disclosed include:

i. "The rate on the plan will not exceed 25% annual percentage rate."

ii. "Not more than ½ of 1% increase in the annual percentage rate per year will occur."

4. *Variable-rate plan—effects of increase.* Examples of effects of rate increases that must be disclosed include:

i. Any requirement for additional collateral if the annual percentage rate increases beyond a specified rate.

ii. Any increase in the scheduled minimum periodic payment amount.

5. *Discounted variable-rate plans.* In some variable-rate plans, creditors may set an initial interest rate that is not determined by the index or formula used to make later interest rate adjustments. Typically, this initial rate is lower than the rate would be if it were calculated using the index or formula.

i. For example, a creditor may calculate interest rates according to a formula using the six-month Treasury bill rate plus a 2 percent margin. If the current Treasury bill rate is 10 percent, the creditor may forgo the 2 percent spread and charge only 10 percent for a limited time, instead of setting an initial rate of 12 percent, or the creditor may disregard the index or formula and set the initial rate at 9 percent.

ii. When creditors disclose in the account-opening disclosures an initial rate that is not calculated using the index or formula for later rate adjustments, the disclosure should reflect:

A. The initial rate (expressed as a periodic rate and a corresponding annual percentage rate), together with a statement of how long the initial rate will remain in effect;

B. The current rate that would have been applied using the index or formula (also expressed as a periodic rate and a corresponding annual percentage rate); and

C. The other variable-rate information required by § 226.6(b)(4)(ii).

*6(b)(4)(iii) Rate changes not due to index or formula.*

1. *Events that cause the initial rate to change.*

i. *Changes based on expiration of time period.* If the initial rate will change at the expiration of a time period, creditors that disclose the initial rate in the account-opening disclosure must identify the expiration date and the fact that the initial rate will end at that time.

ii. *Changes based on specified contract terms.* If the account agreement provides that the creditor may change the initial rate upon the occurrence of a specified event or events, the creditor must identify the events or events. Examples include the consumer not making the required minimum payment when due, or the termination of an employee preferred rate when the employment relationship is terminated.

2. *Rate that will apply after initial rate changes.*

i. *Increased margins.* If the initial rate is based on an index and the rate may increase due to a change in the margin applied to the index, the creditor must disclose the increased margin. If more than one margin could apply, the creditor may disclose the highest margin.

ii. *Risk-based pricing.* In some plans, the amount of the rate change depends on how the creditor weighs the occurrence of events specified in the account agreement that authorize the creditor to change rates, as well as other factors. Creditors must state the increased rate that may apply. At the creditor's option, the creditor may state the possible rates as a range, or by stating only the highest rate that could be assessed. The creditor must disclose the period for which the increased rate will remain in effect, such as "until you make three timely payments," or if there is no limitation, the fact that the increased rate may remain indefinitely.

3. *Effect of rate change on balances.* Creditors must disclose information to consumers about the balance to which the new rate will apply and the balance to which the current rate at the time of the change will apply. Card issuers subject to § 226.55 may be subject to certain restrictions on the application of increased rates to certain balances.

*6(b)(5) Additional disclosures for open-end (not home-secured) plans.*

*6(b)(5)(i) Voluntary credit insurance, debt cancellation or debt suspension.*

1. *Timing.* Under § 226.4(d), disclosures required to exclude the cost of voluntary credit insurance or debt cancellation or debt suspension coverage from the finance charge must be provided before the consumer agrees to the purchase of the insurance or coverage. Creditors comply with § 226.6(b)(5)(i) if they provide those disclosures in accordance with § 226.4(d). For example, if the disclosures required by § 226.4(d) are provided at application, creditors need not repeat those disclosures at account opening.

*6(b)(5)(ii) Security interests.*

1. *General.* Creditors are not required to use specific terms to describe a security interest, or to explain the type of security or the creditor's rights with respect to the collateral.

2. *Identification of property.* Creditors sufficiently identify collateral by type by stating, for example, *motor vehicle* or *household appliances.* (Creditors should be aware, however, that the federal credit practices rules, as well as some state laws, prohibit certain security interests in household goods.) The creditor may, at its option, provide a more specific identification (for example, a model and serial number.)

3. *Spreader clause.* If collateral for preexisting credit with the creditor will secure the plan being opened, the creditor must disclose that fact. (Such security interests may be known as "spreader" or "dragnet" clauses, or as "cross-collateralization" clauses.) The creditor need not specifically identify the collateral; a reminder such as "collateral securing other loans with us may also secure this loan" is sufficient. At the creditor's option, a more specific description of the property involved may be given.

4. *Additional collateral.* If collateral is required when advances reach a certain

amount, the creditor should disclose the information available at the time of the account-opening disclosures. For example, if the creditor knows that a security interest will be taken in household goods if the consumer's balance exceeds $1,000, the creditor should disclose accordingly. If the creditor knows that security will be required if the consumer's balance exceeds $1,000, but the creditor does not know what security will be required, the creditor must disclose on the initial disclosure statement that security will be required if the balance exceeds $1,000, and the creditor must provide a change-in-terms notice under § 226.9(c) at the time the security is taken. (See comment 6(b)(5)(ii)–2.)

5. *Collateral from third party.* Security interests taken in connection with the plan must be disclosed, whether the collateral is owned by the consumer or a third party.

*6(b)(5)(iii) Statement of billing rights.*

1. See the commentary to Model Forms G–3(A) and G–4(A).

*Section 226.7—Periodic Statement*

1. *Multifeatured plans.* Some plans involve a number of different features, such as purchases, cash advances, or overdraft checking. Groups of transactions subject to different finance charge terms because of the dates on which the transactions took place are treated like different features for purposes of disclosures on the periodic statements. The commentary includes additional guidance for multifeatured plans.

*7(a) Rules affecting home-equity plans.*

*7(a)(1) Previous balance.*

1. *Credit balances.* If the previous balance is a credit balance, it must be disclosed in such a way so as to inform the consumer that it is a credit balance, rather than a debit balance.

2. *Multifeatured plans.* In a multifeatured plan, the previous balance may be disclosed either as an aggregate balance for the account or as separate balances for each feature (for example, a previous balance for purchases and a previous balance for cash advances). If separate balances are disclosed, a total previous balance is optional.

3. *Accrued finance charges allocated from payments.* Some open-end credit plans provide that the amount of the finance charge that has accrued since the consumer's last payment is directly deducted from each new payment, rather than being separately added to each statement and reflected as an increase in the obligation. In such a plan, the previous balance need not reflect finance charges accrued since the last payment.

*7(a)(2) Identification of transactions.*

1. *Multifeatured plans.* In identifying transactions under § 226.7(a)(2) for multifeatured plans, creditors may, for example, choose to arrange transactions by feature (such as disclosing sale transactions separately from cash advance transactions) or in some other clear manner, such as by arranging the transactions in general chronological order.

2. *Automated teller machine (ATM) charges imposed by other institutions in shared or interchange systems.* A charge imposed on the cardholder by an institution other than the card issuer for the use of the other institution's ATM in a shared or interchange system and included by the terminal-operating institution in the amount of the transaction need not be separately disclosed on the periodic statement.

*7(a)(3) Credits.*

1. *Identification—sufficiency.* The creditor need not describe each credit by type (returned merchandise, rebate of finance charge, etc.)—"credit" would suffice—except if the creditor is using the periodic statement to satisfy the billing-error correction notice requirement. (See the commentary to § 226.13(e) and (f).)

2. *Format.* A creditor may list credits relating to credit extensions (payments, rebates, etc.) together with other types of credits (such as deposits to a checking account), as long as the entries are identified so as to inform the consumer which type of credit each entry represents.

3. *Date.* If only one date is disclosed (that is, the crediting date as required by the regulation), no further identification of that date is necessary. More than one date may be disclosed for a single entry, as long as it is clear which date represents the date on which credit was given.

4. *Totals.* A total of amounts credited during the billing cycle is not required.

*7(a)(4) Periodic rates.*

1. *Disclosure of periodic rates—whether or not actually applied.* Except as provided in § 226.7(a)(4)(ii), any periodic rate that may be used to compute finance charges (and its corresponding annual percentage rate) must be disclosed whether or not it is applied during the billing cycle. For example:

i. If the consumer's account has both a purchase feature and a cash advance feature, the creditor must disclose the rate for each, even if the consumer only makes purchases on the account during the billing cycle.

ii. If the rate varies (such as when it is tied to a particular index), the creditor must disclose each rate in effect during the cycle for which the statement was issued.

2. *Disclosure of periodic rates required only if imposition possible.* With regard to the periodic rate disclosure (and its corresponding annual percentage rate), only rates that *could have* been imposed during the billing cycle reflected on the periodic statement need to be disclosed. For example:

i. If the creditor is changing rates effective during the next billing cycle (because of a variable-rate plan), the rates required to be disclosed under § 226.7(a)(4) are only those in effect during the billing cycle reflected on the periodic statement. For example, if the monthly rate applied during May was 1.5%, but the creditor will increase the rate to 1.8% effective June 1, 1.5% (and its corresponding annual percentage rate) is the only required disclosure under § 226.7(a)(4) for the periodic statement reflecting the May account activity.

ii. If rates applicable to a particular type of transaction changed after a certain date and the old rate is only being applied to transactions that took place prior to that date, the creditor need not continue to disclose the old rate for those consumers that have no outstanding balances to which that rate could be applied.

3. *Multiple rates—same transaction.* If two or more periodic rates are applied to the same balance for the *same* type of transaction (for example, if the finance charge consists of a monthly periodic rate of 1.5% applied to the outstanding balance and a required credit life insurance component calculated at 0.1% per month on the same outstanding balance), the creditor may do either of the following:

i. Disclose each periodic rate, the range of balances to which it is applicable, and the corresponding annual percentage rate for each. (For example, 1.5% monthly, 18% annual percentage rate; 0.1% monthly, 1.2% annual percentage rate.)

ii. Disclose one composite periodic rate (that is, 1.6% per month) along with the applicable range of balances and the corresponding annual percentage rate.

4. *Corresponding annual percentage rate.* In disclosing the annual percentage rate that corresponds to each periodic rate, the creditor may use "corresponding annual percentage rate," "nominal annual percentage rate," "corresponding nominal annual percentage rate," or similar phrases.

5. *Rate same as actual annual percentage rate.* When the corresponding rate is the same as the annual percentage rate disclosed under § 226.7(a)(7), the creditor need disclose only one annual percentage rate, but must use the phrase "annual percentage rate."

6. *Range of balances.* See comment 6(a)(1)(ii)–1. A creditor is not required to adjust the range of balances disclosure to reflect the balance below which only a minimum charge applies.

*7(a)(5) Balance on which finance charge computed.*

1. *Limitation to periodic rates.* Section 226.7(a)(5) only requires disclosure of the balance(s) to which a periodic rate was applied and does not apply to balances on which other kinds of finance charges (such as transaction charges) were imposed. For example, if a consumer obtains a $1,500 cash advance subject to both a 1% transaction fee and a 1% monthly periodic rate, the creditor need only disclose the balance subject to the monthly rate (which might include portions of earlier cash advances not paid off in previous cycles).

2. *Split rates applied to balance ranges.* If split rates were applied to a balance because different portions of the balance fall within two or more balance ranges, the creditor need not separately disclose the portions of the balance subject to such different rates since the range of balances to which the rates apply has been separately disclosed. For example, a creditor could disclose a balance of $700 for purchases even though a monthly periodic rate of 1.5% applied to the first $500, and a monthly periodic rate of 1% to the remainder. This option to disclose a combined balance does not apply when the finance charge is computed by applying the split rates to each day's balance (in contrast, for example, to applying the rates to the average daily balance). In that case, the balances must be disclosed using any of the options that are available if two or more daily rates are imposed. (*See* comment 7(a)(5)–5.)

3. *Monthly rate on average daily balance.* Creditors may apply a monthly periodic rate to an average daily balance.

4. *Multifeatured plans.* In a multifeatured plan, the creditor must disclose a separate balance (or balances, as applicable) to which

a periodic rate was applied for each feature or group of features subject to different periodic rates or different balance computation methods. Separate balances are not required, however, merely because a grace period is available for some features but not others. A total balance for the entire plan is optional. This does not affect how many balances the creditor must disclose—or may disclose—within each feature. (*See,* for example, comment 7(a)(5)–5.)

5. *Daily rate on daily balances.* i. If the finance charge is computed on the balance each day by application of one or more daily periodic rates, the balance on which the finance charge was computed may be disclosed in any of the following ways for each feature:

ii. If a single daily periodic rate is imposed, the balance to which it is applicable may be stated as:

A. A balance for each day in the billing cycle.

B. A balance for each day in the billing cycle on which the balance in the account changes.

C. The sum of the daily balances during the billing cycle.

D. The average daily balance during the billing cycle, in which case the creditor shall explain that the average daily balance is or can be multiplied by the number of days in the billing cycle and the periodic rate applied to the product to determine the amount of the finance charge.

iii. If two or more daily periodic rates may be imposed, the balances to which the rates are applicable may be stated as:

A. A balance for each day in the billing cycle.

B. A balance for each day in the billing cycle on which the balance in the account changes.

C. Two or more average daily balances, each applicable to the daily periodic rates imposed for the time that those rates were in effect, as long as the creditor explains that the finance charge is or may be determined by (*1*) multiplying each of the average balances by the number of days in the billing cycle (or if the daily rate varied during the cycle, by multiplying by the number of days the applicable rate was in effect), (*2*) multiplying each of the results by the applicable daily periodic rate, and (*3*) adding these products together.

6. *Explanation of balance computation method.* See the commentary to 6(a)(1)(iii).

7. *Information to compute balance.* In connection with disclosing the finance charge balance, the creditor need not give the consumer all of the information necessary to compute the balance if that information is not otherwise required to be disclosed. For example, if current purchases are included from the date they are posted to the account, the posting date need not be disclosed.

8. *Non-deduction of credits.* The creditor need not specifically identify the total dollar amount of credits not deducted in computing the finance charge balance. Disclosure of the amount of credits not deducted is accomplished by listing the credits (§ 226.7(a)(3)) and indicating which credits will not be deducted in determining the balance (for example, "credits after the 15th of the month are not deducted in computing the finance charge.").

9. *Use of one balance computation method explanation when multiple balances disclosed.* Sometimes the creditor will disclose more than one balance to which a periodic rate was applied, even though each balance was computed using the same balance computation method. For example, if a plan involves purchases and cash advances that are subject to different rates, more than one balance must be disclosed, even though the same computation method is used for determining the balance for each feature. In these cases, one explanation of the balance computation method is sufficient. Sometimes the creditor separately discloses the portions of the balance that are subject to different rates because different portions of the balance fall within two or more balance ranges, even when a combined balance disclosure would be permitted under comment 7(a)(5)–2. In these cases, one explanation of the balance computation method is also sufficient (assuming, of course, that all portions of the balance were computed using the same method).

*7(a)(6) Amount of finance charge and other charges.*

*Paragraph 7(a)(6)(i).*

1. *Total.* A total finance charge amount for the plan is not required.

2. *Itemization—types of finance charges.* Each type of finance charge (such as periodic rates, transaction charges, and minimum charges) imposed during the cycle must be separately itemized; for example, disclosure of only a combined finance charge attributable to both a minimum charge and transaction charges would not be permissible. Finance charges of the same type may be disclosed, however, individually or as a total. For example, five transaction charges of $1 may be listed separately or as $5.

3. *Itemization—different periodic rates.* Whether different periodic rates are applicable to different types of transactions or to different balance ranges, the creditor may give the finance charge attributable to each rate or may give a total finance charge amount. For example, if a creditor charges 1.5% per month on the first $500 of a balance and 1% per month on amounts over $500, the creditor may itemize the two components ($7.50 and $1.00) of the $8.50 charge, or may disclose $8.50.

4. *Multifeatured plans.* In a multifeatured plan, in disclosing the amount of the finance charge attributable to the application of periodic rates no total periodic rate disclosure for the entire plan need be given.

5. *Finance charges not added to account.* A finance charge that is not included in the new balance because it is payable to a third party (such as required life insurance) must still be shown on the periodic statement as a finance charge.

6. *Finance charges other than periodic rates.* See comment 6(a)(1)(iv)–1 for examples.

7. *Accrued finance charges allocated from payments.* Some plans provide that the amount of the finance charge that has accrued since the consumer's last payment is directly deducted from each new payment, rather than being separately added to each statement and therefore reflected as an increase in the obligation. In such a plan, no disclosure is required of finance charges that have accrued since the last payment.

8. *Start-up fees.* Points, loan fees, and similar finance charges relating to the opening of the account that are paid prior to the issuance of the first periodic statement need not be disclosed on the periodic statement. If, however, these charges are financed as part of the plan, including charges that are paid out of the first advance, the charges must be disclosed as part of the finance charge on the first periodic statement. However, they need not be factored into the annual percentage rate. (*See* § 226.14(c)(3).)

*Paragraph 7(a)(6)(ii).*

1. *Identification.* In identifying any *other charges* actually imposed during the billing cycle, the type is adequately described as *late charge* or *membership fee,* for example. Similarly, *closing costs* or *settlement costs,* for example, may be used to describe charges imposed in connection with real estate transactions that are excluded from the finance charge under § 226.4(c)(7), if the same term (such as *closing costs*) was used in the initial disclosures and if the creditor chose to itemize and individually disclose the costs included in that term. Even though the taxes and filing or notary fees excluded from the finance charge under § 226.4(e) are not required to be disclosed as *other charges* under § 226.6(a)(2), these charges may be included in the amount shown as *closing costs* or *settlement costs* on the periodic statement, if the charges were itemized and disclosed as part of the *closing costs* or *settlement costs* on the initial disclosure statement. (*See* comment 6(a)(2)–1 for examples of *other charges.*)

2. *Date.* The date of imposing or debiting *other charges* need not be disclosed.

3. *Total.* Disclosure of the total amount of other charges is optional.

4. *Itemization—types of other charges.* Each type of *other charge* (such as late-payment charges, over-the-credit-limit charges, and membership fees) imposed during the cycle must be separately itemized; for example, disclosure of only a total of *other charges* attributable to both an over-the-credit-limit charge and a late-payment charge would not be permissible. *Other charges* of the same type may be disclosed, however, individually or as a total. For example, three fees of $3 for providing copies related to the resolution of a billing error could be listed separately or as $9.

*7(a)(7) Annual percentage rate.*

1. *Plans subject to the requirements of § 226.5b.* For home-equity plans subject to the requirements of § 226.5b, creditors are not required to disclose an effective annual percentage rate. Creditors that state an annualized rate in addition to the corresponding annual percentage rate required by § 226.7(a)(4) must calculate that rate in accordance with § 226.14(c).

2. *Labels.* Creditors that choose to disclose an annual percentage rate calculated under § 226.14(c) and label the figure as "annual percentage rate" must label the periodic rate expressed as an annualized rate as the

"corresponding APR," "nominal APR," or a similar phrase as provided in comment 7(a)(4)–4. Creditors also comply with the label requirement if the rate calculated under § 226.14(c) is described as the "effective APR" or something similar. 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 represent different values, creditors must label the rates differently to meet the clear and conspicuous standard under § 226.5(a)(1).

*7(a)(8) Grace period.*

1. *Terminology.* Although the creditor is required to indicate any time period the consumer may have to pay the balance outstanding without incurring additional finance charges, no specific wording is required, so long as the language used is consistent with that used on the account-opening disclosure statement. For example, "To avoid additional finance charges, pay the new balance before _____" would suffice.

*7(a)(9) Address for notice of billing errors.*

1. *Terminology.* The periodic statement should indicate the general purpose for the address for billing-error inquiries, although a detailed explanation or particular wording is not required.

2. *Telephone number.* A telephone number, e-mail address, or Web site location may be included, but the mailing address for billing-error inquiries, which is the required disclosure, must be clear and conspicuous. The address is deemed to be clear and conspicuous if a precautionary instruction is included that telephoning or notifying the creditor by e-mail or Web site will not preserve the consumer's billing rights, unless the creditor has agreed to treat billing error notices provided by electronic means as written notices, in which case the precautionary instruction is required only for telephoning.

*7(a)(10) Closing date of billing cycle; new balance.*

1. *Credit balances.* See comment 7(a)(1)–1.

2. *Multifeatured plans.* In a multifeatured plan, the new balance may be disclosed for each feature or for the plan as a whole. If separate new balances are disclosed, a total new balance is optional.

3. *Accrued finance charges allocated from payments.* Some plans provide that the amount of the finance charge that has accrued since the consumer's last payment is directly deducted from each new payment, rather than being separately added to each statement and therefore reflected as an increase in the obligation. In such a plan, the new balance need not reflect finance charges accrued since the last payment.

*7(b) Rules affecting open-end (not home-secured) plans.*

*7(b) Rules affecting open-end (not home-secured) plans.*

1. *Deferred interest or similar transactions.* Creditors offer a variety of payment plans for purchases that permit consumers to avoid interest charges if the purchase balance is paid in full by a certain date. "Deferred interest" has the same meaning as in § 226.16(h)(2) and associated commentary. The following provides guidance for a deferred interest or similar plan where, for example, no interest charge is imposed on a $500 purchase made in January if the $500 balance is paid by July 31.

i. *Annual percentage rates.* Under § 226.7(b)(4), creditors must disclose each annual percentage rate that may be used to compute the interest charge. Under some plans with a deferred interest or similar feature, if the deferred interest balance is not paid by a certain date, July 31 in this example, interest charges applicable to the billing cycles between the date of purchase in January and July 31 may be imposed. Annual percentage rates that may apply to the deferred interest balance ($500 in this example) if the balance is not paid in full by July 31 must appear on periodic statements for the billing cycles between the date of purchase and July 31. However, if the consumer does not pay the deferred interest balance by July 31, the creditor is not required to identify, on the periodic statement disclosing the interest charge for the deferred interest balance, annual percentage rates that have been disclosed in previous billing cycles between the date of purchase and July 31.

ii. *Balances subject to periodic rates.* Under § 226.7(b)(5), creditors must disclose the balances subject to interest during a billing cycle. The deferred interest balance ($500 in this example) is not subject to interest for billing cycles between the date of purchase and July 31 in this example. Periodic statements sent for those billing cycles should not include the deferred interest balance in the balance disclosed under § 226.7(b)(5). This amount must be separately disclosed on periodic statements and identified by a term other than the term used to identify the balance disclosed under § 226.7(b)(5) (such as "deferred interest balance"). During any billing cycle in which an interest charge on the deferred interest balance is debited to the account, the balance disclosed under § 226.7(b)(5) should include the deferred interest balance for that billing cycle.

iii. *Amount of interest charge.* Under § 226.7(b)(6)(ii), creditors must disclose interest charges imposed during a billing cycle. For some deferred interest purchases, the creditor may impose interest from the date of purchase if the deferred interest balance ($500 in this example) is not paid in full by July 31 in this example, but otherwise will not impose interest for billing cycles between the date of purchase and July 31. Periodic statements for billing cycles preceding July 31 in this example should not include in the interest charge disclosed under § 226.7(b)(6)(ii) the amounts a consumer may owe if the deferred interest balance is not paid in full by July 31. In this example, the February periodic statement should not identify as interest charges interest attributable to the $500 January purchase. This amount must be separately disclosed on periodic statements and identified by a term other than "interest charge" (such as "contingent interest charge" or "deferred interest charge"). The interest charge on a deferred interest balance should be reflected on the periodic statement under § 226.7(b)(6)(ii) for the billing cycle in which the interest charge is debited to the account.

iv. *Due date to avoid obligation for finance charges under a deferred interest or similar program.* Section 226.7(b)(14) requires disclosure on periodic statements of the date by which any outstanding balance subject to a deferred interest or similar program must be paid in full in order to avoid the obligation for finance charges on such balance. This disclosure must appear on the front of each periodic statement issued during the deferred interest period beginning with the first periodic statement issued during the deferred interest period that reflects the deferred interest or similar transaction.

*7(b)(1) Previous balance.*

1. *Credit balances.* If the previous balance is a credit balance, it must be disclosed in such a way so as to inform the consumer that it is a credit balance, rather than a debit balance.

2. *Multifeatured plans.* In a multifeatured plan, the previous balance may be disclosed either as an aggregate balance for the account or as separate balances for each feature (for example, a previous balance for purchases and a previous balance for cash advances). If separate balances are disclosed, a total previous balance is optional.

3. *Accrued finance charges allocated from payments.* Some open-end credit plans provide that the amount of the finance charge that has accrued since the consumer's last payment is directly deducted from each new payment, rather than being separately added to each statement and reflected as an increase in the obligation. In such a plan, the previous balance need not reflect finance charges accrued since the last payment.

*7(b)(2) Identification of transactions.*

1. *Multifeatured plans.* Creditors may, but are not required to, arrange transactions by feature (such as disclosing purchase transactions separately from cash advance transactions). Pursuant to § 226.7(b)(6), however, creditors must group all fees and all interest separately from transactions and may not disclose any fees or interest charges with transactions.

2. *Automated teller machine (ATM) charges imposed by other institutions in shared or interchange systems.* A charge imposed on the cardholder by an institution other than the card issuer for the use of the other institution's ATM in a shared or interchange system and included by the terminal-operating institution in the amount of the transaction need not be separately disclosed on the periodic statement.

*7(b)(3) Credits.*

1. *Identification—sufficiency.* The creditor need not describe each credit by type (returned merchandise, rebate of finance charge, etc.)—"credit" would suffice—except if the creditor is using the periodic statement to satisfy the billing-error correction notice requirement. (*See* the commentary to § 226.13(e) and (f).) Credits may be distinguished from transactions in any way that is clear and conspicuous, for example, by use of debit and credit columns or by use of plus signs and/or minus signs.

2. *Date.* If only one date is disclosed (that is, the crediting date as required by the regulation), no further identification of that date is necessary. More than one date may be

disclosed for a single entry, as long as it is clear which date represents the date on which credit was given.

3. *Totals.* A total of amounts credited during the billing cycle is not required.

*7(b)(4) Periodic rates.*

1. *Disclosure of periodic interest rates—whether or not actually applied.* Except as provided in § 226.7(b)(4)(ii), any periodic interest rate that may be used to compute finance charges, expressed as and labeled "Annual Percentage Rate," must be disclosed whether or not it is applied during the billing cycle. For example:

i. If the consumer's account has both a purchase feature and a cash advance feature, the creditor must disclose the annual percentage rate for each, even if the consumer only makes purchases on the account during the billing cycle.

ii. If the annual percentage rate varies (such as when it is tied to a particular index), the creditor must disclose each annual percentage rate in effect during the cycle for which the statement was issued.

2. *Disclosure of periodic interest rates required only if imposition possible.* With regard to the periodic interest rate disclosure (and its corresponding annual percentage rate), only rates that *could have* been imposed during the billing cycle reflected on the periodic statement need to be disclosed. For example:

i. If the creditor is changing annual percentage rates effective during the next billing cycle (either because it is changing terms or because of a variable-rate plan), the annual percentage rates required to be disclosed under § 226.7(b)(4) are only those in effect during the billing cycle reflected on the periodic statement. For example, if the annual percentage rate applied during May was 18%, but the creditor will increase the rate to 21% effective June 1, 18% is the only required disclosure under § 226.7(b)(4) for the periodic statement reflecting the May account activity.

ii. If the consumer has an overdraft line that might later be expanded upon the consumer's request to include secured advances, the rates for the secured advance feature need not be given until such time as the consumer has requested and received access to the additional feature.

iii. If annual percentage rates applicable to a particular type of transaction changed after a certain date and the old rate is only being applied to transactions that took place prior to that date, the creditor need not continue to disclose the old rate for those consumers that have no outstanding balances to which that rate could be applied.

3. *Multiple rates—same transaction.* If two or more periodic rates are applied to the same balance for the same type of transaction (for example, if the interest charge consists of a monthly periodic interest rate of 1.5% applied to the outstanding balance and a required credit life insurance component calculated at 0.1% per month on the same outstanding balance), creditors must disclose the periodic interest rate, expressed as an 18% annual percentage rate and the range of balances to which it is applicable. Costs attributable to the credit life insurance component must be disclosed as a fee under § 226.7(b)(6)(iii).

4. *Fees.* Creditors that identify fees in accordance with § 226.7(b)(6)(iii) need not identify the periodic rate at which a fee would accrue if the fee remains unpaid. For example, assume a fee is imposed for a late payment in the previous cycle and that the fee, unpaid, would be included in the purchases balance and accrue interest at the rate for purchases. The creditor need not separately disclose that the purchase rate applies to the portion of the purchases balance attributable to the unpaid fee.

5. *Ranges of balances. See* comment 6(b)(4)(i)(B)–1. A creditor is not required to adjust the range of balances disclosure to reflect the balance below which only a minimum charge applies.

6. *Deferred interest transactions.* See comment 7(b)–1.i.

*7(b)(5) Balance on which finance charge computed.*

1. *Split rates applied to balance ranges.* If split rates were applied to a balance because different portions of the balance fall within two or more balance ranges, the creditor need not separately disclose the portions of the balance subject to such different rates since the range of balances to which the rates apply has been separately disclosed. For example, a creditor could disclose a balance of $700 for purchases even though a monthly periodic rate of 1.5% applied to the first $500, and a monthly periodic rate of 1% to the remainder. This option to disclose a combined balance does not apply when the interest charge is computed by applying the split rates to each day's balance (in contrast, for example, to applying the rates to the average daily balance). In that case, the balances must be disclosed using any of the options that are available if two or more daily rates are imposed. (*See* comment 7(b)(5)–4.)

2. *Monthly rate on average daily balance.* Creditors may apply a monthly periodic rate to an average daily balance.

3. *Multifeatured plans.* In a multifeatured plan, the creditor must disclose a separate balance (or balances, as applicable) to which a periodic rate was applied for each feature. Separate balances are not required, however, merely because a grace period is available for some features but not others. A total balance for the entire plan is optional. This does not affect how many balances the creditor must disclose—or may disclose—within each feature. (*See,* for example, comments 7(b)(5)–4 and 7(b)(4)–5.)

4. *Daily rate on daily balance.* i. If a finance charge is computed on the balance each day by application of one or more daily periodic interest rates, the balance on which the interest charge was computed may be disclosed in any of the following ways for each feature:

ii. If a single daily periodic interest rate is imposed, the balance to which it is applicable may be stated as:

A. A balance for each day in the billing cycle.

B. A balance for each day in the billing cycle on which the balance in the account changes.

C. The sum of the daily balances during the billing cycle.

D. The average daily balance during the billing cycle, in which case the creditor may, at its option, explain that the average daily balance is or can be multiplied by the number of days in the billing cycle and the periodic rate applied to the product to determine the amount of interest.

iii. If two or more daily periodic interest rates may be imposed, the balances to which the rates are applicable may be stated as:

A. A balance for each day in the billing cycle.

B. A balance for each day in the billing cycle on which the balance in the account changes.

C. Two or more average daily balances, each applicable to the daily periodic interest rates imposed for the time that those rates were in effect. The creditor may, at its option, explain that interest is or may be determined by (*1*) multiplying each of the average balances by the number of days in the billing cycle (or if the daily rate varied during the cycle, by multiplying by the number of days the applicable rate was in effect), (*2*) multiplying each of the results by the applicable daily periodic rate, and (*3*) adding these products together.

5. *Information to compute balance.* In connection with disclosing the interest charge balance, the creditor need not give the consumer all of the information necessary to compute the balance if that information is not otherwise required to be disclosed. For example, if current purchases are included from the date they are posted to the account, the posting date need not be disclosed.

6. *Non-deduction of credits.* The creditor need not specifically identify the total dollar amount of credits not deducted in computing the finance charge balance. Disclosure of the amount of credits not deducted is accomplished by listing the credits (§ 226.7(b)(3)) and indicating which credits will not be deducted in determining the balance (for example, "credits after the 15th of the month are not deducted in computing the interest charge.").

7. *Use of one balance computation method explanation when multiple balances disclosed.* Sometimes the creditor will disclose more than one balance to which a periodic rate was applied, even though each balance was computed using the same balance computation method. For example, if a plan involves purchases and cash advances that are subject to different rates, more than one balance must be disclosed, even though the same computation method is used for determining the balance for each feature. In these cases, one explanation or a single identification of the name of the balance computation method is sufficient. Sometimes the creditor separately discloses the portions of the balance that are subject to different rates because different portions of the balance fall within two or more balance ranges, even when a combined balance disclosure would be permitted under comment 7(b)(5)–1. In these cases, one explanation or a single identification of the name of the balance computation method is also sufficient (assuming, of course, that all portions of the balance were computed using the same method).

8. *Deferred interest transactions.* See comment 7(b)–1.ii.

*7(b)(6) Charges imposed.*

1. *Examples of charges. See* commentary to § 226.6(b)(3).

2. *Fees.* Costs attributable to periodic rates other than interest charges shall be disclosed as a fee. For example, if a consumer obtains credit life insurance that is calculated at 0.1% per month on an outstanding balance and a monthly interest rate of 1.5% applies to the same balance, the creditor must disclose the dollar cost attributable to interest as an "interest charge" and the credit insurance cost as a "fee."

3. *Total fees for calendar year to date.*

i. *Monthly statements.* Some creditors send monthly statements but the statement periods do not coincide with the calendar month. For creditors sending monthly statements, the following comply with the requirement to provide calendar year-to-date totals.

A. A creditor may disclose a calendar-year-to-date total at the end of the calendar year by aggregating fees for 12 monthly cycles, starting with the period that begins during January and finishing with the period that begins during December. For example, if statement periods begin on the 10th day of each month, the statement covering December 10, 2011 through January 9, 2012, may disclose the year-to-date total for fees imposed from January 10, 2011, through January 9, 2012. Alternatively, the creditor could provide a statement for the cycle ending January 9, 2012, showing the year-to-date total for fees imposed January 1, 2011, through December 31, 2011.

B. A creditor may disclose a calendar-year-to-date total at the end of the calendar year by aggregating fees for 12 monthly cycles, starting with the period that begins during December and finishing with the period that begins during November. For example, if statement periods begin on the 10th day of each month, the statement covering November 10, 2011 through December 9, 2011, may disclose the year-to-date total for fees imposed from December 10, 2010, through December 9, 2011.

ii. *Quarterly statements.* Creditors issuing quarterly statements may apply the guidance set forth for monthly statements to comply with the requirement to provide calendar year-to-date totals on quarterly statements.

4. *Minimum charge in lieu of interest.* A minimum charge imposed if a charge would otherwise have been determined by applying a periodic rate to a balance except for the fact that such charge is smaller than the minimum must be disclosed as a fee. For example, assume a creditor imposes a minimum charge of $1.50 in lieu of interest if the calculated interest for a billing period is less than that minimum charge. If the interest calculated on a consumer's account for a particular billing period is 50 cents, the minimum charge of $1.50 would apply. In this case, the entire $1.50 would be disclosed as a fee; the periodic statement would reflect the $1.50 as a fee, and $0 in interest.

5. *Adjustments to year-to-date totals.* In some cases, a creditor may provide a statement for the current period reflecting that fees or interest charges imposed during a previous period were waived or reversed and credited to the account. Creditors may, but are not required to, reflect the adjustment in the year-to-date totals, nor, if an adjustment is made, to provide an explanation about the reason for the adjustment. Such adjustments should not affect the total fees or interest charges imposed for the current statement period.

6. *Acquired accounts.* An institution that acquires an account or plan must include, as applicable, fees and charges imposed on the account or plan prior to the acquisition in the aggregate disclosures provided under § 226.7(b)(6) for the acquired account or plan. Alternatively, the institution may provide separate totals reflecting activity prior and subsequent to the account or plan acquisition. For example, a creditor that acquires an account or plan on August 12 of a given calendar year may provide one total for the period from January 1 to August 11 and a separate total for the period beginning on August 12.

7. *Account upgrades.* A creditor that upgrades, or otherwise changes, a consumer's plan to a different open-end credit plan must include, as applicable, fees and charges imposed for that portion of the calendar year prior to the upgrade or change in the consumer's plan in the aggregate disclosures provided pursuant to § 226.7(b)(6) for the new plan. For example, assume a consumer has incurred $125 in fees for the calendar year to date for a retail credit card account, which is then replaced by a cobranded credit card account also issued by the creditor. In this case, the creditor must reflect the $125 in fees incurred prior to the replacement of the retail credit card account in the calendar year-to-date totals provided for the cobranded credit card account. Alternatively, the institution may provide two separate totals reflecting activity prior and subsequent to the plan upgrade or change.

*7(b)(7) Change-in-terms and increased penalty rate summary for open-end (not home-secured) plans.*

1. *Location of summary tables.* If a change-in-terms notice required by § 226.9(c)(2) is provided on or with a periodic statement, a tabular summary of key changes must appear on the front of the statement. Similarly, if a notice of a rate increase due to delinquency or default or as a penalty required by § 226.9(g)(1) is provided on or with a periodic statement, information required to be provided about the increase, presented in a table, must appear on the front of the statement.

*7(b)(8) Grace period.*

1. *Terminology.* In describing the grace period, the language used must be consistent with that used on the account-opening disclosure statement. (*See* § 226.5(a)(2)(i).)

2. *Deferred interest transactions. See* comment 7(b)–1.iv.

3. *Limitations on the imposition of finance charges in § 226.54.* Section 226.7(b)(8) does not require a card issuer to disclose the limitations on the imposition of finance charges in § 226.54.

*7(b)(9) Address for notice of billing errors.*

1. *Terminology.* The periodic statement should indicate the general purpose for the address for billing-error inquiries, although a detailed explanation or particular wording is not required.

2. *Telephone number.* A telephone number, e-mail address, or Web site location may be included, but the mailing address for billing-error inquiries, which is the required disclosure, must be clear and conspicuous. The address is deemed to be clear and conspicuous if a precautionary instruction is included that telephoning or notifying the creditor by e-mail or Web site will not preserve the consumer's billing rights, unless the creditor has agreed to treat billing error notices provided by electronic means as written notices, in which case the precautionary instruction is required only for telephoning.

*7(b)(10) Closing date of billing cycle; new balance.*

1. *Credit balances. See* comment 7(b)(1)–1.

2. *Multifeatured plans.* In a multifeatured plan, the new balance may be disclosed for each feature or for the plan as a whole. If separate new balances are disclosed, a total new balance is optional.

3. *Accrued finance charges allocated from payments.* Some plans provide that the amount of the finance charge that has accrued since the consumer's last payment is directly deducted from each new payment, rather than being separately added to each statement and therefore reflected as an increase in the obligation. In such a plan, the new balance need not reflect finance charges accrued since the last payment.

*7(b)(11) Due date; late payment costs.*

1. *Informal periods affecting late payments.* Although the terms of the account agreement may provide that a card issuer may assess a late payment fee if a payment is not received by a certain date, the card issuer may have an informal policy or practice that delays the assessment of the late payment fee for payments received a brief period of time after the date upon which a card issuer has the contractual right to impose the fee. A card issuer must disclose the due date according to the legal obligation between the parties, and need not consider the end of an informal "courtesy period" as the due date under § 226.7(b)(11).

2. *Assessment of late payment fees.* Some state or other laws require that a certain number of days must elapse following a due date before a late payment fee may be imposed. In addition, a card issuer may be restricted by the terms of the account agreement from imposing a late payment fee until a payment is late for a certain number of days following a due date. For example, assume a payment is due on March 10 and the account agreement or state law provides that a late payment fee cannot be assessed before March 21. A card issuer must disclose the due date under the terms of the legal obligation (March 10 in this example), and not a date different than the due date, such as when the card issuer is restricted by the account agreement or state or other law from imposing a late payment fee unless a payment is late for a certain number of days following the due date (March 21 in this example). Consumers' rights under state law to avoid the imposition of late payment fees during a specified period following a due date are unaffected by the disclosure requirement. In this example, the card issuer would disclose March 10 as the due date for purposes of § 226.7(b)(11), but could not, under state law, assess a late payment fee before March 21.

3. *Fee or rate triggered by multiple events.* If a late payment fee or penalty rate is triggered after multiple events, such as two late payments in six months, the card issuer may, but is not required to, disclose the late payment and penalty rate disclosure each month. The disclosures must be included on any periodic statement for which a late payment could trigger the late payment fee or penalty rate, such as after the consumer made one late payment in this example. For example, if a cardholder has already made one late payment, the disclosure must be on each statement for the following five billing cycles.

4. *Range of late fees or penalty rates.* A card issuer that imposes a range of late payment fees or rates on a credit card account under an open-end (not home-secured) consumer credit plan may state the highest fee or rate along with an indication lower fees or rates could be imposed. For example, a phrase indicating the late payment fee could be "up to $29" complies with this requirement.

5. *Penalty rate in effect.* If the highest penalty rate has previously been triggered on an account, the card issuer may, but is not required to, delete the amount of the penalty rate and the warning that the rate may be imposed for an untimely payment, as not applicable. Alternatively, the card issuer may, but is not required to, modify the language to indicate that the penalty rate has been increased due to previous late payments (if applicable).

6. *Same day each month.* The requirement that the due date be the same day each month means that the due date must generally be the same numerical date. For example, a consumer's due date could be the 25th of every month. In contrast, a due date that is the same relative date but not numerical date each month, such as the third Tuesday of the month, generally would not comply with this requirement. However, a consumer's due date may be the last day of each month, even though that date will not be the same numerical date. For example, if a consumer's due date is the last day of each month, it will fall on February 28th (or February 29th in a leap year) and on August 31st.

7. *Change in due date.* A creditor may adjust a consumer's due date from time to time provided that the new due date will be the same numerical date each month on an ongoing basis. For example, a creditor may choose to honor a consumer's request to change from a due date that is the 20th of each month to the 5th of each month, or may choose to change a consumer's due date from time to time for operational reasons. See comment 2(a)(4)–3 for guidance on transitional billing cycles.

8. *Billing cycles longer than one month.* The requirement that the due date be the same day each month does not prohibit billing cycles that are two or three months, provided that the due date for each billing cycle is on the same numerical date of the month. For example, a creditor that establishes two-month billing cycles could send a consumer periodic statements disclosing due dates of January 25, March 25, and May 25.

9. *Payment due date when the creditor does not accept or receive payments by mail.* If the due date in a given month falls on a day on which the creditor does not receive or accept payments by mail and the creditor is required to treat a payment received the next business day as timely pursuant to § 226.10(d), the creditor must disclose the due date according to the legal obligation between the parties, not the date as of which the creditor is permitted to treat the payment as late. For example, assume that the consumer's due date is the 4th of every month and the creditor does not accept or receive payments by mail on Thursday, July 4. Pursuant to § 226.10(d), the creditor may not treat a mailed payment received on the following business day, Friday, July 5, as late for any purpose. The creditor must nonetheless disclose July 4 as the due date on the periodic statement and may not disclose a July 5 due date.

*7(b)(12) Repayment disclosures.*

*Paragraph 7(b)(12)(i)(F)*

1. *Minimum payment repayment estimate disclosed on the periodic statement is three years or less.* Section 226.7(b)(12)(i)(F)(*2*)(*i*) provides that a credit card issuer is not required to provide the disclosures related to repayment in 36 months if the minimum payment repayment estimate disclosed under § 226.7(b)(12)(i)(B) after rounding is 3 years or less. For example, if the minimum payment repayment estimate is 2 years 6 months to 3 years 5 months, issuers would be required under § 226.7(b)(12)(i)(B) to disclose that it would take 3 years to pay off the balance in full if making only the minimum payment. In these cases, an issuer would not be required to disclose the 36-month disclosures on the periodic statement because the minimum payment repayment estimate disclosed to the consumer on the periodic statement (after rounding) is 3 years or less.

*7(b)(12)(iv) Provision of information about credit counseling services.*

1. *Approved organizations.* Section 226.7(b)(12)(iv)(A) requires card issuers to provide information regarding at least three organizations that have been approved by the United States Trustee or a bankruptcy administrator pursuant to 11 U.S.C. 111(a)(1) to provide credit counseling services in, at the card issuer's option, either the state in which the billing address for the account is located or the state specified by the consumer. A card issuer does not satisfy the requirements in § 226.7(b)(12)(iv)(A) by providing information regarding providers that have been approved pursuant to 11 U.S.C. 111(a)(2) to offer personal financial management courses.

2. *Information regarding approved organizations.*

i. *Provision of information obtained from United States Trustee or bankruptcy administrator.* A card issuer complies with the requirements of § 226.7(b)(12)(iv)(A) if, through the toll-free number disclosed pursuant to § 226.7(b)(12)(i) or (b)(12)(ii), it provides the consumer with information obtained from the United States Trustee or a bankruptcy administrator, such as information obtained from the Web site operated by the United States Trustee. Section 226.7(b)(12)(iv)(A) does not require a card issuer to provide information that is not available from the United States Trustee or a bankruptcy administrator. If, for example, the Web site address for an organization approved by the United States Trustee is not available from the Web site operated by the United States Trustee, a card issuer is not required to provide a Web site address for that organization. However, § 226.7(b)(12)(iv)(B) requires the card issuer to, at least annually, update the information it provides for consistency with the information provided by the United States Trustee or a bankruptcy administrator.

ii. *Provision of information consistent with request of approved organization.* If requested by an approved organization, a card issuer may at its option provide, in addition to the name of the organization obtained from the United States Trustee or a bankruptcy administrator, another name used by that organization through the toll-free number disclosed pursuant to § 226.7(b)(12)(i) or (b)(12)(ii). In addition, if requested by an approved organization, a card issuer may at its option provide through the toll-free number disclosed pursuant to § 226.7(b)(12)(i) or (b)(12)(ii) a street address, telephone number, or Web site address for the organization that is different than the street address, telephone number, or Web site address obtained from the United States Trustee or a bankruptcy administrator. However, if requested by an approved organization, a card issuer must not provide information regarding that organization through the toll-free number disclosed pursuant to § 226.7(b)(12)(i) or (b)(12)(ii).

iii. *Information regarding approved organizations that provide credit counseling services in a language other than English.* A card issuer may at its option provide through the toll-free number disclosed pursuant to § 226.7(b)(12)(i) or (b)(12)(ii) information regarding approved organizations that provide credit counseling services in languages other than English. In the alternative, a card issuer may at its option state that such information is available from the Web site operated by the United States Trustee. Disclosing this Web site address does not by itself constitute a statement that organizations have been approved by the United States Trustee for purposes of comment 7(b)(12)(iv)–2.iv.

iv. *Statements regarding approval by the United States Trustee or a bankruptcy administrator.* Section 226.7(b)(12)(iv) does not require a card issuer to disclose through the toll-free number disclosed pursuant to § 226.7(b)(12)(i) or (b)(12)(ii) that organizations have been approved by the United States Trustee or a bankruptcy administrator. However, if a card issuer chooses to make such a disclosure, § 226.7(b)(12)(iv) requires that the card issuer also disclose that:

A. The United States Trustee or a bankruptcy administrator has determined that the organizations meet the minimum requirements for nonprofit pre-bankruptcy budget and credit counseling;

B. The organizations may provide other credit counseling services that have not been reviewed by the United States Trustee or a bankruptcy administrator; and

C. The United States Trustee or the bankruptcy administrator does not endorse or recommend any particular organization.

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

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

5. *Third parties.* At their option, card issuers may use a third party to establish and maintain a toll-free telephone number for use by the issuer to provide the information required by § 226.7(b)(12)(iv).

6. *Web site address.* When making the repayment disclosures on the periodic statement pursuant to § 226.7(b)(12), a card issuer at its option may also include a reference to a Web site address (in addition to the toll-free telephone number) where its customers may obtain the information required by § 226.7(b)(12)(iv), so long as the information provided on the Web site complies with § 226.7(b)(12)(iv). The Web site address disclosed must take consumers directly to the Web page where information about accessing credit counseling may be obtained. In the alternative, the card issuer may disclose the Web site address for the Web page operated by the United States Trustee where consumers may obtain information about approved credit counseling organizations. Disclosing this Web site address does not by itself constitute a statement that organizations have been approved by the United States Trustee for purposes of comment 7(b)(12)(iv)–2.iv.

7. *Advertising or marketing information.* If a consumer requests information about credit counseling services, the card issuer may not provide advertisements or marketing materials to the consumer (except for providing the name of the issuer) prior to providing the information required by § 226.7(b)(12)(iv). Educational materials that do not solicit business are not considered advertisements or marketing materials for this purpose. Examples:

i. *Toll-free telephone number.* As described in comment 7(b)(12)(iv)–4, an issuer may provide a toll-free telephone number that is designed to handle customer service calls generally, so long as the option to receive the information required by § 226.7(b)(12)(iv) through that toll-free telephone number is prominently disclosed to the consumer. Once the consumer selects the option to receive the information required by § 226.7(b)(12)(iv), the issuer may not provide advertisements or marketing materials to the consumer (except for providing the name of the issuer) prior to providing the required information.

ii. *Web page.* If the issuer discloses a link to a Web site address as part of the disclosures pursuant to comment 7(b)(12)(iv)–6, the issuer may not provide advertisements or marketing materials (except for providing the name of the issuer) on the Web page accessed by the address prior to providing the information required by § 226.7(b)(12)(iv).

*7(b)(12)(v) Exemptions.*

1. *Billing cycle where paying the minimum payment due for that billing cycle will pay the outstanding balance on the account for that billing cycle.* Under § 226.7(b)(12)(v)(C), a card issuer is exempt from the repayment disclosure requirements set forth in § 226.7(b)(12) for a particular billing cycle where paying the minimum payment due for that billing cycle will pay the outstanding balance on the account for that billing cycle. For example, if the entire outstanding balance on an account for a particular billing cycle is $20 and the minimum payment is $20, an issuer would not need to comply with the repayment disclosure requirements for that particular billing cycle. In addition, this exemption would apply to a charged-off account where payment of the entire account balance is due immediately.

*7(b)(13) Format requirements.*

1. *Combined deposit account and credit account statements.* Some financial institutions provide information about deposit account and open-end credit account activity on one periodic statement. For purposes of providing disclosures on the front of the first page of the periodic statement pursuant to § 226.7(b)(13), the first page of such a combined statement shall be the page on which credit transactions first appear.

*Section 226.8—Identifying Transactions on Periodic Statements*

*8(a) Sale credit.*

1. *Sale credit.* The term "sale credit" refers to a purchase in which the consumer uses a credit card or otherwise directly accesses an open-end line of credit (see comment 8(b)–1 if access is by means of a check) to obtain goods or services from a merchant, whether or not the merchant is the card issuer or creditor. "Sale credit" includes:

i. The purchase of funds-transfer services (such as a wire transfer) from an intermediary.

ii. The purchase of services from the card issuer or creditor. For the purchase of services that are costs imposed as part of the plan under § 226.6(b)(3), card issuers and creditors comply with the requirements for identifying transactions under this section by disclosing the fees in accordance with the requirements of § 226.7(b)(6). For the purchases of services that are not costs imposed as part of the plan, card issuers and creditors may, at their option, identify transactions under this section or in accordance with the requirements of § 226.7(b)(6).

2. *Amount—transactions not billed in full.* If sale transactions are not billed in full on any single statement, but are billed periodically in precomputed installments, the first periodic statement reflecting the transaction must show either the full amount of the transaction together with the date the transaction actually took place; or the amount of the first installment that was debited to the account together with the date of the transaction or the date on which the first installment was debited to the account. In any event, subsequent periodic statements should reflect each installment due, together with either any other identifying information required by § 226.8(a) (such as the seller's name and address in a three-party situation) or other appropriate identifying information relating the transaction to the first billing. The debiting date for the particular installment, or the date the transaction took place, may be used as the date of the transaction on these subsequent statements.

3. *Date—when a transaction takes place.*

i. If the consumer conducts the transaction in person, the date of the transaction is the calendar date on which the consumer made the purchase or order, or secured the advance.

ii. For transactions billed to the account on an ongoing basis (other than installments to pay a precomputed amount), the date of the transaction is the date on which the amount is debited to the account. This might include, for example, monthly insurance premiums.

iii. For mail, Internet, or telephone orders, a creditor may disclose as the transaction date either the invoice date, the debiting date, or the date the order was placed by telephone or via the Internet.

iv. In a foreign transaction, the debiting date may be considered the transaction date.

4. *Date—sufficiency of description.*

i. If the creditor discloses only the date of the transaction, the creditor need not identify it as the "transaction date." If the creditor discloses more than one date (for example, the transaction date and the posting date), the creditor must identify each.

ii. The month and day sufficiently identify the transaction date, unless the posting of the transaction is delayed so long that the year is needed for a clear disclosure to the consumer.

5. *Same or related persons.* i. For purposes of identifying transactions, the term *same or related persons* refers to, for example:

A. Franchised or licensed sellers of a creditor's product or service.

B. Sellers who assign or sell open-end sales accounts to a creditor or arrange for such credit under a plan that allows the consumer to use the credit only in transactions with that seller.

ii. A seller is not related to the creditor merely because the seller and the creditor have an agreement authorizing the seller to honor the creditor's credit card.

6. *Brief identification—sufficiency of description.* The "brief identification" provision in § 226.8(a)(1)(i) requires a designation that will enable the consumer to reconcile the periodic statement with the

consumer's own records. In determining the sufficiency of the description, the following rules apply:

i. While item-by-item descriptions are not necessary, reasonable precision is required. For example, "merchandise," "miscellaneous," "second-hand goods," or "promotional items" would not suffice.

ii. A reference to a department in a sales establishment that accurately conveys the identification of the types of property or services available in the department is sufficient—for example, "jewelry," or "sporting goods."

iii. A number or symbol that is related to an identification list printed elsewhere on the statement that reasonably identifies the transaction with the creditor is sufficient.

7. *Seller's name—sufficiency of description.* The requirement contemplates that the seller's name will appear on the periodic statement in essentially the same form as it appears on transaction documents provided to the consumer at the time of the sale. The seller's name may also be disclosed as, for example:

i. A more complete spelling of the name that was alphabetically abbreviated on the receipt or other credit document.

ii. An alphabetical abbreviation of the name on the periodic statement even if the name appears in a more complete spelling on the receipt or other credit document. Terms that merely indicate the form of a business entity, such as "Inc.," "Co.," or "Ltd.," may always be omitted.

8. *Location of transaction.*

i. If the seller has multiple stores or branches within a city, the creditor need not identify the specific branch at which the sale occurred.

ii. When no meaningful address is available because the consumer did not make the purchase at any fixed location of the seller, the creditor may omit the address, or may provide some other identifying designation, such as "aboard plane," "ABC Airways Flight," "customer's home," "telephone order," "Internet order" or "mail order."

*8(b) Nonsale credit.*

1. *Nonsale credit.* The term "nonsale credit" refers to any form of loan credit including, for example:

i. A cash advance.

ii. An advance on a credit plan that is accessed by overdrafts on a checking account.

iii. The use of a "supplemental credit device" in the form of a check or draft or the use of the overdraft credit plan accessed by a debit card, even if such use is in connection with a purchase of goods or services.

iv. Miscellaneous debits to remedy mispostings, returned checks, and similar entries.

2. *Amount—overdraft credit plans.* If credit is extended under an overdraft credit plan tied to a checking account or by means of a debit card tied to an overdraft credit plan:

i. The amount to be disclosed is that of the credit extension, not the face amount of the check or the total amount of the debit/credit transaction.

ii. The creditor may disclose the amount of the credit extensions on a cumulative daily basis, rather than the amount attributable to each check or each use of the debit card that accesses the credit plan.

3. *Date of transaction.* See comment 8(a)–4.

4. *Nonsale transaction—sufficiency of identification.* The creditor sufficiently identifies a nonsale transaction by describing the type of advance it represents, such as cash advance, loan, overdraft loan, or any readily understandable trade name for the credit program.

*Section 226.9—Subsequent Disclosure Requirements*

*9(a) Furnishing statement of billing rights.*

*9(a)(1) Annual statement.*

1. *General.* The creditor may provide the annual billing rights statement:

i. By sending it in one billing period per year to each consumer that gets a periodic statement for that period; or

ii. By sending a copy to all of its accountholders sometime during the calendar year but not necessarily all in one billing period (for example, sending the annual notice in connection with renewal cards or when imposing annual membership fees).

2. *Substantially similar.* See the commentary to Model Forms G–3 and G–3(A) in appendix G to part 226.

*9(a)(2) Alternative summary statement.*

1. *Changing from long-form to short form statement and vice versa.* If the creditor has been sending the long-form annual statement, and subsequently decides to use the alternative summary statement, the first summary statement must be sent no later than 12 months after the last long-form statement was sent. Conversely, if the creditor wants to switch to the long-form, the first long-form statement must be sent no later than 12 months after the last summary statement.

2. *Substantially similar.* See the commentary to Model Forms G–4 and G–4(A) in appendix G to part 226.

*9(b) Disclosures for supplemental credit access devices and additional features.*

1. *Credit access device—examples. Credit access device* includes, for example, a blank check, payee-designated check, blank draft or order, or authorization form for issuance of a check; it does not include a check issued payable to a consumer representing loan proceeds or the disbursement of a cash advance.

2. *Credit account feature—examples.* A new credit account *feature* would include, for example:

i. The addition of overdraft checking to an existing account (although the regular checks that could trigger the overdraft feature are not themselves "devices").

ii. The option to use an existing credit card to secure cash advances, when previously the card could only be used for purchases.

*Paragraph 9(b)(2).*

1. *Different finance charge terms.* Except as provided in § 226.9(b)(3) for checks that access a credit card account, if the finance charge terms are different from those previously disclosed, the creditor may satisfy the requirement to give the finance charge terms either by giving a complete set of new account-opening disclosures reflecting the terms of the added device or feature or by giving only the finance charge disclosures for the added device or feature.

*9(b)(3) Checks that access a credit card account.*

*9(b)(3)(i) Disclosures.*

1. *Front of the page containing the checks.* The following would comply with the requirement that the tabular disclosures provided pursuant to § 226.9(b)(3) appear on the front of the page containing the checks:

i. Providing the tabular disclosure on the front of the first page on which checks appear, for an offer where checks are provided on multiple pages;

ii. Providing the tabular disclosure on the front of a mini-book or accordion booklet containing the checks; or

iii. Providing the tabular disclosure on the front of the solicitation letter, when the checks are printed on the front of the same page as the solicitation letter even if the checks can be separated by the consumer from the solicitation letter using perforations.

*Paragraph 9(b)(3)(i)(D).*

1. *Grace period.* Creditors may use the following language to describe a grace period on check transactions: "Your due date is [at least] _____ days after the close of each billing cycle. We will not charge you interest on check transactions if you pay your entire balance by the due date each month." Creditors may use the following language to describe that no grace period on check transactions is offered, as applicable: "We will begin charging interest on these checks on the transaction date."

*9(c) Change in terms.*

*9(c)(1) Rules affecting home-equity plans.*

1. *Changes initially disclosed.* No notice of a change in terms need be given if the specific change is set forth initially, such as: rate increases under a properly disclosed variable-rate plan, 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 rules in § 226.5b(f) relating to home-equity plans limit the ability of a creditor to change the terms of such plans.

2. *State law issues.* Examples of issues not addressed by § 226.9(c) because they are controlled by state or other applicable law include:

i. The types of changes a creditor may make. (But see § 226.5b(f))

ii. How changed terms affect existing balances, such as when a periodic rate is changed and the consumer does not pay off the entire existing balance before the new rate takes effect.

3. *Change in billing cycle.* Whenever the creditor changes the consumer's billing cycle, it must give a change-in-terms notice if the change either affects any of the terms required to be disclosed under § 226.6(a) or increases the minimum payment, unless an exception under § 226.9(c)(1)(ii) applies; for example, the creditor must give advance notice if the creditor initially disclosed a 25-day grace period on purchases and the

consumer will have fewer days during the billing cycle change.

*9(c)(1)(i) Written notice required.*

1. *Affected consumers.* Change-in-terms notices need only go to those consumers who may be affected by the change. For example, a change in the periodic rate for check overdraft credit need not be disclosed to consumers who do not have that feature on their accounts.

2. *Timing—effective date of change.* The rule that the notice of the change in terms be provided at least 15 days before the change takes effect permits mid-cycle changes when there is clearly no retroactive effect, such as the imposition of a transaction fee. Any change in the balance computation method, in contrast, would need to be disclosed at least 15 days prior to the billing cycle in which the change is to be implemented.

3. *Timing—advance notice not required.* Advance notice of 15 days is not necessary—that is, a notice of change in terms is required, but it may be mailed or delivered as late as the effective date of the change—in two circumstances:

i. If there is an increased periodic rate or any other finance charge attributable to the consumer's delinquency or default.

ii. If the consumer agrees to the particular change. This provision is intended for use in the unusual instance when a consumer substitutes collateral or when the creditor can advance additional credit only if a change relatively unique to that consumer is made, such as the consumer's providing additional security or paying an increased minimum payment amount. Therefore, the following are not "agreements" between the consumer and the creditor for purposes of § 226.9(c)(1)(i): The consumer's general acceptance of the creditor's contract reservation of the right to change terms; the consumer's use of the account (which might imply acceptance of its terms under state law); and the consumer's acceptance of a unilateral term change that is not particular to that consumer, but rather is of general applicability to consumers with that type of account.

4. *Form of change-in-terms notice.* A complete new set of the initial disclosures containing the changed term complies with § 226.9(c)(1)(i) if the change is highlighted in some way on the disclosure statement, or if the disclosure statement is accompanied by a letter or some other insert that indicates or draws attention to the term change.

5. *Security interest change—form of notice.* A copy of the security agreement that describes the collateral securing the consumer's account may be used as the notice, when the term change is the addition of a security interest or the addition or substitution of collateral.

6. *Changes to home-equity plans entered into on or after November 7, 1989.* Section 226.9(c)(1) applies when, by written agreement under § 226.5b(f)(3)(iii), a creditor changes the terms of a home-equity plan—entered into on or after November 7, 1989—at or before its scheduled expiration, for example, by renewing a plan on terms different from those of the original plan. In disclosing the change:

i. If the index is changed, the maximum annual percentage rate is increased (to the limited extent permitted by § 226.30), or a variable-rate feature is added to a fixed-rate plan, the creditor must include the disclosures required by § 226.5b(d)(12)(x) and (d)(12)(xi), unless these disclosures are unchanged from those given earlier.

ii. If the minimum payment requirement is changed, the creditor must include the disclosures required by § 226.5b(d)(5)(iii) (and, in variable-rate plans, the disclosures required by § 226.5b(d)(12)(x) and (d)(12)(xi)) unless the disclosures given earlier contained representative examples covering the new minimum payment requirement. (See the commentary to § 226.5b(d)(5)(iii), (d)(12)(x) and (d)(12)(xi) for a discussion of representative examples.)

iii. When the terms are changed pursuant to a written agreement as described in § 226.5b(f)(3)(iii), the advance-notice requirement does not apply.

*9(c)(1)(ii) Notice not required.*

1. *Changes not requiring notice.* The following are examples of changes that do not require a change-in-terms notice:

i. A change in the consumer's credit limit.

ii. A change in the name of the credit card or credit card plan.

iii. The substitution of one insurer for another.

iv. A termination or suspension of credit privileges. (But see § 226.5b(f).)

v. Changes arising merely by operation of law; for example, if the creditor's security interest in a consumer's car automatically extends to the proceeds when the consumer sells the car.

2. *Skip features.* If a credit program allows consumers to skip or reduce one or more payments during the year, or involves temporary reductions in finance charges, no notice of the change in terms is required either prior to the reduction or upon resumption of the higher rates or payments if these features are explained on the initial disclosure statement (including an explanation of the terms upon resumption). For example, a merchant may allow consumers to skip the December payment to encourage holiday shopping, or a teachers' credit union may not require payments during summer vacation. Otherwise, the creditor must give notice prior to resuming the original schedule or rate, even though no notice is required prior to the reduction. The change-in-terms notice may be combined with the notice offering the reduction. For example, the periodic statement reflecting the reduction or skip feature may also be used to notify the consumer of the resumption of the original schedule or rate, either by stating explicitly when the higher payment or charges resume, or by indicating the duration of the skip option. Language such as "You may skip your October payment," or "We will waive your finance charges for January," may serve as the change-in-terms notice.

*9(c)(1)(iii) Notice to restrict credit.*

1. *Written request for reinstatement.* If a creditor requires the request for reinstatement of credit privileges to be in writing, the notice under § 226.9(c)(1)(iii) must state that fact.

2. *Notice not required.* A creditor need not provide a notice under this paragraph if, pursuant to the commentary to § 226.5b(f)(2), a creditor freezes a line or reduces a credit line rather than terminating a plan and accelerating the balance.

*9(c)(2) Rules affecting open-end (not home-secured) plans.*

1. *Changes initially disclosed.* Except as provided in § 226.9(g)(1), no notice of a change in terms need be given if the specific change is set forth initially, such as rate increases under a properly disclosed variable-rate plan in accordance with § 226.9(c)(2)(v)(C). In contrast, notice must be given if the contract allows the creditor to increase the rate at its discretion.

2. *State law issues.* Some issues are not addressed by § 226.9(c)(2) because they are controlled by state or other applicable laws. These issues include the types of changes a creditor may make, to the extent otherwise permitted by this regulation.

3. *Change in billing cycle.* Whenever the creditor changes the consumer's billing cycle, it must give a change-in-terms notice if the change affects any of the terms described in § 226.9(c)(2)(i), unless an exception under § 226.9(c)(2)(v) applies; for example, the creditor must give advance notice if the creditor initially disclosed a 28-day grace period on purchases and the consumer will have fewer days during the billing cycle change. See also § 226.7(b)(11)(i)(A) regarding the general requirement that the payment due date for a credit card account under an open-end (not home-secured) consumer credit plan must be the same day each month.

4. *Relationship to § 226.9(b).* If a creditor adds a feature to the account on the type of terms otherwise required to be disclosed under § 226.6, the creditor must satisfy: the requirement to provide the finance charge disclosures for the added feature under § 226.9(b); and any applicable requirement to provide a change-in-terms notice under § 226.9(c), including any advance notice that must be provided. For example, if a creditor adds a balance transfer feature to an account more than 30 days after account-opening disclosures are provided, it must give the finance charge disclosures for the balance transfer feature under § 226.9(b) as well as comply with the change-in-terms notice requirements under § 226.9(c), including providing notice of the change at least 45 days prior to the effective date of the change. Similarly, if a creditor makes a balance transfer offer on finance charge terms that are higher than those previously disclosed for balance transfers, it would also generally be required to provide a change-in-terms notice at least 45 days in advance of the effective date of the change. A creditor may provide a single notice under § 226.9(c) to satisfy the notice requirements of both paragraphs (b) and (c) of § 226.9. For checks that access a credit card account subject to the disclosure requirements in § 226.9(b)(3), a creditor is not subject to the notice requirements under § 226.9(c) even if the applicable rate or fee is higher than those previously disclosed for such checks. Thus, for example, the creditor need not wait 45 days before applying the new rate or fee for transactions made using such checks, but the creditor must make the required disclosures on or with the checks in accordance with § 226.9(b)(3).

*9(c)(2)(i) Changes where written advance notice is required.*

1. *Affected consumers.* Change-in-terms notices need only go to those consumers who may be affected by the change. For example, a change in the periodic rate for check overdraft credit need not be disclosed to consumers who do not have that feature on their accounts. If a single credit account involves multiple consumers that may be affected by the change, the creditor should refer to § 226.5(d) to determine the number of notices that must be given.

2. *Timing—effective date of change.* The rule that the notice of the change in terms be provided at least 45 days before the change takes effect permits mid-cycle changes when there is clearly no retroactive effect, such as the imposition of a transaction fee. Any change in the balance computation method, in contrast, would need to be disclosed at least 45 days prior to the billing cycle in which the change is to be implemented.

3. *Changes agreed to by the consumer.* See also comment 5(b)(1)(i)–6.

4. *Form of change-in-terms notice.* Except if § 226.9(c)(2)(iv) applies, a complete new set of the initial disclosures containing the changed term complies with § 226.9(c)(2)(i) if the change is highlighted on the disclosure statement, or if the disclosure statement is accompanied by a letter or some other insert that indicates or draws attention to the term being changed.

5. *Security interest change—form of notice.* A creditor must provide a description of any security interest it is acquiring under § 226.9(c)(2)(iv). A copy of the security agreement that describes the collateral securing the consumer's account may also be used as the notice, when the term change is the addition of a security interest or the addition or substitution of collateral.

6. *Examples.* See comment 55(a)–1 and 55(b)–3 for examples of how a card issuer that is subject to § 226.55 may comply with the timing requirements for notices required by § 226.9(c)(2)(i).

*9(c)(2)(iii) Charges not covered by § 226.6(b)(1) and (b)(2).*

1. *Applicability.* Generally, if a creditor increases any component of a charge, or introduces a new charge, that is imposed as part of the plan under § 226.6(b)(3) but is not required to be disclosed as part of the account-opening summary table under § 226.6(b)(1) and (b)(2), the creditor may either, at its option (i) provide at least 45 days' written advance notice before the change becomes effective to comply with the requirements of § 226.9(c)(2)(i), or (ii) provide notice orally or in writing, or electronically if the consumer requests the service electronically, of the amount of the charge to an affected consumer before the consumer agrees to or becomes obligated to pay the charge, at a time and in a manner that a consumer would be likely to notice the disclosure. (*See* the commentary under § 226.5(a)(1)(iii) regarding disclosure of such changes in electronic form.) For example, a fee for expedited delivery of a credit card is a charge imposed as part of the plan under § 226.6(b)(3) but is not required to be disclosed in the account-opening summary table under § 226.6(b)(1) and (b)(2). If a creditor changes the amount of that expedited delivery fee, the creditor may provide written advance notice of the change to affected consumers at least 45 days before the change becomes effective. Alternatively, the creditor may provide oral or written notice, or electronic notice if the consumer requests the service electronically, of the amount of the charge to an affected consumer before the consumer agrees to or becomes obligated to pay the charge, at a time and in a manner that the consumer would be likely to notice the disclosure. (*See* comment 5(b)(1)(ii)–1 for examples of disclosures given at a time and in a manner that the consumer would be likely to notice them.)

*9(c)(2)(iv) Disclosure requirements.*

*9(c)(2)(iv) Significant changes in account terms.*

1. *Changing margin for calculating a variable rate.* If a creditor is changing a margin used to calculate a variable rate, the creditor must disclose the amount of the new rate (as calculated using the new margin) in the table described in § 226.9(c)(2)(iv), and include a reminder that the rate is a variable rate. For example, if a creditor is changing the margin for a variable rate that uses the prime rate as an index, the creditor must disclose in the table the new rate (as calculated using the new margin) and indicate that the rate varies with the market based on the prime rate.

2. *Changing index for calculating a variable rate.* If a creditor is changing the index used to calculate a variable rate, the creditor must disclose the amount of the new rate (as calculated using the new index) and indicate that the rate varies and the how the rate is determined, as explained in § 226.6(b)(2)(i)(A). For example, if a creditor is changing from using a prime rate to using the LIBOR in calculating a variable rate, the creditor would disclose in the table the new rate (using the new index) and indicate that the rate varies with the market based on the LIBOR.

3. *Changing from a variable rate to a non-variable rate.* If a creditor is changing from a variable rate to a non-variable rate, the creditor must disclose the amount of the new rate (that is, the non-variable rate) in the table.

4. *Changing from a non-variable rate to a variable rate.* If a creditor is changing from a non-variable rate to a variable rate, the creditor must disclose the amount of the new rate (the variable rate using the index and margin), and indicate that the rate varies with the market based on the index used, such as the prime rate or the LIBOR.

5. *Changes in the penalty rate, the triggers for the penalty rate, or how long the penalty rate applies.* If a creditor is changing the amount of the penalty rate, the creditor must also redisclose the triggers for the penalty rate and the information about how long the penalty rate applies even if those terms are not changing. Likewise, if a creditor is changing the triggers for the penalty rate, the creditor must redisclose the amount of the penalty rate and information about how long the penalty rate applies. If a creditor is changing how long the penalty rate applies, the creditor must redisclose the amount of the penalty rate and the triggers for the penalty rate, even if they are not changing.

6. *Changes in fees.* If a creditor is changing part of how a fee that is disclosed in a tabular format under § 226.6(b)(1) and (b)(2) is determined, the creditor must redisclose all relevant information related to that fee regardless of whether this other information is changing. For example, if a creditor currently charges a cash advance fee of "Either $5 or 3% of the transaction amount, whichever is greater. (Max: $100)," and the creditor is only changing the minimum dollar amount from $5 to $10, the issuer must redisclose the other information related to how the fee is determined. For example, the creditor in this example would disclose the following: "Either $10 or 3% of the transaction amount, whichever is greater. (Max: $100)."

7. *Combining a notice described in § 226.9(c)(2)(iv) with a notice described in § 226.9(g)(3).* If a creditor is required to provide a notice described in § 226.9(c)(2)(iv) and a notice described in § 226.9(g)(3) to a consumer, the creditor may combine the two notices. This would occur if penalty pricing has been triggered, and other terms are changing on the consumer's account at the same time.

8. *Content.* Sample G–20 contains an example of how to comply with the requirements in § 226.9(c)(2)(iv) when a variable rate is being changed to a non-variable rate on a credit card account. The sample explains when the new rate will apply to new transactions and to which balances the current rate will continue to apply. Sample G–21 contains an example of how to comply with the requirements in § 226.9(c)(2)(iv) when (i) the late payment fee on a credit card account is being increased in accordance with a formula that depends on the outstanding balance on the account, and (ii) the returned payment fee is also being increased. The sample discloses the consumer's right to reject the changes in accordance with § 226.9(h).

9. *Clear and conspicuous standard. See* comment 5(a)(1)–1 for the clear and conspicuous standard applicable to disclosures required under § 226.9(c)(2)(iv)(A)(*1*).

10. *Terminology. See* § 226.5(a)(2) for terminology requirements applicable to disclosures required under § 226.9(c)(2)(iv)(A)(*1*).

*9(c)(2)(v) Notice not required.*

1. *Changes not requiring notice.* The following are examples of changes that do not require a change-in-terms notice:

i. A change in the consumer's credit limit except as otherwise required by § 226.9(c)(2)(vi).

ii. A change in the name of the credit card or credit card plan.

iii. The substitution of one insurer for another.

iv. A termination or suspension of credit privileges.

v. Changes arising merely by operation of law; for example, if the creditor's security interest in a consumer's car automatically extends to the proceeds when the consumer sells the car.

2. *Skip features.* i. *General.* If a credit program allows consumers to skip or reduce one or more payments during the year, or

involves temporary reductions in finance charges other than reductions in an interest rate (except if § 226.9(c)(2)(v)(B) or (c)(2)(v)(D) applies), no notice of the change in terms is required either prior to the reduction or upon resumption of the higher finance charges or payments if these features are explained on the account-opening disclosure statement (including an explanation of the terms upon resumption). For example, a merchant may allow consumers to skip the December payment to encourage holiday shopping, or a teacher's credit union may not require payments during summer vacation. Otherwise, the creditor must give notice prior to resuming the original schedule or finance charge, even though no notice is required prior to the reduction. The change-in-terms notice may be combined with the notice offering the reduction. For example, the periodic statement reflecting the reduction or skip feature may also be used to notify the consumer of the resumption of the original schedule or finance charge, either by stating explicitly when the higher payment or charges resume or by indicating the duration of the skip option. Language such as "You may skip your October payment" may serve as the change-in-terms notice.

ii. *Temporary reductions in interest rates.* If a credit program involves temporary reductions in an interest rate, no notice of the change in terms is required either prior to the reduction or upon resumption of the original rate if these features are disclosed in advance in accordance with the requirements of § 226.9(c)(2)(v)(B). Otherwise, the creditor must give notice prior to resuming the original rate, even though no notice is required prior to the reduction. The notice provided prior to resuming the original rate must comply with the timing requirements of § 226.9(c)(2)(i) and the content and format requirements of § 226.9(c)(2)(iv)(A), (B) (if applicable), (C) (if applicable), and (D). *See* comment 55(b)–3 for guidance regarding the application of § 226.55 in these circumstances.

3. *Changing from a variable rate to a non-variable rate.* If a creditor is changing a rate applicable to a consumer's account from a variable rate to a non-variable rate, the creditor must provide a notice as otherwise required under § 226.9(c) even if the variable rate at the time of the change is higher than the non-variable rate. (See comment 9(c)(2)(iv)(A)–3.)

4. *Changing from a non-variable rate to a variable rate.* If a creditor is changing a rate applicable to a consumer's account from a non-variable rate to a variable rate, the creditor must provide a notice as otherwise required under § 226.9(c) even if the non-variable rate is higher than the variable rate at the time of the change. (See comment 9(c)(2)(iv)(A)–4.)

5. *Temporary rate reductions offered by telephone.* The timing requirements of § 226.9(c)(2)(v)(B) are deemed to have been met, and written disclosures required by § 226.9(c)(2)(v)(B) may be provided as soon as reasonably practicable after the first transaction subject to a rate that will be in effect for a specified period of time (a temporary rate) if:

i. The consumer accepts the offer of the temporary rate by telephone;

ii. The creditor permits the consumer to reject the temporary rate offer and have the rate or rates that previously applied to the consumer's balances reinstated for 45 days after the creditor mails or delivers the written disclosures required by § 226.9(c)(2)(v)(B); and

iii. The disclosures required by § 226.9(c)(2)(v)(B) and the consumer's right to reject the temporary rate offer and have the rate or rates that previously applied to the consumer's account reinstated are disclosed to the consumer as part of the temporary rate offer.

6. *First listing.* The disclosures required by § 226.9(c)(2)(v)(B)(*1*) are only required to be provided in close proximity and in equal prominence to the first listing of the temporary rate in the disclosure provided to the consumer. For purposes of § 226.9(c)(2)(v)(B), the first statement of the temporary rate is the most prominent listing on the front side of the first page of the disclosure. If the temporary rate does not appear on the front side of the first page of the disclosure, then the first listing of the temporary rate is the most prominent listing of the temporary rate on the subsequent pages of the disclosure. For advertising requirements for promotional rates, see § 226.16(g).

7. *Close proximity—point of sale.* Creditors providing the disclosures required by § 226.9(c)(2)(v)(B) of this section in person in connection with financing the purchase of goods or services may, at the creditor's option, disclose the annual percentage rate that would apply after expiration of the period on a separate page or document from the temporary rate and the length of the period, provided that the disclosure of the annual percentage rate that would apply after the expiration of the period is equally prominent to, and is provided at the same time as, the disclosure of the temporary rate and length of the period.

8. *Disclosure of annual percentage rates.* If a rate disclosed pursuant to § 226.9(c)(2)(v)(B) or (c)(2)(v)(D) is a variable rate, the creditor must disclose the fact that the rate may vary and how the rate is determined. For example, a creditor could state "After October 1, 2009, your APR will be 14.99%. This APR will vary with the market based on the Prime Rate."

9. *Deferred interest or similar programs.* If the applicable conditions are met, the exception in § 226.9(c)(2)(v)(B) applies to deferred interest or similar promotional programs under which the consumer is not obligated to pay interest that accrues on a balance if that balance is paid in full prior to the expiration of a specified period of time. For purposes of this comment and § 226.9(c)(2)(v)(B), "deferred interest" has the same meaning as in § 226.16(h)(2) and associated commentary. For such programs, a creditor must disclose pursuant to § 226.9(c)(2)(v)(B)(*1*) the length of the deferred interest period and the rate that will apply to the balance subject to the deferred interest program if that balance is not paid in full prior to expiration of the deferred interest period. Examples of language that a creditor may use to make the required disclosures under § 226.9(c)(2)(v)(B)(*1*) include:

i. "No interest if paid in full in 6 months. If the balance is not paid in full in 6 months, interest will be imposed from the date of purchase at a rate of 15.99%."

ii. "No interest if paid in full by December 31, 2010. If the balance is not paid in full by that date, interest will be imposed from the transaction date at a rate of 15%."

10. *Disclosure of the terms of a workout or temporary hardship arrangement.* In order for the exception in § 226.9(c)(2)(v)(D) to apply, the disclosure provided to the consumer pursuant to § 226.9(c)(2)(v)(D)(*2*) must set forth:

i. The annual percentage rate that will apply to balances subject to the workout or temporary hardship arrangement;

ii. The annual percentage rate that will apply to such balances if the consumer completes or fails to comply with the terms of, the workout or temporary hardship arrangement;

iii. Any reduced fee or charge of a type required to be disclosed under § 226.6(b)(2)(ii), (b)(2)(iii), or (b)(2)(xii) that will apply to balances subject to the workout or temporary hardship arrangement, as well as the fee or charge that will apply if the consumer completes or fails to comply with the terms of the workout or temporary hardship arrangement;

iv. Any reduced minimum periodic payment that will apply to balances subject to the workout or temporary hardship arrangement, as well as the minimum periodic payment that will apply if the consumer completes or fails to comply with the terms of the workout or temporary hardship arrangement; and

v. If applicable, that the consumer must make timely minimum payments in order to remain eligible for the workout or temporary hardship arrangement.

11. *Index not under creditor's control. See* comment 55(b)(2)–2 for guidance on when an index is deemed to be under the card issuer's control.

*9(d) Finance charge imposed at time of transaction.*

1. *Disclosure prior to imposition.* A person imposing a finance charge at the time of honoring a consumer's credit card must disclose the amount of the charge, or an explanation of how the charge will be determined, prior to its imposition. This must be disclosed before the consumer becomes obligated for property or services that may be paid for by use of a credit card. For example, disclosure must be given before the consumer has dinner at a restaurant, stays overnight at a hotel, or makes a deposit guaranteeing the purchase of property or services.

*9(e) Disclosures upon renewal of credit or charge card.*

1. *Coverage.* This paragraph applies to credit and charge card accounts of the type subject to § 226.5a. (*See* § 226.5a(a)(5) and the accompanying commentary for discussion of the types of accounts subject to § 226.5a.) The disclosure requirements are triggered when a card issuer imposes any annual or other periodic fee on such an account or if the card

issuer has changed or amended any term of a cardholder's account required to be disclosed under § 226.6(b)(1) and (b)(2) that has not previously been disclosed to the consumer, whether or not the card issuer originally was required to provide the application and solicitation disclosures described in § 226.5a.

2. *Form.* The disclosures under this paragraph must be clear and conspicuous, but need not appear in a tabular format or in a prominent location. The disclosures need not be in a form the cardholder can retain.

3. *Terms at renewal.* Renewal notices must reflect the terms actually in effect at the time of renewal. For example, a card issuer that offers a preferential annual percentage rate to employees during their employment must send a renewal notice to employees disclosing the lower rate actually charged to employees (although the card issuer also may show the rate charged to the general public).

4. *Variable rate.* If the card issuer cannot determine the rate that will be in effect if the cardholder chooses to renew a variable-rate account, the card issuer may disclose the rate in effect at the time of mailing or delivery of the renewal notice. Alternatively, the card issuer may use the rate as of a specified date within the last 30 days before the disclosure is provided.

5. *Renewals more frequent than annual.* If a renewal fee is billed more often than annually, the renewal notice should be provided each time the fee is billed. In this instance, the fee need not be disclosed as an annualized amount. Alternatively, the card issuer may provide the notice no less than once every 12 months if the notice explains the amount and frequency of the fee that will be billed during the time period covered by the disclosure, and also discloses the fee as an annualized amount. The notice under this alternative also must state the consequences of a cardholder's decision to terminate the account after the renewal-notice period has expired. For example, if a $2 fee is billed monthly but the notice is given annually, the notice must inform the cardholder that the monthly charge is $2, the annualized fee is $24, and $2 will be billed to the account each month for the coming year unless the cardholder notifies the card issuer. If the cardholder is obligated to pay an amount equal to the remaining unpaid monthly charges if the cardholder terminates the account during the coming year but after the first month, the notice must disclose the fact.

6. *Terminating credit availability.* Card issuers have some flexibility in determining the procedures for how and when an account may be terminated. However, the card issuer must clearly disclose the time by which the cardholder must act to terminate the account to avoid paying a renewal fee, if applicable. State and other applicable law govern whether the card issuer may impose requirements such as specifying that the cardholder's response be in writing or that the outstanding balance be repaid in full upon termination.

7. *Timing of termination by cardholder.* When a card issuer provides notice under § 226.9(e)(1), a cardholder must be given at least 30 days or one billing cycle, whichever is less, from the date the notice is mailed or delivered to make a decision whether to terminate an account.

8. *Timing of notices.* A renewal notice is deemed to be provided when mailed or delivered. Similarly, notice of termination is deemed to be given when mailed or delivered.

9. *Prompt reversal of renewal fee upon termination.* In a situation where a cardholder has provided timely notice of termination and a renewal fee has been billed to a cardholder's account, the card issuer must reverse or otherwise withdraw the fee promptly. Once a cardholder has terminated an account, no additional action by the cardholder may be required.

10. *Disclosure of changes in terms not required to be disclosed pursuant to § 226.6(b)(1) and (b)(2).* Clear and conspicuous disclosure of a changed term on a periodic statement provided to a consumer prior to renewal of the consumer's account constitutes prior disclosure of that term for purposes of § 226.9(e)(1). Card issuers should refer to § 226.9(c)(2) for additional timing, content, and formatting requirements that apply to certain changes in terms under that paragraph.

*9(e)(2) Notification on periodic statements.*

1. *Combined disclosures.* If a single disclosure is used to comply with both §§ 226.9(e) and 226.7, the periodic statement must comply with the rules in §§ 226.5a and 226.7. For example, a description substantially similar to the heading describing the grace period required by § 226.5a(b)(5) must be used and the name of the balance-calculation method must be identified (if listed in § 226.5a(g)) to comply with the requirements of § 226.5a. A card issuer may include some of the renewal disclosures on a periodic statement and others on a separate document so long as there is some reference indicating that the disclosures relate to one another. All renewal disclosures must be provided to a cardholder at the same time.

2. *Preprinted notices on periodic statements.* A card issuer may preprint the required information on its periodic statements. A card issuer that does so, however, must make clear on the periodic statement when the preprinted renewal disclosures are applicable. For example, the card issuer could include a special notice (not preprinted) at the appropriate time that the renewal fee will be billed in the following billing cycle, or could show the renewal date as a regular (preprinted) entry on all periodic statements.

*9(f) Change in credit card account insurance provider.*

1. *Coverage.* This paragraph applies to credit card accounts of the type subject to § 226.5a if credit insurance (typically life, disability, and unemployment insurance) is offered on the outstanding balance of such an account. (Credit card accounts subject to § 226.9(f) are the same as those subject to § 226.9(e); *see* comment 9(e)–1.) Charge card accounts are not covered by this paragraph. In addition, the disclosure requirements of this paragraph apply only where the card issuer initiates the change in insurance provider. For example, if the card issuer's current insurance provider is merged into or acquired by another company, these disclosures would not be required. Disclosures also need not be given in cases where card issuers pay for credit insurance themselves and do not separately charge the cardholder.

2. *No increase in rate or decrease in coverage.* The requirement to provide the disclosure arises when the card issuer changes the provider of insurance, even if there will be no increase in the premium rate charged to the consumer and no decrease in coverage under the insurance policy.

3. *Form of notice.* If a substantial decrease in coverage will result from the change in provider, the card issuer either must explain the decrease or refer to an accompanying copy of the policy or group certificate for details of the new terms of coverage. (*See* the commentary to appendix G–13 to part 226.)

4. *Discontinuation of insurance.* In addition to stating that the cardholder may cancel the insurance, the card issuer may explain the effect the cancellation would have on the consumer's credit card plan.

5. *Mailing by third party.* Although the card issuer is responsible for the disclosures, the insurance provider or another third party may furnish the disclosures on the card issuer's behalf.

*9(f)(3) Substantial decrease in coverage.*

1. *Determination.* Whether a substantial decrease in coverage will result from the change in provider is determined by the two-part test in § 226.9(f)(3): First, whether the decrease is in a significant term of coverage; and second, whether the decrease might reasonably be expected to affect a cardholder's decision to continue the insurance. If both conditions are met, the decrease must be disclosed in the notice.

*9(g) Increase in rates due to delinquency or default or as a penalty.*

1. *Relationship between § 226.9(c) and (g) and § 226.55—examples.* Card issuers subject to § 226.55 are prohibited from increasing the annual percentage rate for a category of transactions on any consumer credit card account unless specifically permitted by one of the exceptions in § 226.55(b). *See* comments 55(a)–1 and 55(b)–3 and the commentary to § 226.55(b)(4) for examples that illustrate the relationship between the notice requirements of § 226.9(c) and (g) and § 226.55.

2. *Affected consumers.* If a single credit account involves multiple consumers that may be affected by the change, the creditor should refer to § 226.5(d) to determine the number of notices that must be given.

3. *Combining a notice described in § 226.9(g)(3) with a notice described in § 226.9(c)(2)(iv).* If a creditor is required to provide notices pursuant to both § 226.9(c)(2)(iv) and (g)(3) to a consumer, the creditor may combine the two notices. This would occur when penalty pricing has been triggered, and other terms are changing on the consumer's account at the same time.

4. *Content.* Sample G–22 contains an example of how to comply with the requirements in § 226.9(g)(3)(i) when the rate on a consumer's credit card account is being increased to a penalty rate as described in § 226.9(g)(1)(ii), based on a late payment that is not more than 60 days late. Sample G–23

contains an example of how to comply with the requirements in § 226.9(g)(3)(i) when the rate increase is triggered by a delinquency of more than 60 days.

5. *Clear and conspicuous standard. See* comment 5(a)(1)–1 for the clear and conspicuous standard applicable to disclosures required under § 226.9(g).

6. *Terminology. See* § 226.5(a)(2) for terminology requirements applicable to disclosures required under § 226.9(g).

*9(g)(4) Exception for decrease in credit limit.*

1. The following illustrates the requirements of § 226.9(g)(4). Assume that a creditor decreased the credit limit applicable to a consumer's account and sent a notice pursuant to § 226.9(g)(4) on January 1, stating among other things that the penalty rate would apply if the consumer's balance exceeded the new credit limit as of February 16. If the consumer's balance exceeded the credit limit on February 16, the creditor could impose the penalty rate on that date. However, a creditor could not apply the penalty rate if the consumer's balance did not exceed the new credit limit on February 16, even if the consumer's balance had exceeded the new credit limit on several dates between January 1 and February 15. If the consumer's balance did not exceed the new credit limit on February 16 but the consumer conducted a transaction on February 17 that caused the balance to exceed the new credit limit, the general rule in § 226.9(g)(1)(ii) would apply and the creditor would be required to give an additional 45 days' notice prior to imposition of the penalty rate (but under these circumstances the consumer would have no ability to cure the over-the-limit balance in order to avoid penalty pricing).

*9(h) Consumer rejection of certain significant changes in terms.*

1. *Circumstances in which § 226.9(h) does not apply.* Section 226.9(h) applies when § 226.9(c)(2)(iv)(B) requires disclosure of the consumer's right to reject a significant change to an account term. Thus, for example, § 226.9(h) does not apply to changes to the terms of home equity plans subject to the requirements of § 226.5b that are accessible by a credit or charge card because § 226.9(c)(2) does not apply to such plans. Similarly, § 226.9(h) does not apply in the following circumstances because § 226.9(c)(2)(iv)(B) does not require disclosure of the right to reject in those circumstances: (i) An increase in the required minimum periodic payment; (ii) a change in an annual percentage rate applicable to a consumer's account (such as changing the margin or index for calculating a variable rate, changing from a variable rate to a non-variable rate, or changing from a non-variable rate to a variable rate); (iii) a change in the balance computation method necessary to comply with § 226.54; and (iv) when the change results from the creditor not receiving the consumer's required minimum periodic payment within 60 days after the due date for that payment.

*9(h)(1) Right to reject.*

1. *Reasonable requirements for submission of rejections.* A creditor may establish reasonable requirements for the submission of rejections pursuant to § 226.9(h)(1). For example:

i. It would be reasonable for a creditor to require that rejections be made by the primary account holder and that the consumer identify the account number.

ii. It would be reasonable for a creditor to require that rejections be made only using the toll-free telephone number disclosed pursuant to § 226.9(c). It would also be reasonable for a creditor to designate additional channels for the submission of rejections (such as an address for rejections submitted by mail) so long as the creditor does not require that rejections be submitted through such additional channels.

iii. It would be reasonable for a creditor to require that rejections be received before the effective date disclosed pursuant to § 226.9(c) and to treat the account as not subject to § 226.9(h) if a rejection is received on or after that date. It would not, however, be reasonable to require that rejections be submitted earlier than the day before the effective date. If a creditor is unable to process all rejections received before the effective date, the creditor may delay implementation of the change in terms until all rejections have been processed. In the alternative, the creditor could implement the change on the effective date and then, on any account for which a timely rejection was received, reverse the change and remove or credit any interest charges or fees imposed as a result of the change. For example, if the effective date for a change in terms is June 15 and the creditor cannot process all rejections received by telephone on June 14 until June 16, the creditor may delay imposition of the change until June 17. Alternatively, the creditor could implement the change for all affected accounts on June 15 and then, once all rejections have been processed, return any account for which a timely rejection was received to the prior terms and ensure that the account is not assessed any additional interest or fees as a result of the change or that the account is credited for such interest or fees.

2. *Use of account following provision of notice.* A consumer does not waive or forfeit the right to reject a significant change in terms by using the account for transactions prior to the effective date of the change. Similarly, a consumer does not revoke a rejection by using the account for transactions after the rejection is received.

*9(h)(2)(ii) Prohibition on penalties.*

1. *Termination or suspension of credit availability.* Section 226.9(h)(2)(ii) does not prohibit a creditor from terminating or suspending credit availability as a result of the consumer's rejection of a significant change in terms.

2. *Solely as a result of rejection.* A creditor is prohibited from imposing a fee or charge or treating an account as in default solely as a result of the consumer's rejection of a significant change in terms. For example, if credit availability is terminated or suspended as a result of the consumer's rejection of a significant change in terms, a creditor is prohibited from imposing a periodic fee that was not charged before the consumer rejected the change (such as a closed account fee). *See* also comment 55(d)–1. However, regardless of whether credit availability is terminated or suspended as a result of the consumer's rejection, a creditor is not prohibited from continuing to charge a periodic fee that was charged before the rejection. Similarly, a creditor that charged a fee for late payment before a change was rejected is not prohibited from charging that fee after rejection of the change.

*9(h)(2)(iii) Repayment of outstanding balance.*

1. *Relevant date for repayment methods.* Once a consumer has rejected a significant change in terms, § 226.9(h)(2)(iii) prohibits the creditor from requiring repayment of the balance on the account using a method that is less beneficial to the consumer than one of the methods listed in § 226.55(c)(2). When applying the methods listed in § 226.55(c)(2) pursuant to § 226.9(h)(2)(iii), a creditor may utilize the date on which the creditor was notified of the rejection or a later date (such as the date on which the change would have gone into effect but for the rejection). For example, assume that on April 16 a creditor provides a notice pursuant to § 226.9(c) informing the consumer that the monthly maintenance fee for the account will increase effective June 1. The notice also states that the consumer may reject the increase by calling a specified toll-free telephone number before June 1 but that, if the consumer does so, credit availability for the account will be terminated. On May 5, the consumer calls the toll-free number and exercises the right to reject. If the creditor chooses to establish a five-year amortization period for the balance on the account consistent with § 226.55(c)(2)(ii), that period may begin no earlier than the date on which the creditor was notified of the rejection (May 5). However, the creditor may also begin the amortization period on the date on which the change would have gone into effect but for the rejection (June 1).

2. *Balance on the account.*

i. *In general.* When applying the methods listed in § 226.55(c)(2) pursuant to § 226.9(h)(2)(iii), the provisions in § 226.55(c)(2) and the guidance in the commentary to § 226.55(c)(2) regarding protected balances also apply to a balance on the account subject to § 226.9(h)(2)(iii). If a creditor terminates or suspends credit availability based on a consumer's rejection of a significant change in terms, the balance on the account that is subject to § 226.9(h)(2)(iii) is the balance at the end of the day on which credit availability is terminated or suspended. However, if a creditor does not terminate or suspend credit availability based on the consumer's rejection, the balance on the account subject to § 226.9(h)(2)(iii) is the balance at the end of the day on which the creditor was notified of the rejection or, at the creditor's option, a later date.

ii. *Example.* Assume that on June 16 a creditor provides a notice pursuant to § 226.9(c) informing the consumer that the annual fee for the account will increase effective August 1. The notice also states that the consumer may reject the increase by calling a specified toll-free telephone number before August 1 but that, if the consumer does so, credit availability for the account will be terminated. On July 20, the account has a purchase balance of $1,000 and the

consumer calls the toll-free number and exercises the right to reject. On July 22, a $200 purchase is charged to the account. If the creditor terminates credit availability on July 25 as a result of the rejection, the balance subject to the repayment limitations in § 226.9(h)(2)(iii) is the $1,200 purchase balance at the end of the day on July 25. However, if the creditor does not terminate credit availability as a result of the rejection, the balance subject to the repayment limitations in § 226.9(h)(2)(iii) is the $1,000 purchase balance at the end of the day on the date the creditor was notified of the rejection (July 20), although the creditor may, at its option, treat the $200 purchase as part of the balance subject to § 226.9(h)(2)(iii).

*9(h)(3) Exception.*

1. *Examples.* Section 226.9(h)(3) provides that § 226.9(h) does not apply when the creditor has not received the consumer's required minimum periodic payment within 60 days after the due date for that payment. The following examples illustrate the application of this exception:

i. *Account becomes more than 60 days delinquent before notice provided.* Assume that a credit card account is opened on January 1 of year one and that the payment due date for the account is the fifteenth day of the month. On June 20 of year two, the creditor has not received the required minimum periodic payments due on April 15, May 15, and June 15. On June 20, the creditor provides a notice pursuant to § 226.9(c) informing the consumer that a monthly maintenance fee of $10 will be charged beginning on August 4. However, § 226.9(c)(2)(iv)(B) does not require the creditor to notify the consumer of the right to reject because the creditor has not received the April 15 minimum payment within 60 days after the due date. Furthermore, the exception in § 226.9(h)(3) applies and the consumer may not reject the fee.

ii. *Account becomes more than 60 days delinquent after rejection.* Assume that a credit card account is opened on January 1 of year one and that the payment due date for the account is the fifteenth day of the month. On April 20 of year two, the creditor has not received the required minimum periodic payment due on April 15. On April 20, the creditor provides a notice pursuant to § 226.9(c) informing the consumer that an annual fee of $100 will be charged beginning on June 4. The notice further states that the consumer may reject the fee by calling a specified toll-free telephone number before June 4 but that, if the consumer does so, credit availability for the account will be terminated. On May 5, the consumer calls the toll-free telephone number and rejects the fee. Section 226.9(h)(2)(i) prohibits the creditor from charging the $100 fee to the account. If, however, the creditor does not receive the minimum payments due on April 15 and May 15 by June 15, § 226.9(h)(3) permits the creditor to charge the $100 fee. The creditor must provide a second notice of the fee pursuant to § 226.9(c), but § 226.9(c)(2)(iv)(B) does not require the creditor to disclose the right to reject and § 226.9(h)(3) does not allow the consumer to reject the fee. Similarly, the restrictions in § 226.9(h)(2)(ii) and (iii) no longer apply.

*Section 226.10—Payments*

*10(a) General rule.*

1. *Crediting date.* Section 226.10(a) does not require the creditor to post the payment to the consumer's account on a particular date; the creditor is only required to credit the payment *as of* the date of receipt.

2. *Date of receipt.* The "date of receipt" is the date that the payment instrument or other means of completing the payment reaches the creditor. For example:

i. Payment by check is received when the creditor gets it, not when the funds are collected.

ii. In a payroll deduction plan in which funds are deposited to an asset account held by the creditor, and from which payments are made periodically to an open-end credit account, payment is received on the date when it is debited to the asset account (rather than on the date of the deposit), provided the payroll deduction method is voluntary and the consumer retains use of the funds until the contractual payment date.

iii. If the consumer elects to have payment made by a third party payor such as a financial institution, through a preauthorized payment or telephone bill-payment arrangement, payment is received when the creditor gets the third party payor's check or other transfer medium, such as an electronic fund transfer, as long as the payment meets the creditor's requirements as specified under § 226.10(b).

iv. Payment made via the creditor's Web site is received on the date on which the consumer authorizes the creditor to effect the payment, even if the consumer gives the instruction authorizing that payment in advance of the date on which the creditor is authorized to effect the payment. If the consumer authorizes the creditor to effect the payment immediately, but the consumer's instruction is received after 5 p.m. or any later cut-off time specified by the creditor, the date on which the consumer authorizes the creditor to effect the payment is deemed to be the next business day.

*10(b) Specific requirements for payments.*

1. *Payment by electronic fund transfer.* A creditor may be prohibited from specifying payment by preauthorized electronic fund transfer. (See section 913 of the Electronic Fund Transfer Act.)

2. *Payment via creditor's Web site.* If a creditor promotes electronic payment via its Web site (such as by disclosing on the Web site itself that payments may be made via the Web site), any payments made via the creditor's Web site prior to the creditor's specified cut-off time, if any, would generally be conforming payments for purposes of § 226.10(b).

3. *Acceptance of nonconforming payments.* If the creditor accepts a nonconforming payment (for example, payment mailed to a branch office, when the creditor had specified that payment be sent to a different location), finance charges may accrue for the period between receipt and crediting of payments.

4. *Implied guidelines for payments.* In the absence of specified requirements for making payments (see § 226.10(b)):

i. Payments may be made at any location where the creditor conducts business.

ii. Payments may be made any time during the creditor's normal business hours.

iii. Payment may be by cash, money order, draft, or other similar instrument in properly negotiable form, or by electronic fund transfer if the creditor and consumer have so agreed.

5. *Payments made at point of sale.* If a card issuer that is a financial institution issues a credit card under an open-end (not home-secured) consumer credit plan that can be used only for transactions with a particular merchant or merchants or a credit card that is cobranded with the name of a particular merchant or merchants, and a consumer is able to make a payment on that credit card account at a retail location maintained by such a merchant, that retail location is not considered to be a branch or office of the card issuer for purposes of § 226.10(b)(3).

6. *In-person payments on credit card accounts.* For purposes of § 226.10(b)(3), payments made in person at a branch or office of a financial institution include payments made with the direct assistance of, or to, a branch or office employee, for example a teller at a bank branch. A payment made at the bank branch without the direct assistance of a branch or office employee, for example a payment placed in a branch or office mail slot, is not a payment made in person for purposes of § 226.10(b)(3).

7. *In-person payments at affiliate of card issuer.* If an affiliate of a card issuer that is a financial institution shares a name with the card issuer, such as "ABC," and accepts in-person payments on the card issuer's credit card accounts, those payments are subject to the requirements of § 226.10(b)(3).

*10(d) Crediting of payments when creditor does not receive or accept payments on due date.*

1. *Example.* A day on which the creditor does not receive or accept payments by mail may occur, for example, if the U.S. Postal Service does not deliver mail on that date.

2. *Treating a payment as late for any purpose.* See comment 5(b)(2)(ii)–2 for guidance on treating a payment as late for any purpose. When an account is not eligible for a grace period, imposing a finance charge due to a periodic interest rate does not constitute treating a payment as late.

*10(e) Limitations on fees related to method of payment.*

1. *Separate fee to allow consumers to make a payment.* For purposes of § 226.10(e), the term "separate fee" means a fee imposed on a consumer for making a payment to the consumer's account. A fee or other charge imposed if payment is made after the due date, such as a late fee or finance charge, is not a separate fee to allow consumers to make a payment for purposes of § 226.10(e).

2. *Expedited.* For purposes of § 226.10(e), the term "expedited" means crediting a payment the same day or, if the payment is received after any cut-off time established by the creditor, the next business day.

3. *Service by a customer service representative.* Service by a customer service representative of a creditor means any payment made to the consumer's account with the assistance of a live representative or agent of the creditor, including those made in person, on the telephone, or by electronic

means. A customer service representative does not include automated means of making payment that do not involve a live representative or agent of the creditor, such as a voice response unit or interactive voice response system. Service by a customer service representative includes any payment transaction which involves the assistance of a live representative or agent of the creditor, even if an automated system is required for a portion of the transaction.

*10(f) Changes by card issuer.*

1. *Address for receiving payment.* For purposes of § 226.10(f), "address for receiving payment" means a mailing address for receiving payment, such as a post office box, or the address of a branch or office at which payments on credit card accounts are accepted.

2. *Materiality.* For purposes of § 226.10(f), a "material change" means any change in the address for receiving payment or procedures for handling cardholder payments which causes a material delay in the crediting of a payment. "Material delay" means any delay in crediting payment to a consumer's account which would result in a late payment and the imposition of a late fee or finance charge. A delay in crediting a payment which does not result in a late fee or finance charge would be immaterial.

3. *Safe harbor.* (i) *General.* A card issuer may elect not to impose a late fee or finance charge on a consumer's account for the 60-day period following a change in address for receiving payment or procedures for handling cardholder payments which could reasonably be expected to cause a material delay in crediting of a payment to the consumer's account. For purposes of § 226.10(f), a late fee or finance charge is not imposed if the fee or charge is waived or removed, or an amount equal to the fee or charge is credited to the account.

(ii) *Retail location.* For a material change in the address of a retail location or procedures for handling cardholder payments at a retail location, a card issuer may impose a late fee or finance charge on a consumer's account for a late payment during the 60-day period following the date on which the change took effect. However, if a consumer is notified by a consumer no later than 60 days after the card issuer transmitted the first periodic statement that reflects the late fee or finance charge for a late payment that the late payment was caused by such change, the card issuer must waive or remove any late fee or finance charge, or credit an amount equal to any late fee or finance charge, imposed on the account during the 60-day period following the date on which the change took effect.

4. *Examples.*

i. A card issuer changes the mailing address for receiving payments by mail from a five-digit postal zip code to a nine-digit postal zip code. A consumer mails a payment using the five-digit postal zip code. The change in mailing address is immaterial and it does not cause a delay. Therefore, a card issuer may impose a late fee or finance charge for a late payment on the account.

ii. A card issuer changes the mailing address for receiving payments by mail from one post office box number to another post office box number. For a 60-day period following the change, the card issuer continues to use both post office box numbers for the collection of payments received by mail. The change in mailing address would not cause a material delay in crediting a payment because payments would be received and credited at both addresses. Therefore, a card issuer may impose a late fee or finance charge for a late payment on the account during the 60-day period following the date on which the change took effect.

iii. Same facts as paragraph ii. above, except the prior post office box number is no longer valid and mail sent to that address during the 60-day period following the change would be returned to sender. The change in mailing address is material and the change could cause a material delay in the crediting of a payment because a payment sent to the old address could be delayed past the due date. If, as a result, a consumer makes a late payment on the account during the 60-day period following the date on which the change took effect, a card issuer may not impose any late fee or finance charge for the late payment.

iv. A card issuer permanently closes a local branch office at which payments are accepted on credit card accounts. The permanent closing of the local branch office is a material change in address for receiving payment. Relying on the safe harbor, the card issuer elects not to impose a late fee or finance charge for the 60-day period following the local branch closing for late payments on consumer accounts which the issuer reasonably determines are associated with the local branch and which could reasonably be expected to have been caused by the branch closing.

v. A consumer has elected to make payments automatically to a credit card account, such as through a payroll deduction plan or a third party payor's preauthorized payment arrangement. A card issuer changes the procedures for handling such payments and as a result, a payment is delayed and not credited to the consumer's account before the due date. In these circumstances, a card issuer may not impose any late fee or finance charge during the 60-day period following the date on which the change took effect for a late payment on the account.

vi. A card issuer no longer accepts payments in person at a retail location as a conforming method of payment, which is a material change in the procedures for handling cardholder payment. In the 60-day period following the date on which the change took effect, a consumer attempts to make a payment in person at a retail location of a card issuer. As a result, the consumer makes a late payment and the issuer charges a late fee on the consumer's account. The consumer notifies the card issuer of the late fee for the late payment which was caused by the material change. In order to comply with § 226.10(f), the card issuer must waive or remove the late fee or finance charge, or credit the consumer's account in an amount equal to the late fee or finance charge.

5. *Finance charge due to periodic interest rate.* When an account is not eligible for a grace period, imposing a finance charge due to a periodic interest rate does not constitute imposition of a finance charge for a late payment for purposes of § 226.10(f).

*Section 226.11—Treatment of Credit Balances; Account Termination*

*11(a) Credit balances.*

1. *Timing of refund.* The creditor may also fulfill its obligations under § 226.11 by:

i. Refunding any credit balance to the consumer immediately.

ii. Refunding any credit balance prior to receiving a written request (under § 226.11(a)(2)) from the consumer.

iii. Refunding any credit balance upon the consumer's oral or electronic request.

iv. Making a good faith effort to refund any credit balance before 6 months have passed. If that attempt is unsuccessful, the creditor need not try again to refund the credit balance at the end of the 6-month period.

2. *Amount of refund.* The phrases *any part of the remaining credit balance* in § 226.11(a)(2) and *any part of the credit balance remaining in the account* in § 226.11(a)(3) mean the amount of the credit balance at the time the creditor is required to make the refund. The creditor may take into consideration intervening purchases or other debits to the consumer's account (including those that have not yet been reflected on a periodic statement) that decrease or eliminate the credit balance.

*Paragraph 11(a)(2).*

1. *Written requests—standing orders.* The creditor is not required to honor standing orders requesting refunds of any credit balance that may be created on the consumer's account.

*Paragraph 11(a)(3).*

1. *Good faith effort to refund.* The creditor must take positive steps to return any credit balance that has remained in the account for over 6 months. This includes, if necessary, attempts to trace the consumer through the consumer's last known address or telephone number, or both.

2. *Good faith effort unsuccessful.* Section 226.11 imposes no further duties on the creditor if a good faith effort to return the balance is unsuccessful. The ultimate disposition of the credit balance (or any credit balance of $1 or less) is to be determined under other applicable law.

*11(b) Account termination.*

*Paragraph 11(b)(1).*

1. *Expiration date.* The credit agreement determines whether or not an open-end plan has a stated expiration (maturity) date. Creditors that offer accounts with no stated expiration date are prohibited from terminating those accounts solely because a consumer does not incur a finance charge, even if credit cards or other access devices associated with the account expire after a stated period. Creditors may still terminate such accounts for inactivity consistent with § 226.11(b)(2).

*11(c) Timely settlement of estate debts*

1. *Administrator of an estate.* For purposes of § 226.11(c), the term "administrator" means an administrator, executor, or any personal representative of an estate who is authorized to act on behalf of the estate.

2. *Examples.* The following are examples of reasonable procedures that satisfy this rule:

i. A card issuer may decline future transactions and terminate the account upon receiving reasonable notice of the consumer's death.

ii. A card issuer may credit the account for fees and charges imposed after the date of receiving reasonable notice of the consumer's death.

iii. A card issuer may waive the estate's liability for all charges made to the account after receiving reasonable notice of the consumer's death.

iv. A card issuer may authorize an agent to handle matters in accordance with the requirements of this rule.

v. A card issuer may require administrators of an estate to provide documentation indicating authority to act on behalf of the estate.

vi. A card issuer may establish or designate a department, business unit, or communication channel for administrators, such as a specific mailing address or toll-free number, to handle matters in accordance with the requirements of this rule.

vii. A card issuer may direct administrators, who call a general customer service toll-free number or who send correspondence by mail to an address for general correspondence, to an appropriate customer service representative, department, business unit, or communication channel to handle matters in accordance with the requirements of this rule.

2. *Request by an administrator of an estate.* A card issuer may receive a request for the amount of the balance on a deceased consumer's account in writing or by telephone call from the administrator of an estate. If a request is made in writing, such as by mail, the request is received on the date the card issuer receives the correspondence.

3. *Timely statement of balance.* A card issuer must disclose the balance on a deceased consumer's account, upon request by the administrator of the decedent's estate. A card issuer may provide the amount, if any, by a written statement or by telephone. This does not preclude a card issuer from providing the balance amount to appropriate persons, other than the administrator, such as the spouse or a relative of the decedent, who indicate that they may pay any balance. This provision does not relieve card issuers of the requirements to provide a periodic statement, under § 226.5(b)(2). A periodic statement, under § 226.5(b)(2), may satisfy the requirements of § 226.11(c)(2), if provided within 30 days of receiving a request by an administrator of the estate.

4. *Imposition of fees and interest charges.* Section 226.11(c)(3) does not prohibit a card issuer from imposing fees and finance charges due to a periodic interest rate based on balances for days that precede the date on which the card issuer receives a request pursuant to § 226.11(c)(2). For example, if the last day of the billing cycle is June 30 and the card issuer receives a request pursuant to § 226.11(c)(2) on June 25, the card issuer may charge interest that accrued prior to June 25.

5. *Example.* A card issuer receives a request from an administrator for the amount of the balance on a deceased consumer's account on March 1. The card issuer discloses to the administrator on March 25 that the balance is $1,000. If the card issuer receives payment in full of the $1,000 on April 24, the card issuer must waive or rebate any additional interest that accrued on the $1,000 balance between March 25 and April 24. If the card issuer receives a payment of $1,000 on April 25, the card issuer is not required to waive or rebate interest charges on the $1,000 balance in respect of the period between March 25 and April 25. If the card issuer receives a partial payment of $500 on April 24, the card issuer is not required to waive or rebate interest charges on the $1,000 balance in respect of the period between March 25 and April 25.

6. *Application to joint accounts.* A card issuer may impose fees and charges on an account of a deceased consumer if a joint accountholder remains on the account. If only an authorized user remains on the account of a deceased consumer, however, then a card issuer may not impose fees and charges.

*Section 226.12—Special Credit Card Provisions*

1. *Scope.* Sections 226.12(a) and (b) deal with the issuance and liability rules for credit cards, whether the card is intended for consumer, business, or any other purposes. Sections 226.12(a) and (b) are exceptions to the general rule that the regulation applies only to consumer credit. (See §§ 226.1 and 226.3.)

2. *Definition of "accepted credit card".* For purposes of this section, "accepted credit card" means any credit card that a cardholder has requested or applied for and received, or has signed, used, or authorized another person to use to obtain credit. Any credit card issued as a renewal or substitute in accordance with § 226.12(a) becomes an accepted credit card when received by the cardholder.

*12(a) Issuance of credit cards.*

*Paragraph 12(a)(1).*

1. *Explicit request.* A request or application for a card must be explicit. For example, a request for an overdraft plan tied to a checking account does not constitute an application for a credit card with overdraft checking features.

2. *Addition of credit features.* If the consumer has a non-credit card, the addition of credit features to the card (for example, the granting of overdraft privileges on a checking account when the consumer already has a check guarantee card) constitutes issuance of a credit card.

3. *Variance of card from request.* The request or application need not correspond exactly to the card that is issued. For example:

i. The name of the card requested may be different when issued.

ii. The card may have features in addition to those reflected in the request or application.

4. *Permissible form of request.* The request or application may be oral (in response to a telephone solicitation by a card issuer, for example) or written.

5. *Time of issuance.* A credit card may be issued in response to a request made before any cards are ready for issuance (for example, if a new program is established), even if there is some delay in issuance.

6. *Persons to whom cards may be issued.* A card issuer may issue a credit card to the person who requests it, and to anyone else for whom that person requests a card and who will be an authorized user on the requester's account. In other words, cards may be sent to consumer A on A's request, and also (on A's request) to consumers B and C, who will be authorized users on A's account. In these circumstances, the following rules apply:

i. The additional cards may be imprinted in either A's name or in the names of B and C.

ii. No liability for unauthorized use (by persons other than B and C), not even the $50, may be imposed on B or C since they are merely users and not cardholders as that term is defined in § 226.2 and used in § 226.12(b); of course, liability of up to $50 for unauthorized use of B's and C's cards may be imposed on A.

iii. Whether B and C may be held liable for their own use, or on the account generally, is a matter of state or other applicable law.

7. *Issuance of non-credit cards.*

i. *General.* Under § 226.12(a)(1), a credit card cannot be issued except in response to a request or an application. (*See* comment 2(a)(15)–2 for examples of cards or devices that are and are not credit cards.) A non-credit card may be sent on an unsolicited basis by an issuer that does not propose to connect the card to any credit plan; a credit feature may be added to a previously issued non-credit card only upon the consumer's specific request.

ii. *Examples.* A purchase-price discount card may be sent on an unsolicited basis by an issuer that does not propose to connect the card to any credit plan. An issuer demonstrates that it proposes to connect the card to a credit plan by, for example, including promotional materials about credit features or account agreements and disclosures required by § 226.6. The issuer will violate the rule against unsolicited issuance if, for example, at the time the card is sent a credit plan can be accessed by the card or the recipient of the unsolicited card has been preapproved for credit that the recipient can access by contacting the issuer and activating the card.

8. *Unsolicited issuance of PINs.* A card issuer may issue personal identification numbers (PINs) to existing credit cardholders without a specific request from the cardholders, provided the PINs cannot be used alone to obtain credit. For example, the PINs may be necessary if consumers wish to use their existing credit cards at automated teller machines or at merchant locations with point of sale terminals that require PINs.

*Paragraph 12(a)(2).*

1. *Renewal.* Renewal generally contemplates the regular replacement of existing cards because of, for example, security reasons or new technology or systems. It also includes the re-issuance of cards that have been suspended temporarily, but does not include the opening of a new account after a previous account was closed.

2. *Substitution—examples.* Substitution encompasses the replacement of one card with another because the underlying account relationship has changed in some way—such as when the card issuer has:

i. Changed its name.

ii. Changed the name of the card.

iii. Changed the credit or other features available on the account. For example, the original card could be used to make purchases and obtain cash advances at teller windows. The substitute card might be usable, in addition, for obtaining cash advances through automated teller machines. (If the substitute card constitutes an access device, as defined in Regulation E, then the Regulation E issuance rules would have to be followed.) The substitution of one card with another on an unsolicited basis is not permissible, however, where in conjunction with the substitution an additional credit card account is opened and the consumer is able to make new purchases or advances under both the original and the new account with the new card. For example, if a retail card issuer replaces its credit card with a combined retailer/bank card, each of the creditors maintains a separate account, and both accounts can be accessed for new transactions by use of the new credit card, the card cannot be provided to a consumer without solicitation.

iv. Substituted a card user's name on the substitute card for the cardholder's name appearing on the original card.

v. Changed the merchant base, provided that the new card is honored by at least one of the persons that honored the original card. However, unless the change in the merchant base is the addition of an affiliate of the existing merchant base, the substitution of a new card for another on an unsolicited basis is not permissible where the account is inactive. A credit card cannot be issued in these circumstances without a request or application. For purposes of § 226.12(a), an account is inactive if no credit has been extended and if the account has no outstanding balance for the prior 24 months. (See § 226.11(b)(2).)

3. *Substitution—successor card issuer.* Substitution also occurs when a successor card issuer replaces the original card issuer (for example, when a new card issuer purchases the accounts of the original issuer and issues its own card to replace the original one). A permissible substitution exists even if the original issuer retains the existing receivables and the new card issuer acquires the right only to future receivables, provided use of the original card is cut off when use of the new card becomes possible.

4. *Substitution—non-credit-card plan.* A credit card that replaces a retailer's open-end credit plan not involving a credit card is not considered a substitute for the retailer's plan—even if the consumer used the retailer's plan. A credit card cannot be issued in these circumstances without a request or application.

5. *One-for-one rule.* An accepted card may be replaced by no more than one renewal or substitute card. For example, the card issuer may not replace a credit card permitting purchases and cash advances with two cards, one for the purchases and another for the cash advances.

6. *One-for-one rule—exceptions.* The regulation does not prohibit the card issuer from:

i. Replacing a debit/credit card with a credit card and another card with only debit functions (or debit functions plus an associated overdraft capability), since the latter card could be issued on an unsolicited basis under Regulation E.

ii. Replacing an accepted card with more than one renewal or substitute card, provided that:

A. No replacement card accesses any account not accessed by the accepted card;

B. For terms and conditions required to be disclosed under § 226.6, all replacement cards are issued subject to the same terms and conditions, except that a creditor may vary terms for which no change in terms notice is required under § 226.9(c); and

C. Under the account's terms the consumer's total liability for unauthorized use with respect to the account does not increase.

7. *Methods of terminating replaced card.* The card issuer need not physically retrieve the original card, provided the old card is voided in some way, for example:

i. The issuer includes with the new card a notification that the existing card is no longer valid and should be destroyed immediately.

ii. The original card contained an expiration date.

iii. The card issuer, in order to preclude use of the card, reprograms computers or issues instructions to authorization centers.

8. *Incomplete replacement.* If a consumer has duplicate credit cards on the same account (Card A—one type of bank credit card, for example), the card issuer may not replace the duplicate cards with one Card A and one Card B (Card B—another type of bank credit card) unless the consumer requests Card B.

9. *Multiple entities.* Where multiple entities share responsibilities with respect to a credit card issued by one of them, the entity that issued the card may replace it on an unsolicited basis, if that entity terminates the original card by voiding it in some way, as described in comment 12(a)(2)–7. The other entity or entities may not issue a card on an unsolicited basis in these circumstances.

*12(b) Liability of cardholder for unauthorized use.*

1. *Meaning of cardholder.* For purposes of this provision, cardholder includes any person (including organizations) to whom a credit card is issued for any purpose, including business. When a corporation is the cardholder, required disclosures should be provided to the corporation (as opposed to an employee user).

2. *Imposing liability.* A card issuer is not required to impose liability on a cardholder for the unauthorized use of a credit card; if the card issuer does not seek to impose liability, the issuer need not conduct any investigation of the cardholder's claim.

3. *Reasonable investigation.* If a card issuer seeks to impose liability when a claim of unauthorized use is made by a cardholder, the card issuer must conduct a reasonable investigation of the claim. In conducting its investigation, the card issuer may reasonably request the cardholder's cooperation. The card issuer may not automatically deny a claim based solely on the cardholder's failure or refusal to comply with a particular request, including providing an affidavit or filing a police report; however, if the card issuer otherwise has no knowledge of facts confirming the unauthorized use, the lack of information resulting from the cardholder's failure or refusal to comply with a particular request may lead the card issuer reasonably to terminate the investigation. The procedures involved in investigating claims may differ, but actions such as the following represent steps that a card issuer may take, as appropriate, in conducting a reasonable investigation:

i. Reviewing the types or amounts of purchases made in relation to the cardholder's previous purchasing pattern.

ii. Reviewing where the purchases were delivered in relation to the cardholder's residence or place of business.

iii. Reviewing where the purchases were made in relation to where the cardholder resides or has normally shopped.

iv. Comparing any signature on credit slips for the purchases to the signature of the cardholder or an authorized user in the card issuer's records, including other credit slips.

v. Requesting documentation to assist in the verification of the claim.

vi. Requiring a written, signed statement from the cardholder or authorized user. For example, the creditor may include a signature line on a billing rights form that the cardholder may send in to provide notice of the claim. However, a creditor may not require the cardholder to provide an affidavit or signed statement under penalty of perjury as part of a reasonable investigation.

vii. Requesting a copy of a police report, if one was filed.

viii. Requesting information regarding the cardholder's knowledge of the person who allegedly used the card or of that person's authority to do so.

4. *Checks that access a credit card account.* The liability provisions for unauthorized use under § 226.12(b)(1) only apply to transactions involving the use of a credit card, and not if an unauthorized transaction is made using a check accessing the credit card account. However, the billing error provisions in § 226.13 apply to both of these types of transactions.

*12(b)(1)(ii) Limitation on amount.*

1. *Meaning of authority.* Section 226.12(b)(1)(i) defines unauthorized use in terms of whether the user has actual, implied, or apparent authority. Whether such authority exists must be determined under state or other applicable law.

2. *Liability limits—dollar amounts.* As a general rule, the cardholder's liability for a series of unauthorized uses cannot exceed either $50 or the value obtained through the unauthorized use before the card issuer is notified, whichever is less.

3. *Implied or apparent authority.* If a cardholder furnishes a credit card and grants authority to make credit transactions to a person (such as a family member or coworker) who exceeds the authority given, the cardholder is liable for the transaction(s) unless the cardholder has notified the creditor that use of the credit card by that person is no longer authorized.

4. *Credit card obtained through robbery or fraud.* An unauthorized use includes, but is not limited to, a transaction initiated by a

person who has obtained the credit card from the consumer, or otherwise initiated the transaction, through fraud or robbery.

*12(b)(2) Conditions of liability.*

1. *Issuer's option not to comply.* A card issuer that chooses not to impose any liability on cardholders for unauthorized use need not comply with the disclosure and identification requirements discussed in § 226.12(b)(2).

*Paragraph 12(b)(2)(ii).*

1. *Disclosure of liability and means of notifying issuer.* The disclosures referred to in § 226.12(b)(2)(ii) may be given, for example, with the initial disclosures under § 226.6, on the credit card itself, or on periodic statements. They may be given at any time preceding the unauthorized use of the card.

2. *Meaning of* "*adequate notice.*" For purposes of this provision, "adequate notice" means a printed notice to a cardholder that sets forth clearly the pertinent facts so that the cardholder may reasonably be expected to have noticed it and understood its meaning. The notice may be given by any means reasonably assuring receipt by the cardholder.

*Paragraph 12(b)(2)(iii).*

1. *Means of identifying cardholder or user.* To fulfill the condition set forth in § 226.12(b)(2)(iii), the issuer must provide some method whereby the cardholder or the authorized user can be identified. This could include, for example, a signature, photograph, or fingerprint on the card or other biometric means, or electronic or mechanical confirmation.

2. *Identification by magnetic strip.* Unless a magnetic strip (or similar device not readable without physical aids) must be used in conjunction with a secret code or the like, it would not constitute sufficient means of identification. Sufficient identification also does not exist if a "pool" or group card, issued to a corporation and signed by a corporate agent who will not be a user of the card, is intended to be used by another employee for whom no means of identification is provided.

3. *Transactions not involving card.* The cardholder may not be held liable under § 226.12(b) when the card itself (or some other sufficient means of identification of the cardholder) is not presented. Since the issuer has not provided a means to identify the user under these circumstances, the issuer has not fulfilled one of the conditions for imposing liability. For example, when merchandise is ordered by telephone or the Internet by a person without authority to do so, using a credit card account number by itself or with other information that appears on the card (for example, the card expiration date and a 3- or 4-digit cardholder identification number), no liability may be imposed on the cardholder.

*12(b)(3) Notification to card issuer.*

1. *How notice must be provided.* Notice given in a normal business manner—for example, by mail, telephone, or personal visit—is effective even though it is not given to, or does not reach, some particular person within the issuer's organization. Notice also may be effective even though it is not given at the address or phone number disclosed by the card issuer under § 226.12(b)(2)(ii).

2. *Who must provide notice.* Notice of loss, theft, or possible unauthorized use need not be initiated by the cardholder. Notice is sufficient so long as it gives the "pertinent information" which would include the name or card number of the cardholder and an indication that unauthorized use has or may have occurred.

3. *Relationship to § 226.13.* The liability protections afforded to cardholders in § 226.12 do not depend upon the cardholder's following the error resolution procedures in § 226.13. For example, the written notification and time limit requirements of § 226.13 do not affect the § 226.12 protections. (See also comment 12(b)–4.)

*12(b)(5) Business use of credit cards.*

1. *Agreement for higher liability for business use cards.* The card issuer may not rely on § 226.12(b)(5) if the business is clearly not in a position to provide 10 or more cards to employees (for example, if the business has only 3 employees). On the other hand, the issuer need not monitor the personnel practices of the business to make sure that it has at least 10 employees at all times.

2. *Unauthorized use by employee.* The protection afforded to an employee against liability for unauthorized use in excess of the limits set in § 226.12(b) applies only to unauthorized use by someone other than the employee. If the employee uses the card in an unauthorized manner, the regulation sets no restriction on the employee's potential liability for such use.

*12(c) Right of cardholder to assert claims or defenses against card issuer.*

1. *Relationship to § 226.13.* The § 226.12(c) credit card "holder in due course" provision deals with the consumer's right to assert against the card issuer a claim or defense concerning property or services purchased with a credit card, if the merchant has been unwilling to resolve the dispute. Even though certain merchandise disputes, such as non-delivery of goods, may also constitute "billing errors" under § 226.13, that section operates independently of § 226.12(c). The cardholder whose asserted billing error involves undelivered goods may institute the error resolution procedures of § 226.13; but whether or not the cardholder has done so, the cardholder may assert claims or defenses under § 226.12(c). Conversely, the consumer may pay a disputed balance and thus have no further right to assert claims and defenses, but still may assert a billing error if notice of that billing error is given in the proper time and manner. An assertion that a particular transaction resulted from unauthorized use of the card could also be both a "defense" and a billing error.

2. *Claims and defenses assertible.* Section 226.12(c) merely preserves the consumer's right to assert against the card issuer any claims or defenses that can be asserted against the merchant. It does not determine what claims or defenses are valid as to the merchant; this determination must be made under state or other applicable law.

3. *Transactions excluded.* Section 226.12(c) does not apply to the use of a check guarantee card or a debit card in connection with an overdraft credit plan, or to a check guarantee card used in connection with cash-advance checks.

4. *Method of calculating the amount of credit outstanding.* The amount of the claim or defense that the cardholder may assert shall not exceed the amount of credit outstanding for the disputed transaction at the time the cardholder first notifies the card issuer or the person honoring the credit card of the existence of the claim or defense. To determine the amount of credit outstanding for purposes of this section, payments and other credits shall be applied to: (i) Late charges in the order of entry to the account; then to (ii) finance charges in the order of entry to the account; and then to (iii) any other debits in the order of entry to the account. If more than one item is included in a single extension of credit, credits are to be distributed pro rata according to prices and applicable taxes.

*12(c)(1) General rule.*

1. *Situations excluded and included.* The consumer may assert claims or defenses only when the goods or services are "purchased with the credit card." This could include mail, the Internet or telephone orders, if the purchase is charged to the credit card account. But it would exclude:

i. Use of a credit card to obtain a cash advance, even if the consumer then uses the money to purchase goods or services. Such a transaction would not involve "property or services purchased with the credit card."

ii. The purchase of goods or services by use of a check accessing an overdraft account and a credit card used solely for identification of the consumer. (On the other hand, if the credit card is used to make partial payment for the purchase and not merely for identification, the right to assert claims or defenses would apply to credit extended via the credit card, although not to the credit extended on the overdraft line.)

iii. Purchases made by use of a check guarantee card in conjunction with a cash advance check (or by cash advance checks alone). (*See* comment 12(c)–3.) A cash advance check is a check that, when written, does not draw on an asset account; instead, it is charged entirely to an open-end credit account.

iv. Purchases effected by use of either a check guarantee card or a debit card when used to draw on overdraft credit plans. (*See* comment 12(c)–3.) The debit card exemption applies whether the card accesses an asset account via point of sale terminals, automated teller machines, or in any other way, and whether the card qualifies as an "access device" under Regulation E or is only a paper based debit card. If a card serves both as an ordinary credit card and also as check guarantee or debit card, a transaction will be subject to this rule on asserting claims and defenses when used as an ordinary credit card, but not when used as a check guarantee or debit card.

*12(c)(2) Adverse credit reports prohibited.*

1. *Scope of prohibition.* Although an amount in dispute may not be reported as delinquent until the matter is resolved:

i. That amount may be reported as disputed.

ii. Nothing in this provision prohibits the card issuer from undertaking its normal

collection activities for the delinquent and undisputed portion of the account.

2. *Settlement of dispute.* A card issuer may not consider a dispute settled and report an amount disputed as delinquent or begin collection of the disputed amount until it has completed a reasonable investigation of the cardholder's claim. A reasonable investigation requires an independent assessment of the cardholder's claim based on information obtained from both the cardholder and the merchant, if possible. In conducting an investigation, the card issuer may request the cardholder's reasonable cooperation. The card issuer may not automatically consider a dispute settled if the cardholder fails or refuses to comply with a particular request. However, if the card issuer otherwise has no means of obtaining information necessary to resolve the dispute, the lack of information resulting from the cardholder's failure or refusal to comply with a particular request may lead the card issuer reasonably to terminate the investigation.

*12(c)(3) Limitations.*

*Paragraph 12(c)(3)(i)(A).*

1. *Resolution with merchant.* The consumer must have tried to resolve the dispute with the merchant. This does not require any special procedures or correspondence between them, and is a matter for factual determination in each case. The consumer is not required to seek satisfaction from the manufacturer of the goods involved. When the merchant is in bankruptcy proceedings, the consumer is not required to file a claim in those proceedings, and may instead file a claim for the property or service purchased with the credit card with the card issuer directly.

*Paragraph 12(c)(3)(i)(B).*

1. *Geographic limitation.* The question of where a transaction occurs (as in the case of mail, Internet, or telephone orders, for example) is to be determined under state or other applicable law.

*Paragraph 12(c)(3)(ii).*

1. *Merchant honoring card.* The exceptions (stated in § 226.12(c)(3)(ii)) to the amount and geographic limitations in § 226.12(c)(3)(i)(B) do not apply if the merchant merely honors, or indicates through signs or advertising that it honors, a particular credit card.

*12(d) Offsets by card issuer prohibited.*

*Paragraph 12(d)(1).*

1. *Holds on accounts.* "Freezing" or placing a hold on funds in the cardholder's deposit account is the functional equivalent of an offset and would contravene the prohibition in § 226.12(d)(1), unless done in the context of one of the exceptions specified in § 226.12(d)(2). For example, if the terms of a security agreement permitted the card issuer to place a hold on the funds, the hold would not violate the offset prohibition. Similarly, if an order of a bankruptcy court required the card issuer to turn over deposit account funds to the trustee in bankruptcy, the issuer would not violate the regulation by placing a hold on the funds in order to comply with the court order.

2. *Funds intended as deposits.* If the consumer tenders funds as a deposit (to a checking account, for example), the card issuer may not apply the funds to repay indebtedness on the consumer's credit card account.

3. *Types of indebtedness; overdraft accounts.* The offset prohibition applies to any indebtedness arising from transactions under a credit card plan, including accrued finance charges and other charges on the account. The prohibition also applies to balances arising from transactions not using the credit card itself but taking place under plans that involve credit cards. For example, if the consumer writes a check that accesses an overdraft line of credit, the resulting indebtedness is subject to the offset prohibition since it is incurred through a credit card plan, even though the consumer did not use an associated check guarantee or debit card.

4. *When prohibition applies in case of termination of account.* The offset prohibition applies even after the card issuer terminates the cardholder's credit card privileges, if the indebtedness was incurred prior to termination. If the indebtedness was incurred after termination, the prohibition does not apply.

*Paragraph 12(d)(2).*

1. *Security interest—limitations.* In order to qualify for the exception stated in § 226.12(d)(2), a security interest must be affirmatively agreed to by the consumer and must be disclosed in the issuer's account-opening disclosures under § 226.6. The security interest must not be the functional equivalent of a right of offset; as a result, routinely including in agreements contract language indicating that consumers are giving a security interest in any deposit accounts maintained with the issuer does not result in a security interest that falls within the exception in § 226.12(d)(2). For a security interest to qualify for the exception under § 226.12(d)(2) the following conditions must be met:

i. The consumer must be aware that granting a security interest is a condition for the credit card account (or for more favorable account terms) and must specifically intend to grant a security interest in a deposit account. Indicia of the consumer's awareness and intent include at least one of the following (or a substantially similar procedure that evidences the consumer's awareness and intent):

A. Separate signature or initials on the agreement indicating that a security interest is being given.

B. Placement of the security agreement on a separate page, or otherwise separating the security interest provisions from other contract and disclosure provisions.

C. Reference to a specific amount of deposited funds or to a specific deposit account number.

ii. The security interest must be obtainable and enforceable by creditors generally. If other creditors could not obtain a security interest in the consumer's deposit accounts to the same extent as the card issuer, the security interest is prohibited by § 226.12(d)(2).

2. *Security interest—after-acquired property.* As used in § 226.12(d)(2), the term "security interest" does not exclude (as it does for other Regulation Z purposes) interests in after-acquired property. Thus, a consensual security interest in deposit-account funds, including funds deposited after the granting of the security interest would constitute a permissible exception to the prohibition on offsets.

3. *Court order.* If the card issuer obtains a judgment against the cardholder, and if state and other applicable law and the terms of the judgment do not so prohibit, the card issuer may offset the indebtedness against the cardholder's deposit account.

*Paragraph 12(d)(3).*

1. *Automatic payment plans—scope of exception.* With regard to automatic debit plans under § 226.12(d)(3), the following rules apply:

i. The cardholder's authorization must be in writing and signed or initialed by the cardholder.

ii. The authorizing language need not appear directly above or next to the cardholder's signature or initials, provided it appears on the same document and that it clearly spells out the terms of the automatic debit plan.

iii. If the cardholder has the option to accept or reject the automatic debit feature (such option may be required under section 913 of the Electronic Fund Transfer Act), the fact that the option exists should be clearly indicated.

2. *Automatic payment plans—additional exceptions.* The following practices are not prohibited by § 226.12(d)(1):

i. Automatically deducting charges for participation in a program of banking services (one aspect of which may be a credit card plan).

ii. Debiting the cardholder's deposit account on the cardholder's specific request rather than on an automatic periodic basis (for example, a cardholder might check a box on the credit card bill stub, requesting the issuer to debit the cardholder's account to pay that bill).

*12(e) Prompt notification of returns and crediting of refunds.*

*Paragraph 12(e)(1).*

1. *Normal channels.* The term normal channels refers to any network or interchange system used for the processing of the original charge slips (or equivalent information concerning the transaction).

*Paragraph 12(e)(2).*

1. *Crediting account.* The card issuer need not actually post the refund to the consumer's account within three business days after receiving the credit statement, provided that it credits the account as of a date within that time period.

*Section 226.13—Billing Error Resolution*

1. *Creditor's failure to comply with billing error provisions.* Failure to comply with the error resolution procedures may result in the forfeiture of disputed amounts as prescribed in section 161(e) of the act. (Any failure to comply may also be a violation subject to the liability provisions of section 130 of the act.)

2. *Charges for error resolution.* If a billing error occurred, whether as alleged or in a different amount or manner, the creditor may not impose a charge related to any aspect of the error resolution process (including charges for documentation or investigation) and must credit the consumer's account if

such a charge was assessed pending resolution. Since the act grants the consumer error resolution rights, the creditor should avoid any chilling effect on the good faith assertion of errors that might result if charges are assessed when no billing error has occurred.

*13(a) Definition of billing error.*

*Paragraph 13(a)(1).*

1. *Actual, implied, or apparent authority.* Whether use of a credit card or open-end credit plan is authorized is determined by state or other applicable law. (*See* comment 12(b)(1)(ii)–1.)

*Paragraph 13(a)(3).*

1. *Coverage.* i. Section 226.13(a)(3) covers disputes about goods or services that are "not accepted" or "not delivered * * * as agreed"; for example:

A. The appearance on a periodic statement of a purchase, when the consumer refused to take delivery of goods because they did not comply with the contract.

B. Delivery of property or services different from that agreed upon.

C. Delivery of the wrong quantity.

D. Late delivery.

E. Delivery to the wrong location.

ii. Section 226.13(a)(3) does not apply to a dispute relating to the quality of property or services that the consumer accepts. Whether acceptance occurred is determined by state or other applicable law.

2. *Application to purchases made using a third-party payment intermediary.* Section 226.13(a)(3) generally applies to disputes about goods and services that are purchased using a third-party payment intermediary, such as a person-to-person Internet payment service, funded through use of a consumer's open-end credit plan when the goods or services are not accepted by the consumer or not delivered to the consumer as agreed. However, the extension of credit must be made at the time the consumer purchases the good or service and match the amount of the transaction to purchase the good or service (including ancillary taxes and fees). Under these circumstances, the property or service for which the extension of credit is made is not the payment service, but rather the good or service that the consumer has purchased using the payment service. Thus, for example, § 226.13(a)(3) would not apply to purchases using a third party payment intermediary that is funded through use of an open-end credit plan if:

i. The extension of credit is made to fund the third-party payment intermediary "account," but the consumer does not contemporaneously use those funds to purchase a good or service at that time.

ii. The extension of credit is made to fund only a portion of the purchase amount, and the consumer uses other sources to fund the remaining amount.

3. *Notice to merchant not required.* A consumer is not required to first notify the merchant or other payee from whom he or she has purchased goods or services and attempt to resolve a dispute regarding the good or service before providing a billing-error notice to the creditor under § 226.13(a)(3) asserting that the goods or services were not accepted or delivered as agreed.

*Paragraph 13(a)(5).*

1. *Computational errors.* In periodic statements that are combined with other information, the error resolution procedures are triggered only if the consumer asserts a computational billing error in the credit-related portion of the periodic statement. For example, if a bank combines a periodic statement reflecting the consumer's credit card transactions with the consumer's monthly checking statement, a computational error in the checking account portion of the combined statement is not a billing error.

*Paragraph 13(a)(6).*

1. *Documentation requests.* A request for documentation such as receipts or sales slips, unaccompanied by an allegation of an error under § 226.13(a) or a request for additional clarification under § 226.13(a)(6), does not trigger the error resolution procedures. For example, a request for documentation merely for purposes such as tax preparation or recordkeeping does not trigger the error resolution procedures.

*13(b) Billing error notice.*

1. *Withdrawal of billing error notice by consumer.* The creditor need not comply with the requirements of § 226.13(c) through (g) of this section if the consumer concludes that no billing error occurred and voluntarily withdraws the billing error notice. The consumer's withdrawal of a billing error notice may be oral, electronic or written.

2. *Form of written notice.* The creditor may require that the written notice not be made on the payment medium or other material accompanying the periodic statement if the creditor so stipulates in the billing rights statement required by §§ 226.6(a)(5) or (b)(5)(iii), and 226.9(a). In addition, if the creditor stipulates in the billing rights statement that it accepts billing error notices submitted electronically, and states the means by which a consumer may electronically submit a billing error notice, a notice sent in such manner will be deemed to satisfy the written notice requirement for purposes of § 226.13(b).

*Paragraph 13(b)(1).*

1. *Failure to send periodic statement—timing.* If the creditor has failed to send a periodic statement, the 60-day period runs from the time the statement should have been sent. Once the statement is provided, the consumer has another 60 days to assert any billing errors reflected on it.

2. *Failure to reflect credit—timing.* If the periodic statement fails to reflect a credit to the account, the 60-day period runs from transmittal of the statement on which the credit should have appeared.

3. *Transmittal.* If a consumer has arranged for periodic statements to be held at the financial institution until called for, the statement is "transmitted" when it is first made available to the consumer.

*Paragraph 13(b)(2).*

1. *Identity of the consumer.* The billing error notice need not specify both the name and the account number if the information supplied enables the creditor to identify the consumer's name and account.

*13(c) Time for resolution; general procedures.*

1. *Temporary or provisional corrections.* A creditor may temporarily correct the consumer's account in response to a billing error notice, but is not excused from complying with the remaining error resolution procedures within the time limits for resolution.

2. *Correction without investigation.* A creditor may correct a billing error in the manner and amount asserted by the consumer without the investigation or the determination normally required. The creditor must comply, however, with all other applicable provisions. If a creditor follows this procedure, no presumption is created that a billing error occurred.

3. *Relationship with § 226.12.* The consumer's rights under the billing error provisions in § 226.13 are independent of the provisions set forth in § 226.12(b) and (c). (*See* comments 12(b)–4, 12(b)(3)–3, and 12(c)–1.)

*Paragraph 13(c)(2).*

1. *Time for resolution.* The phrase two complete billing cycles means two actual billing cycles occurring after receipt of the billing error notice, not a measure of time equal to two billing cycles. For example, if a creditor on a monthly billing cycle receives a billing error notice mid-cycle, it has the remainder of that cycle plus the next two full billing cycles to resolve the error.

2. *Finality of error resolution procedure.* A creditor must comply with the error resolution procedures and complete its investigation to determine whether an error occurred within two complete billing cycles as set forth in § 226.13(c)(2). Thus, for example, the creditor would be prohibited from reversing amounts previously credited for an alleged billing error even if the creditor obtains evidence after the error resolution time period has passed indicating that the billing error did not occur as asserted by the consumer. Similarly, if a creditor fails to mail or deliver a written explanation setting forth the reason why the billing error did not occur as asserted, or otherwise fails to comply with the error resolution procedures set forth in § 226.13(f), the creditor generally must credit the disputed amount and related finance or other charges, as applicable, to the consumer's account.

*13(d) Rules pending resolution.*

1. *Disputed amount.* Disputed amount is the dollar amount alleged by the consumer to be in error. When the allegation concerns the description or identification of the transaction (such as the date or the seller's name) rather than a dollar amount, the disputed amount is the amount of the transaction or charge that corresponds to the disputed transaction identification. If the consumer alleges a failure to send a periodic statement under § 226.13(a)(7), the disputed amount is the entire balance owing.

*13(d)(1) Consumer's right to withhold disputed amount; collection action prohibited.*

1. *Prohibited collection actions.* During the error resolution period, the creditor is prohibited from trying to collect the disputed amount from the consumer. Prohibited collection actions include, for example, instituting court action, taking a lien, or instituting attachment proceedings.

2. *Right to withhold payment.* If the creditor reflects any disputed amount or

related finance or other charges on the periodic statement, and is therefore required to make the disclosure under § 226.13(d)(4), the creditor may comply with that disclosure requirement by indicating that payment of any disputed amount is not required pending resolution. Making a disclosure that only refers to the disputed amount would, of course, in no way affect the consumer's right under § 226.13(d)(1) to withhold related finance and other charges. The disclosure under § 226.13(d)(4) need not appear in any specific place on the periodic statement, need not state the specific amount that the consumer may withhold, and may be preprinted on the periodic statement.

3. *Imposition of additional charges on undisputed amounts.* The consumer's withholding of a disputed amount from the total bill cannot subject undisputed balances (including new purchases or cash advances made during the present or subsequent cycles) to the imposition of finance or other charges. For example, if on an account with a grace period (that is, an account in which paying the new balance in full allows the consumer to avoid the imposition of additional finance charges), a consumer disputes a $2 item out of a total bill of $300 and pays $298 within the grace period, the consumer would not lose the grace period as to any undisputed amounts, even if the creditor determines later that no billing error occurred. Furthermore, finance or other charges may not be imposed on any new purchases or advances that, absent the unpaid disputed balance, would not have finance or other charges imposed on them. Finance or other charges that would have been incurred even if the consumer had paid the disputed amount would not be affected.

4. *Automatic payment plans—coverage.* The coverage of this provision is limited to the card issuer's automatic payment plans, whether or not the consumer's asset account is held by the card issuer or by another financial institution. It does not apply to automatic or bill-payment plans offered by financial institutions other than the credit card issuer.

5. *Automatic payment plans—time of notice.* While the card issuer does not have to restore or prevent the debiting of a disputed amount if the billing error notice arrives after the three-business-day cut-off, the card issuer must, however, prevent the automatic debit of any part of the disputed amount that is still outstanding and unresolved at the time of the next scheduled debit date.

*13(d)(2) Adverse credit reports prohibited.*

1. *Report of dispute.* Although the creditor must not issue an adverse credit report because the consumer fails to pay the disputed amount or any related charges, the creditor may report that the amount or the account is in dispute. Also, the creditor may report the account as delinquent if undisputed amounts remain unpaid.

2. *Person.* During the error resolution period, the creditor is prohibited from making an adverse credit report about the disputed amount to any person—including employers, insurance companies, other creditors, and credit bureaus.

3. *Creditor's agent.* Whether an agency relationship exists between a creditor and an issuer of an adverse credit report is determined by State or other applicable law.

*13(e) Procedures if billing error occurred as asserted.*

1. *Correction of error.* The phrase as applicable means that the necessary corrections vary with the type of billing error that occurred. For example, a misidentified transaction (or a transaction that is identified by one of the alternative methods in § 226.8) is cured by properly identifying the transaction and crediting related finance and any other charges imposed. The creditor is not required to cancel the amount of the underlying obligation incurred by the consumer.

2. *Form of correction notice.* The written correction notice may take a variety of forms. It may be sent separately, or it may be included on or with a periodic statement that is mailed within the time for resolution. If the periodic statement is used, the amount of the billing error must be specifically identified. If a separate billing error correction notice is provided, the accompanying or subsequent periodic statement reflecting the corrected amount may simply identify it as credit.

3. *Discovery of information after investigation period. See* comment 13(c)(2)–2.

*13(f) Procedures if different billing error or no billing error occurred.*

1. *Different billing error.* Examples of a different billing error include:

i. Differences in the amount of an error (for example, the customer asserts a $55.00 error but the error was only $53.00).

ii. Differences in other particulars asserted by the consumer (such as when a consumer asserts that a particular transaction never occurred, but the creditor determines that only the seller's name was disclosed incorrectly).

2. *Form of creditor's explanation.* The written explanation (which also may notify the consumer of corrections to the account) may take a variety of forms. It may be sent separately, or it may be included on or with a periodic statement that is mailed within the time for resolution. If the creditor uses the periodic statement for the explanation and correction(s), the corrections must be specifically identified. If a separate explanation, including the correction notice, is provided, the enclosed or subsequent periodic statement reflecting the corrected amount may simply identify it as a credit. The explanation may be combined with the creditor's notice to the consumer of amounts still owing, which is required under § 226.13(g)(1), provided it is sent within the time limit for resolution. (See commentary to § 226.13(e).)

3. *Reasonable investigation.* A creditor must conduct a reasonable investigation before it determines that no billing error occurred or that a different billing error occurred from that asserted. In conducting its investigation of an allegation of a billing error, the creditor may reasonably request the consumer's cooperation. The creditor may not automatically deny a claim based solely on the consumer's failure or refusal to comply with a particular request, including providing an affidavit or filing a police report. However, if the creditor otherwise has no knowledge of facts confirming the billing error, the lack of information resulting from the consumer's failure or refusal to comply with a particular request may lead the creditor reasonably to terminate the investigation. The procedures involved in investigating alleged billing errors may differ depending on the billing error type.

i. *Unauthorized transaction.* In conducting an investigation of a notice of billing error alleging an unauthorized transaction under § 226.13(a)(1), actions such as the following represent steps that a creditor may take, as appropriate, in conducting a reasonable investigation:

A. Reviewing the types or amounts of purchases made in relation to the consumer's previous purchasing pattern.

B. Reviewing where the purchases were delivered in relation to the consumer's residence or place of business.

C. Reviewing where the purchases were made in relation to where the consumer resides or has normally shopped.

D. Comparing any signature on credit slips for the purchases to the signature of the consumer (or an authorized user in the case of a credit card account) in the creditor's records, including other credit slips.

E. Requesting documentation to assist in the verification of the claim.

F. Requiring a written, signed statement from the consumer (or authorized user, in the case of a credit card account). For example, the creditor may include a signature line on a billing rights form that the consumer may send in to provide notice of the claim. However, a creditor may not require the consumer to provide an affidavit or signed statement under penalty of perjury as a part of a reasonable investigation.

G. Requesting a copy of a police report, if one was filed.

H. Requesting information regarding the consumer's knowledge of the person who allegedly obtained an extension of credit on the account or of that person's authority to do so.

ii. *Nondelivery of property or services.* In conducting an investigation of a billing error notice alleging the nondelivery of property or services under § 226.13(a)(3), the creditor shall not deny the assertion unless it conducts a reasonable investigation and determines that the property or services were actually delivered, mailed, or sent as agreed.

iii. *Incorrect information.* In conducting an investigation of a billing error notice alleging that information appearing on a periodic statement is incorrect because a person honoring the consumer's credit card or otherwise accepting an access device for an open-end plan has made an incorrect report to the creditor, the creditor shall not deny the assertion unless it conducts a reasonable investigation and determines that the information was correct.

*13(g) Creditor's rights and duties after resolution.*

*Paragraph 13(g)(1).*

1. *Amounts owed by consumer.* Amounts the consumer still owes may include both minimum periodic payments and related finance and other charges that accrued during the resolution period. As explained in

the commentary to § 226.13(d)(1), even if the creditor later determines that no billing error occurred, the creditor may not include finance or other charges that are imposed on undisputed balances solely as a result of a consumer's withholding payment of a disputed amount.

2. *Time of notice.* The creditor need not send the notice of amount owed within the time period for resolution, although it is under a duty to send the notice promptly after resolution of the alleged error. If the creditor combines the notice of the amount owed with the explanation required under § 226.13(f)(1), the combined notice must be provided within the time limit for resolution.

*Paragraph 13(g)(2).*

1. *Grace period if no error occurred.* If the creditor determines, after a reasonable investigation, that a billing error did not occur as asserted, and the consumer was entitled to a grace period at the time the consumer provided the billing error notice, the consumer must be given a period of time equal to the grace period disclosed under § 226.6(a)(1) or (b)(2) and § 226.7(a)(8) or (b)(8) to pay any disputed amounts due without incurring additional finance or other charges. However, the creditor need not allow a grace period disclosed under the above-mentioned sections to pay the amount due under § 226.13(g)(1) if no error occurred and the consumer was not entitled to a grace period at the time the consumer asserted the error. For example, assume that a creditor provides a consumer a grace period of 20 days to pay a new balance to avoid finance charges, and that the consumer did not carry an outstanding balance from the prior month. If the consumer subsequently asserts a billing error for the current statement period within the 20-day grace period, and the creditor determines that no billing error in fact occurred, the consumer must be given at least 20 days (i.e., the full disclosed grace period) to pay the amount due without incurring additional finance charges. Conversely, if the consumer was not entitled to a grace period at the time the consumer asserted the billing error, for example, if the consumer did not pay the previous monthly balance of undisputed charges in full, the creditor may assess finance charges on the disputed balance for the entire period the item was in dispute.

*Paragraph 13(g)(3).*

1. *Time for payment.* The consumer has a minimum of 10 days to pay (measured from the time the consumer could reasonably be expected to have received notice of the amount owed) before the creditor may issue an adverse credit report; if an initially disclosed grace period allows the consumer a longer time in which to pay, the consumer has the benefit of that longer period.

*Paragraph 13(g)(4).*

1. *Credit reporting.* Under § 226.13(g)(4)(i) and (iii) the creditor's additional credit reporting responsibilities must be accomplished promptly. The creditor need not establish costly procedures to fulfill this requirement. For example, a creditor that reports to a credit bureau on scheduled updates need not transmit corrective information by an unscheduled computer or magnetic tape; it may provide the credit bureau with the correct information by letter or other commercially reasonable means when using the scheduled update would not be "prompt." The creditor is not responsible for ensuring that the credit bureau corrects its information immediately.

2. *Adverse report to credit bureau.* If a creditor made an adverse report to a credit bureau that disseminated the information to other creditors, the creditor fulfills its § 226.13(g)(4)(ii) obligations by providing the consumer with the name and address of the credit bureau.

*13(i) Relation to Electronic Fund Transfer Act and Regulation E.*

1. *Coverage.* Credit extended directly from a non-overdraft credit line is governed solely by Regulation Z, even though a combined credit card/access device is used to obtain the extension.

2. *Incidental credit under agreement.* Credit extended incident to an electronic fund transfer under an agreement between the consumer and the financial institution is governed by § 226.13(i), which provides that certain error resolution procedures in both this regulation and Regulation E apply. Incidental credit that is not extended under an agreement between the consumer and the financial institution is governed solely by the error resolution procedures in Regulation E. For example, credit inadvertently extended incident to an electronic fund-transfer, such as under an overdraft service not subject to Regulation Z, is governed solely by the Regulation E error resolution procedures, if the bank and the consumer do not have an agreement to extend credit when the consumer's account is overdrawn.

3. *Application to debit/credit transactions-examples.* If a consumer withdraws money at an automated teller machine and activates an overdraft credit feature on the checking account:

i. An error asserted with respect to the transaction is subject, for error resolution purposes, to the applicable Regulation E provisions (such as timing and notice) for the entire transaction.

ii. The creditor need not provisionally credit the consumer's account, under § 205.11(c)(2)(i) of Regulation E, for any portion of the unpaid extension of credit.

iii. The creditor must credit the consumer's account under § 205.11(c) with any finance or other charges incurred as a result of the alleged error.

iv. The provisions of §§ 226.13(d) and (g) apply only to the credit portion of the transaction.

*Section 226.14—Determination of Annual Percentage Rate*

*14(a) General rule.*

1. *Tolerance.* The tolerance of ⅛th of 1 percentage point above or below the annual percentage rate applies to any required disclosure of the annual percentage rate. The disclosure of the annual percentage rate is required in §§ 226.5a, 226.5b, 226.6, 226.7, 226.9, 226.15, 226.16, 226.26, 226.55, and 226.56.

2. *Rounding.* The regulation does not require that the annual percentage rate be calculated to any particular number of decimal places; rounding is permissible within the ⅛th of 1 percent tolerance. For example, an exact annual percentage rate of 14.33333% may be stated as 14.33% or as 14.3%, or even as 14¼%; but it could not be stated as 14.2% or 14%, since each varies by more than the permitted tolerance.

3. *Periodic rates.* No explicit tolerance exists for any periodic rate as such; a disclosed periodic rate may vary from precise accuracy (for example, due to rounding) only to the extent that its annualized equivalent is within the tolerance permitted by § 226.14(a). Further, a periodic rate need not be calculated to any particular number of decimal places.

4. *Finance charges.* The regulation does not prohibit creditors from assessing finance charges on balances that include prior, unpaid finance charges; state or other applicable law may do so, however.

5. *Good faith reliance on faulty calculation tools.* The regulation relieves a creditor of liability for an error in the annual percentage rate or finance charge that resulted from a corresponding error in a calculation tool used in good faith by the creditor. Whether or not the creditor's use of the tool was in good faith must be determined on a case-by-case basis, but the creditor must in any case have taken reasonable steps to verify the accuracy of the tool, including any instructions, before using it. Generally, the safe harbor from liability is available only for errors directly attributable to the calculation tool itself, including software programs; it is not intended to absolve a creditor of liability for its own errors, or for errors arising from improper use of the tool, from incorrect data entry, or from misapplication of the law.

*14(b) Annual percentage rate—in general.*

1. *Corresponding annual percentage rate computation.* For purposes of §§ 226.5a, 226.5b, 226.6, 226.7(a)(4) or (b)(4), 226.9, 226.15, 226.16, 226.26, 226.55, and 226.56, the annual percentage rate is determined by multiplying the periodic rate by the number of periods in the year. This computation reflects the fact that, in such disclosures, the rate (known as the corresponding annual percentage rate) is prospective and does not involve any particular finance charge or periodic balance.

*14(c) Optional effective annual percentage rate for periodic statements for creditors offering open-end plans subject to the requirements of § 226.5b.*

1. *General rule.* The periodic statement may reflect (under § 226.7(a)(7)) the annualized equivalent of the rate actually applied during a particular cycle; this rate may differ from the corresponding annual percentage rate because of the inclusion of, for example, fixed, minimum, or transaction charges. Sections 226.14(c)(1) through (c)(4) state the computation rules for the effective rate.

2. *Charges related to opening, renewing, or continuing an account.* Sections 226.14(c)(2) and (c)(3) exclude from the calculation of the effective annual percentage rate finance charges that are imposed during the billing cycle such as a loan fee, points, or similar charge that relates to opening, renewing, or continuing an account. The charges involved here do not relate to a specific transaction or to specific activity on the account, but relate

solely to the opening, renewing, or continuing of the account. For example, an annual fee to renew an open-end credit account that is a percentage of the credit limit on the account, or that is charged only to consumers that have not used their credit card for a certain dollar amount in transactions during the preceding year, would not be included in the calculation of the annual percentage rate, even though the fee may not be excluded from the finance charge under § 226.4(c)(4). (See comment 4(c)(4)–2.) This rule applies even if the loan fee, points, or similar charges are billed on a subsequent periodic statement or withheld from the proceeds of the first advance on the account.

3. *Classification of charges.* If the finance charge includes a charge not due to the application of a periodic rate, the creditor must use the annual percentage rate computation method that corresponds to the type of charge imposed. If the charge is tied to a specific transaction (for example, 3 percent of the amount of each transaction), then the method in § 226.14(c)(3) must be used. If a fixed or minimum charge is applied, that is, one not tied to any specific transaction, then the formula in § 226.14(c)(2) is appropriate.

4. *Small finance charges.* Section 226.14(c)(4) gives the creditor an alternative to § 226.14(c)(2) and (c)(3) if small finance charges (50 cents or less) are involved; that is, if the finance charge includes minimum or fixed fees not due to the application of a periodic rate and the total finance charge for the cycle does not exceed 50 cents. For example, while a monthly activity fee of 50 cents on a balance of $20 would produce an annual percentage rate of 30 percent under the rule in § 226.14(c)(2), the creditor may disclose an annual percentage rate of 18 percent if the periodic rate generally applicable to all balances is 1½ percent per month.

5. *Prior-cycle adjustments.* i. The annual percentage rate reflects the finance charges imposed during the billing cycle. However, finance charges imposed during the billing cycle may relate to activity in a prior cycle. Examples of circumstances when this may occur are:

A. A cash advance occurs on the last day of a billing cycle on an account that uses the transaction date to figure finance charges, and it is impracticable to post the transaction until the following cycle.

B. An adjustment to the finance charge is made following the resolution of a billing error dispute.

C. A consumer fails to pay the purchase balance under a deferred payment feature by the payment due date, and finance charges are imposed from the date of purchase.

ii. Finance charges relating to activity in prior cycles should be reflected on the periodic statement as follows:

A. If a finance charge imposed in the current billing cycle is attributable to periodic rates applicable to prior billing cycles (such as when a deferred payment balance was not paid in full by the payment due date and finance charges from the date of purchase are now being debited to the account, or when a cash advance occurs on the last day of a billing cycle on an account that uses the transaction date to figure finance charges and it is impracticable to post the transaction until the following cycle), and the creditor uses the quotient method to calculate the annual percentage rate, the numerator would include the amount of any transaction charges plus any other finance charges posted during the billing cycle. At the creditor's option, balances relating to the finance charge adjustment may be included in the denominator if permitted by the legal obligation, if it was impracticable to post the transaction in the previous cycle because of timing, or if the adjustment is covered by comment 14(c)–5.ii.B.

B. If a finance charge that is posted to the account relates to activity for which a finance charge was debited or credited to the account in a previous billing cycle (for example, if the finance charge relates to an adjustment such as the resolution of a billing error dispute, or an unintentional posting error, or a payment by check that was later returned unpaid for insufficient funds or other reasons), the creditor shall at its option:

*1.* Calculate the annual percentage rate in accordance with ii.A. of this paragraph, or

*2.* Disclose the finance charge adjustment on the periodic statement and calculate the annual percentage rate for the current billing cycle without including the finance charge adjustment in the numerator and balances associated with the finance charge adjustment in the denominator.

*14(c)(1) Solely periodic rates imposed.*

1. *Periodic rates.* Section 226.14(c)(1) applies if the only finance charge imposed is due to the application of a periodic rate to a balance. The creditor may compute the annual percentage rate either:

i. By multiplying each periodic rate by the number of periods in the year; or

ii. By the "quotient" method. This method refers to a composite annual percentage rate when different periodic rates apply to different balances. For example, a particular plan may involve a periodic rate of ½ percent on balances up to $500, and 1 percent on balances over $500. If, in a given cycle, the consumer has a balance of $800, the finance charge would consist of $7.50 (500 ×.015) plus $3.00 (300 ×.01), for a total finance charge of $10.50. The annual percentage rate for this period may be disclosed either as 18% on $500 and 12 percent on $300, or as 15.75 percent on a balance of $800 (the quotient of $10.50 divided by $800, multiplied by 12).

*14(c)(2) Minimum or fixed charge, but not transaction charge, imposed.*

1. *Certain charges not based on periodic rates.* Section 226.14(c)(2) specifies use of the quotient method to determine the annual percentage rate if the finance charge imposed includes a certain charge not due to the application of a periodic rate (other than a charge relating to a specific transaction). For example, if the creditor imposes a minimum $1 finance charge on all balances below $50, and the consumer's balance was $40 in a particular cycle, the creditor would disclose an annual percentage rate of 30 percent (1/40 ×12).

2. *No balance.* If there is no balance to which the finance charge is applicable, an annual percentage rate cannot be determined under § 226.14(c)(2). This could occur not only when minimum charges are imposed on an account with no balance, but also when a periodic rate is applied to advances from the date of the transaction. For example, if on May 19 the consumer pays the new balance in full from a statement dated May 1, and has no further transactions reflected on the June 1 statement, that statement would reflect a finance charge with no account balance.

*14(c)(3) Transaction charge imposed.*

1. *Transaction charges.* i. Section 226.14(c)(3) transaction charges include, for example:

A. A loan fee of $10 imposed on a particular advance.

B. A charge of 3 percent of the amount of each transaction.

ii. The reference to avoiding duplication in the computation requires that the amounts of transactions on which transaction charges were imposed not be included both in the amount of total balances and in the "other amounts on which a finance charge was imposed" figure. In a multifeatured plan, creditors may consider each bona fide feature separately in the calculation of the denominator. A creditor has considerable flexibility in defining features for open-end plans, as long as the creditor has a reasonable basis for the distinctions. For further explanation and examples of how to determine the components of this formula, see appendix F to part 226.

2. *Daily rate with specific transaction charge.* Section 226.14(c)(3) sets forth an acceptable method for calculating the annual percentage rate if the finance charge results from a charge relating to a specific transaction and the application of a daily periodic rate. This section includes the requirement that the creditor follow the rules in appendix F to part 226 in calculating the annual percentage rate, especially the provision in the introductory section of appendix F which addresses the daily rate/transaction charge situation by providing that the "average of daily balances" shall be used instead of the "sum of the balances."

*14(d) Calculations where daily periodic rate applied.*

1. *Quotient method.* Section 226.14(d) addresses use of a daily periodic rate(s) to determine some or all of the finance charge and use of the quotient method to determine the annual percentage rate. Since the quotient formula in § 226.14(c)(1)(ii) and (c)(2) cannot be used when a daily rate is being applied to a series of daily balances, § 226.14(d) provides two alternative ways to calculate the annual percentage rate—either of which satisfies the provisions of § 226.7(a)(7).

2. *Daily rate with specific transaction charge.* If the finance charge results from a charge relating to a specific transaction and the application of a daily periodic rate, see comment 14(c)(3)–2 for guidance on an appropriate calculation method.

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*Section 226.16—Advertising*

1. *Clear and conspicuous standard—general.* Section 226.16 is subject to the general "clear and conspicuous" standard for

subpart B (see § 226.5(a)(1)) but prescribes no specific rules for the format of the necessary disclosures, other than the format requirements related to the disclosure of a promotional rate or payment under § 226.16(d)(6), a promotional rate under § 226.16(g), or a deferred interest or similar offer under § 226.16(h). Other than the disclosure of certain terms described in §§ 226.16(d)(6), (g), or (h), the credit terms need not be printed in a certain type size nor need they appear in any particular place in the advertisement.

2. *Clear and conspicuous standard—promotional rates or payments; deferred interest or similar offers.*

i. For purposes of § 226.16(d)(6), a clear and conspicuous disclosure means that the required information in § 226.16(d)(6)(ii)(A)–(C) is disclosed with equal prominence and in close proximity to the promotional rate or payment to which it applies. If the information in § 226.16(d)(6)(ii)(A)–(C) is the same type size and is located immediately next to or directly above or below the promotional rate or payment to which it applies, without any intervening text or graphical displays, the disclosures would be deemed to be equally prominent and in close proximity. Notwithstanding the above, for electronic advertisements that disclose promotional rates or payments, compliance with the requirements of § 226.16(c) is deemed to satisfy the clear and conspicuous standard.

ii. For purposes of § 226.16(g)(4) as it applies to written or electronic advertisements only, a clear and conspicuous disclosure means the required information in § 226.16(g)(4)(i) and (g)(4)(ii) must be equally prominent to the promotional rate to which it applies. If the information in § 226.16(g)(4)(i) and (g)(4)(ii) is the same type size as the promotional rate to which it applies, the disclosures would be deemed to be equally prominent. For purposes of § 226.16(h)(3) as it applies to written or electronic advertisements only, a clear and conspicuous disclosure means the required information in § 226.16(h)(3) must be equally prominent to each statement of "no interest," "no payments," "deferred interest," "same as cash," or similar term regarding interest or payments during the deferred interest period. If the information required to be disclosed under § 226.16(h)(3) is the same type size as the statement of "no interest," "no payments," "deferred interest," "same as cash," or similar term regarding interest or payments during the deferred interest period, the disclosure would be deemed to be equally prominent.

3. *Clear and conspicuous standard—Internet advertisements for home-equity plans.* For purposes of this section, a clear and conspicuous disclosure for visual text advertisements on the Internet for home-equity plans subject to the requirements of § 226.5b means that the required disclosures are not obscured by techniques such as graphical displays, shading, coloration, or other devices and comply with all other requirements for clear and conspicuous disclosures under § 226.16(d). (See also comment 16(c)(1)–2.)

4. *Clear and conspicuous standard—televised advertisements for home-equity plans.* For purposes of this section, including alternative disclosures as provided for by § 226.16(e), a clear and conspicuous disclosure in the context of visual text advertisements on television for home-equity plans subject to the requirements of § 226.5b means that the required disclosures are not obscured by techniques such as graphical displays, shading, coloration, or other devices, are displayed in a manner that allows for a consumer to read the information required to be disclosed, and comply with all other requirements for clear and conspicuous disclosures under § 226.16(d). For example, very fine print in a television advertisement would not meet the clear and conspicuous standard if consumers cannot see and read the information required to be disclosed.

5. *Clear and conspicuous standard—oral advertisements for home-equity plans.* For purposes of this section, including alternative disclosures as provided for by § 226.16(e), a clear and conspicuous disclosure in the context of an oral advertisement for home-equity plans subject to the requirements of § 226.5b, whether by radio, television, the Internet, or other medium, means that the required disclosures are given at a speed and volume sufficient for a consumer to hear and comprehend them. For example, information stated very rapidly at a low volume in a radio or television advertisement would not meet the clear and conspicuous standard if consumers cannot hear and comprehend the information required to be disclosed.

6. *Expressing the annual percentage rate in abbreviated form.* Whenever the annual percentage rate is used in an advertisement for open-end credit, it may be expressed using a readily understandable abbreviation such as APR.

7. *Effective date.* For guidance on the applicability of the Board's revisions to § 226.16 published on July 30, 2008, see comment 1(d)(5)–1.

*16(a) Actually available terms.*

1. *General rule.* To the extent that an advertisement mentions specific credit terms, it may state only those terms that the creditor is actually prepared to offer. For example, a creditor may not advertise a very low annual percentage rate that will not in fact be available at any time. Section 226.16(a) is not intended to inhibit the promotion of new credit programs, but to bar the advertising of terms that are not and will not be available. For example, a creditor may advertise terms that will be offered for only a limited period, or terms that will become available at a future date.

2. *Specific credit terms. Specific credit terms* is not limited to the disclosures required by the regulation but would include any specific components of a credit plan, such as the minimum periodic payment amount or seller's points in a plan secured by real estate.

*16(b) Advertisement of terms that require additional disclosures.*

*Paragraph (b)(1).*

1. *Triggering terms.* Negative as well as affirmative references trigger the requirement for additional information. For example, if a creditor states *no interest* or *no annual membership fee* in an advertisement, additional information must be provided. Other examples of terms that trigger additional disclosures are:

i. *Small monthly service charge on the remaining balance,* which describes how the amount of a finance charge will be determined.

ii. *12 percent Annual Percentage Rate* or *A $15 annual membership fee buys you $2,000 in credit,* which describe required disclosures under § 226.6.

2. *Implicit terms.* Section 226.16(b) applies even if the triggering term is not stated explicitly, but may be readily determined from the advertisement.

3. *Membership fees.* A membership fee is not a triggering term nor need it be disclosed under § 226.16(b)(1)(iii) if it is required for participation in the plan whether or not an open-end credit feature is attached. (See comment 6(a)(2)–1 and § 226.6(b)(3)(iii)(B).)

4. *Deferred billing and deferred payment programs.* Statements such as "Charge it—you won't be billed until May" or "You may skip your January payment" are not in themselves triggering terms, since the timing for initial billing or for monthly payments are not terms required to be disclosed under § 226.6. However, a statement such as "No interest charges until May" or any other statement regarding when interest or finance charges begin to accrue is a triggering term, whether appearing alone or in conjunction with a description of a deferred billing or deferred payment program such as the examples above.

5. *Variable-rate plans.* In disclosing the annual percentage rate in an advertisement for a variable-rate plan, as required by § 226.16(b)(1)(ii), the creditor may use an insert showing the current rate; or may give the rate as of a specified recent date. The additional requirement in § 226.16(b)(1)(ii) to disclose the variable-rate feature may be satisfied by disclosing that the annual percentage rate may vary or a similar statement, but the advertisement need not include the information required by § 226.6(a)(1)(ii) or (b)(4)(ii).

6. *Membership fees for open-end (not home-secured) plans.* For purposes of § 226.16(b)(1)(iii), membership fees that may be imposed on open-end (not home-secured) plans shall have the same meaning as in § 226.5a(b)(2).

*Paragraph (b)(2).*

1. *Assumptions.* In stating the total of payments and the time period to repay the obligation, assuming that the consumer pays only the periodic payment amounts advertised, as required under § 226.16(b)(2), the following additional assumptions may be made:

i. Payments are made timely so as not to be considered late by the creditor;

ii. Payments are made each period, and no debt cancellation or suspension agreement, or skip payment feature applies to the account;

iii. No interest rate changes will affect the account;

iv. No other balances are currently carried or will be carried on the account;

v. No taxes or ancillary charges are or will be added to the obligation;

vi. Goods or services are delivered on a single date; and

vii. The consumer is not currently and will not become delinquent on the account.

2. *Positive periodic payment amounts.* Only positive periodic payment amounts trigger the additional disclosures under § 226.16(b)(2). Therefore, if the periodic payment amount advertised is not a positive amount (*e.g.,* "No payments"), the advertisement need not state the total of payments and the time period to repay the obligation.

*16(c) Catalogs or other multiple-page advertisements; electronic advertisements.*

1. *Definition.* The multiple-page advertisements to which § 226.16(c) refers are advertisements consisting of a series of sequentially numbered pages—for example, a supplement to a newspaper. A mailing consisting of several separate flyers or pieces of promotional material in a single envelope does not constitute a single multiple-page advertisement for purposes of § 226.16(c).

*Paragraph 16(c)(1).*

1. *General.* Section 226.16(c)(1) permits creditors to put credit information together in one place in a catalog or other multiple-page advertisement or an electronic advertisement (such as an advertisement appearing on an Internet Web site). The rule applies only if the advertisement contains one or more of the triggering terms from § 226.16(b).

2. *Electronic advertisement.* If an electronic advertisement (such as an advertisement appearing on an Internet Web site) contains the table or schedule permitted under § 226.16(c)(1), any statement of terms set forth in § 226.6 appearing anywhere else in the advertisement must clearly direct the consumer to the location where the table or schedule begins. For example, a term triggering additional disclosures may be accompanied by a link that directly takes the consumer to the additional information.

*Paragraph 16(c)(2).*

1. *Table or schedule if credit terms depend on outstanding balance.* If the credit terms of a plan vary depending on the amount of the balance outstanding, rather than the amount of any property purchased, a table or schedule complies with § 226.16(c)(2) if it includes the required disclosures for representative balances. For example, a creditor would disclose that a periodic rate of 1.5% is applied to balances of $500 or less, and a 1% rate is applied to balances greater than $500.

*16(d) Additional requirements for home-equity plans.*

1. *Trigger terms.* Negative as well as affirmative references trigger the requirement for additional information. For example, if a creditor states *no annual fee, no points,* or *we waive closing costs* in an advertisement, additional information must be provided. (*See* comment 16(d)–4 regarding the use of a phrase such as *no closing costs.*) Inclusion of a statement such as *low fees,* however, would not trigger the need to state additional information. References to payment terms include references to the draw period or any repayment period, to the length of the plan, to how the minimum payments are determined and to the timing of such payments.

2. *Fees to open the plan.* Section 226.16(d)(1)(i) requires a disclosure of any fees imposed by the creditor or a third party to open the plan. In providing the fee information required under this paragraph, the corresponding rules for disclosure of this information apply. For example, fees to open the plan may be stated as a range. Similarly, if property insurance is required to open the plan, a creditor either may estimate the cost of the insurance or provide a statement that such insurance is required. (*See* the commentary to § 226.5b(d)(7) and (d)(8).)

3. *Statements of tax deductibility.* An advertisement that refers to deductibility for tax purposes is not misleading if it includes a statement such as "consult a tax advisor regarding the deductibility of interest." An advertisement distributed in paper form or through the Internet (rather than by radio or television) that states that the advertised extension of credit may exceed the fair market value of the consumer's dwelling is not misleading if it clearly and conspicuously states the required information in §§ 226.16(d)(4)(i) and (d)(4)(ii).

4. *Misleading terms prohibited.* Under § 226.16(d)(5), advertisements may not refer to home-equity plans as *free money* or use other misleading terms. For example, an advertisement could not state "no closing costs" or "we waive closing costs" if consumers may be required to pay any closing costs, such as recordation fees. In the case of property insurance, however, a creditor may state, for example, "no closing costs" even if property insurance may be required, as long as the creditor also provides a statement that such insurance may be required. (*See* the commentary to this section regarding fees to open a plan.)

5. *Promotional rates and payments in advertisements for home-equity plans.* Section 226.16(d)(6) requires additional disclosures for promotional rates or payments.

i. *Variable-rate plans.* In advertisements for variable-rate plans, if the advertised annual percentage rate is based on (or the advertised payment is derived from) the index and margin that will be used to make rate (or payment) adjustments over the term of the loan, then there is no promotional rate or promotional payment. If, however, the advertised annual percentage rate is not based on (or the advertised payment is not derived from) the index and margin that will be used to make rate (or payment) adjustments, and a reasonably current application of the index and margin would result in a higher annual percentage rate (or, given an assumed balance, a higher payment) then there is a promotional rate or promotional payment.

ii. *Equal prominence, close proximity.* Information required to be disclosed in § 226.16(d)(6)(ii) that is immediately next to or directly above or below the promotional rate or payment (but not in a footnote) is deemed to be closely proximate to the listing. Information required to be disclosed in § 226.16(d)(6)(ii) that is in the same type size as the promotional rate or payment is deemed to be equally prominent.

iii. *Amounts and time periods of payments.* Section 226.16(d)(6)(ii)(C) requires disclosure of the amount and time periods of any payments that will apply under the plan. This section may require disclosure of several payment amounts, including any balloon payment. For example, if an advertisement for a home-equity plan offers a $100,000 five-year line of credit and assumes that the entire line is drawn resulting in a minimum payment of $800 per month for the first six months, increasing to $1,000 per month after month six, followed by a $50,000 balloon payment after five years, the advertisement must disclose the amount and time period of each of the two monthly payment streams, as well as the amount and timing of the balloon payment, with equal prominence and in close proximity to the promotional payment. However, if the final payment could not be more than twice the amount of other minimum payments, the final payment need not be disclosed.

iv. *Plans other than variable-rate plans.* For a plan other than a variable-rate plan, if an advertised payment is calculated in the same way as other payments based on an assumed balance, the fact that the minimum payment could increase solely if the consumer made an additional draw does not make the payment a promotional payment. For example, if a payment of $500 results from an assumed $10,000 draw, and the payment would increase to $1,000 if the consumer made an additional $10,000 draw, the payment is not a promotional payment.

v. *Conversion option.* Some home-equity plans permit the consumer to repay all or part of the balance during the draw period at a fixed rate (rather than a variable rate) and over a specified time period. The fixed-rate conversion option does not, by itself, make the rate or payment that would apply if the consumer exercised the fixed-rate conversion option a promotional rate or payment.

vi. *Preferred-rate provisions.* Some home-equity plans contain a preferred-rate provision, where the rate will increase upon the occurrence of some event, such as the consumer-employee leaving the creditor's employ, the consumer closing an existing deposit account with the creditor, or the consumer revoking an election to make automated payments. A preferred-rate provision does not, by itself, make the rate or payment under the preferred-rate provision a promotional rate or payment.

6. *Reasonably current index and margin.* For the purposes of this section, an index and margin is considered reasonably current if:

i. For direct mail advertisements, it was in effect within 60 days before mailing;

ii. For advertisements in electronic form it was in effect within 30 days before the advertisement is sent to a consumer's e-mail address, or in the case of an advertisement made on an Internet Web site, when viewed by the public; or

iii. For printed advertisements made available to the general public, including ones contained in a catalog, magazine, or other generally available publication, it was in effect within 30 days before printing.

7. *Relation to other sections.* Advertisements for home-equity plans must comply with all provisions in § 226.16, not solely the rules in § 226.16(d). If an advertisement contains information (such as

the payment terms) that triggers the duty under § 226.16(d) to state the annual percentage rate, the additional disclosures in § 226.16(b) must be provided in the advertisement. While § 226.16(d) does not require a statement of fees to use or maintain the plan (such as membership fees and transaction charges), such fees must be disclosed under § 226.16(b)(1)(i) and (b)(1)(iii).

8. *Inapplicability of closed-end rules.* Advertisements for home-equity plans are governed solely by the requirements in § 226.16, except § 226.16(g), and not by the closed-end advertising rules in § 226.24. Thus, if a creditor states payment information about the repayment phase, this will trigger the duty to provide additional information under § 226.16, but not under § 226.24.

9. *Balloon payment. See* comment 5b(d)(5)(ii)–3 for information not required to be stated in advertisements, and on situations in which the balloon payment requirement does not apply.

*16(e) Alternative disclosures—television or radio advertisements.*

1. *Multi-purpose telephone number.* When an advertised telephone number provides a recording, disclosures must be provided early in the sequence to ensure that the consumer receives the required disclosures. For example, in providing several options—such as providing directions to the advertiser's place of business—the option allowing the consumer to request disclosures should be provided early in the telephone message to ensure that the option to request disclosures is not obscured by other information.

2. *Statement accompanying toll free number.* Language must accompany a telephone number indicating that disclosures are available by calling the telephone number, such as "call 1–800–000–0000 for details about credit costs and terms."

*16(g) Promotional rates.*

1. *Rate in effect at the end of the promotional period.* If the annual percentage rate that will be in effect at the end of the promotional period (*i.e.,* the post-promotional rate) is a variable rate, the post-promotional rate for purposes of § 226.16(g)(2)(i) is the rate that would have applied at the time the promotional rate was advertised if the promotional rate was not offered, consistent with the accuracy requirements in § 226.5a(c)(2) and (e)(4), as applicable.

2. *Immediate proximity.* For written or electronic advertisements, including the term "introductory" or "intro" in the same phrase as the listing of the introductory rate is deemed to be in immediate proximity of the listing.

3. *Prominent location closely proximate.* For written or electronic advertisements, information required to be disclosed in § 226.16(g)(4)(i) and (g)(4)(ii) that is in the same paragraph as the first listing of the promotional rate is deemed to be in a prominent location closely proximate to the listing. Information disclosed in a footnote will not be considered in a prominent location closely proximate to the listing.

4. *First listing.* For purposes of § 226.16(g)(4) as it applies to written or electronic advertisements, the first listing of the promotional rate is the most prominent listing of the rate on the front side of the first page of the principal promotional document. The principal promotional document is the document designed to be seen first by the consumer in a mailing, such as a cover letter or solicitation letter. If the promotional rate does not appear on the front side of the first page of the principal promotional document, then the first listing of the promotional rate is the most prominent listing of the rate on the subsequent pages of the principal promotional document. If the promotional rate is not listed on the principal promotional document or there is no principal promotional document, the first listing is the most prominent listing of the rate on the front side of the first page of each document listing the promotional rate. If the promotional rate does not appear on the front side of the first page of a document, then the first listing of the promotional rate is the most prominent listing of the rate on the subsequent pages of the document. If the listing of the promotional rate with the largest type size on the front side of the first page (or subsequent pages if the promotional rate is not listed on the front side of the first page) of the principal promotional document (or each document listing the promotional rate if the promotional rate is not listed on the principal promotional document or there is no principal promotional document) is used as the most prominent listing, it will be deemed to be the first listing. Consistent with comment 16(c)–1, a catalog or multiple-page advertisement is considered one document for purposes of § 226.16(g)(4).

5. *Post-promotional rate depends on consumer's creditworthiness.* For purposes of disclosing the rate that may apply after the end of the promotional rate period, at the advertiser's option, the advertisement may disclose the rates that may apply as either specific rates, or a range of rates. For example, if there are three rates that may apply (9.99%, 12.99% or 17.99%), an issuer may disclose these three rates as specific rates (9.99%, 12.99% or 17.99%) or as a range of rates (9.99%–17.99%).

*16(h) Deferred interest or similar offers.*

1. *Deferred interest or similar offers clarified.* Deferred interest or similar offers do not include offers that allow a consumer to skip payments during a specified period of time, and under which the consumer is not obligated under any circumstances for any interest or other finance charges that could be attributable to that period. Deferred interest or similar offers also do not include 0% annual percentage rate offers where a consumer is not obligated under any circumstances for interest attributable to the time period the 0% annual percentage rate was in effect, though such offers may be considered promotional rates under § 226.16(g)(2)(i). Deferred interest or similar offers also do not include skip payment programs that have no required minimum payment for one or more billing cycles but where interest continues to accrue and is imposed during that period.

2. *Deferred interest period clarified.* Although the terms of an advertised deferred interest or similar offer may provide that a creditor may charge the accrued interest if the balance is not paid in full by a certain date, creditors sometimes have an informal policy or practice that delays charging the accrued interest for payment received a brief period of time after the date upon which a creditor has the contractual right to charge the accrued interest. The advertisement need not include the end of an informal "courtesy period" in disclosing the deferred interest period under § 226.16(h)(3).

3. *Immediate proximity.* For written or electronic advertisements, including the deferred interest period in the same phrase as the statement of "no interest," "no payments," "deferred interest," or "same as cash" or similar term regarding interest or payments during the deferred interest period is deemed to be in immediate proximity of the statement.

4. *Prominent location closely proximate.* For written or electronic advertisements, information required to be disclosed in § 226.16(h)(4)(i) and (ii) that is in the same paragraph as the first statement of "no interest," "no payments," "deferred interest," or "same as cash" or similar term regarding interest or payments during the deferred interest period is deemed to be in a prominent location closely proximate to the statement. Information disclosed in a footnote is not considered in a prominent location closely proximate to the statement.

5. *First listing.* For purposes of § 226.16(h)(4) as it applies to written or electronic advertisements, the first statement of "no interest," "no payments," "deferred interest," "same as cash," or similar term regarding interest or payments during the deferred interest period is the most prominent listing of one of these statements on the front side of the first page of the principal promotional document. The principal promotional document is the document designed to be seen first by the consumer in a mailing, such as a cover letter or solicitation letter. If one of the statements does not appear on the front side of the first page of the principal promotional document, then the first listing of one of these statements is the most prominent listing of a statement on the subsequent pages of the principal promotional document. If one of the statements is not listed on the principal promotional document or there is no principal promotional document, the first listing of one of these statements is the most prominent listing of the statement on the front side of the first page of each document containing one of these statements. If one of the statements does not appear on the front side of the first page of a document, then the first listing of one of these statements is the most prominent listing of a statement on the subsequent pages of the document. If the listing of one of these statements with the largest type size on the front side of the first page (or subsequent pages if one of these statements is not listed on the front side of the first page) of the principal promotional document (or each document listing one of these statements if a statement is not listed on the principal promotional document or there is no principal promotional document) is used as the most prominent listing, it will be deemed to be the first listing. Consistent

with comment 16(c)–1, a catalog or multiple-page advertisement is considered one document for purposes of § 226.16(h)(4).

6. *Additional information.* Consistent with comment 5(a)–2, the information required under § 226.16(h)(4) need not be segregated from other information regarding the deferred interest or similar offer. Advertisements may also be required to provide additional information pursuant to § 226.16(b) though such information need not be integrated with the information required under § 226.16(h)(4).

7. *Examples.* Examples of disclosures that could be used to comply with the requirements of § 226.16(h)(3) include: "no interest if paid in full within 6 months" and "no interest if paid in full by December 31, 2010."

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*Section 226.26—Use of Annual Percentage Rate in Oral Disclosures*

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*26(a) Open-end credit.*

1. *Information that may be given.* The creditor may state periodic rates in addition to the required annual percentage rate, but it need not do so. If the annual percentage rate is unknown because transaction charges, loan fees, or similar finance charges may be imposed, the creditor must give the corresponding annual percentage rate (that is, the periodic rate multiplied by the number of periods in a year, as described in §§ 226.6(a)(1)(ii) and (b)(4)(i)(A) and 226.7(a)(4) and (b)(4)). In such cases, the creditor may, but need not, also give the consumer information about other finance charges and other charges.

* * * * *

*Section 226.27—Language of Disclosures*

1. *Subsequent disclosures.* If a creditor provides account-opening disclosures in a language other than English, subsequent disclosures need not be in that other language. For example, if the creditor gave Spanish-language account-opening disclosures, periodic statements and change-in-terms notices may be made in English.

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*Section 226.28—Effect on State Laws*

*28(a) Inconsistent disclosure requirements.*

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6. *Rules for other fair credit billing provisions.* The second part of the criteria for fair credit billing relates to the other rules implementing chapter 4 of the act (addressed in §§ 226.4(c)(8), 226.5(b)(2)(ii), 226.6(a)(5) and (b)(5)(iii), 226.7(a)(9) and (b)(9), 226.9(a), 226.10, 226.11, 226.12(c) through (f), 226.13, and 226.21). Section 226.28(a)(2)(ii) provides that the test of inconsistency is whether the creditor can comply with state law without violating Federal law. For example:

i. A state law that allows the card issuer to offset the consumer's credit-card indebtedness against funds held by the card issuer would be preempted, since § 226.12(d) prohibits such action.

ii. A state law that requires periodic statements to be sent more than 14 days before the end of a free-ride period would not be preempted.

iii. A state law that permits consumers to assert claims and defenses against the card issuer without regard to the $50 and 100-mile limitations of § 226.12(c)(3)(ii) would not be preempted.

iv. In paragraphs ii. and iii. of this comment, compliance with state law would involve no violation of the Federal law.

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*Section 226.30—Limitation on Rates*

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8. *Manner of stating the maximum interest rate.* The maximum interest rate must be stated in the credit contract either as a specific amount or in any other manner that would allow the consumer to easily ascertain, at the time of entering into the obligation, what the rate ceiling will be over the term of the obligation.

i. For example, the following statements would be sufficiently specific:

A. The maximum interest rate will not exceed X%.

B. The interest rate will never be higher than X percentage points above the initial rate of Y%.

C. The interest rate will not exceed X%, or X percentage points about [a rate to be determined at some future point in time], whichever is less.

D. The maximum interest rate will not exceed X%, or the state usury ceiling, whichever is less.

ii. The following statements would not comply with this section:

A. The interest rate will never be higher than X percentage points over the prevailing market rate.

B. The interest rate will never be higher than X percentage points above [a rate to be determined at some future point in time].

C. The interest rate will not exceed the state usury ceiling which is currently X%.

iii. A creditor may state the maximum rate in terms of a maximum annual percentage rate that may be imposed. Under an open-end credit plan, this normally would be the corresponding annual percentage rate. (*See* generally § 226.6(a)(1)(ii) and (b)(4)(i)(A).)

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## Subpart G—Special Rules Applicable to Credit Card Accounts and Open-End Credit Offered to College Students

### *Section 226.51 Ability To Pay*

*51(a) General rule.*

*51(a)(1) Consideration of ability to pay.*

1. *Consideration of additional factors.* Section 226.51(a) requires a card issuer to consider a consumer's ability to make the required minimum periodic payments under the terms of an account based on the consumer's income or assets and current obligations. The card issuer may also consider consumer reports, credit scores, and other factors, consistent with Regulation B (12 CFR part 202).

2. *Ability to pay as of application or consideration of increase.* A card issuer complies with § 226.51(a) if it bases its determination regarding a consumer's ability to make the required minimum periodic payments on the facts and circumstances known to the card issuer at the time the consumer applies to open the credit card account or when the card issuer considers increasing the credit line on an existing account.

3. *Credit line increase.* When a card issuer considers increasing the credit line on an existing account, § 226.51(a) applies whether the consideration is based upon a request of the consumer or is initiated by the card issuer.

4. *Income, assets, and employment.* Any current or reasonably expected assets or income may be considered by the card issuer. For example, a card issuer may use information about current or expected salary, wages, bonus pay, tips and commissions. Employment may be full-time, part-time, seasonal, irregular, military, or self-employment. Other sources of income could include interest or dividends, retirement benefits, public assistance, alimony, child support, or separate maintenance payments. A card issuer may also take into account assets such as savings accounts or investments that the consumer can or will be able to use. A card issuer may consider the consumer's income or assets based on information provided by the consumer, in connection with this credit card account or any other financial relationship the card issuer or its affiliates has with the consumer, subject to any applicable information-sharing rules, and information obtained through third parties, subject to any applicable information-sharing rules. A card issuer may also consider information obtained through any empirically derived, demonstrably and statistically sound model that reasonably estimates a consumer's income or assets.

5. *Current obligations.* A card issuer may consider the consumer's current obligations based on information provided by the consumer or in a consumer report. In evaluating a consumer's current obligations, a card issuer need not assume that credit lines for other obligations are fully utilized.

6. *Joint applicants and joint accountholders.* With respect to the opening of a joint account between two or more consumers or a credit line increase on a joint account between two or more consumers, the card issuer may consider the collective ability of all joint applicants or joint accountholders to make the required payments.

*51(a)(2) Minimum periodic payments.*

1. *Applicable minimum payment formula.* For purposes of estimating required minimum periodic payments under the safe harbor set forth in § 226.51(a)(2)(ii), if the account has or may have a promotional program, such as a deferred payment or similar program, where there is no applicable minimum payment formula during the promotional period, the issuer must estimate the required minimum periodic payment based on the minimum payment formula that will apply when the promotion ends.

2. *Interest rate for purchases.* For purposes of estimating required minimum periodic payments under the safe harbor set forth in § 226.51(a)(2)(ii), if the interest rate for purchases is or may be a promotional rate, the issuer must use the post-promotional rate to estimate interest charges.

2. *Mandatory fees.* For purposes of estimating required minimum periodic payments under the safe harbor set forth in § 226.51(a)(2)(ii), mandatory fees that must be assumed to be charged include those fees the card issuer knows the consumer will be required to pay under the terms of the account if the account is opened, such as an annual fee.

*51(b) Rules affecting young consumers.*

1. *Age as of date of application or consideration of credit line increase.* Sections 226.51(b)(1) and (b)(2) apply only to a consumer who has not attained the age of 21 as of the date of submission of the application under § 226.51(b)(1) or the date the credit line increase is requested by the consumer (or if no request has been made, the date the credit line increase is considered by the card issuer) under § 226.51(b)(2).

2. *Liability of cosigner, guarantor, or joint accountholder.* Sections 226.51(b)(1)(ii) and (b)(2) require the signature or written consent of a cosigner, guarantor, or joint accountholder agreeing either to be secondarily liable for any debt on the account incurred by the consumer before the consumer has attained the age of 21 or to be jointly liable with the consumer for any debt on the account. Sections 226.51(b)(1)(ii) and (b)(2) do not prohibit a card issuer from also requiring the cosigner, guarantor, or joint accountholder to assume liability for debts incurred after the consumer has attained the age of 21, consistent with any agreement made between the parties.

3. *Authorized users exempt.* If a consumer who has not attained the age of 21 is being added to another person's account as an authorized user and has no liability for debts incurred on the account, § 226.51(b)(1) and (b)(2) do not apply.

4. *Electronic application.* Consistent with § 226.5(a)(1)(iii), an application may be provided to the consumer in electronic form without regard to the consumer consent or other provisions of the Electronic Signatures in Global and National Commerce Act (E-Sign Act) (15 U.S.C. 7001 *et seq.*) in the circumstances set forth in § 226.5a. The electronic submission of an application from a consumer or a consent to a credit line increase from a cosigner, guarantor, or joint accountholder to a card issuer would constitute a written application or consent for purposes of § 226.51(b) and would not be considered a consumer disclosure for purposes of the E-Sign Act.

*51(b)(1) Applications from young consumers.*

1. *Relation to Regulation B.* In considering an application or credit line increase on the credit card account of a consumer who is less than 21 years old, creditors must comply with the applicable rules in Regulation B (12 CFR part 202).

*51(b)(2) Credit line increases for young consumers.*

1. *Credit line request by joint accountholder aged 21 or older.* The requirement under § 226.51(b)(2) that a cosigner, guarantor, or joint accountholder for a credit card account opened pursuant to § 226.51(b)(1)(ii) must agree in writing to assume liability for the increase before a credit line is increased, does not apply if the cosigner, guarantor or joint accountholder who is at least 21 years old initiates the request for the increase.

*Section 226.52—Limitations on Fees*

*52(a) Limitations during first year after account opening.*

*52(a)(1) General rule.*

1. *Application.* Section 226.52(a)(1) applies if a card issuer charges any fees to the account during the first year after the account is opened (unless the fees are specifically exempted by § 226.52(a)(2)). Thus, if a card issuer charges a non-exempt fee to the account during the first year after account opening, § 226.52(a)(1) provides that the total amount of non-exempt fees the consumer is required to pay with respect to the account during the first year cannot exceed 25 percent of the credit limit in effect when the account is opened. This 25 percent limit applies to fees that the card issuer charges to the account as well as to fees that the card issuer requires the consumer to pay with respect to the account through other means (such as through a payment from the consumer to the card issuer or from another credit account provided by the card issuer).

For example:

i. Assume that, under the terms of a credit card account, a consumer is required to pay $120 in fees for the issuance or availability of credit at account opening. The consumer is also required to pay a cash advance fee that is equal to five percent of the cash advance and a late payment fee of $15 if the required minimum periodic payment is not received by the payment due date (which is the twenty-fifth of the month). At account opening on January 1 of year one, the credit limit for the account is $500. Section 226.52(a)(1) permits the card issuer to charge to the account the $120 in fees for the issuance or availability of credit at account opening. On February 1 of year one, the consumer uses the account for a $100 cash advance. Section 226.52(a)(1) permits the card issuer to charge a $5 cash-advance fee to the account. On March 26 of year one, the card issuer has not received the consumer's required minimum periodic payment. Section 226.52(a)(2) permits the card issuer to charge a $15 late payment fee to the account. On July 15 of year one, the consumer uses the account for a $50 cash advance. Section 226.52(a)(1) does not permit the card issuer to charge a $2.50 cash advance fee to the account. Furthermore, § 225.52(a)(1) prohibits the card issuer from collecting the $2.50 cash advance fee from the consumer by other means.

ii. Assume that, under the terms of a credit card account, a consumer is required to pay $125 in fees for the issuance or availability of credit during the first year after account opening. At account opening on January 1 of year one, the credit limit for the account is $500. Section 226.52(a)(1) permits the card issuer to charge the $125 in fees to the account. However, § 226.52(a)(1) prohibits the card issuer from requiring the consumer to make payments to the card issuer for additional non-exempt fees with respect to the account during the first year after account opening or requiring the consumer to open a separate credit account with the card issuer to fund the payment of additional non-exempt fees during the first year.

2. *Fees that exceed 25 percent limit.* A card issuer that charges a fee to a credit card account that exceeds the 25 percent limit complies with § 226.52(a)(1) if the card issuer waives or removes the fee and any associated interest charges or credits the account for an amount equal to the fee and any associated interest charges within a reasonable amount of time but no later than the end of the billing cycle following the billing cycle during which the fee was charged. For example, assuming the facts in comment 52(a)(1)–1 above, the card issuer complies with § 226.52(a)(1) if the card issuer charged the $2.50 cash advance fee to the account on July 15 of year one but waived or removed the fee or credited the account for $2.50 (plus any interest charges on that $2.50) at the end of the billing cycle.

3. *Changes in credit limit during first year.*

i. *Increases in credit limit.* If a card issuer increases the credit limit during the first year after the account is opened, § 226.52(a)(1) does not permit the card issuer to require the consumer to pay additional fees that would otherwise be prohibited (such as a fee for increasing the credit limit). For example, assume that, at account opening on January 1, the credit limit for a credit card account is $400 and the consumer is required to pay $100 in fees for the issuance or availability of credit. On July 1, the card issuer increases the credit limit for the account to $600. Section 226.52(a)(1) does not permit the card issuer to require the consumer to pay additional fees based on the increased credit limit.

ii. *Decreases in credit limit.* If a card issuer decreases the credit limit during the first year after the account is opened, § 226.52(a)(1) requires the card issuer to waive or remove any fees charged to the account that exceed 25 percent of the reduced credit limit or to credit the account for an amount equal to any fees the consumer was required to pay with respect to the account that exceed 25 percent of the reduced credit limit within a reasonable amount of time but no later than the end of the billing cycle following the billing cycle during which the fee was charged. For example, assume that, at account opening on January 1, the credit limit for a credit card account is $1,000 and the consumer is required to pay $250 in fees for the issuance or availability of credit. The billing cycles for the account begin on the first day of the month and end on the last day of the month. On July 30, the card issuer decreases the credit limit for the account to $500. Section 226.52(a)(1) requires the card issuer to waive or remove $175 in fees from the account or to credit the account for an amount equal to $175 within a reasonable amount of time but no later than August 31.

*52(a)(2) Fees not subject to limitations.*

1. *Covered fees.* Except as provided in § 226.52(a)(2), § 226.52(a) applies to any fees that a card issuer will or may require the consumer to pay with respect to a credit card account during the first year after account opening. For example, § 226.52(a) applies to:

i. Fees that the consumer is required to pay for the issuance or availability of credit described in § 226.5a(b)(2), including any fee

based on account activity or inactivity and any fee that a consumer is required to pay in order to receive a particular credit limit;

ii. Fees for insurance described in § 226.4(b)(7) or debt cancellation or debt suspension coverage described in § 226.4(b)(10) written in connection with a credit transaction, if the insurance or debt cancellation or debt suspension coverage is required by the terms of the account;

iii. Fees that the consumer is required to pay in order to engage in transactions using the account (such as cash advance fees, balance transfer fees, foreign transaction fees, and fees for using the account for purchases); and

iv. Fees that the consumer is required to pay for violating the terms of the account (except to the extent specifically excluded by § 226.52(a)(2)(i)).

2. *Fees the consumer is not required to pay.* Section 226.52(a)(2)(ii) provides that § 226.52(a) does not apply to fees that the consumer is not required to pay with respect to the account. For example, § 226.52(a) generally does not apply to fees for making an expedited payment (to the extent permitted by § 226.10(e)), fees for optional services (such as travel insurance), fees for reissuing a lost or stolen card, or statement reproduction fees.

3. *Security deposits.* A security deposit that is charged to a credit card account is a fee for purposes of § 226.52(a). In contrast, however, a security deposit is not subject to the 25 percent limit in § 226.52(a)(1) if it is not charged to the account. For example, § 226.52(a)(1) does not prohibit a card issuer from requiring a consumer to provide funds at account opening pledged as security for the account that exceed 25 percent of the credit limit at account opening so long as those funds are not obtained from the account.

*52(a)(3) Rule of construction.*

1. *Fees or charges otherwise prohibited by law.* Section 226.52(a) does not authorize the imposition or payment of fees or charges otherwise prohibited by law. For example, see 16 CFR § 310.4(a)(4).

*Section 226.53—Allocation of Payments*

1. *Required minimum periodic payment.* Section 226.53 addresses the allocation of amounts paid by the consumer in excess of the minimum periodic payment required by the card issuer. Section 226.53 does not limit or otherwise address the card issuer's ability to determine, consistent with applicable law and regulatory guidance, the amount of the required minimum periodic payment or how that payment is allocated. A card issuer may, but is not required to, allocate the required minimum periodic payment consistent with the requirements in § 226.53 to the extent consistent with other applicable law or regulatory guidance.

2. *Applicable rates and balances.* Section 226.53 permits a card issuer to allocate an amount paid by the consumer in excess of the required minimum periodic payment based on the annual percentage rates and balances on the day the preceding billing cycle ends, on the day the payment is credited to the account, or on any day in between those two dates. The day used by the card issuer to determine the applicable annual percentage rates and balances for purposes of § 226.53 generally must be consistent from billing cycle to billing cycle, although the card issuer may adjust this day from time to time. For example:

i. Assume that the billing cycles for a credit card account start on the first day of the month and end on the last day of the month. On the date the March billing cycle ends (March 31), the account has a purchase balance of $500 at a promotional annual percentage rate of 5% and another purchase balance of $200 at a non-promotional annual percentage rate of 15%. On April 5, a $100 purchase to which the 15% rate applies is charged to the account. On April 15, the promotional rate expires and § 226.55(b)(1) permits the card issuer to increase the rate that applies to the $500 balance from 5% to 18%. On April 25, the card issuer credits to the account $400 paid by the consumer in excess of the required minimum periodic payment. If the card issuer's practice is to allocate payments based on the rates and balances on the last day of the prior billing cycle, the card issuer would allocate the $400 payment to pay in full the $200 balance to which the 15% rate applied on March 31 and then allocate the remaining $200 to the $500 balance to which the 5% rate applied on March 31. In the alternative, if the card issuer's practice is to allocate payments based on the rates and balances on the day a payment is credited to the account, the card issuer would allocate the $400 payment to the $500 balance to which the 18% rate applied on April 25.

ii. Same facts as above except that, on April 25, the card issuer credits to the account $750 paid by the consumer in excess of the required minimum periodic payment. If the card issuer's practice is to allocate payments based on the rates and balances on the last day of the prior billing cycle, the card issuer would allocate the $750 payment to pay in full the $200 balance to which the 15% rate applied on March 31 and the $500 balance to which the 5% rate applied on March 31 and then allocate the remaining $50 to the $100 purchase made on April 5. In the alternative, if the card issuer's practice is to allocate payments based on the rates and balances on the day a payment is credited to the account, the card issuer would allocate the $750 payment to pay in full the $500 balance to which the 18% rate applied on April 25 and then allocate the remaining $250 to the $300 balance to which the 15% rate applied on April 25.

3. *Claims or defenses under § 226.12(c) and billing error disputes under § 226.13.* When a consumer has asserted a claim or defense against the card issuer pursuant to § 226.12(c) or alleged a billing error under § 226.13, the card issuer must apply the consumer's payment in a manner that avoids or minimizes any reduction in the amount subject to that claim, defense, or dispute. For example:

i. Assume that a credit card account has a $500 cash advance balance at an annual percentage rate of 25% and a $1,000 purchase balance at an annual percentage rate of 17%. Assume also that $200 of the cash advance balance is subject to a claim or defense under § 226.12(c) or a billing error dispute under § 226.13. If the consumer pays $900 in excess of the required minimum periodic payment, the card issuer must allocate $300 of the excess payment to pay in full the portion of the cash advance balance that is not subject to the claim, defense, or dispute and then allocate the remaining $600 to the $1,000 purchase balance.

ii. Same facts as above except that the consumer pays $1,400 in excess of the required minimum periodic payment. The card issuer must allocate $1,300 of the excess payment to pay in full the $300 cash advance balance that is not subject to the claim, defense, or dispute and the $1,000 purchase balance. If there are no new transactions or other amounts to which the remaining $100 can be allocated, the card issuer may apply that amount to the $200 cash advance balance that is subject to the claim, defense, or dispute. However, if the card issuer subsequently determines that a billing error occurred as asserted by the consumer, the card issuer must credit the account for the disputed amount and any related finance or other charges and send a correction notice consistent with § 226.13(e).

4. *Balances with the same rate.* When the same annual percentage rate applies to more than one balance on an account and a different annual percentage rate applies to at least one other balance on that account, § 226.53 generally does not require that any particular method be used when allocating among the balances with the same annual percentage rate. Under these circumstances, a card issuer may treat the balances with the same rate as a single balance or separate balances. See example in comment 53–5.iv. However, when a balance on a credit card account is subject to a deferred interest or similar program that provides that a consumer will not be obligated to pay interest that accrues on the balance if the balance is paid in full prior to the expiration of a specified period of time, that balance must be treated as a balance with an annual percentage rate of zero for purposes of § 226.53 during that period of time. For example, if an account has a $1,000 purchase balance and a $2,000 balance that is subject to a deferred interest program that expires on July 1 and a 15% annual percentage rate applies to both, the balances must be treated as balances with different rates for purposes of § 226.53 until July 1. In addition, unless the card issuer allocates amounts paid by the consumer in excess of the required minimum periodic payment in the manner requested by the consumer pursuant to § 226.53(b)(2), § 226.53(b)(1) requires the card issuer to apply any excess payments first to the $1,000 purchase balance except during the last two billing cycles of the deferred interest period (when it must be applied first to any remaining portion of the $2,000 balance). See example in comment 53–5.v.

5. *Examples.* For purposes of the following examples, assume that none of the required minimum periodic payment is allocated to the balances discussed (unless otherwise stated).

i. Assume that a credit card account has a cash advance balance of $500 at an annual

percentage rate of 20% and a purchase balance of $1,500 at an annual percentage rate of 15% and that the consumer pays $800 in excess of the required minimum periodic payment. Under § 226.53(a), the card issuer must allocate $500 to pay off the cash advance balance and then allocate the remaining $300 to the purchase balance.

ii. Assume that a credit card account has a cash advance balance of $500 at an annual percentage rate of 20% and a purchase balance of $1,500 at an annual percentage rate of 15% and that the consumer pays $400 in excess of the required minimum periodic payment. Under § 226.53(a), the card issuer must allocate the entire $400 to the cash advance balance.

iii. Assume that a credit card account has a cash advance balance of $100 at an annual percentage rate of 20%, a purchase balance of $300 at an annual percentage rate of 18%, and a $600 protected balance on which the 12% annual percentage rate cannot be increased pursuant to § 226.55. If the consumer pays $500 in excess of the required minimum periodic payment, § 226.53(a) requires the card issuer to allocate $100 to pay off the cash advance balance, $300 to pay off the purchase balance, and $100 to the protected balance.

iv. Assume that a credit card account has a cash advance balance of $500 at an annual percentage rate of 20%, a purchase balance of $1,000 at an annual percentage rate of 15%, and a transferred balance of $2,000 that was previously at a discounted annual percentage rate of 5% but is now at an annual percentage rate of 15%. Assume also that the consumer pays $800 in excess of the required minimum periodic payment. Under § 226.53(a), the card issuer must allocate $500 to pay off the cash advance balance and allocate the remaining $300 among the purchase balance and the transferred balance in the manner the card issuer deems appropriate.

v. Assume that on January 1 a consumer uses a credit card account to make a $1,200 purchase subject to a deferred interest program under which interest accrues at an annual percentage rate of 15% but the consumer will not be obligated to pay that interest if the balance is paid in full on or before June 30. The billing cycles for this account begin on the first day of the month and end on the last day of the month. Each month from January through June, the consumer uses the account to make $200 in purchases that are not subject to the deferred interest program but are subject to the 15% rate.

A. Each month from February through June, the consumer pays $400 in excess of the required minimum periodic payment on the payment due date, which is the twenty-fifth of the month. Any interest that accrues on the purchases not subject to the deferred interest program is paid by the required minimum periodic payment. The card issuer does not accept requests from consumers regarding the allocation of excess payments pursuant to § 226.53(b)(2). Thus, § 226.53(b)(1) requires the card issuer to allocate the $400 excess payments received on February 25, March 25, and April 25 consistent with § 226.53(a). In other words, the card issuer must allocate those payments as follows: $200 to pay off the balance not subject to the deferred interest program (which is subject to the 15% rate) and the remaining $200 to the deferred interest balance (which is treated as a balance with a rate of zero). However, § 226.53(b)(1) requires the card issuer to allocate the entire $400 excess payment received on May 25 to the deferred interest balance. Similarly, § 226.53(b)(1) requires the card issuer to allocate the $400 excess payment received on June 25 as follows: $200 to the deferred interest balance (which pays that balance in full) and the remaining $200 to the balance not subject to the deferred interest program.

B. Same facts as above, except that the card issuer does accept requests from consumers regarding the allocation of excess payments pursuant to § 226.53(b)(2). In addition, on April 25, the card issuer receives an excess payment of $800, which the consumer requests be allocated to pay off the $800 balance subject to the deferred interest program. Section 226.53(b)(2) permits the card issuer to allocate the $800 excess payment in the manner requested by the consumer.

*53(b) Special rule for accounts with balances subject to deferred interest or similar programs.*

1. *Deferred interest and similar programs.* Section 226.53(b) applies to deferred interest or similar programs under which the consumer is not obligated to pay interest that accrues on a balance if that balance is paid in full prior to the expiration of a specified period of time. For purposes of § 226.53(b), "deferred interest" has the same meaning as in § 226.16(h)(2) and associated commentary. Section 226.53(b) applies regardless of whether the consumer is required to make payments with respect to that balance during the specified period. However, a grace period during which any credit extended may be repaid without incurring a finance charge due to a periodic interest rate is not a deferred interest or similar program for purposes of § 226.53(b). Similarly, a temporary annual percentage rate of zero percent that applies for a specified period of time consistent with § 226.55(b)(1) is not a deferred interest or similar program for purposes of § 226.53(b) unless the consumer may be obligated to pay interest that accrues during the period if a balance is not paid in full prior to expiration of the period.

2. *Expiration of program during billing cycle.* For purposes of § 226.53(b)(1), a billing cycle does not constitute one of the two billing cycles immediately preceding expiration of a deferred interest or similar program if the expiration date for the program precedes the payment due date in that billing cycle. For example, assume that a credit card account has a balance subject to a deferred interest program that expires on June 15. Assume also that the billing cycles for the account begin on the first day of the month and end on the last day of the month and that the required minimum periodic payment is due on the twenty-fifth day of the month. The card issuer does not accept requests from consumers regarding the allocation of excess payments pursuant to § 226.53(b)(2). Because the expiration date for the deferred interest program (June 15) precedes the due date in the June billing cycle (June 25), § 226.53(b)(1) requires the card issuer to allocate first to the deferred interest balance any amount paid by the consumer in excess of the required minimum periodic payment during the April and May billing cycles (as well as any amount paid by the consumer before June 15). However, if the deferred interest program expired on June 25 or on June 30 (or on any day in between), § 226.53(b)(1) would apply only to the May and June billing cycles.

3. *Consumer requests.*

i. *Generally.* Section 226.53(b) does not require a card issuer to allocate amounts paid by the consumer in excess of the required minimum periodic payment in the manner requested by the consumer, provided that the card issuer instead allocates such amounts consistent with § 226.53(b)(1). For example, a card issuer may decline consumer requests regarding payment allocation as a general matter or may decline such requests when a consumer does not comply with requirements set by the card issuer (such as submitting the request in writing or submitting the request prior to or contemporaneously with submission of the payment), provided that amounts paid by the consumer in excess of the required minimum periodic payment are allocated consistent with § 226.53(b)(1). Similarly, a card issuer that accepts requests pursuant to § 226.53(b)(2) must allocate amounts paid by a consumer in excess of the required minimum periodic payment consistent with § 226.53(b)(1) if the consumer does not submit a request. Furthermore, in these circumstances, a card issuer must allocate consistent with § 226.53(b)(1) if the consumer submits a request with which the card issuer cannot comply (such as a request that contains a mathematical error), unless the consumer submits an additional request with which the card issuer can comply.

ii. *Examples of consumer requests that satisfy § 226.53(b)(2).* A consumer has made a request for purposes of § 226.53(b)(2) if:

A. The consumer contacts the card issuer orally, electronically, or in writing and specifically requests that a payment or payments be allocated in a particular manner during the period of time that the deferred interest or similar program applies to a balance on the account.

B. The consumer completes a form or payment coupon provided by the card issuer for the purpose of requesting that a payment or payments be allocated in a particular manner during the period of time that the deferred interest or similar program applies to a balance on the account and submits that form or coupon to the card issuer.

C. The consumer contacts the card issuer orally, electronically, or in writing and specifically requests that a payment that the card issuer has previously allocated consistent with § 226.53(b)(1) instead be allocated in a different manner.

iii. *Examples of consumer requests that do not satisfy § 226.53(b)(2).* A consumer has not made a request for purposes of § 226.53(b)(2) if:

A. The terms and conditions of the account agreement contain preprinted language

stating that by applying to open an account or by using that account for transactions subject to a deferred interest or similar program the consumer requests that payments be allocated in a particular manner.

B. The card issuer's on-line application contains a preselected check box indicating that the consumer requests that payments be allocated in a particular manner and the consumer does not deselect the box.

C. The payment coupon provided by the card issuer contains preprinted language or a preselected check box stating that by submitting a payment the consumer requests that the payment be allocated in a particular manner.

D. The card issuer requires a consumer to accept a particular payment allocation method as a condition of using a deferred interest or similar program, making a payment, or receiving account services or features.

*Section 226.54—Limitations on the Imposition of Finance Charges*

*54(a) Limitations on imposing finance charges as a result of the loss of a grace period.*

*54(a)(1) General rule.*

1. *Eligibility for grace period.* Section 226.54 prohibits the imposition of finance charges as a result of the loss of a grace period in certain specified circumstances. Section 226.54 does not require the card issuer to provide a grace period. Furthermore, § 226.54 does not prohibit the card issuer from placing limitations and conditions on a grace period (such as limiting application of the grace period to certain types of transactions or conditioning eligibility for the grace period on certain transactions being paid in full by a particular date), provided that such limitations and conditions are consistent with § 226.5(b)(2)(ii)(B) and § 226.54. Finally, § 226.54 does not limit the imposition of finance charges with respect to a transaction when the consumer is not eligible for a grace period on that transaction at the end of the billing cycle in which the transaction occurred. For example:

i. Assume that the billing cycles for a credit card account begin on the first day of the month and end on the last day of the month and that the payment due date is the twenty-fifth day of the month. Assume also that, for purchases made during the current billing cycle (for purposes of this example, the June billing cycle), the grace period applies from the date of the purchase until the payment due date in the following billing cycle (July 25), subject to two conditions. First, the purchase balance at the end of the preceding billing cycle (the May billing cycle) must have been paid in full by the payment due date in the current billing cycle (June 25). Second, the purchase balance at the end of the current billing cycle (the June billing cycle) must be paid in full by the following payment due date (July 25). Finally, assume that the consumer was eligible for a grace period at the start of the June billing cycle (in other words, assume that the purchase balance for the April billing cycle was paid in full by May 25).

A. If the consumer pays the purchase balance for the May billing cycle in full by June 25, then at the end of the June billing cycle the consumer is eligible for a grace period with respect to purchases made during that billing cycle. Therefore, § 226.54 limits the imposition of finance charges with respect to purchases made during the June billing cycle if the consumer does not pay the purchase balance for the June billing cycle in full by July 25. Specifically, § 226.54(a)(1)(i) prohibits the card issuer from imposing finance charges based on the purchase balance at the end of the June billing cycle for days that precede the July billing cycle. Furthermore, § 226.54(a)(1)(ii) prohibits the card issuer from imposing finance charges based on any portion of the balance at the end of the June billing cycle that was paid on or before July 25.

B. If the consumer does not pay the purchase balance for the May billing cycle in full by June 25, then the consumer is not eligible for a grace period with respect to purchases made during the June billing cycle at the end of that cycle. Therefore, § 226.54 does not limit the imposition of finance charges with respect to purchases made during the June billing cycle regardless of whether the consumer pays the purchase balance for the June billing cycle in full by July 25.

ii. Same facts as above except that the card issuer places only one condition on the provision of a grace period for purchases made during the current billing cycle (the June billing cycle): that the purchase balance at the end of the current billing cycle (the June billing cycle) be paid in full by the following payment due date (July 25). In these circumstances, § 226.54 applies to the same extent as discussed in paragraphs i.A. and i.B. above regardless of whether the purchase balance for the April billing cycle was paid in full by May 25.

2. *Definition of grace period.* For purposes of §§ 226.5(b)(2)(ii)(B) and 226.54, a grace period is a period within which any credit extended may be repaid without incurring a finance charge due to a periodic interest rate. The following are not grace periods for purposes of § 226.54:

i. *Deferred interest and similar programs.* A deferred interest or similar promotional program under which a consumer will not be obligated to pay interest that accrues on a balance if that balance is paid in full prior to the expiration of a specified period of time is not a grace period for purposes of § 226.54. Thus, § 226.54 does not prohibit the card issuer from charging accrued interest to an account upon expiration of a deferred interest or similar program if the balance was not paid in full prior to expiration (to the extent consistent with § 226.55 and other applicable law and regulatory guidance).

ii. *Waivers or rebates of interest.* As a general matter, a card issuer has not provided a grace period with respect to transactions for purposes of § 226.54 if, on an individualized basis (such as in response to a consumer's request), the card issuer waives or rebates finance charges that have accrued on transactions. In addition, when a balance at the end of the preceding billing cycle is paid in full on or before the payment due date in the current billing cycle, a card issuer that waives or rebates trailing or residual interest accrued on that balance or any other transactions during the current billing cycle has not provided a grace period with respect to that balance or any other transactions for purposes of § 226.54. However, if the terms of the account provide that all interest accrued on transactions will be waived or rebated if the balance for those transactions at the end of the billing cycle during which the transactions occurred is paid in full by the following payment due date, the card issuer is providing a grace period with respect to those transactions for purposes of § 226.54. For example:

A. Assume that the billing cycles for a credit card account begin on the first day of the month and end on the last day of the month and that the payment due date is the twenty-fifth day of the month. On March 31, the balance on the account is $1,000 and the consumer is not eligible for a grace period with respect to that balance because the balance at the end of the prior billing cycle was not paid in full on March 25. On April 15, the consumer uses the account for a $500 purchase. On April 25, the card issuer receives a payment of $1,000. On May 3, the card issuer mails or delivers a periodic statement reflecting trailing or residual interest that accrued on the $1,000 balance from April 1 through April 24 as well as interest that accrued on the $500 purchase from April 15 through April 30. On May 10, the consumer requests that the trailing or residual interest charges be waived and the card issuer complies. By waiving these interest charges, the card issuer has not provided a grace period with respect to the $1,000 balance or the $500 purchase.

B. Same facts as in paragraph ii.A. above except that the terms of the account state that trailing or residual interest will be waived in these circumstances or it is the card issuer's practice to waive trailing or residual interest in these circumstances. By waiving these interest charges, the card issuer has not provided a grace period with respect to the $1,000 balance or the $500 purchase.

C. Assume that the billing cycles for a credit card account begin on the first day of the month and end on the last day of the month and that the payment due date is the twenty-fifth day of the month. Assume also that, for purchases made during the current billing cycle (for purposes of this example, the June billing cycle), the terms of the account provide that interest accrued on those purchases from the date of the purchase until the payment due date in the following billing cycle (July 25) will be waived or rebated, subject to two conditions. First, the purchase balance at the end of the preceding billing cycle (the May billing cycle) must have been paid in full by the payment due date in the current billing cycle (June 25). Second, the purchase balance at the end of the current billing cycle (the June billing cycle) must be paid in full by the following payment due date (July 25). Under these circumstances, the card issuer is providing a grace period on purchases for purposes of § 226.54. Therefore, assuming that the consumer was eligible for this grace period at the start of the June billing cycle

(in other words, assuming that the purchase balance for the April billing cycle was paid in full by May 25) and assuming that the consumer pays the purchase balance for the May billing cycle in full by June 25, § 226.54 applies to the imposition of finance charges with respect to purchases made during the June billing cycle. Specifically, § 226.54(a)(1)(i) prohibits the card issuer from imposing finance charges based on the purchase balance at the end of the June billing cycle for days that precede the July billing cycle. Furthermore, § 226.54(a)(1)(ii) prohibits the card issuer from imposing finance charges based on any portion of the balance at the end of the June billing cycle that was paid on or before July 25.

3. *Relationship to payment allocation requirements in § 226.53.* Card issuers must comply with the payment allocation requirements in § 226.53 even if doing so will result in the loss of a grace period.

4. *Prohibition on two-cycle balance computation method.* When a consumer ceases to be eligible for a grace period, § 226.54(a)(1)(i) prohibits the card issuer from computing the finance charge using the two-cycle average daily balance computation method. This method calculates the finance charge using a balance that is the sum of the average daily balances for two billing cycles. The first balance is for the current billing cycle, and is calculated by adding the total balance (including or excluding new purchases and deducting payments and credits) for each day in the billing cycle, and then dividing by the number of days in the billing cycle. The second balance is for the preceding billing cycle.

5. *Prohibition on imposing finance charges on amounts paid within grace period.* When a balance on a credit card account is eligible for a grace period and the card issuer receives payment for some but not all of that balance prior to the expiration of the grace period, § 226.54(a)(1)(ii) prohibits the card issuer from imposing finance charges on the portion of the balance paid. Card issuers are not required to use a particular method to comply with § 226.54(a)(1)(ii). However, when § 226.54(a)(1)(ii) applies, a card issuer is in compliance if, for example, it applies the consumer's payment to the balance subject to the grace period at the end of the preceding billing cycle (in a manner consistent with the payment allocation requirements in § 226.53) and then calculates interest charges based on the amount of the balance that remains unpaid.

6. *Examples.* Assume that the annual percentage rate for purchases on a credit card account is 15%. The billing cycle starts on the first day of the month and ends on the last day of the month. The payment due date for the account is the twenty-fifth day of the month. For purchases made during the current billing cycle, the card issuer provides a grace period from the date of the purchase until the payment due date in the following billing cycle, provided that the purchase balance at the end of the current billing cycle is paid in full by the following payment due date. For purposes of this example, assume that none of the required minimum periodic payment is allocated to the balances discussed. During the March billing cycle, the following transactions are charged to the account: A $100 purchase on March 10, a $200 purchase on March 15, and a $300 purchase on March 20. On March 25, the purchase balance for the February billing cycle is paid in full. Thus, for purposes of § 226.54, the consumer is eligible for a grace period on the March purchases. At the end of the March billing cycle (March 31), the consumer's total purchase balance is $600 and the consumer will not be charged interest on that balance if it is paid in full by the following due date (April 25).

i. On April 10, a $150 purchase is charged to the account. On April 25, the card issuer receives $500 in excess of the required minimum periodic payment. Section 226.54(a)(1)(i) prohibits the card issuer from reaching back and charging interest on any of the March transactions from the date of the transaction through the end of the March billing cycle (March 31). In these circumstances, the card issuer may comply with § 226.54(a)(1)(ii) by applying the $500 excess payment to the $600 purchase balance and then charging interest only on the portion of the $600 purchase balance that remains unpaid ($100) from the start of the April billing cycle (April 1) through the end of the April billing cycle (April 30). In addition, the card issuer may charge interest on the $150 purchase from the date of the transaction (April 10) through the end of the April billing cycle (April 31).

ii. Same facts as in paragraph 6. above except that, on March 18, a $250 cash advance is charged to the account at an annual percentage rate of 25%. The card issuer's grace period does not apply to cash advances, but the card issuer does provide a grace period on the March purchases because the purchase balance for the February billing cycle is paid in full on March 25. On April 25, the card issuer receives $600 in excess of the required minimum periodic payment. As required by § 226.53, the card issuer allocates the $600 excess payment first to the balance with the highest annual percentage rate (the $250 cash advance balance). Although § 226.54(a)(1)(i) prohibits the card issuer from charging interest on the March purchases based on days in the March billing cycle, the card issuer may charge interest on the $250 cash advance from the date of the transaction (March 18) through April 24. In these circumstances, the card issuer may comply with § 226.54(a)(1)(ii) by applying the remainder of the excess payment ($350) to the $600 purchase balance and then charging interest only on the portion of the $600 purchase balance that remains unpaid ($250) from the start of the April billing cycle (April 1) through the end of the April billing cycle (April 30).

iii. Same facts as in paragraph 6. above except that the consumer does not pay the balance for the February billing cycle in full on March 25 and therefore is not eligible for a grace period on the March purchases. Under these circumstances, § 226.54 does not apply and the card issuer may charge interest from the date of each transaction through April 24 and interest on the remaining $100 from April 25 through the end of the April billing cycle (April 25).

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

*55(a) General rule.*

1. *Examples.* Section 226.55(a) prohibits card issuers from increasing an annual percentage rate or any fee or charge required to be disclosed under § 226.6(b)(2)(ii), (b)(2)(iii), or (b)(2)(xii) on a credit card account unless specifically permitted by one of the exceptions in § 226.55(b). The following examples illustrate the general application of § 226.55(a) and (b). Additional examples illustrating specific aspects of the exceptions in § 226.55(b) are provided in the commentary to those exceptions.

i. *Account-opening disclosure of non-variable rate for six months, then variable rate.* Assume that, at account opening on January 1 of year one, a card issuer discloses that the annual percentage rate for purchases is a non-variable rate of 15% and will apply for six months. The card issuer also discloses that, after six months, the annual percentage rate for purchases will be a variable rate that is currently 18% and will be adjusted quarterly by adding a margin of 8 percentage points to a publicly-available index not under the card issuer's control. Furthermore, the card issuer discloses that the annual percentage rate for cash advances is the same variable rate that will apply to purchases after six months. Finally, the card issuer discloses that, to the extent consistent with § 226.55 and other applicable law, a non-variable penalty rate of 30% may apply if the consumer makes a late payment. The payment due date for the account is the twenty-fifth day of the month and the required minimum periodic payments are applied to accrued interest and fees but do not reduce the purchase and cash advance balances.

A. *Change-in-terms rate increase for new transactions after first year.* On January 15 of year one, the consumer uses the account to make a $2,000 purchase and a $500 cash advance. No other transactions are made on the account. At the start of each quarter, the card issuer may adjust the variable rate that applies to the $500 cash advance consistent with changes in the index (pursuant to § 226.55(b)(2)). All required minimum periodic payments are received on or before the payment due date until May of year one, when the payment due on May 25 is received by the creditor on May 28. At this time, the card issuer is prohibited by § 226.55 from increasing the rates that apply to the $2,000 purchase, the $500 cash advance, or future purchases and cash advances. Six months after account opening (July 1), the card issuer may begin to accrue interest on the $2,000 purchase at the previously-disclosed variable rate determined using an 8-point margin (pursuant to § 226.55(b)(1)). Because no other increases in rate were disclosed at account opening, the card issuer may not subsequently increase the variable rate that applies to the $2,000 purchase and the $500 cash advance (except due to increases in the index pursuant to § 226.55(b)(2)). On November 16, the card issuer provides a notice pursuant to § 226.9(c) informing the consumer of a new variable rate that will apply on January 1 of year two (calculated using the same index and an increased

margin of 12 percentage points). On December 15, the consumer makes a $100 purchase. On January 1 of year two, the card issuer may increase the margin used to determine the variable rate that applies to new purchases to 12 percentage points (pursuant to § 226.55(b)(3)). However, § 226.55(b)(3)(ii) does not permit the card issuer to apply the variable rate determined using the 12-point margin to the $2,000 purchase balance. Furthermore, although the $100 purchase occurred more than 14 days after provision of the § 226.9(c) notice, § 226.55(b)(3)(iii) does not permit the card issuer to apply the variable rate determined using the 12-point margin to that purchase because it occurred during the first year after account opening. On January 15 of year two, the consumer makes a $300 purchase. The card issuer may apply the variable rate determined using the 12-point margin to the $300 purchase.

B. *Account becomes more than 60 days delinquent during first year.* Same facts as above except that the required minimum periodic payment due on May 25 of year one is not received by the card issuer until July 30 of year one. Because the card issuer received the required minimum periodic payment more than 60 days after the payment due date, § 226.55(b)(4) permits the card issuer to increase the annual percentage rate applicable to the $2,000 purchase, the $500 cash advance, and future purchases and cash advances. However, § 226.55(b)(4)(i) requires the card issuer to first comply with the notice requirements in § 226.9(g). Thus, if the card issuer provided a § 226.9(g) notice on July 25 stating that all rates on the account would be increased to the 30% penalty rate, the card issuer could apply that rate beginning on September 8 to all balances and to future transactions.

ii. *Account-opening disclosure of non-variable rate for six months, then increased non-variable rate for six months, then variable rate; change-in-terms rate increase for new transactions after first year.* Assume that, at account opening on January 1 of year one, a card issuer discloses that the annual percentage rate for purchases will increase as follows: A non-variable rate of 5% for six months; a non-variable rate of 10% for an additional six months; and thereafter a variable rate that is currently 15% and will be adjusted monthly by adding a margin of 5 percentage points to a publicly-available index not under the card issuer's control. The payment due date for the account is the fifteenth day of the month and the required minimum periodic payments are applied to accrued interest and fees but do not reduce the purchase balance. On January 15 of year one, the consumer uses the account to make a $1,500 purchase. Six months after account opening (July 1), the card issuer may begin to accrue interest on the $1,500 purchase at the previously-disclosed 10% non-variable rate (pursuant to § 226.55(b)(1)). On September 15, the consumer uses the account for a $700 purchase. On November 16, the card issuer provides a notice pursuant to § 226.9(c) informing the consumer of a new variable rate that will apply on January 1 of year two (calculated using the same index and an increased margin of 8 percentage points). One year after account opening (January 1 of year two), the card issuer may begin accruing interest on the $2,200 purchase balance at the previously-disclosed variable rate determined using a 5-point margin (pursuant to § 226.55(b)(1)). Section 226.55 does not permit the card issuer to apply the variable rate determined using the 8-point margin to the $2,200 purchase balance. Furthermore, § 226.55 does not permit the card issuer to subsequently increase the variable rate determined using the 5-point margin that applies to the $2,200 purchase balance (except due to increases in the index pursuant to § 226.55(b)(2)). The card issuer may, however, apply the variable rate determined using the 8-point margin to purchases made on or after January 1 of year two (pursuant to § 226.55(b)(3)).

iii. *Change-in-terms rate increase for new transactions after first year; penalty rate increase after first year.* Assume that, at account opening on January 1 of year one, a card issuer discloses that the annual percentage rate for purchases is a variable rate determined by adding a margin of 6 percentage points to a publicly-available index outside of the card issuer's control. The card issuer also discloses that, to the extent consistent with § 226.55 and other applicable law, a non-variable penalty rate of 28% may apply if the consumer makes a late payment. The due date for the account is the fifteenth of the month. On May 30 of year two, the account has a purchase balance of $1,000. On May 31, the card issuer provides a notice pursuant to § 226.9(c) informing the consumer of a new variable rate that will apply on July 16 for all purchases made on or after June 15 (calculated by using the same index and an increased margin of 8 percentage points). On June 14, the consumer makes a $500 purchase. On June 15, the consumer makes a $200 purchase. On July 1, the card issuer has not received the payment due on June 15 and provides the consumer with a notice pursuant to § 226.9(g) stating that the 28% penalty rate will apply as of August 15 to all transactions made on or after July 16 and that, if the consumer becomes more than 60 days late, the penalty rate will apply to all balances on the account. On July 17, the consumer makes a $300 purchase.

A. *Account does not become more than 60 days delinquent.* The payment due on June 15 of year two is received on July 2. On July 16, § 226.55(b)(3)(ii) permits the card issuer to apply the variable rate determined using the 8-point margin disclosed in the § 226.9(c) notice to the $200 purchase made on June 15 but does not permit the card issuer to apply this rate to the $1,500 purchase balance. On August 15, § 226.55(b)(3)(ii) permits the card issuer to apply the 28% penalty rate disclosed at account opening and in the § 226.9(g) notice to the $300 purchase made on July 17 but does not permit the card issuer to apply this rate to the $1,500 purchase balance (which remains at the variable rate determined using the 6-point margin) or the $200 purchase (which remains at the variable rate determined using the 8-point margin).

B. *Account becomes more than 60 days delinquent after provision of § 226.9(g) notice.* Same facts as above except the payment due on June 15 of year two has not been received by August 15. Section 226.55(b)(4) permits the card issuer to apply the 28% penalty rate to the $1,500 purchase balance and the $200 purchase because it has not received the June 15 payment within 60 days after the due date. However, in order to do so, § 226.55(b)(4)(i) requires the card issuer to first provide an additional notice pursuant to § 226.9(g). This notice must be sent no earlier than August 15, which is the first day the account became more than 60 days' delinquent. If the notice is sent on August 15, the card issuer may begin accruing interest on the $1,500 purchase balance and the $200 purchase at the 28% penalty rate beginning on September 29.

2. *Relationship to grace period.* Nothing in § 226.55 prohibits a card issuer from assessing interest due to the loss of a grace period to the extent consistent with § 226.5(b)(2)(ii)(B) and § 226.54. In addition, a card issuer has not reduced an annual percentage rate on a credit card account for purposes of § 226.55 if the card issuer does not charge interest on a balance or a portion thereof based on a payment received prior to the expiration of a grace period. For example, if the annual percentage rate for purchases on an account is 15% but the card issuer does not charge any interest on a $500 purchase balance because that balance was paid in full prior to the expiration of the grace period, the card issuer has not reduced the 15% purchase rate to 0% for purposes of § 226.55.

*55(b) Exceptions.*

1. *Exceptions not mutually exclusive.* A card issuer may increase an annual percentage rate or a fee or charge required to be disclosed under § 226.6(b)(2)(ii), (b)(2)(iii), or (b)(2)(xii) pursuant to an exception set forth in § 226.55(b) even if that increase would not be permitted under a different exception. For example, although a card issuer cannot increase an annual percentage rate pursuant to § 226.55(b)(1) unless that rate is provided for a specified period of at least six months, the card issuer may increase an annual percentage rate during a specified period due to an increase in an index consistent with § 226.55(b)(2). Similarly, although § 226.55(b)(3) does not permit a card issuer to increase an annual percentage rate during the first year after account opening, the card issuer may increase the rate during the first year after account opening pursuant to § 226.55(b)(4) if the required minimum periodic payment is not received within 60 days after the due date.

2. *Relationship between exceptions in § 226.55(b) and notice requirements in § 226.9.* Nothing in § 226.55 alters the requirements in § 226.9(c) and (g) that creditors provide written notice at least 45 days prior to the effective date of certain increases in annual percentage rates, fees, and charges.

i. *14-day rule in § 226.55(b)(3)(ii).* Although § 226.55(b)(3)(ii) permits a card issuer that discloses an increased rate pursuant to § 226.9(c) or (g) to apply that rate to transactions that occur more than 14 days after provision of the notice, the card issuer cannot begin to accrue interest at the increased rate until that increase goes into effect, consistent with § 226.9(c) or (g). For example, if on May 1 a card issuer provides

a notice pursuant to § 226.9(c) stating that a rate will increase from 15% to 18% on June 15, § 226.55(b)(3)(ii) permits the card issuer to apply the 18% rate to transactions that occur on or after May 16. However, neither § 226.55 nor § 226.9(c) permits the card issuer to begin accruing interest at the 18% rate on those transactions until June 15. See additional examples in comment 55(b)(3)–4.

ii. *Mid-cycle increases; application of balance computation methods.* Once an increased rate has gone into effect, the card issuer cannot calculate interest charges based on that increased rate for days prior to the effective date. Assume that, in the example in paragraph i. above, the billing cycles for the account begin on the first day of the month and end on the last day of the month. If, for example, the card issuer uses the average daily balance computation method, it cannot apply the 18% rate to the average daily balance for the entire June billing cycle because that rate did not become effective until June 15. However, the card issuer could apply the 15% rate to the average daily balance from June 1 through June 14 and the 18% rate to the average daily balance from June 15 through June 30. Similarly, if the card issuer that uses the daily balance computation method, it could apply the 15% rate to the daily balance for each day from June 1 through June 14 and the 18% rate to the daily balance for each day from June 15 through June 30.

iii. *Mid-cycle increases; delayed implementation of increase.* If § 226.55(b) and § 226.9(b), (c), or (g) permit a card issuer to apply an increased annual percentage rate, fee, or charge on a date that is not the first day of a billing cycle, the card issuer may delay application of the increased rate, fee, or charge until the first day of the following billing cycle without relinquishing the ability to apply that rate, fee, or charge. Thus, in the example in paragraphs i. and ii. above, the card issuer could delay application of the 18% rate until the start of the next billing cycle (April 1) without relinquishing its ability to apply that rate under § 226.55(b)(3). Similarly, assume that, at account opening on January 1, a card issuer discloses that a non-variable annual percentage rate of 10% will apply to purchases for six months and a non-variable rate of 15% will apply thereafter. The first day of each billing cycle for the account is the fifteenth of the month. If the six-month period expires on July 1, the card issuer may delay application of the 15% rate until the start of the next billing cycle (July 15) without relinquishing its ability to apply that rate under § 226.55(b)(1).

3. *Application of a lower rate, fee, or charge.* Nothing in § 226.55 prohibits a card issuer from lowering an annual percentage rate or a fee or charge required to be disclosed under § 226.6(b)(2)(ii), (b)(2)(iii), or (b)(2)(xii). However, a card issuer that does so cannot subsequently increase the rate, fee, or charge unless permitted by one of the exceptions in § 226.55(b). The following examples illustrate the application of the rule:

i. *Application of lower rate during first year.* Assume that a card issuer discloses at account opening on January 1 of year one that a non-variable annual percentage rate of 15% will apply to purchases. The card issuer also discloses that, to the extent consistent with § 226.55 and other applicable law, a non-variable penalty rate of 30% may apply if the consumer's required minimum periodic payment is received after the payment due date, which is the tenth of the month. The required minimum periodic payments are applied to accrued interest and fees but do not reduce the purchase balance.

A. *Temporary rate returns to standard rate at expiration.* On September 30 of year one, the account has a purchase balance of $1,400 at the 15% rate. On October 1, the card issuer provides a notice pursuant to § 226.9(c) informing the consumer that the rate for new purchases will decrease to a non-variable rate of 5% for six months (from October 1 through March 31 of year two) and that, beginning on April 1 of year two, the rate for purchases will increase to the 15% non-variable rate disclosed at account opening. The card issuer does not apply the 5% rate to the $1,400 purchase balance. On October 14 of year one, the consumer makes a $300 purchase at the 5% rate. On January 15 of year two, the consumer makes a $150 purchase at the 5% rate. On April 1 of year two, the card issuer may begin accruing interest on the $300 purchase and the $150 purchase at 15% as disclosed in the § 226.9(c) notice (pursuant to § 226.55(b)(1)).

B. *Penalty rate increase.* Same facts as above except that the required minimum periodic payment due on November 10 of year one is not received until November 15. Section 226.55 does not permit the card issuer to increase any annual percentage rate on the account at this time. The card issuer may apply the 30% penalty rate to new transactions beginning on April 1 of year two pursuant to § 226.55(b)(3) by providing a § 226.9(g) notice informing the consumer of this increase no later than February 14 of year two. The card issuer may not, however, apply the 30% penalty rate to the $1,400 purchase balance as of September 30 of year one, the $300 purchase on October 15 of year one, or the $150 purchase on January 15 of year two.

ii. *Application of lower rate at end of first year.* Assume that, at account opening on January 1 of year one, a card issuer discloses that a non-variable annual percentage rate of 15% will apply to purchases for one year and discloses that, after the first year, the card issuer will apply a variable rate that is currently 20% and is determined by adding a margin of 10 percentage points to a publicly-available index not under the card issuer's control. On December 31 of year one, the account has a purchase balance of $3,000.

A. *Notice of extension of existing temporary rate provided consistent with § 226.55(b)(1)(i).* On December 15 of year one, the card issuer provides a notice pursuant to § 226.9(c) informing the consumer that the existing 15% rate will continue to apply until July 1 of year two. The notice further states that, on July 1 of year two, the variable rate disclosed at account opening will apply. On July 1 of year two, § 226.55(b)(1) permits the card issuer to apply that variable rate to any remaining portion of the $3,000 balance and to new transactions.

B. *Notice of new temporary rate provided consistent with § 226.55(b)(1)(i).* On December 15 of year one, the card issuer provides a notice pursuant to § 226.9(c) informing the consumer of a new variable rate that will apply on January 1 of year two that is lower than the variable rate disclosed at account opening. The new variable rate is calculated using the same index and a reduced margin of 8 percentage points. The notice further states that, on July 1 of year two, the margin will increase to the margin disclosed at account opening (10 percentage points). On July 1 of year two, § 226.55(b)(1) permits the card issuer to increase the margin used to determine the variable rate that applies to new purchases to 10 percentage points and to apply that rate to any remaining portion of the $3,000 purchase balance.

C. *No notice provided.* Same facts as in paragraph ii.B. above except that the card issuer does not send a notice on December 15 of year one. Instead, on January 1 of year two, the card issuer lowers the margin used to determine the variable rate to 8 percentage points and applies that rate to the $3,000 purchase balance and to new purchases. Section 226.9 does not require advance notice in these circumstances. However, unless the account becomes more than 60 days' delinquent, § 226.55 does not permit the card issuer to subsequently increase the rate that applies to the $3,000 purchase balance except due to increases in the index (pursuant to § 226.55(b)(2)).

iii. *Application of lower rate after first year.* Assume that a card issuer discloses at account opening on January 1 of year one that a non-variable annual percentage rate of 10% will apply to purchases for one year, after which that rate will increase to a non-variable rate of 15%. The card issuer also discloses that, to the extent consistent with § 226.55 and other applicable law, a non-variable penalty rate of 30% may apply if the consumer's required minimum periodic payment is received after the payment due date, which is the tenth of the month. The required minimum periodic payments are applied to accrued interest and fees but do not reduce the purchase balance.

A. *Effect of 14-day period.* On June 30 of year two, the account has a purchase balance of $1,000 at the 15% rate. On July 1, the card issuer provides a notice pursuant to § 226.9(c) informing the consumer that the rate for new purchases will decrease to a non-variable rate of 5% for six months (from July 1 through December 31 of year two) and that, beginning on January 1 of year three, the rate for purchases will increase to a non-variable rate of 17%. On July 15 of year two, the consumer makes a $200 purchase. On July 16, the consumer makes a $100 purchase. On January 1 of year three, the card issuer may begin accruing interest on the $100 purchase at 17% (pursuant to § 226.55(b)(1)). However, § 226.55(b)(1)(ii)(B) does not permit the card issuer to apply the 17% rate to the $200 purchase because that transaction occurred within 14 days after provision of the § 226.9(c) notice. Instead, the card issuer may apply the 15% rate that applied to purchases prior to provision of the § 226.9(c) notice. In addition, if the card issuer applied the 5% rate to the $1,000 purchase balance, § 226.55(b)(ii)(A) would

not permit the card issuer to increase the rate that applies to that balance on January 1 of year three to a rate that is higher than 15% that previously applied to the balance.

B. *Penalty rate increase.* Same facts as above except that the required minimum periodic payment due on August 25 is received on August 30. At this time, § 226.55 does not permit the card issuer to increase the annual percentage rates that apply to the $1,000 purchase balance, the $200 purchase, or the $100 purchase. Instead, those rates can only be increased as discussed in paragraph iii.A. above. However, if the card issuer provides a notice pursuant to § 226.9(c) or (g) on September 1, § 226.55(b)(3) permits the card issuer to apply an increased rate (such as the 17% purchase rate or the 30% penalty rate) to transactions that occur on or after September 16 beginning on October 16.

4. *Date on which transaction occurred.* When a transaction occurred for purposes of § 226.55 is generally determined by the date of the transaction. However, if a transaction that occurred within 14 days after provision of a § 226.9(c) or (g) notice is not charged to the account prior to the effective date of the change or increase, the card issuer may treat the transaction as occurring more than 14 days after provision of the notice for purposes of § 226.55. See example in comment 55(b)(3)–4.iii.B. In addition, when a merchant places a "hold" on the available credit on an account for an estimated transaction amount because the actual transaction amount will not be known until a later date, the date of the transaction for purposes of § 226.55 is the date on which the card issuer receives the actual transaction amount from the merchant. See example in comment 55(b)(3)–4.iii.A.

5. *Category of transactions.* For purposes of § 226.55, a "category of transactions" is a type or group of transactions to which an annual percentage rate applies that is different than the annual percentage rate that applies to other transactions. Similarly, a type or group of transactions is a "category of transactions" for purposes of § 226.55 if a fee or charge required to be disclosed under § 226.6(b)(2)(ii), (b)(2)(iii), or (b)(2)(xii) applies to those transactions that is different than the fee or charge that applies to other transactions. For example, purchase transactions, cash advance transactions, and balance transfer transactions are separate categories of transactions for purposes of § 226.55 if a card issuer applies different annual percentage rates to each. Furthermore, if, for example, the card issuer applies different annual percentage rates to different types of purchase transactions (such as one rate for purchases of gasoline or purchases over $100 and a different rate for all other purchases), each type constitutes a separate category of transactions for purposes of § 226.55.

*55(b)(1) Temporary rate exception.*

1. *Relationship to § 226.9(c)(2)(v)(B).* A card issuer that has complied with the disclosure requirements in § 226.9(c)(2)(v)(B) has also complied with the disclosure requirements in § 226.55(b)(1)(i).

2. *Period of six months or longer.* A temporary annual percentage rate must apply to transactions for a specified period of six months or longer before a card issuer can increase that rate pursuant to § 226.55(b)(1). The specified period must expire no less than six months after the date on which the creditor provides the consumer with the disclosures required by § 226.55(b)(1)(i) or, if later, the date on which the account can be used for transactions to which the temporary rate applies. Section 226.55(b)(1) does not prohibit a card issuer from limiting the application of a temporary annual percentage rate to a particular category of transactions (such as balance transfers or purchases over $100). However, in circumstances where the card issuer limits application of the temporary rate to a particular transaction, the specified period must expire no less than six months after the date on which that transaction occurred. The following examples illustrate the application of § 226.55(b)(1):

i. Assume that on January 1 a card issuer offers a consumer a 5% annual percentage rate on purchases made during the months of January through June. A 15% rate will apply thereafter. On February 15, a $500 purchase is charged to the account. On June 15, a $200 purchase is charged to the account. On July 1, the card issuer may begin accruing interest at the 15% rate on the $500 purchase and the $200 purchase (pursuant to § 226.55(b)(1)).

ii. Same facts as above except that on January 1 the card issuer offered the 5% rate on purchases beginning in the month of February. Section 226.55(b)(1) would not permit the card issuer to begin accruing interest at the 15% rate on the $500 purchase and the $200 purchase until August 1.

iii. Assume that on October 31 of year one the annual percentage rate for purchases is 17%. On November 1, the card issuer offers the consumer a 0% rate for six months on purchases made during the months of November and December. The 17% rate will apply thereafter. On November 15, a $500 purchase is charged to the account. On December 15, a $300 purchase is charged to the account. On January 15 of year two, a $150 purchase is charged to the account. Section 226.55(b)(1) would not permit the card issuer to begin accruing interest at the 17% rate on the $500 purchase and the $300 purchase until May 1 of year two. However, the card issuer may accrue interest at the 17% rate on the $150 purchase beginning on January 15 of year two.

iv. Assume that on June 1 of year one a card issuer offers a consumer a 0% annual percentage rate for six months on the purchase of an appliance. An 18% rate will apply thereafter. On September 1, a $5,000 transaction is charged to the account for the purchase of an appliance. Section 226.55(b)(1) would not permit the card issuer to begin accruing interest at the 18% rate on the $5,000 transaction until March 1 of year two.

v. Assume that on May 31 of year one the annual percentage rate for purchases is 15%. On June 1, the card issuer offers the consumer a 5% rate for six months on a balance transfer of at least $1,000. The 15% rate will apply thereafter. On June 15, a $3,000 balance is transferred to the account. On July 15, a $200 purchase is charged to the account. Section 226.55(b)(1) would not permit the card issuer to begin accruing interest at the 15% rate on the $3,000 transferred balance until December 15. However, the card issuer may accrue interest at the 15% rate on the $200 purchase beginning on July 15.

vi. Same facts as in paragraph v. above except that the card issuer offers the 5% rate for six months on all balance transfers of at least $1,000 during the month of June and a $2,000 balance is transferred to the account on June 30 (in addition to the $3,000 balance transfer on June 15). Because the 5% rate is not limited to a particular transaction, § 226.55(b)(1) permits the card issuer to begin accruing interest on the $3,000 and $2,000 transferred balances on December 1.

3. *Deferred interest and similar promotional programs.*

i. *Application of § 226.55.* The general prohibition in § 226.55(a) applies to the imposition of accrued interest upon the expiration of a deferred interest or similar promotional program under which the consumer is not obligated to pay interest that accrues on a balance if that balance is paid in full prior to the expiration of a specified period of time. However, the exception in § 226.55(b)(1) also applies to these programs, provided that the specified period is six months or longer and that, prior to the commencement of the period, the card issuer discloses the length of the period and the rate at which interest will accrue on the balance subject to the deferred interest or similar program if that balance is not paid in full prior to expiration of the period. See comment 9(c)(2)(v)–9. For purposes of § 226.55, "deferred interest" has the same meaning as in § 226.16(h)(2) and associated commentary.

ii. *Examples.*

A. *Deferred interest offer at account opening.* Assume that, at account opening on January 1 of year one, the card issuer discloses the following with respect to a deferred interest program: "No interest on purchases made in January of year one if paid in full by December 31 of year one. If the balance is not paid in full by that date, interest will be imposed from the transaction date at a rate of 20%." On January 15 of year one, the consumer makes a purchase of $2,000. No other transactions are made on the account. The terms of the deferred interest program require the consumer to make minimum periodic payments with respect to the deferred interest balance, and the payment due on April 1 is not received until April 10. Section 226.55 does not permit the card issuer to charge to the account interest that has accrued on the $2,000 purchase at this time. Furthermore, if the consumer pays the $2,000 purchase in full on or before December 31 of year one, § 226.55 does not permit the card issuer to charge to the account any interest that has accrued on that purchase. If, however, the $2,000 purchase has not been paid in full by January 1 of year two, § 226.55(b)(1) permits the card issuer to charge to the account the interest accrued on that purchase at the 20% rate during year one (to the extent consistent with other applicable law).

B. *Deferred interest offer after account opening.* Assume that a card issuer discloses

at account opening on January 1 of year one that the rate that applies to purchases is a variable annual percentage rate that is currently 18% and will be adjusted quarterly by adding a margin of 8 percentage points to a publicly-available index not under the card issuer's control. The card issuer also discloses that, to the extent consistent with § 226.55 and other applicable law, a non-variable penalty rate of 30% may apply if the consumer's required minimum periodic payment is received after the payment due date, which is the first of the month. On June 30 of year two, the consumer uses the account for a $1,000 purchase in response to an offer of a deferred interest program. Under the terms of this program, interest on the purchase will accrue at the variable rate for purchases but the consumer will not be obligated to pay that interest if the purchase is paid in full by December 31 of year three. The terms of the deferred interest program require the consumer to make minimum periodic payments with respect to the deferred interest balance, and the payment due on September 1 of year two is not received until September 6. Section 226.55 does not permit the card issuer to charge to the account interest that has accrued on the $1,000 purchase at this time. Furthermore, if the consumer pays the $1,000 purchase in full on or before December 31 of year three, § 226.55 does not permit the card issuer to charge to the account any interest that has accrued on that purchase. On December 31 of year three, the $1,000 purchase has been paid in full. Under these circumstances, the card issuer may not charge any interest accrued on the $1,000 purchase.

C. *Application of § 226.55(b)(4) to deferred interest programs.* Same facts as in paragraph ii.B. above except that, on November 2 of year two, the card issuer has not received the required minimum periodic payments due on September 1, October 1, or November 1 of year two and sends a § 226.9(c) or (g) notice stating that interest accrued on the $1,000 purchase since June 30 of year two will be charged to the account on December 17 of year two and thereafter interest will be charged on the $1,000 purchase consistent with the variable rate for purchases. On December 17 of year two, § 226.55(b)(4) permits the card issuer to charge to the account interest accrued on the $1,000 purchase since June 30 of year two and § 226.55(b)(3) permits the card issuer to begin charging interest on the $1,000 purchase consistent with the variable rate for purchases. However, if the card issuer receives the required minimum periodic payments due on January 1, February 1, March 1, April 1, May 1, and June 1 of year three, § 226.55(b)(4)(ii) requires the card issuer to cease charging the account for interest on the $1,000 purchase no later than the first day of the next billing cycle. See comment 55(b)(4)–3.iii. However, § 226.55(b)(4)(ii) does not require the card issuer to waive or credit the account for interest accrued on the $1,000 purchase since June 30 of year two. If the $1,000 purchase is paid in full on December 31 of year three, the card issuer is not permitted to charge to the account interest accrued on the $1,000 purchase after June 1 of year three.

4. *Contingent or discretionary rate increases.* Section § 226.55(b)(1) permits a card issuer to increase a temporary annual percentage rate upon the expiration of a specified period of time. However, § 226.55(b)(1) does not permit a card issuer to apply an increased rate that is contingent on a particular event or occurrence or that may be applied at the card issuer's discretion. The following examples illustrate rate increases that are not permitted by § 226.55:

i. Assume that a card issuer discloses at account opening on January 1 of year one that a non-variable annual percentage rate of 15% applies to purchases but that all rates on an account may be increased to a non-variable penalty rate of 30% if a consumer's required minimum periodic payment is received after the payment due date, which is the fifteenth of the month. On March 1, the account has a $2,000 purchase balance. The payment due on March 15 is not received until March 20. Section 226.55 does not permit the card issuer to apply the 30% penalty rate to the $2,000 purchase balance. However, pursuant to § 226.55(b)(3), the card issuer could provide a § 226.9(c) or (g) notice on or before November 16 informing the consumer that, on January 1 of year two, the 30% rate (or a different rate) will apply to new transactions.

ii. Assume that a card issuer discloses at account opening on January 1 of year one that a non-variable annual percentage rate of 5% applies to transferred balances but that this rate will increase to a non-variable rate of 18% if the consumer does not use the account for at least $200 in purchases each billing cycle. On July 1, the consumer transfers a balance of $4,000 to the account. During the October billing cycle, the consumer uses the account for $150 in purchases. Section 226.55 does not permit the card issuer to apply the 18% rate to the $4,000 transferred balance or the $150 in purchases. However, pursuant to § 226.55(b)(3), the card issuer could provide a § 226.9(c) or (g) notice on or before November 16 informing the consumer that, on January 1 of year two, the 18% rate (or a different rate) will apply to new transactions.

*55(b)(2) Variable rate exception.*

1. *Increases due to increase in index.* Section 226.55(b)(2) provides that an annual percentage rate that varies according to an index that is not under the card issuer's control and is available to the general public may be increased due to an increase in the index. This section does not permit a card issuer to increase the rate by changing the method used to determine a rate that varies with an index (such as by increasing the margin), even if that change will not result in an immediate increase. However, from time to time, a card issuer may change the day on which index values are measured to determine changes to the rate.

2. *Index not under card issuer's control.* A card issuer may increase a variable annual percentage rate pursuant to § 226.55(b)(2) only if the increase is based on an index or indices outside the card issuer's control. For purposes of § 226.55(b)(2), an index is under the card issuer's control if:

i. The index is the card issuer's own prime rate or cost of funds. A card issuer is permitted, however, to use a published prime rate, such as that in the *Wall Street Journal,* even if the card issuer's own prime rate is one of several rates used to establish the published rate.

ii. The variable rate is subject to a fixed minimum rate or similar requirement that does not permit the variable rate to decrease consistent with reductions in the index. A card issuer is permitted, however, to establish a fixed maximum rate that does not permit the variable rate to increase consistent with increases in an index. For example, assume that, under the terms of an account, a variable rate will be adjusted monthly by adding a margin of 5 percentage points to a publicly-available index. When the account is opened, the index is 10% and therefore the variable rate is 15%. If the terms of the account provide that the variable rate will not decrease below 15% even if the index decreases below 10%, the card issuer cannot increase that rate pursuant to § 226.55(b)(2). However, § 226.55(b)(2) does not prohibit the card issuer from providing in the terms of the account that the variable rate will not increase above a certain amount (such as 20%).

iii. The variable rate can be calculated based on any index value during a period of time (such as the 90 days preceding the last day of a billing cycle). A card issuer is permitted, however, to provide in the terms of the account that the variable rate will be calculated based on the average index value during a specified period. In the alternative, the card issuer is permitted to provide in the terms of the account that the variable rate will be calculated based on the index value on a specific day (such as the last day of a billing cycle). For example, assume that the terms of an account provide that a variable rate will be adjusted at the beginning of each quarter by adding a margin of 7 percentage points to a publicly-available index. At account opening at the beginning of the first quarter, the variable rate is 17% (based on an index value of 10%). During the first quarter, the index varies between 9.8% and 10.5% with an average value of 10.1%. On the last day of the first quarter, the index value is 10.2%. At the beginning of the second quarter, § 226.55(b)(2) does not permit the card issuer to increase the variable rate to 17.5% based on the first quarter's maximum index value of 10.5%. However, if the terms of the account provide that the variable rate will be calculated based on the average index value during the prior quarter, § 226.55(b)(2) permits the card issuer to increase the variable rate to 17.1% (based on the average index value of 10.1% during the first quarter). In the alternative, if the terms of the account provide that the variable rate will be calculated based on the index value on the last day of the prior quarter, § 226.55(b)(2) permits the card issuer to increase the variable rate to 17.2% (based on the index value of 10.2% on the last day of the first quarter).

3. *Publicly available.* The index or indices must be available to the public. A publicly-available index need not be published in a newspaper, but it must be one the consumer

can independently obtain (by telephone, for example) and use to verify the annual percentage rate applied to the account.

4. *Changing a non-variable rate to a variable rate.* Section 226.55 generally prohibits a card issuer from changing a non-variable annual percentage rate to a variable annual percentage rate because such a change can result in an increase. However, a card issuer may change a non-variable rate to a variable rate to the extent permitted by one of the exceptions in § 226.55(b). For example, § 226.55(b)(1) permits a card issuer to change a non-variable rate to a variable rate upon expiration of a specified period of time. Similarly, following the first year after the account is opened, § 226.55(b)(3) permits a card issuer to change a non-variable rate to a variable rate with respect to new transactions (after complying with the notice requirements in § 226.9(b), (c) or (g)).

5. *Changing a variable rate to a non-variable rate.* Nothing in § 226.55 prohibits a card issuer from changing a variable annual percentage rate to an equal or lower non-variable rate. Whether the non-variable rate is equal to or lower than the variable rate is determined at the time the card issuer provides the notice required by § 226.9(c). For example, assume that on March 1 a variable annual percentage rate that is currently 15% applies to a balance of $2,000 and the card issuer sends a notice pursuant to § 226.9(c) informing the consumer that the variable rate will be converted to a non-variable rate of 14% effective April 15. On April 15, the card issuer may apply the 14% non-variable rate to the $2,000 balance and to new transactions even if the variable rate on March 2 or a later date was less than 14%.

6. *Substitution of index.* A card issuer may change the index and margin used to determine the annual percentage rate under § 226.55(b)(2) if the original index becomes unavailable, as long as historical fluctuations in the original and replacement indices were substantially similar, and as long as the replacement index and margin will produce a rate similar to the rate that was in effect at the time the original index became unavailable. If the replacement index is newly established and therefore does not have any rate history, it may be used if it produces a rate substantially similar to the rate in effect when the original index became unavailable.

*55(b)(3) Advance notice exception.*

1. *Relationship to § 226.9(h).* A card issuer may not increase a fee or charge required to be disclosed under § 226.6(b)(2)(ii), (b)(2)(iii), or (b)(2)(xii) pursuant to § 226.55(b)(3) if the consumer has rejected the increased fee or charge pursuant to § 226.9(h).

2. *Notice provided pursuant to § 226.9(b) and (c).* If an increased annual percentage rate, fee, or charge is disclosed pursuant to both § 226.9(b) and (c), that rate, fee, or charge may only be applied to transactions that occur more than 14 days after provision of the § 226.9(c) notice as provided in § 226.55(b)(3)(ii).

3. *Account opening.*

i. *Multiple accounts with same card issuer.* When a consumer has a credit card account with a card issuer and the consumer opens a new credit card account with the same card issuer (or its affiliate or subsidiary), the opening of the new account constitutes the opening of a credit card account for purposes of § 226.55(b)(3)(iii) if, more than 30 days after the new account is opened, the consumer has the option to obtain additional extensions of credit on each account. For example, assume that, on January 1 of year one, a consumer opens a credit card account with a card issuer. On July 1 of year one, the consumer opens a second credit card account with that card issuer. On July 15, a $1,000 balance is transferred from the first account to the second account. The opening of the second account constitutes the opening of a credit card account for purposes of § 226.55(b)(3)(iii) so long as, on August 1, the consumer has the option to engage in transactions using either account. Under these circumstances, the card issuer could not increase an annual percentage rate or a fee or charge required to be disclosed under § 226.6(b)(2)(ii), (b)(2)(iii), or (b)(2)(xii) on the second account pursuant to § 226.55(b)(3) until July 1 of year two (which is one year after the second account was opened).

ii. *Substitution, replacement or consolidation.*

A. *Generally.* A credit card account has not been opened for purposes of § 226.55(b)(3)(iii) when a credit card account issued by a card issuer is substituted, replaced, or consolidated with another credit card account issued by the same card issuer (or its affiliate or subsidiary). Circumstances in which a credit card account has not been opened for purposes of § 226.55(b)(3)(iii) include when:

(1) A retail credit card account is replaced with a cobranded general purpose credit card account that can be used at a wider number of merchants;

(2) A credit card account is replaced with another credit card account offering different features;

(3) A credit card account is consolidated or combined with one or more other credit card accounts into a single credit card account; or

(4) A credit card account acquired through merger or acquisition is replaced with a credit card account issued by the acquiring card issuer.

B. *Limitation.* A card issuer that replaces or consolidates a credit card account with another credit card account issued by the card issuer (or its affiliate or subsidiary) may not increase an annual percentage rate or a fee or charge required to be disclosed under § 226.6(b)(2)(ii), (b)(2)(iii), or (b)(2)(xii) in a manner otherwise prohibited by § 226.55. For example, assume that, on January 1 of year one, a consumer opens a credit card account with an annual percentage rate of 15% for purchases. On July 1 of year one, the account is replaced with a credit card account that offers different features (such as rewards on purchases). Under these circumstances, § 226.55(b)(3)(iii) prohibits the card issuer from increasing the annual percentage rate for new purchases to a rate that is higher than 15% pursuant to § 226.55(b)(3) until January 1 of year two (which is one year after the first account was opened).

4. *Examples.*

i. *Change-in-terms rate increase; temporary rate increase; 14-day period.* Assume that an account is opened on January 1 of year one. On March 14 of year two, the account has a purchase balance of $2,000 at a non-variable annual percentage rate of 15%. On March 15, the card issuer provides a notice pursuant to § 226.9(c) informing the consumer that the rate for new purchases will increase to a non-variable rate of 18% on May 1. The notice further states that the 18% rate will apply for six months (until November 1) and that thereafter the card issuer will apply a variable rate that is currently 22% and is determined by adding a margin of 12 percentage points to a publicly-available index that is not under the card issuer's control. The fourteenth day after provision of the notice is March 29 and, on that date, the consumer makes a $200 purchase. On March 30, the consumer makes a $1,000 purchase. On May 1, the card issuer may begin accruing interest at 18% on the $1,000 purchase made on March 30 (pursuant to § 226.55(b)(3)). Section 226.55(b)(3)(ii) does not permit the card issuer to apply the 18% rate to the $2,200 purchase balance as of March 29 because that balance reflects transactions that occurred prior to or within 14 days after the provision of the § 226.9(c) notice. After six months (November 2), the card issuer may begin accruing interest on any remaining portion of the $1,000 purchase at the previously-disclosed variable rate determined using the 12-point margin (pursuant to § 226.55(b)(1) and (b)(3)).

ii. *Checks that access an account.* Assume that a card issuer discloses at account opening on January 1 of year one that the annual percentage rate that applies to cash advances is a variable rate that is currently 24% and will be adjusted quarterly by adding a margin of 14 percentage points to a publicly available index not under the card issuer's control. On July 1 of year two, the card issuer provides checks that access the account and, pursuant to § 226.9(b)(3)(i)(A), discloses that a promotional rate of 15% will apply to credit extended by use of the checks until January 1 of year three, after which the cash advance rate determined using the 14-point margin will apply. On July 9 of year two, the consumer uses one of the checks to pay for a $500 transaction. Beginning on January 1 of year three, the card issuer may apply the cash advance rate determined using the 14-point margin to any remaining portion of the $500 transaction (pursuant to § 226.55(b)(1) and (b)(3)).

iii. *Hold on available credit; 14-day period.* Assume that an account is opened on January 1 of year one. On September 14 of year two, the account has a purchase balance of $2,000 at a non-variable annual percentage rate of 17%. On September 15, the card issuer provides a notice pursuant to § 226.9(c) informing the consumer that the rate for new purchases will increase to a non-variable rate of 20% on October 30. The fourteenth day after provision of the notice is September 29. On September 28, the consumer uses the credit card to check into a hotel and the hotel obtains authorization for a $1,000 hold on the account to ensure there is adequate available credit to cover the anticipated cost of the stay.

A. The consumer checks out of the hotel on October 2. The actual cost of the stay is

$1,100 because of additional incidental costs. On October 2, the hotel charges the $1,100 transaction to the account. For purposes of § 226.55(b)(3), the transaction occurred on October 2. Therefore, on October 30, § 226.55(b)(3) permits the card issuer to apply the 20% rate to new purchases and to the $1,100 transaction. However, § 226.55(b)(3)(ii) does not permit the card issuer to apply the 20% rate to any remaining portion of the $2,000 purchase balance.

B. Same facts as above except that the consumer checks out of the hotel on September 29. The actual cost of the stay is $250, but the hotel does not charge this amount to the account until November 1. For purposes of § 226.55(b)(3), the card issuer may treat the transaction as occurring more than 14 days after provision of the § 226.9(c) notice (*i.e.,* after September 29). Accordingly, the card issuer may apply the 20% rate to the $250 transaction.

5. *Application of increased fees and charges. See* comment 55(c)(1)–3.

*55(b)(4) Delinquency exception.*

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

2. *Relationship to § 226.9(g)(3)(i)(B).* A card issuer that has complied with the disclosure requirements in § 226.9(g)(3)(i)(B) has also complied with the disclosure requirements in § 226.55(b)(4)(i).

3. *Reduction in rate pursuant to § 226.55(b)(4)(ii).* Section 226.55(b)(4)(ii) provides that, if the card issuer receives six consecutive required minimum periodic payments on or before the payment due date beginning with the first payment due following the effective date of the increase, the card issuer must reduce any annual percentage rate, fee, or charge increased pursuant to § 226.55(b)(4) to the annual percentage rate, fee, or charge that applied prior to the increase with respect to transactions that occurred prior to or within 14 days after provision of the § 226.9(c) or (g) notice.

i. *Six consecutive payments immediately following effective date of increase.* Section 226.55(b)(4)(ii) does not apply if the card issuer does not receive six consecutive required minimum periodic payments on or before the payment due date beginning with the payment due immediately following the effective date of the increase, even if, at some later point in time, the card issuer receives six consecutive required minimum periodic payments on or before the payment due date.

ii. *Rate, fee, or charge that does not exceed rate, fee, or charge that applied before increase.* Although § 226.55(b)(4)(ii) requires the card issuer to reduce an annual percentage rate, fee, or charge increased pursuant to § 226.55(b)(4) to the annual percentage rate, fee, or charge that applied prior to the increase, this provision does not prohibit the card issuer from applying an increased annual percentage rate, fee, or charge consistent with any of the other exceptions in § 226.55(b). For example, if a temporary rate applied prior to the § 226.55(b)(4) increase and the temporary rate expired before a reduction in rate pursuant to § 226.55(b)(4)(ii), the card issuer may apply an increased rate to the extent consistent with § 226.55(b)(1). Similarly, if a variable rate applied prior to the § 226.55(b)(4) increase, the card issuer may apply any increase in that variable rate to the extent consistent with § 226.55(b)(2).

iii. *Delayed implementation of reduction.* If § 226.55(b)(4)(ii) requires a card issuer to reduce an annual percentage rate, fee, or charge on a date that is not the first day of a billing cycle, the card issuer may delay application of the reduced rate, fee, or charge until the first day of the following billing cycle.

iv. *Examples.* The following examples illustrate the application of § 226.55(b)(4)(ii):

A. Assume that the billing cycles for an account begin on the first day of the month and end on the last day of the month and that the required minimum periodic payments are due on the fifteenth day of the month. Assume also that the account has a $5,000 purchase balance to which a non-variable annual percentage rate of 15% applies. On May 16 of year one, the card issuer has not received the required minimum periodic payments due on the fifteenth day of March, April, or May and sends a § 226.9(c) or (g) notice stating that the annual percentage rate applicable to the $5,000 balance and to new transactions will increase to 28% effective July 1. On July 1, § 226.55(b)(4) permits the card issuer to apply the 28% rate to the $5,000 balance and to new transactions. The card issuer receives the required minimum periodic payments due on the fifteenth day of July, August, September, October, November, and December. On January 1 of year two, § 226.55(b)(4)(ii) requires the card issuer to reduce the rate that applies to any remaining portion of the $5,000 balance to 15%. The card issuer is not required to reduce the rate that applies to any transactions that occurred on or after May 31 (which is the fifteenth day after provision of the § 226.9(c) or (g) notice).

B. Same facts as paragraph iv.A. above except that the 15% rate that applied to the $5,000 balance prior to the § 226.55(b)(4) increase was scheduled to increase to 20% on August 1 of year one (pursuant to § 226.55(b)(1)). On January 1 of year two, § 226.55(b)(4)(ii) requires the card issuer to reduce the rate that applies to any remaining portion of the $5,000 balance to 20%.

C. Same facts as paragraph iv.A. above except that the 15% rate that applied to the $5,000 balance prior to the § 226.55(b)(4) increase was scheduled to increase to 20% on March 1 of year two (pursuant to § 226.55(b)(1)). On January 1 of year two, § 226.55(b)(4)(ii) requires the card issuer to reduce the rate that applies to any remaining portion of the $5,000 balance to 15%.

D. Same facts as paragraph iv.A. above except that the 15% rate that applied to the $5,000 balance prior to the § 226.55(b)(4) increase was a variable rate that was determined by adding a margin of 10 percentage points to a publicly-available index not under the card issuer's control (consistent with § 226.55(b)(2)). On January 1 of year two, § 226.55(b)(4)(ii) requires the card issuer to reduce the rate that applies to any remaining portion of the $5,000 balance to the variable rate determined using the 10-point margin.

E. For an example of the application of § 226.55(b)(4)(ii) to deferred interest or similar programs, see comment 55(b)(1)–3.ii.C.

*55(b)(5) Workout and temporary hardship arrangement exception.*

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

2. *Relationship to § 226.9(c)(2)(v)(D).* A card issuer that has complied with the disclosure requirements in § 226.9(c)(2)(v)(D) has also complied with the disclosure requirements in § 226.55(b)(5)(i). See comment 9(c)(2)(v)–10. Thus, although the disclosures required by § 226.55(b)(5)(i) must generally be provided in writing prior to commencement of the arrangement, a card issuer may comply with § 226.55(b)(5)(i) by complying with § 226.9(c)(2)(v)(D), which states that the disclosure of the terms of the arrangement may be made orally by telephone, provided that the card issuer mails or delivers a written disclosure of the terms of the arrangement to the consumer as soon as reasonably practicable after the oral disclosure is provided.

3. *Rate, fee, or charge that does not exceed rate, fee, or charge that applied before workout or temporary hardship arrangement.* Upon the completion or failure of a workout or temporary hardship arrangement, § 226.55(b)(5)(ii) prohibits the card issuer from applying to any transactions that occurred prior to commencement of the arrangement an annual percentage rate, fee, or charge that exceeds the annual percentage rate, fee, or charge that applied to those transactions prior to commencement of the arrangement. However, this provision does not prohibit the card issuer from applying an increased annual percentage rate, fee, or charge upon completion or failure of the arrangement, to the extent consistent with any of the other exceptions in § 226.55(b). For example, if a temporary rate applied prior to the arrangement and that rate expired during the arrangement, the card issuer may apply an increased rate upon completion or failure of the arrangement to the extent consistent with § 226.55(b)(1). Similarly, if a variable rate applied prior to the arrangement, the card issuer may apply any increase in that variable rate upon completion or failure of the arrangement to the extent consistent with § 226.55(b)(2).

4. *Examples.*

i. Assume that an account is subject to a $50 annual fee and that, consistent with § 226.55(b)(4), the margin used to determine a variable annual percentage rate that applies to a $5,000 balance is increased from 5 percentage points to 15 percentage points. Assume also that the card issuer and the consumer subsequently agree to a workout arrangement that reduces the annual fee to $0 and reduces the margin back to 5 points on the condition that the consumer pay a specified amount by the payment due date each month. If the consumer does not pay the agreed-upon amount by the payment due date, § 226.55(b)(5) permits the card issuer to increase the annual fee to $50 and increase the margin for the variable rate that applies to the $5,000 balance up to 15 percentage points.

ii. Assume that a consumer fails to make four consecutive monthly minimum payments totaling $480 on a consumer credit card account with a balance of $6,000 and that, consistent with § 226.55(b)(4), the annual percentage rate that applies to that balance is increased from a non-variable rate of 15% to a non-variable penalty rate of 30%. Assume also that the card issuer and the consumer subsequently agree to a temporary hardship arrangement that reduces all rates on the account to 0% on the condition that the consumer pay an amount by the payment due date each month that is sufficient to cure the $480 delinquency within six months. If the consumer pays the agreed-upon amount by the payment due date during the six-month period and cures the delinquency, § 226.55(b)(5) permits the card issuer to increase the rate that applies to any remaining portion of the $6,000 balance to 15% or any other rate up to the 30% penalty rate.

*55(b)(6) Servicemembers Civil Relief Act exception.*

1. *Rate that does not exceed rate that applied before decrease.* Once 50 U.S.C. app. 527 no longer applies, § 226.55(b)(6) prohibits a card issuer from applying an annual percentage rate to any transactions that occurred prior to a decrease in rate pursuant to 50 U.S.C. app. 527 that exceeds the rate that applied to those transactions prior to the decrease. However, this provision does not prohibit the card issuer from applying an increased annual percentage rate once 50 U.S.C. app. 527 no longer applies, to the extent consistent with any of the other exceptions in § 226.55(b). For example, if a temporary rate applied prior to the decrease and that rate expired during the period that 50 U.S.C. app. 527 applied to the account, the card issuer may apply an increased rate once 50 U.S.C. app. 527 no longer applies to the extent consistent with § 226.55(b)(1). Similarly, if a variable rate applied prior to the decrease, the card issuer may apply any increase in that variable rate once 50 U.S.C. app. 527 no longer applies to the extent consistent with § 226.55(b)(2).

2. *Example.* Assume that on December 31 of year one the annual percentage rate that applies to a $5,000 balance on a credit card account is a variable rate that is determined by adding a margin of 10 percentage points to a publicly-available index that is not under the card issuer's control. On January 1 of year two, the card issuer reduces the rate that applies to the $5,000 balance to a non-variable rate of 6% pursuant to 50 U.S.C. app. 527. On January 1 of year three, 50 U.S.C. app. 527 ceases to apply and the card issuer provides a notice pursuant to § 226.9(c) informing the consumer that on February 15 of year three the variable rate determined using the 10-point margin will apply to any remaining portion of the $5,000 balance. On February 15 of year three, § 226.55(b)(6) permits the card issuer to begin accruing interest on any remaining portion of the $5,000 balance at the variable rate determined using the 10-point margin.

*55(c) Treatment of protected balances.*

*55(c)(1) Definition of protected balance.*

1. *Example of protected balance.* Assume that, on March 15 of year two, an account has a purchase balance of $1,000 at a non-variable annual percentage rate of 12% and that, on March 16, the card issuer sends a notice pursuant to § 226.9(c) informing the consumer that the annual percentage rate for new purchases will increase to a non-variable rate of 15% on May 1. The fourteenth day after provision of the notice is March 29. On March 29, the consumer makes a $100 purchase. On March 30, the consumer makes a $150 purchase. On May 1, § 226.55(b)(3)(ii) permits the card issuer to begin accruing interest at 15% on the $150 purchase made on March 30 but does not permit the card issuer to apply that 15% rate to the $1,100 purchase balance as of March 29. Accordingly, the protected balance for purposes of § 226.55(c) is the $1,100 purchase balance as of March 29. The $150 purchase made on March 30 is not part of the protected balance.

2. *First year after account opening.* Section 226.55(c) applies to amounts owed for a category of transactions to which an increased annual percentage rate or an increased fee or charge cannot be applied after the rate, fee, or charge for that category of transactions has been increased pursuant to § 226.55(b)(3). Because § 226.55(b)(3)(iii) does not permit a card issuer to increase an annual percentage rate or a fee or charge required to be disclosed under § 226.6(b)(2)(ii), (b)(2)(iii), or (b)(2)(xii) during the first year after account opening, § 226.55(c) does not apply to balances during the first year after account opening.

3. *Increased fees and charges.* Once an account has been open for more than one year, § 226.55(b)(3) permits a card issuer to increase a fee or charge required to be disclosed under § 226.6(b)(2)(ii), (b)(2)(iii), or (b)(2)(xii) after complying with the applicable notice requirements in § 226.9(b) or (c), provided that the increased fee or charge is not applied to a protected balance. A card issuer is not prohibited from increasing a fee or charge that applies to the account as a whole or to balances other than the protected balance. For example, after the first year following account opening, a card issuer may add a new annual or a monthly maintenance fee to an account or increase such a fee so long as the fee is not based solely on the protected balance. However, if the consumer rejects an increase in a fee or charge pursuant to § 226.9(h), the card issuer is prohibited from applying the increased fee or charge to the account and from imposing any other fee or charge solely as a result of the rejection. *See* § 226.9(h)(2)(i) and (ii); comment 9(h)(2)(ii)–2.

*55(c)(2) Repayment of protected balance.*

1. *No less beneficial to the consumer.* A card issuer may provide a method of repaying the protected balance that is different from the methods listed in § 226.55(c)(2) so long as the method used is no less beneficial to the consumer than one of the listed methods. A method is no less beneficial to the consumer if the method results in a required minimum periodic payment that is equal to or less than a minimum payment calculated using the method for the account before the effective date of the increase. Similarly, a method is no less beneficial to the consumer if the method amortizes the balance in five years or longer or if the method results in a required minimum periodic payment that is equal to or less than a minimum payment calculated consistent with § 226.55(c)(2)(iii). For example:

i. If at account opening the cardholder agreement stated that the required minimum periodic payment would be either the total of fees and interest charges plus 1% of the total amount owed or $20 (whichever is greater), the card issuer may require the consumer to make a minimum payment of $20 even if doing so would pay off the balance in less than five years or constitute more than 2% of the balance plus fees and interest charges.

ii. A card issuer could increase the percentage of the balance included in the required minimum periodic payment from 2% to 5% so long as doing so would not result in amortization of the balance in less than five years.

iii. A card issuer could require the consumer to make a required minimum periodic payment that amortizes the balance in four years so long as doing so would not more than double the percentage of the

balance included in the minimum payment prior to the date on which the increased annual percentage rate, fee, or charge became effective.

*55(c)(2)(ii) Five-year amortization period.*

1. *Amortization period starting from effective date of increase.* Section 226.55(c)(2)(ii) provides for an amortization period for the protected balance of no less than five years, starting from the date on which the increased annual percentage rate or fee or charge required to be disclosed under § 226.6(b)(2)(ii), (b)(2)(iii), or (b)(2)(xii) became effective. A card issuer is not required to recalculate the required minimum periodic payment for the protected balance if, during the amortization period, that balance is reduced as a result of the allocation of payments by the consumer in excess of that minimum payment consistent with § 226.53 or any other practice permitted by these rules and other applicable law.

2. *Amortization when applicable rate is variable.* If the annual percentage rate that applies to the protected balance varies with an index, the card issuer may adjust the interest charges included in the required minimum periodic payment for that balance accordingly in order to ensure that the balance is amortized in five years. For example, assume that a variable rate that is currently 15% applies to a protected balance and that, in order to amortize that balance in five years, the required minimum periodic payment must include a specific amount of principal plus all accrued interest charges. If the 15% variable rate increases due to an increase in the index, the creditor may increase the required minimum periodic payment to include the additional interest charges.

*55(c)(2)(iii) Doubling repayment rate.*

1. *Portion of required minimum periodic payment on other balances.* Section 226.55(c)(2)(iii) addresses the portion of the required minimum periodic payment based on the protected balance. Section 226.55(c)(2)(iii) does not limit or otherwise address the card issuer's ability to determine the portion of the required minimum periodic payment based on other balances on the account or the card issuer's ability to apply that portion of the minimum payment to the balances on the account.

2. *Example.* Assume that the method used by a card issuer to calculate the required minimum periodic payment for a credit card account requires the consumer to pay either the total of fees and accrued interest charges plus 2% of the total amount owed or $50, whichever is greater. Assume also that the account has a purchase balance of $2,000 at an annual percentage rate of 15% and a cash advance balance of $500 at an annual percentage rate of 20% and that the card issuer increases the rate for purchases to 18% but does not increase the rate for cash advances. Under § 226.55(c)(2)(iii), the card issuer may require the consumer to pay fees and interest plus 4% of the $2,000 purchase balance. Section 226.55(c)(2)(iii) does not limit the card issuer's ability to increase the portion of the required minimum periodic payment that is based on the cash advance balance.

*55(d) Continuing application.*

1. *Closed accounts.* If a credit card account under an open-end (not home-secured) consumer credit plan with a balance is closed, § 226.55 continues to apply to that balance. For example, if a card issuer or a consumer closes a credit card account with a balance, § 226.55(d)(1) prohibits the card issuer from increasing the annual percentage rate that applies to that balance or imposing a periodic fee based solely on that balance that was not charged before the account was closed (such as a closed account fee) unless permitted by one of the exceptions in § 226.55(b).

2. *Acquired accounts.* If, through merger or acquisition (for example), a card issuer acquires a credit card account under an open-end (not home-secured) consumer credit plan with a balance, § 226.55 continues to apply to that balance. For example, if a credit card account has a $1,000 purchase balance with an annual percentage rate of 15% and the card issuer that acquires that account applies an 18% rate to purchases, § 226.55(d)(1) prohibits the card issuer from applying the 18% rate to the $1,000 balance unless permitted by one of the exceptions in § 226.55(b).

3. *Balance transfers.*

i. *Between accounts issued by the same creditor.* If a balance is transferred from a credit card account under an open-end (not home-secured) consumer credit plan issued by a creditor to another credit account issued by the same creditor or its affiliate or subsidiary, § 226.55 continues to apply to that balance. For example, if a credit card account has a $2,000 purchase balance with an annual percentage rate of 15% and that balance is transferred to another credit card account issued by the same creditor that applies an 18% rate to purchases, § 226.55(d)(2) prohibits the creditor from applying the 18% rate to the $2,000 balance unless permitted by one of the exceptions in § 226.55(b). However, the creditor would not generally be prohibited from charging a new periodic fee (such as an annual fee) on the second account so long as the fee is not based solely on the $2,000 balance and the creditor has notified the consumer of the fee either by providing written notice 45 days before imposing the fee pursuant to § 226.9(c) or by providing account-opening disclosures pursuant to § 226.6(b). See also § 226.55(b)(3)(iii); comment 55(b)(3)–3; comment 5(b)(1)(i)–6. Additional circumstances in which a balance is considered transferred for purposes of § 226.55(d)(2) include when:

A. A retail credit card account with a balance is replaced or substituted with a cobranded general purpose credit card account that can be used with a broader merchant base;

B. A credit card account with a balance is replaced or substituted with another credit card account offering different features;

C. A credit card account with a balance is consolidated or combined with one or more other credit card accounts into a single credit card account; and

D. A credit card account is replaced or substituted with a line of credit that can be accessed solely by an account number.

ii. *Between accounts issued by different creditors.* If a balance is transferred to a credit card account under an open-end (not home-secured) consumer credit plan issued by a creditor from a credit card account issued by a different creditor or an institution that is not an affiliate or subsidiary of the creditor that issued the account to which the balance is transferred, § 226.55(d)(2) does not prohibit the creditor to which the balance is transferred from applying its account terms to that balance, provided that those terms comply with this part. For example, if a credit card account issued by creditor A has a $1,000 purchase balance at an annual percentage rate of 15% and the consumer transfers that balance to a credit card account with a purchase rate of 17% issued by creditor B, creditor B may apply the 17% rate to the $1,000 balance. However, creditor B may not subsequently increase the rate on that balance unless permitted by one of the exceptions in § 226.55(b).

*Section 226.56—Requirements for Over-the-Limit Transactions*

*56(b) Opt-in requirement.*

1. *Policy and practice of declining over-the-limit transactions.* Section 226.56(b)(1)(i)–(v), including the requirements to provide notice and obtain consumer consent, do not apply to any card issuer that has a policy and practice of declining to pay any over-the-limit transactions for the consumer's credit card account when the card issuer has a reasonable belief that completing a transaction will cause the consumer to exceed the consumer's credit limit for that account. For example, if a card issuer only authorizes those transactions which, at the time of authorization, would not cause the consumer to exceed a credit limit, it is not subject to the requirement to provide consumers notice and an opportunity to affirmatively consent to the card issuer's payment of over-the-limit transactions. However, if an over-the-limit transaction is paid without the consumer providing affirmative consent, the card issuer may not charge a fee for paying the transaction.

2. *Over-the-limit transactions not required to be authorized or paid.* Section 226.56 does not require a card issuer to authorize or pay an over-the-limit transaction even if the consumer has affirmatively consented to the card issuer's over-the-limit service.

3. *Examples of reasonable opportunity to provide affirmative consent.* A card issuer provides a reasonable opportunity for the consumer to provide affirmative consent to the card issuer's payment of over-the-limit transactions when, among other things, it provides reasonable methods by which the consumer may affirmatively consent. A card issuer provides such reasonable methods if—

i. *On the application.* The card issuer provides the notice on the application form that the consumer can fill out to request the service as part of the application;

ii. *By mail.* The card issuer provides a form with the account-opening disclosures or the periodic statement for the consumer to fill out and mail to affirmatively request the service;

iii. *By telephone.* The card issuer provides a readily available telephone line that

consumers may call to provide affirmative consent.

iv. *By electronic means.* The card issuer provides an electronic means for the consumer to affirmatively consent. For example, a card issuer could provide a form that can be accessed and processed at its Web site, where the consumer can check a box to opt in and confirm that choice by clicking on a button that affirms the consumer's consent.

4. *Separate consent required.* A consumer's affirmative consent, or opt-in, to a card issuer's payment of over-the-limit transactions must be obtained separately from other consents or acknowledgments obtained by the card issuer. For example, a consumer's signature on a credit application to request a credit card would not by itself sufficiently evidence the consumer's consent to the card issuer's payment of over-the-limit transactions. However, a card issuer may obtain a consumer's affirmative consent by providing a blank signature line or a check box on the application that the consumer can sign or select to request the over-the-limit service, provided that the signature line or check box is used solely for purposes of evidencing the choice and not for any other purpose, such as to also obtain consumer consents for other account services or features or to receive disclosures electronically.

5. *Written confirmation.* A card issuer may comply with the requirement in § 226.56(b)(1)(iv) to provide written confirmation of the consumer's decision to affirmatively consent, or opt in, to the card issuer's payment of over-the-limit transactions by providing the consumer a copy of the consumer's completed opt-in form or by sending a letter or notice to the consumer acknowledging that the consumer has elected to opt into the card issuer's service. A card issuer may also satisfy the written confirmation requirement by providing the confirmation on the first periodic statement sent after the consumer has opted in. For example, a card issuer could provide a written notice consistent with § 226.56(e)(2) on the periodic statement. A card issuer may not, however, assess any over-the-limit fees or charges on the consumer's credit card account unless and until the card issuer has sent the written confirmation. Thus, if a card issuer elects to provide written confirmation on the first periodic statement after the consumer has opted in, it would not be permitted to assess any over-the-limit fees or charges until the next statement cycle.

*56(b)(2) Completion of over-the-limit transactions without consumer consent.*

1. *Examples of over-the-limit transactions paid without consumer consent.* Section 226.56(b)(2) provides that a card issuer may pay an over-the-limit transaction even if the consumer has not provided affirmative consent, so long as the card issuer does not impose a fee or charge for paying the transaction. The prohibition on imposing fees for paying an over-the-limit transaction applies even in circumstances where the card issuer is unable to avoid paying a transaction that exceeds the consumer's credit limit.

i. *Transactions not submitted for authorization.* A consumer has not affirmatively consented to a card issuer's payment of over-the-limit transactions. The consumer purchases a $3 cup of coffee using his credit card. Because of the small dollar amount of the transaction, the merchant does not submit the transaction to the card issuer for authorization. The transaction causes the consumer to exceed the credit limit. Under these circumstances, the card issuer is prohibited from imposing a fee or charge on the consumer's credit card account for paying the over-the-limit transaction because the consumer has not opted in to the card issuer's over-the-limit service.

ii. *Settlement amount exceeds authorization amount.* A consumer has not affirmatively consented to a card issuer's payment of over-the-limit transactions. The consumer uses his credit card at a pay-at-the-pump fuel dispenser to purchase $50 of fuel. Before permitting the consumer to use the fuel pump, the merchant verifies the validity of the card by requesting an authorization hold of $1. The subsequent $50 transaction amount causes the consumer to exceed his credit limit. Under these circumstances, the card issuer is prohibited from imposing a fee or charge on the consumer's credit card account for paying the over-the-limit transaction because the consumer has not opted in to the card issuer's over-the-limit service.

iii. *Intervening charges.* A consumer has not affirmatively consented to a card issuer's payment of over-the-limit transactions. The consumer makes a $50 purchase using his credit card. However, before the $50 transaction is charged to the consumer's account, a separate recurring charge is posted to the account. The $50 purchase then causes the consumer to exceed his credit limit. Under these circumstances, the card issuer is prohibited from imposing a fee or charge on the consumer's credit card account for paying the over-the-limit transaction because the consumer has not opted in to the card issuer's over-the-limit service.

2. *Permissible fees or charges when a consumer has not consented.* Section 226.56(b)(2) does not preclude a card issuer from assessing fees or charges other than over-the-limit fees when an over-the-limit transaction is completed. For example, if a consumer has not opted in, the card issuer may assess a balance transfer fee in connection with a balance transfer, provided such a fee is assessed whether or not the transfer exceeds the credit limit. Section 226.56(b)(2) does not limit the card issuer's ability to debit the consumer's account for the amount of the over-the-limit transaction if the card issuer is permitted to do so under applicable law. The card issuer may also assess interest charges in connection with the over-the-limit transaction.

*56(c) Method of election.*

1. *Card issuer-determined methods.* A card issuer may determine the means available to consumers to affirmatively consent, or opt in, to the card issuer's payment of over-the-limit transactions. For example, a card issuer may decide to obtain consents in writing, electronically, or orally, or through some combination of these methods. Section 226.56(c) further requires, however, that such methods must be made equally available for consumers to revoke a prior consent. Thus, for example, if a card issuer allows a consumer to consent in writing or electronically, it must also allow the consumer to revoke that consent in writing or electronically.

2. *Electronic requests.* A consumer consent or revocation request submitted electronically is not considered a consumer disclosure for purposes of the E-Sign Act.

*56(d) Timing and placement of notices.*

1. *Contemporaneous notice for oral or electronic consent.* Under § 226.56(d)(1)(ii), if a card issuer seeks to obtain consent from the consumer orally or by electronic means, the card issuer must provide a notice containing the disclosures in § 226.56(e)(1) prior to and as part of the process of obtaining the consumer's consent.

*56(e) Content.*

1. *Varying fee amounts.* If the amount of an over-the-limit fee may vary, such as based on the amount of the over-the-limit transaction, the card issuer may indicate that the consumer may be assessed a fee "up to" the maximum fee.

2. *Notice content.* In describing the consumer's right to affirmatively consent to a card issuer's payment of over-the-limit transactions, the card issuer may explain that any transactions that exceed the consumer's credit limit will be declined if the consumer does not consent to the service. In addition, the card issuer should explain that even if a consumer consents, the payment of over-the-limit transactions is at the discretion of the card issuer. For example, the card issuer may indicate that it may decline a transaction for any reason, such as if the consumer is past due or significantly over the limit. The card issuer may also disclose the consumer's right to revoke consent.

*56(f) Joint relationships.*

1. *Authorized users.* Section 226.56(f) does not permit a card issuer to treat a request to opt in to or to revoke a prior request for the card issuer's payment of over-the-limit transactions from an authorized user that is not jointly liable on a credit card account as a consent or revocation request for that account.

*56(g) Continuing right to opt in or revoke opt-in.*

1. *Fees or charges for over-the-limit transactions incurred prior to revocation.* Section 226.56(g) provides that a consumer may revoke his or her prior consent at any time. If a consumer does so, this provision does not require the card issuer to waive or reverse any over-the-limit fees or charges assessed to the consumer's account for transactions that occurred prior to the card issuer's implementation of the consumer's revocation request. Nor does this requirement prevent the card issuer from assessing over-the-limit fees in subsequent cycles if the consumer's account balance continues to exceed the credit limit after the payment due date as a result of an over-the-limit transaction that occurred prior to the consumer's revocation of consent.

*56(h) Duration of opt-in.*

1. *Card issuer ability to stop paying over-the-limit transactions after consumer consent.* A card issuer may cease paying over-the-limit transactions for consumers that

have previously opted in at any time and for any reason. For example, a card issuer may stop paying over-the-limit transactions for a consumer to respond to changes in the credit risk presented by the consumer.

*56(j) Prohibited practices.*

1. *Periodic fees or charges.* A card issuer may charge an over-the-limit fee or charge only if the consumer has exceeded the credit limit during the billing cycle. Thus, a card issuer may not impose any recurring or periodic fees for paying over-the-limit transactions (for example, a monthly "over-the-limit protection" service fee), even if the consumer has affirmatively consented to or opted in to the service, unless the consumer has in fact exceeded the credit limit during that cycle.

2. *Examples of limits on fees or charges imposed per billing cycle.* Section 226.56(j)(1) generally prohibits a card issuer from assessing a fee or charge due to the same over-the-limit transaction for more than three billing cycles. The following examples illustrate the prohibition.

i. Assume that a consumer has opted into a card issuer's payment of over-the-limit transactions. The consumer exceeds the credit limit during the December billing cycle and does not make sufficient payment to bring the account balance back under the limit for four consecutive cycles. The consumer does not engage in any additional transactions during this period. In this case, § 226.56(j)(1) would permit the card issuer to charge a maximum of three over-the-limit fees for the December over-the-limit transaction.

ii. Assume the same facts as above except that the consumer makes sufficient payment to reduce his account balance by the payment due date during the February billing cycle. The card issuer may charge over-the-limit fees for the December and January billing cycles. However, because the consumer's account balance was below the credit limit by the payment due date for the February billing cycle, the card issuer may not charge an over-the-limit fee for the February billing cycle.

iii. Assume the same facts as in paragraph i., except that the consumer engages in another over-the-limit transaction during the February billing cycle. Because the consumer has obtained an additional extension of credit which causes the consumer to exceed his credit limit, the card issuer may charge over-the-limit fees for the December transaction on the January, February and March billing statements, and additional over-the-limit fees for the February transaction on the April and May billing statements. The card issuer may not charge an over-the-limit fee for each of the December and the February transactions on the March billing statement because it is prohibited from imposing more than one over-the-limit fee during a billing cycle.

3. *Replenishment of credit line.* Section 226.56(j)(2) does not prevent a card issuer from delaying replenishment of a consumer's available credit where appropriate, for example, where the card issuer may suspect fraud on the credit card account. However, a card issuer may not assess an over-the-limit fee or charge if the over-the-limit transaction is caused by the card issuer's decision not to promptly replenish the available credit after the consumer's payment is credited to the consumer's account.

4. *Examples of conditioning.* Section 226.56(j)(3) prohibits a card issuer from conditioning or otherwise tying the amount of a consumer's credit limit on the consumer affirmatively consenting to the card issuer's payment of over-the-limit transactions where the card issuer assesses an over-the-limit fee for the transaction. The following examples illustrate the prohibition.

i. *Amount of credit limit.* Assume that a card issuer offers a credit card with a credit limit of $1,000. The consumer is informed that if the consumer opts in to the payment of the card issuer's payment of over-the-limit transactions, the initial credit limit would be increased to $1,300. If the card issuer would have offered the credit card with the $1,300 credit limit but for the fact that the consumer did not consent to the card issuer's payment of over-the-limit transactions, the card issuer would not be in compliance with § 226.56(j)(3). Section 226.56(j)(3) prohibits the card issuer from tying the consumer's opt-in to the card issuer's payment of over-the-limit transactions as a condition of obtaining the credit card with the $1,300 credit limit.

ii. *Access to credit.* Assume the same facts as above, except that the card issuer declines the consumer's application altogether because the consumer has not affirmatively consented or opted in to the card issuer's payment of over-the-limit transactions. The card issuer is not in compliance with § 226.56(j)(3) because the card issuer has required the consumer's consent as a condition of obtaining credit.

5. *Over-the-limit fees caused by accrued fees or interest.* Section 226.56(j)(4) prohibits a card issuer from imposing any over-the-limit fees or charges on a consumer's account if the consumer has exceeded the credit limit solely because charges imposed as part of the plan as described in § 226.6(b)(3) were charged to the consumer's account during the billing cycle. For example, a card issuer may not assess an over-the-limit fee or charge even if the credit limit was exceeded due to fees for services requested by the consumer if such fees would constitute charges imposed as part of the plan (such as fees for voluntary debt cancellation or suspension coverage). Section 226.56(j)(4) does not, however, restrict card issuers from assessing over-the-limit fees or charges due to accrued finance charges or fees from prior cycles that have subsequently been added to the account balance. The following examples illustrate the prohibition.

i. Assume that a consumer has opted in to a card issuer's payment of over-the-limit transactions. The consumer's account has a credit limit of $500. The billing cycles for the account begin on the first day of the month and end on the last day of the month. The account is not eligible for a grace period as defined in § 226.5(b)(2)(ii)(B)(*3*). On December 31, the only balance on the account is a purchase balance of $475. On that same date, $50 in fees charged as part of the plan under § 226.6(b)(3)(i) and interest charges are imposed on the account, increasing the total balance at the end of the December billing cycle to $525. Although the total balance exceeds the $500 credit limit, § 226.56(j)(4) prohibits the card issuer from imposing an over-the-limit fee or charge for the December billing cycle in these circumstances because the consumer's credit limit was exceeded solely because of the imposition of fees and interest charges during that cycle.

ii. Same facts as above except that, on December 31, the only balance on the account is a purchase balance of $400. On that same date, $50 in fees imposed as part of the plan under § 226.6(b)(3)(i), including interest charges, are imposed on the account, increasing the total balance at the end of the December billing cycle to $450. The consumer makes a $25 payment by the January payment due date and the remaining $25 in fees imposed as part of the plan in December is added to the outstanding balance. On January 25, an $80 purchase is charged to the account. At the close of the cycle on January 31, an additional $20 in fees imposed as part of the plan are imposed on the account, increasing the total balance to $525. Because § 226.56(j)(4) does not require the issuer to consider fees imposed as part of the plan for the prior cycle in determining whether an over-the-limit fee may be properly assessed for the current cycle, the issuer need not take into account the remaining $25 in fees and interest charges from the December cycle in determining whether fees imposed as part of the plan caused the consumer to exceed the credit limit during the January cycle. Thus, under these circumstances, § 226.56(j)(4) does not prohibit the card issuer from imposing an over-the-limit fee or charge for the January billing cycle because the $20 in fees imposed as part of the plan for the January billing cycle did not cause the consumer to exceed the credit limit during that cycle.

*Section 226.57—Reporting and Marketing Rules for College Student Open-End Credit*

*57(a) Definitions.*

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

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

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

1. *Definition.* Section 226.57(a)(5) defines "college credit card agreement" to include any business, marketing or promotional agreement between a card issuer and a

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

*57(b) Public disclosure of agreements.*

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

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

*57(c) Prohibited inducements.*

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

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

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

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

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

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

*57(d) Annual report to the Board.*

*57(d)(2) Contents of report.*

1. *Memorandum of understanding.* Section 226.57(d)(2) requires that the report to the Board include, among other items, a copy of any memorandum of understanding between the card issuer and the institution (or affiliated organization) that "directly or indirectly relates to the college credit card agreement or that controls or directs any obligations or distribution of benefits between any such entities." Such a memorandum of understanding includes any document that amends the college credit card agreement, or that constitutes a further agreement between the parties as to the interpretation or administration of the agreement. For example, a memorandum of understanding required to be included in the report would include a document that provides details on the dollar amounts of payments from the card issuer to the university, to supplement the original agreement which only provided for payments in general terms (e.g., as a percentage). A memorandum of understanding for these purposes would not include email (or other) messages that merely discuss matters such as the addresses to which payments should be sent or the names of contact persons for carrying out the agreement.

*Section 226.58—Internet Posting of Credit Card Agreements*

*58(b) Definitions.*

*58(b)(1) Agreement.*

1. *Inclusion of pricing information.* For purposes of this section, a credit card agreement is deemed to include certain information, such as annual percentage rates and fees, even if the issuer does not otherwise include this information in the basic credit contract. This information is listed under the defined term "pricing information" in § 226.58(b)(6). For example, the basic credit contract may not specify rates, fees and other information that constitutes pricing information as defined in § 226.58(b)(6); instead, such information may be provided to the cardholder in a separate document sent along with the card. However, this information nevertheless constitutes part of the agreement for purposes of § 226.58.

2. *Provisions contained in separate documents included.* A credit card agreement is defined as the written document or documents evidencing the terms of the legal obligation, or the prospective legal obligation, between a card issuer and a consumer for a credit card account under an open-end (not home-secured) consumer credit plan. An agreement therefore may consist of several documents that, taken together, define the legal obligation between the issuer and consumer. For example, provisions that mandate arbitration or allow an issuer to unilaterally alter the terms of the card issuer's or consumer's obligation are part of the agreement even if they are provided to the consumer in a document separate from the basic credit contract.

*58(b)(2) Amends.*

1. *Substantive changes.* A change to an agreement is substantive, and therefore is deemed an amendment of the agreement, if it alters the rights or obligations of the parties. Section 226.58(b)(2) provides that any change in the pricing information, as defined in § 226.58(b)(6), is deemed to be substantive. Examples of other changes that generally would be considered substantive include: (i) Addition or deletion of a provision giving the issuer or consumer a right under the agreement, such as a clause that allows an issuer to unilaterally change the terms of an agreement; (ii) addition or deletion of a provision giving the issuer or consumer an obligation under the agreement, such as a clause requiring the consumer to pay an additional fee; (iii) changes that may affect the cost of credit to the consumer, such as changes in a provision describing how the minimum payment will be calculated; (iv) changes that may affect how the terms of the agreement are construed or applied, such as changes in a choice-of-law provision; and (v) changes that may affect the parties to whom the agreement may apply, such as provisions regarding authorized users or assignment of the agreement.

2. *Non-substantive changes.* Changes that generally would not be considered substantive include, for example: (i) Correction of typographical errors that do not affect the meaning of any terms of the agreement; (ii) changes to the card issuer's corporate name, logo, or tagline; (iii) changes to the format of the agreement, such as conversion to a booklet from a full-sheet format, changes in font, or changes in margins; (iv) changes to the name of the credit card to which the program applies; (v) reordering sections of the agreement without affecting the meaning of any terms of the agreement; (vi) adding, removing, or modifying a table of contents or index; and (vii) changes to titles, headings, section numbers, or captions.

*58(b)(4) Offers.*

1. *Cards offered to limited groups.* A card issuer is deemed to offer a credit card agreement to the public even if the issuer solicits, or accepts applications from, only a limited group of persons. For example, a card issuer may market affinity cards to students and alumni of a particular educational institution, or may solicit only high-net-worth individuals for a particular card; in these cases, the agreement would be considered to be offered to the public. Similarly, agreements for credit cards issued by a credit union are considered to be offered to the public even though such cards are available only to credit union members.

2. *Individualized agreements.* A card issuer is deemed to offer a credit card agreement to the public even if the terms of the agreement are changed immediately upon opening of an account to terms not offered to the public.

*58(b)(5) Open account*

1. *Open account clarified.* The definition of open account includes a credit card account under an open-end (not home-secured) consumer credit plan if either: (i) The cardholder can obtain extensions of credit on the account; or (ii) there is an outstanding balance on the account that has not been charged off. Under this definition, an account that meets either of these criteria is considered to be open even if the account is inactive. Similarly, if an account has been closed for new activity (for example, due to default by the cardholder), but the cardholder is still making payments to pay off the outstanding balance, the account is considered open.

*58(b)(7) Private label credit card account and private label credit card plan.*

1. *Private label credit card account.* The term private label credit card account means a credit card account under an open-end (not home-secured) consumer credit plan with a credit card that can be used to make purchases only at a single merchant or an affiliated group of merchants. This term applies to any such credit card account, regardless of whether it is issued by the merchant or its affiliate or by an unaffiliated third party.

2. *Co-branded credit cards.* The term private label credit card account does not include accounts with so-called co-branded credit cards. Credit cards that display the name, mark, or logo of a merchant or affiliated group of merchants as well as the mark, logo, or brand of payment network are generally referred to as co-branded cards. While these credit cards may display the brand of the merchant or affiliated group of merchants as the dominant brand on the card, such credit cards are usable at any merchant that participates in the payment network. Because these credit cards can be used at multiple unaffiliated merchants, accounts with such credit cards are not considered private label credit card accounts under § 226.58(b)(7).

3. *Affiliated group of merchants.* The term "affiliated group of merchants" means two or more affiliated merchants or other persons that are related by common ownership or common corporate control. For example, the term would include franchisees that are subject to a common set of corporate policies or practices under the terms of their franchise licenses. The term also applies to two or more merchants or other persons that agree among each other, by contract or otherwise, to accept a credit card bearing the same name, mark, or logo (other than the mark, logo, or brand of a payment network), for the purchase of goods or services solely at such merchants or persons. For example, several local clothing retailers jointly agree to issue credit cards called the "Main Street Fashion Card" that can be used to make purchases only at those retailers. For purposes of this section, these retailers would be considered an affiliated group of merchants.

4. *Private label credit card plan.* Which credit card accounts issued by a particular issuer constitute a private label credit card plan is determined by where the credit cards can be used. All of the private label credit card accounts issued by a particular card issuer with credit cards usable at the same merchant or affiliated group of merchants constitute a single private label credit card plan, regardless of whether the rates, fees, or other terms applicable to the individual credit card accounts differ. For example, a card issuer has 3,000 open private label credit card accounts with credit cards usable only at Merchant A and 5,000 open private label credit card accounts with credit cards usable only at Merchant B and its affiliates. The card issuer has two separate private label credit card plans, as defined by § 226.58(b)(7)—one plan consisting of 3,000 open accounts with credit cards usable only at Merchant A and another plan consisting of 5,000 open accounts with credit cards usable only at Merchant B and its affiliates.

The example above remains the same regardless of whether (or the extent to which) the terms applicable to the individual open accounts differ. For example, assume that, with respect to the card issuer's 3,000 open accounts with credit cards usable only at Merchant A in the example above, 1,000 of the open accounts have a purchase APR of 12 percent, 1,000 of the open accounts have a purchase APR of 15 percent, and 1,000 of the open accounts have a purchase APR of 18 percent. All of the 5,000 open accounts with credit cards usable only at Merchant B and Merchant B's affiliates have the same 15 percent purchase APR. The card issuer still has only two separate private label credit card plans, as defined by § 226.58(b)(7). The open accounts with credit cards usable only at Merchant A do not constitute three separate private label credit card plans under § 226.58(b)(7), even though the accounts are subject to different terms.

*58(c) Submission of agreements to Board.*

*58(c)(1) Quarterly submissions.*

1. *Quarterly submission requirement.* Section 226.58(c)(1) requires card issuers to send quarterly submissions to the Board no later than the first business day on or after January 31, April 30, July 31, and October 31 of each year. For example, a card issuer has already submitted three credit card agreements to the Board. On October 15, the card issuer stops offering agreement A. On November 20, the card issuer amends agreement B. On December 1, the issuer starts offering a new agreement D. The card issuer must submit to the Board no later than the first business day on or after January 31: (i) Notification that the card issuer is withdrawing agreement A, because it is no longer offered to the public; (ii) the amended version of agreement B; and (iii) agreement D.

2. *No quarterly submission required.* Under § 226.58(c)(1), a card issuer is not required to make any submission to the Board at a particular quarterly submission deadline if, during the previous calendar quarter, the card issuer did not take any of the following actions: (i) Offering a new credit card agreement that was not submitted to the Board previously; (ii) amending an agreement previously submitted to the Board; and (iii) ceasing to offer an agreement previously submitted to the Board. For example, a card issuer offers five agreements to the public as of September 30 and submits these to the Board by October 31, as required by § 226.58(c)(1). Between September 30 and December 31, the card issuer continues to offer all five of these agreements to the public without amending them and does not begin offering any new agreements. The card issuer is not required to make any submission to the Board by the following January 31.

3. *Quarterly submission of complete set of updated agreements.* Section 226.58(c)(1) permits a card issuer to submit to the Board on a quarterly basis a complete, updated set of the credit card agreements the card issuer offers to the public. For example, a card issuer offers agreements A, B, and C to the public as of March 31. The card issuer submits each of these agreements to the Board by April 30 as required by § 226.58(c)(1). On May 15, the card issuer amends agreement A, but does not make any changes to agreements B or C. As of June 30, the card issuer continues to offer amended agreement A and agreements B and C to the public. At the next quarterly submission deadline, July 31, the card issuer must submit the entire amended agreement A and is not required to make any submission with respect to agreements B and C. The card issuer may either: (i) Submit the entire amended agreement A and make no submission with respect to agreements B and C; or (ii) submit the entire amended agreement A and also resubmit agreements B and C. A card issuer may choose to resubmit to the Board all of the agreements it offered to the public as of a particular quarterly submission deadline even if the card issuer has not introduced any new agreements or

amended any agreements since its last submission and continues to offer all previously submitted agreements.

*58(c)(3) Amended agreements.*

1. *No requirement to resubmit agreements not amended.* Under § 226.58(c)(3), if a credit card agreement has been submitted to the Board, the agreement has not been amended, and the card issuer continues to offer the agreement to the public, no additional submission regarding that agreement is required. For example, a credit card issuer begins offering an agreement in October and submits the agreement to the Board the following January 31, as required by § 226.58(c)(1). As of March 31, the card issuer has not amended the agreement and is still offering the agreement to the public. The card issuer is not required to submit anything to the Board regarding that agreement by April 30.

2. *Submission of amended agreements.* If a card issuer amends a credit card agreement previously submitted to the Board, § 226.58(c)(3) requires the card issuer to submit the entire amended agreement to the Board by the first quarterly submission deadline after the last day of the calendar quarter in which the change became effective. For example, a card issuer submits an agreement to the Board on October 31. On November 15, the issuer changes the balance computation method used under the agreement. Because an element of the pricing information has changed, the agreement has been amended and the card issuer must submit the entire amended agreement to the Board no later than January 31.

3. *Change-in-terms notices not permissible.* Section 226.58(c)(3) requires that if an agreement previously submitted to the Board is amended, the card issuer must submit the entire revised agreement to the Board. A card issuer may not fulfill this requirement by submitting a change-in-terms or similar notice covering only the terms that have changed. In addition, amendments must be integrated into the text of the agreement (or the addenda described in § 226.58(c)(8)), not provided as separate riders. For example, a card issuer changes the purchase APR associated with an agreement the issuer has previously submitted to the Board. The purchase APR for that agreement was included in the addendum of pricing information, as required by § 226.58(c)(8). The card issuer may not submit a change-in-terms or similar notice reflecting the change in APR, either alone or accompanied by the original text of the agreement and original pricing information addendum. Instead, the card issuer must revise the pricing information addendum to reflect the change in APR and submit to the Board the entire text of the agreement and the entire revised addendum, even though no changes have been made to the provisions of the agreement and only one item on the pricing information addendum has changed.

*58(c)(4) Withdrawal of agreements.*

1. *Notice of withdrawal of agreement.* Section 226.58(c)(4) requires a card issuer to notify the Board if any agreement previously submitted to the Board by that issuer is no longer offered to the public by the first quarterly submission deadline after the last day of the calendar quarter in which the card issuer ceased to offer the agreement. For example, on January 5 a card issuer stops offering to the public an agreement it previously submitted to the Board. The card issuer must notify the Board that the agreement is being withdrawn by April 30, the first quarterly submission deadline after March 31, the last day of the calendar quarter in which the card issuer stopped offering the agreement.

*58(c)(5) De minimis exception.*

1. *Relationship to other exceptions.* The de minimis exception is distinct from the private label credit card exception under § 226.58(c)(6) and the product testing exception under § 226.58(c)(7). The de minimis exception provides that a card issuer with fewer than 10,000 open credit card accounts is not required to submit any agreements to the Board, regardless of whether those agreements qualify for the private label credit card exception or the product testing exception. In contrast, the private label credit card exception and the product testing exception provide that a card issuer is not required to submit to the Board agreements offered solely in connection with certain types of credit card plans with fewer than 10,000 open accounts, regardless of the card issuer's total number of open accounts.

2. *De minimis exception.* Under § 226.58(c)(5), a card issuer is not required to submit any credit card agreements to the Board under § 226.58(c)(1) if the card issuer has fewer than 10,000 open credit card accounts as of the last business day of the calendar quarter. For example, a card issuer offers five credit card agreements to the public as of September 30. However, the card issuer has only 2,000 open credit card accounts as of September 30. The card issuer is not required to submit any agreements to the Board by October 31 because the issuer qualifies for the de minimis exception.

3. *Date for determining whether card issuer qualifies clarified.* Whether a card issuer qualifies for the de minimis exception is determined as of the last business day of each calendar quarter. For example, as of December 31, a card issuer offers three agreements to the public and has 9,500 open credit card accounts. As of January 30, the card issuer still offers three agreements, but has 10,100 open accounts. As of March 31, the card issuer still offers three agreements, but has only 9,700 open accounts. Even though the card issuer had 10,100 open accounts at one time during the calendar quarter, the card issuer qualifies for the de minimis exception because the number of open accounts was less than 10,000 as of March 31. The card issuer therefore is not required to submit any agreements to the Board under § 226.58(c)(1) by April 30.

4. *Date for determining whether card issuer ceases to qualify clarified.* Whether a card issuer has ceased to qualify for the de minimis exception under § 226.58(c)(5) is determined as of the last business day of the calendar quarter, For example, as of June 30, a card issuer offers three agreements to the public and has 9,500 open credit card accounts. The card issuer is not required to submit any agreements to the Board under § 226.58(c)(1) because the card issuer qualifies for the de minimis exception. As of July 15, the card issuer still offers the same three agreements, but now has 10,000 open accounts. The card issuer is not required to take any action at this time, because whether a card issuer qualifies for the de minimis exception under § 226.58(c)(5) is determined as of the last business day of the calendar quarter. As of September 30, the card issuer still offers the same three agreements and still has 10,000 open accounts. Because the card issuer had 10,000 open accounts as of September 30, the card issuer ceased to qualify for the de minimis exception and must submit the three agreements it offers to the Board by October 31, the next quarterly submission deadline.

5. *Option to withdraw agreements clarified.* Section 226.58(c)(5) provides that if a card issuer that did not previously qualify for the de minimis exception qualifies for the de minimis exception, the card issuer must continue to make quarterly submissions to the Board as required by § 226.58(c)(1) until the card issuer notifies the Board that the issuer is withdrawing all agreements it previously submitted to the Board. For example, a card issuer has 10,001 open accounts and offers three agreements to the public as of December 31. The card issuer has submitted each of the three agreements to the Board as required under § 226.58(c)(1). As of March 31, the card issuer has only 9,999 open accounts. The card issuer has two options. First, the card issuer may notify the Board that the card issuer is withdrawing each of the three agreements it previously submitted. Once the card issuer has notified the Board, the card issuer is no longer required to make quarterly submissions to the Board under § 226.58(c)(1). Alternatively, the card issuer may choose not to notify the Board that it is withdrawing its agreements. In this case, the card issuer must continue making quarterly submissions to the Board as required by § 226.58(c)(1). The card issuer might choose not to withdraw its agreements if, for example, the card issuer believes that it likely will cease to qualify for the de minimis exception again in the near future.

*58(c)(6) Private label credit card exception.*

1. *Private label credit card exception.* Under § 226.58(c)(6)(i), a card issuer is not required to submit to the Board a credit card agreement if, as of the last business day of the calendar quarter, the agreement: (A) Is offered for accounts under one or more private label credit card plans each of which has fewer than 10,000 open accounts; and (B) is not offered to the public other than for accounts under such a plan. For example, a card issuer offers to the public a credit card agreement offered solely for private label credit card accounts with credit cards that can be used only at Merchant A. The card issuer has 8,000 open accounts with such credit cards usable only at Merchant A. The card issuer is not required to submit this agreement to the Board under § 226.58(c)(1) because the agreement is offered for a private label credit card plan with fewer than 10,000 open accounts, and the credit card agreement is not offered to the public other than for accounts under that private label credit card plan.

In contrast, assume the same card issuer also offers to the public a different credit card

agreement that is offered solely for private label credit card accounts with credit cards usable only at Merchant B. The card issuer has 12,000 open accounts with such credit cards usable only at Merchant B. The private label credit card exception does not apply. Although this agreement is offered for a private label credit card plan (*i.e.,* the 12,000 private label credit card accounts with credit cards usable only at Merchant B), and the agreement is not offered to the public other than for accounts under that private label credit card plan, the private label credit card plan has more than 10,000 open accounts. (The card issuer still is not required to submit to the Board the agreement offered in connection with credit cards usable only at Merchant A, as each agreement is evaluated separately under the private label credit card exception.)

2. *Card issuers with small private label and other credit card plans.* Whether the private label credit card exception applies is determined on an agreement-by-agreement basis. Therefore, some agreements offered by a card issuer may qualify for the private label credit card exception even though the card issuer also offers other agreements that do not qualify, such as agreements offered for accounts with cards usable at multiple unaffiliated merchants or agreements offered for accounts under private label plans with 10,000 or more open accounts.

3. *De minimis exception distinguished.* The private label credit card exception under § 226.58(c)(6) is distinct from the de minimis exception under § 226.58(c)(5). The private label credit card exception exempts card issuers from submitting certain agreements to the Board regardless of the card issuer's overall size as measured by total number of open accounts. In contrast, the de minimis exception exempts a particular card issuer from submitting any credit card agreements to the Board if the card issuer has fewer than 10,000 total open accounts. For example, a card issuer offers to the public two credit card agreements. Agreement A is offered solely for private label credit card accounts with credit cards usable only at Merchant A. The card issuer has 5,000 open credit card accounts with such credit cards usable only at Merchant A. Agreement B is offered solely for credit card accounts with cards usable at multiple unaffiliated merchants that participate in a major payment network. The card issuer has 40,000 open credit card accounts with such payment network cards. The card issuer is not required to submit agreement A to the Board under § 226.58(c)(1) because agreement A qualifies for the private label credit card exception under § 226.58(c)(6). Agreement A is offered for accounts under a private label credit card plan with fewer than 10,000 open accounts (*i.e.,* the 5,000 accounts with credit cards usable only at Merchant A) and is not otherwise offered to the public. The card issuer is required to submit agreement B to the Board under § 226.58(c)(1). The card issuer does not qualify for the de minimis exception under § 226.58(c)(5) because it has more than 10,000 open accounts, and agreement B does not qualify for the private label credit card exception under § 226.58(c)(6) because it is not offered solely for accounts under a private label credit card plan with fewer than 10,000 open accounts.

4. *Agreement otherwise offered to the public.* An agreement qualifies for the private label exception only if it is offered for accounts under one or more private label credit card plans with fewer than 10,000 open accounts and is not offered to the public other than for accounts under such a plan. For example, a card issuer offers a single agreement to the public. The agreement is offered for private label credit card accounts with credit cards usable only at Merchant A. The card issuer has 9,000 such open accounts with credit cards usable only at Merchant A. The agreement also is offered for credit card accounts with credit cards usable at multiple unaffiliated merchants that participate in a major payment network. The agreement does not qualify for the private label credit card exception. The agreement is offered for accounts under a private label credit card plan with fewer than 10,000 open accounts. However, the agreement also is offered to the public for accounts that are not part of a private label credit card plan and therefore does not qualify for the private label credit card exception.

Similarly, an agreement does not qualify for the private label credit card exception if it is offered in connection with one private label credit card plan with fewer than 10,000 open accounts and one private label credit card plan with 10,000 or more open accounts. For example, a card issuer offers a single credit card agreement to the public. The agreement is offered for two types of accounts. The first type of account is a private label credit card account with a credit card usable only at Merchant A. The second type of account is a private label credit card account with a credit card usable only at Merchant B. The card issuer has 10,000 such open accounts with credit cards usable only at Merchant A and 5,000 such open accounts with credit cards usable only at Merchant B. The agreement does not qualify for the private label credit card exception. While the agreement is offered for accounts under a private label credit card plan with fewer than 10,000 open accounts (*i.e.,* the 5,000 open accounts with credit cards usable only at Merchant B), the agreement is also offered for accounts not under such a plan (*i.e.,* the 10,000 open accounts with credit cards usable only at Merchant A).

5. *Agreement used for multiple small private label plans.* The private label exception applies even if the same agreement is used for more than one private label credit card plan with fewer than 10,000 open accounts. For example, a card issuer has 15,000 total open private label credit card accounts. Of these, 7,000 accounts have credit cards usable only at Merchant A, 5,000 accounts have credit cards usable only at Merchant B, and 3,000 accounts have credit cards usable only at Merchant C. The card issuer offers to the public a single credit card agreement that is offered for all three types of accounts and is not offered for any other type of account. The card issuer is not required to submit the agreement to the Board under § 226.58(c)(1). The agreement is used for three different private label credit card plans (*i.e.,* the accounts with credit cards usable at Merchant A, the accounts with credit cards usable at Merchant B, and the accounts with credit cards usable at Merchant C), each of which has fewer than 10,000 open accounts, and the card issuer does not offer the agreement for any other type of account. The agreement therefore qualifies for the private label credit card exception under § 226.58(c)(6).

6. *Multiple agreements used for one private label credit card plan.* The private label credit card exception applies even if a card issuer offers more than one agreement in connection with a particular private label credit card plan. For example, a card issuer has 5,000 open private label credit card accounts with credit cards usable only at Merchant A. The card issuer offers to the public three different agreements each of which may be used in connection with private label credit card accounts with credit cards usable only at Merchant A. The agreements are not offered for any other type of credit card account. The card issuer is not required to submit any of the three agreements to the Board under § 226.58(c)(1) because each of the agreements is used for a private label credit card plan which has fewer than 10,000 open accounts and none of the three is offered to the public other than for accounts under such a plan.

*58(c)(8) Form and content of agreements submitted to the Board.*

1. "*As of*" *date clarified.* Agreements submitted to the Board must contain the provisions of the agreement and pricing information in effect as of the last business day of the preceding calendar quarter. For example, on June 1, a card issuer decides to decrease the purchase APR associated with one of the agreements it offers to the public. The change in the APR will become effective on August 1. If the card issuer submits the agreement to the Board on July 31 (for example, because the agreement has been otherwise amended), the agreement submitted should not include the new lower APR because that APR was not in effect on June 30, the last business day of the preceding calendar quarter.

2. *Pricing agreement addendum.* Pricing information must be set forth in the separate addendum described in § 226.58(c)(8)(ii)(A) even if it is also stated elsewhere in the agreement.

3. *Pricing agreement variations do not constitute separate agreements.* Pricing information that may vary from one cardholder to another depending on the cardholder's creditworthiness or state of residence or other factors must be disclosed by setting forth all the possible variations or by providing a range of possible variations. Two agreements that differ only with respect to variations in the pricing information do not constitute separate agreements for purposes of this section. For example, a card issuer offers two types of credit card accounts that differ only with respect to the purchase APR. The purchase APR for one type of account is 15 percent, while the purchase APR for the other type of account is 18 percent. The provisions of the agreement and pricing information for the two types of accounts are otherwise identical. The card

issuer should not submit to the Board one agreement with a pricing information addendum listing a 15 percent purchase APR and another agreement with a pricing information addendum listing an 18 percent purchase APR. Instead, the card issuer should submit to the Board one agreement with a pricing information addendum listing possible purchase APRs of 15 or 18 percent.

4. *Optional variable terms addendum.* Examples of provisions that might be included in the variable terms addendum include a clause that is required by law to be included in credit card agreements in a particular state but not in other states (unless, for example, a clause is included in the agreement used for all cardholders under a heading such as "For State X Residents"), the name of the credit card plan to which the agreement applies (if this information is included in the agreement), or the name of a charitable organization to which donations will be made in connection with a particular card (if this information is included in the agreement).

5. *Integrated agreement requirement.* Card issuers may not provide provisions of the agreement or pricing information in the form of change-in-terms notices or riders. The only two addenda that may be submitted as part of an agreement are the pricing information addendum and optional variable terms addendum described in § 226.58(c)(8). Changes in provisions or pricing information must be integrated into the body of the agreement, pricing information addendum, or optional variable terms addendum described in § 226.58(c)(8). For example, it would be impermissible for a card issuer to submit to the Board an agreement in the form of a terms and conditions document dated January 1, 2005, four subsequent change in terms notices, and 2 addenda showing variations in pricing information. Instead, the card issuer must submit a document that integrates the changes made by each of the change in terms notices into the body of the original terms and conditions document and a single addendum displaying variations in pricing information.

*58(d) Posting of agreements offered to the public.*

1. *Requirement applies only to agreements submitted to the Board.* Card issuers are only required to post and maintain on their publicly available Web site the credit card agreements that the card issuer must submit to the Board under § 226.58(c). If, for example, a card issuer is not required to submit any agreements to the Board because the card issuer qualifies for the de minimis exception under § 226.58(c)(5), the card issuer is not required to post and maintain any agreements on its Web site under § 226.58(d). Similarly, if a card issuer is not required to submit a specific agreement to the Board, such as an agreement that qualifies for the private label exception under § 226.58(c)(6), the card issuer is not required to post and maintain that agreement under § 226.58(d) (either on the card issuer's publicly available Web site or on the publicly available Web sites of merchants at which private label credit cards can be used). (The card issuer in both of these cases is still required to provide each individual cardholder with access to his or her specific credit card agreement under § 226.58(e) by posting and maintaining the agreement on the card issuer's Web site or by providing a copy of the agreement upon the cardholder's request.)

2. *Card issuers that do not otherwise maintain Web sites.* Unlike § 226.58(e), § 226.58(d) does not include a special rule for card issuers that do not otherwise maintain a Web site. If a card issuer is required to submit one or more agreements to the Board under § 226.58(c), that card issuer must post those agreements on a publicly available Web site it maintains (or, with respect to an agreement for a private label credit card, on the publicly available Web site of at least one of the merchants at which the card may be used, as provided in § 226.58(d)(1)).

3. *Private label credit card plans.* Section 226.58(d) provides that, with respect to an agreement offered solely for accounts under one or more private label credit card plans, a card issuer may comply by posting and maintaining the agreement on the Web site of at least one of the merchants at which the cards issued under each private label credit card plan with 10,000 or more open accounts may be used. For example, a card issuer has 100,000 open private label credit card accounts. Of these, 75,000 open accounts have credit cards usable only at Merchant A and 25,000 open accounts have credit cards usable only at Merchant B and Merchant B's affiliates, Merchants C and D. The card issuer offers to the public a single credit card agreement that is offered for both of these types of accounts and is not offered for any other type of account.

The card issuer is required to submit the agreement to the Board under § 226.58(c)(1). (The card issuer has more than 10,000 open accounts, so the § 226.58(c)(5) de minimis exception does not apply. The agreement is offered solely for two different private label credit card plans (*i.e.*, one plan consisting of the accounts with credit cards usable at Merchant A and one plan consisting of the accounts with credit cards usable at Merchant B and its affiliates, Merchants C and D), but both of these plans have more than 10,000 open accounts, so the § 226.58(c)(6) private label credit card exception does not apply. Finally, the agreement is not offered solely in connection with a product test by the card issuer, so the § 226.58(c)(7) product test exception does not apply.)

Because the card issuer is required to submit the agreement to the Board under § 226.58(c)(1), the card issuer is required to post and maintain the agreement on the card issuer's publicly available Web site under § 226.58(d). However, because the agreement is offered solely for accounts under one or more private label credit card plans, the card issuer may comply with § 226.58(d) in either of two ways. First, the card issuer may comply by posting and maintaining the agreement on the card issuer's own publicly available Web site. Alternatively, the card issuer may comply by posting and maintaining the agreement on the publicly available Web site of Merchant A *and* the publicly available Web site of at least one of Merchants B, C and D. It would not be sufficient for the card issuer to post the agreement on Merchant A's Web site alone because § 226.58(d) requires the card issuer to post the agreement on the publicly available Web site of "at least one of the merchants at which cards issued under *each* private label credit card plan may be used" (emphasis added).

In contrast, assume that a card issuer has 100,000 open private label credit card accounts. Of these, 5,000 open accounts have credit cards usable only at Merchant A and 95,000 open accounts have credit cards usable only at Merchant B and Merchant B's affiliates, Merchants C and D. The card issuer offers to the public a single credit card agreement that is offered for both of these types of accounts and is not offered for any other type of account.

The card issuer is required to submit the agreement to the Board under § 226.58(c)(1). (The card issuer has more than 10,000 open accounts, so the § 226.58(c)(5) de minimis exception does not apply. The agreement is offered solely for two different private label credit card plans (*i.e.*, one plan consisting of the accounts with credit cards usable at Merchant A and one plan consisting of the accounts with credit cards usable at Merchant B and its affiliates, Merchants C and D), but one of these plans has more than 10,000 open accounts, so the § 226.58(c)(6) private label credit card exception does not apply. Finally, the agreement is not offered solely in connection with a product test by the card issuer, so the § 226.58(c)(7) product test exception does not apply.)

Because the card issuer is required to submit the agreement to the Board under § 226.58(c)(1), the card issuer is required to post and maintain the agreement on the card issuer's publicly available Web site under § 226.58(d). However, because the agreement is offered solely for accounts under one or more private label credit card plans, the card issuer may comply with § 226.58(d) in either of two ways. First, the card issuer may comply by posting and maintaining the agreement on the card issuer's own publicly available Web site. Alternatively, the card issuer may comply by posting and maintaining the agreement on the publicly available Web site of at least one of Merchants B, C and D. The card issuer is not required to post and maintain the agreement on the publicly available Web site of Merchant A because the card issuer's private label credit card plan consisting of accounts with cards usable only at Merchant A has fewer than 10,000 open accounts.

*58(e) Agreements for all open accounts.*

1. *Requirement applies to all open accounts.* The requirement to provide access to credit card agreements under § 226.58(e) applies to all open credit card accounts, regardless of whether such agreements are required to be submitted to the Board pursuant to § 226.58(c) (or posted on the card issuer's Web site pursuant to § 226.58(d)). For example, a card issuer that is not required to submit agreements to the Board because it qualifies for the de minimis exception under § 226.58(c)(5)) would still be required to provide cardholders with access to their specific agreements under § 226.58(e). Similarly, an agreement that is no longer

offered to the public would not be required to be submitted to the Board under § 226.58(c), but would still need to be provided to the cardholder to whom it applies under § 226.58(e).

2. *Readily available telephone line.* Section 226.58(e) provides that card issuers that provide copies of cardholder agreements upon request must provide the cardholder with the ability to request a copy of their agreement by calling a readily available telephone line. To satisfy the readily available standard, the financial institution must provide enough telephone lines so that consumers get a reasonably prompt response. The institution need only provide telephone service during normal business hours. Within its primary service area, an institution must provide a local or toll-free telephone number. It need not provide a toll-free number or accept collect long-distance calls from outside the area where it normally conducts business.

3. *Issuers without interactive Web sites.* Section 226.58(e)(2) provides that a card issuer that does not maintain a Web site from which cardholders can access specific information about their individual accounts is not required to provide a cardholder with the ability to request a copy of the agreement by using the card issuer's Web site. A card issuer without a Web site of any kind could comply by disclosing the telephone number on each periodic statement; a card issuer with a non-interactive Web site could comply in the same way, or alternatively could comply by displaying the telephone number on the card issuer's Web site.

4. *Deadline for providing requested agreements clarified.* Sections 226.58(e)(1)(ii) and (e)(2) require that credit card agreements provided upon request must be sent to the cardholder or otherwise made available to the cardholder in electronic or paper form no later than 30 days after the cardholder's request is received. For example, if a card issuer chooses to respond to a cardholder's request by mailing a paper copy of the cardholder's agreement, the card issuer must mail the agreement no later than 30 days after receipt of the cardholder's request. Alternatively, if a card issuer chooses to respond to a cardholder's request by posting the cardholder's agreement on the card issuer's Web site, the card issuer must post the agreement on its Web site no later than 30 days after receipt of the cardholder's request. Section 226.58(e)(3)(v) provides that a card issuer may provide cardholder agreements in either electronic or paper form regardless of the form of the cardholder's request.

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## Appendix F—Optional Annual Percentage Rate Computations for Creditors Offering Open-End Plans Subject to the Requirements of § 226.5b

1. *Daily rate with specific transaction charge.* If the finance charge results from a charge relating to a specific transaction and the application of a daily periodic rate, see comment 14(c)(3)–2 for guidance on an appropriate calculation method.

## Appendices G and H—Open-End and Closed-End Model Forms and Clauses

1. *Permissible changes.* Although use of the model forms and clauses is not required, creditors using them properly will be deemed to be in compliance with the regulation with regard to those disclosures. Creditors may make certain changes in the format or content of the forms and clauses and may delete any disclosures that are inapplicable to a transaction or a plan without losing the act's protection from liability, except formatting changes may not be made to model forms and samples in G–2(A), G–3(A), G–4(A), G–10(A)–(E), G–17(A)–(D), G–18(A) (except as permitted pursuant to § 226.7(b)(2)), G–18(B)–(C), G–19, G–20, and G–21. The rearrangement of the model forms and clauses may not be so extensive as to affect the substance, clarity, or meaningful sequence of the forms and clauses. Creditors making revisions with that effect will lose their protection from civil liability. Except as otherwise specifically required, acceptable changes include, for example:

i. Using the first person, instead of the second person, in referring to the borrower.

ii. Using "borrower" and "creditor" instead of pronouns.

iii. Rearranging the sequences of the disclosures.

iv. Not using bold type for headings.

v. Incorporating certain state "plain English" requirements.

vi. Deleting inapplicable disclosures by whiting out, blocking out, filling in "N/A" (not applicable) or "0," crossing out, leaving blanks, checking a box for applicable items, or circling applicable items. (This should permit use of multipurpose standard forms.)

vii. Using a vertical, rather than a horizontal, format for the boxes in the closed-end disclosures.

2. *Debt-cancellation coverage.* This regulation does not authorize creditors to characterize debt-cancellation fees as insurance premiums for purposes of this regulation. Creditors may provide a disclosure that refers to debt cancellation or debt suspension coverage whether or not the coverage is considered insurance. Creditors may use the model credit insurance disclosures only if the debt cancellation coverage constitutes insurance under state law.

## Appendix G—Open-End Model Forms and Clauses

1. *Models G–1 and G–1(A).* The model disclosures in G–1 and G–1(A) (different balance computation methods) may be used in both the account-opening disclosures under § 226.6 and the periodic disclosures under § 226.7. As is clear from the models given, "shorthand" descriptions of the balance computation methods are not sufficient, except where § 226.7(b)(5) applies. For creditors using model G–1, the phrase "a portion of" the finance charge should be included if the total finance charge includes other amounts, such as transaction charges, that are not due to the application of a periodic rate. If unpaid interest or finance charges are subtracted in calculating the balance, that fact must be stated so that the disclosure of the computation method is accurate. Only model G–1(b) contains a final sentence appearing in brackets, which reflects the total dollar amount of payments and credits received during the billing cycle. The other models do not contain this language because they reflect plans in which payments and credits received during the billing cycle are subtracted. If this is not the case, however, the language relating to payments and credits should be changed, and the creditor should add either the disclosure of the dollar amount as in model G–1(b) or an indication of which credits (disclosed elsewhere on the periodic statement) will not be deducted in determining the balance. (Such an indication may also substitute for the bracketed sentence in model G–1(b).) (See the commentary to § 226.7(a)(5) and (b)(5).) For open-end plans subject to the requirements of § 226.5b, creditors may, at their option, use the clauses in G–1 or G–1(A).

2. *Models G–2 and G–2(A).* These models contain the notice of liability for unauthorized use of a credit card. For home-equity plans subject to the requirements of § 226.5b, at the creditor's option, a creditor either may use G–2 or G–2(A). For open-end plans not subject to the requirements of § 226.5b, creditors properly use G–2(A).

3. *Models G–3, G–3(A), G–4 and G–4(A).*

i. These set out models for the long-form billing-error rights statement (for use with the account-opening disclosures and as an annual disclosure or, at the creditor's option, with each periodic statement) and the alternative billing-error rights statement (for use with each periodic statement), respectively. For home-equity plans subject to the requirements of § 226.5b, at the creditor's option, a creditor either may use G–3 or G–3(A), and for creditors that use the short form, G–4 or G–4(A). For open-end (not home-secured) plans that not subject to the requirements of § 226.5b, creditors properly use G–3(A) and G–4(A). Creditors must provide the billing-error rights statements in a form substantially similar to the models in order to comply with the regulation. The model billing-rights statements may be modified in any of the ways set forth in the first paragraph to the commentary on appendices G and H. The models may, furthermore, be modified by deleting inapplicable information, such as:

A. The paragraph concerning stopping a debit in relation to a disputed amount, if the creditor does not have the ability to debit automatically the consumer's savings or checking account for payment.

B. The rights stated in the special rule for credit card purchases and any limitations on those rights.

ii. The model billing rights statements also contain optional language that creditors may use. For example, the creditor may:

A. Include a statement to the effect that notice of a billing error must be submitted on something other than the payment ticket or other material accompanying the periodic disclosures.

B. Insert its address or refer to the address that appears elsewhere on the bill.

C. Include instructions for consumers, at the consumer's option, to communicate with the creditor electronically or in writing.

iii. Additional information may be included on the statements as long as it does not detract from the required disclosures. For instance, information concerning the reporting of errors in connection with a checking account may be included on a combined statement as long as the disclosures required by the regulation remain clear and conspicuous.

* * * * *

5. *Model G–10(A), samples G–10(B) and G–10(C), model G–10(D), sample G–10(E), model G–17(A), and samples G–17(B), 17(C) and 17(D).* i. Model G–10(A) and Samples G–10(B) and G–10(C) illustrate, in the tabular format, the disclosures required under § 226.5a for applications and solicitations for credit cards other than charge cards. Model G–10(D) and Sample G–10(E) illustrate the tabular format disclosure for charge card applications and solicitations and reflect the disclosures in the table. Model G–17(A) and Samples G–17(B), G–17(C) and G–17(D) illustrate, in the tabular format, the disclosures required under § 226.6(b)(2) for account-opening disclosures.

ii. Except as otherwise permitted, disclosures must be substantially similar in sequence and format to Models G–10(A), G–10(D) and G–17(A). While proper use of the model forms will be deemed in compliance with the regulation, card issuers and other creditors offering open-end (not home-secured) plans are permitted to disclose the annual percentage rates for purchases, cash advances, or balance transfers in the same row in the table for any transaction types for which the issuer or creditor charges the same annual percentage rate. Similarly, card issuer and other creditors offering open-end (not home-secured) plans are permitted to disclose fees of the same amount in the same row if the fees are in the same category. Fees in different categories may not be disclosed in the same row. For example, a transaction fee and a penalty fee that are of the same amount may not be disclosed in the same row. Card issuers and other creditors offering open-end (not home-secured) plans are also permitted to use headings other than those in the forms if they are clear and concise and are substantially similar to the headings contained in model forms, with the following exceptions. The heading "penalty APR" must be used when describing rates that may increase due to default or delinquency or as a penalty, and in relation to required insurance, or debt cancellation or suspension coverage, the term "required" and the name of the product must be used. (See also §§ 226.5a(b)(5) and 226.6(b)(2)(v) for guidance on headings that must be used to describe the grace period, or lack of grace period, in the disclosures required under § 226.5a for applications and solicitations for credit cards other than charge cards, and the disclosures required under § 226.6(b)(2) for account-opening disclosures, respectively.)

iii. Models G–10(A) and G–17(A) contain two alternative headings ("Minimum Interest Charge" and "Minimum Charge") for disclosing a minimum interest or fixed finance charge under §§ 226.5a(b)(3) and 226.6(b)(2)(iii). If a creditor imposes a minimum charge in lieu of interest in those months where a consumer would otherwise incur an interest charge but that interest charge is less than the minimum charge, the creditor should disclose this charge under the heading "Minimum Interest Charge" or a substantially similar heading. Other minimum or fixed finance charges should be disclosed under the heading "Minimum Charge" or a substantially similar heading.

iv. Models G–10(A), G–10(D) and G–17(A) contain two alternative headings ("Annual Fees" and "Set-up and Maintenance Fees") for disclosing fees for issuance or availability of credit under § 226.5a(b)(2) or § 226.6(b)(2)(ii). If the only fee for issuance or availability of credit disclosed under § 226.5a(b)(2) or § 226.6(b)(2)(ii) is an annual fee, a creditor should use the heading "Annual Fee" or a substantially similar heading to disclose this fee. If a creditor imposes fees for issuance or availability of credit disclosed under § 226.5a(b)(2) or § 226.6(b)(2)(ii) other than, or in addition to, an annual fee, the creditor should use the heading "Set-up and Maintenance Fees" or a substantially similar heading to disclose fees for issuance or availability of credit, including the annual fee.

v. Although creditors are not required to use a certain paper size in disclosing the §§ 226.5a or 226.6(b)(1) and (2) disclosures, samples G–10(B), G–10(C), G–17(B), G–17(C) and G–17(D) are designed to be printed on an 8½ × 14 inch sheet of paper. A creditor may use a smaller sheet of paper, such as 8½ × 11 inch sheet of paper. If the table is not provided on a single side of a sheet of paper, the creditor must include a reference or references, such as "SEE BACK OF PAGE for more important information about your account." at the bottom of each page indicating that the table continues onto an additional page or pages. A creditor that splits the table onto two or more pages must disclose the table on consecutive pages and may not include any intervening information between portions of the table. In addition, the following formatting techniques were used in presenting the information in the sample tables to ensure that the information is readable:

A. A readable font style and font size (10-point Arial font style, except for the purchase annual percentage rate which is shown in 16-point type).

B. Sufficient spacing between lines of the text.

C. Adequate spacing between paragraphs when several pieces of information were included in the same row of the table, as appropriate. For example, in the samples in the row of the tables with the heading "APR for Balance Transfers," the forms disclose two components: the applicable balance transfer rate and a cross reference to the balance transfer fee. The samples show these two components on separate lines with adequate space between each component. On the other hand, in the samples, in the disclosure of the late payment fee, the forms disclose two components: the late payment fee, and the cross reference to the penalty rate. Because the disclosure of both these components is short, these components are disclosed on the same line in the tables.

D. Standard spacing between words and characters. In other words, the text was not compressed to appear smaller than 10-point type.

E. Sufficient white space around the text of the information in each row, by providing sufficient margins above, below and to the sides of the text.

F. Sufficient contrast between the text and the background. Generally, black text was used on white paper.

vi. While the Board is not requiring issuers to use the above formatting techniques in presenting information in the table (except for the 10-point and 16-point font requirement), the Board encourages issuers to consider these techniques when deciding how to disclose information in the table, to ensure that the information is presented in a readable format.

vii. Creditors are allowed to use color, shading and similar graphic techniques with respect to the table, so long as the table remains substantially similar to the model and sample forms in appendix G.

6. *Model G–11.* Model G–11 contains clauses that illustrate the general disclosures required under § 226.5a(e) in applications and solicitations made available to the general public.

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8. *Samples G–18(A)–(D).* For home-equity plans subject to the requirements of § 226.5b, if a creditor chooses to comply with the requirements in § 226.7(b), the creditor may use Samples G–18(A) through G–18(D) to comply with these requirements, as applicable.

9. *Samples G–18(D).* Sample G–18(D) illustrates how credit card issuers may comply with proximity requirements for payment information on periodic statements. Creditors that offer card accounts with a charge card feature and a revolving feature may change the disclosure to make clear to which feature the disclosures apply.

10. *Forms G–18(F)–(G).* Forms G–18(F) and G–18(G) are intended as a compliance aid to illustrate front sides of a periodic statement, and how a periodic statement for open-end (not home-secured) plans might be designed to comply with the requirements of § 226.7. The samples contain information that is not required by Regulation Z. The samples also present information in additional formats that are not required by Regulation Z.

i. Creditors are not required to use a certain paper size in disclosing the § 226.7 disclosures. However, Forms G–18(F) and G–18(G) are designed to be printed on an 8 × 14 inch sheet of paper.

ii. The due date for a payment, if a late payment fee or penalty rate may be imposed, must appear on the front of the first page of the statement. See Sample G–18(D) that illustrates how a creditor may comply with proximity requirements for other disclosures. The payment information disclosures appear in the upper right-hand corner on Samples G–18(F) and G–18(G), but may be located elsewhere, as long as they appear on the front of the first page of the periodic statement. The summary of account activity presented on Samples G–18(F) and G–18(G) is not itself a required disclosure, although the previous balance and the new balance, presented in the summary, must be disclosed in a clear and conspicuous manner on periodic statements.

iii. Additional information not required by Regulation Z may be presented on the statement. The information need not be located in any particular place or be segregated from disclosures required by Regulation Z, although the effect of proximity requirements for required disclosures, such as the due date, may cause the additional information to be segregated from those disclosures required to be disclosed in close proximity to one another. Any additional information must be presented consistent with the creditor's obligation to provide required disclosures in a clear and conspicuous manner.

iv. Model Forms G–18(F) and G–18(G) demonstrate two examples of ways in which transactions could be presented on the periodic statement. Model Form G–18(G) presents transactions grouped by type and Model Form G–18(F) presents transactions in a list in chronological order. Neither of these approaches to presenting transactions is required; a creditor may present transactions differently, such as in a list grouped by authorized user or other means.

11. *Model Form G–19.* See § 226.9(b)(3) regarding the headings required to be disclosed when describing in the tabular disclosure a grace period (or lack of a grace period) offered on check transactions that access a credit card account.

12. *Sample G–24.* Sample G–24 includes two model clauses for use in complying with § 226.16(h)(4). Model clause (a) is for use in connection with credit card accounts under an open-end (not home-secured) consumer credit plan. Model clause (b) is for use in connection with other open-end credit plans.

* * * * *

By order of the Board of Governors of the Federal Reserve System, January 11, 2010.

**Jennifer J. Johnson,**

*Secretary of the Board.*

**Note:** The following attachment will not appear in the Code of Federal Regulations.

## Attachment I—Consumer and College Credit Card Agreement

### Submission Technical Specifications Document

### Initial Submission Requirements

### I. Introduction

This document provides technical specifications for complying with the initial submission requirements of sections 204 and 305 of the Credit Card Act of 2009 and 12 CFR 226.57(d) and 226.58. These provisions require card issuers to submit to the Board of Governors of the Federal Reserve System ("Board"):

- Agreements between the issuer and a consumer under a credit card account for an open-end (not home-secured) consumer credit plan ("consumer agreements"); and
- An annual report regarding any college credit card agreement to which the issuer is a party ("college agreements").

### II. General Submission Information

Issuers must first determine the type of agreements they are required to submit. Once identified, issuers are required to submit their initial set of agreements (consumer and/or college) to the Board on CD or DVD. A complete submission consists of a transmittal sheet file, agreement documents, and college agreement metadata file (if appropriate).

*General Submission Requirements*

1. The CD/DVD must be mailed to the Federal Reserve Board by the dates specified in 12 CFR 226.57(d) (college agreements) and 226.58 (consumer agreements).

a. Initial submissions of consumer agreements, including agreements offered to the public as of December 31, 2009, must be sent to the Board no later than February 22, 2010.

b. Initial submissions of college agreements, providing information for the 2009 calendar year, must be sent to the Board no later than February 22, 2010.

2. The CD/DVD must be mailed to: Credit Card Act Submission, Federal Reserve Board, 20th and Constitution Avenue, NW., Stop 806, Washington, DC 20551.

3. The agreement documents, transmittal sheet file, and college metadata file (if appropriate) must be the only files submitted on the CD/DVD.

4. The CD/DVD must be labeled with the following information.

a. Issuer name
b. DUNS number
c. Federal Tax ID number
d. Filer [1] name
e. Filer phone number
f. Filer email address
g. Agreement type(s)—Consumer Agreements and/or College Agreements
h. Number of agreements on the CD/DVD
i. If submitting both types, identify how many of each type.

5. All submitted CDs/DVDs must be virus-free.

6. No zip file(s) will be accepted.

a. Each CD/DVD must contain a directory for each type of agreement submitted.

b. Directories must be labeled as Consumer Agreements or College Agreements and contain the respective agreement documents.

7. Issuers must submit a transmittal sheet file with information describing the issuer. The transmittal sheet file will contain a single record containing issuer identification and contact information.

a. The naming convention for the transmittal sheet file is DUNSnumber_TS.txt.

b. Since the transmittal sheet contains issuer-specific information and not agreement-specific information, the transmittal sheet file should be in the root directory and not in the consumer agreements or college agreements directory.

c. Addendum A provides an example of a transmittal sheet file.

*Consumer Agreements*

1. Issuers must submit *each* consumer agreement in *two* formats.

a. Plain text

i. The plain text version must be a Section 508 [2] accessible document.

b. PDF

2. Each individual agreement must be submitted in *both* plain text *and* PDF formats and each version must include all provisions of the agreement and pricing information, as described in 12 CFR 226.58. Issuers must submit a single PDF file and a single plain text file for each agreement.

3. Consumer agreement documents must use the following file naming convention.

a. DUNSnumber_X.txt (and .pdf)

i. X = agreement number (1, 2, 3, etc.)

4. Documents in the consumer agreement directory must include only the plain text and PDF versions of each agreement.

*College Agreements*

1. College agreements must be submitted in *either* Word or PDF format. Issuers are *not* required to submit college agreements in both formats.

2. Issuers must submit a single Word or PDF file for each institution of higher education or affiliated organization with which the issuer has a college credit card agreement.

a. For example, if an issuer has college credit card agreements with 3 such entities, that issuer must submit 3 Word or PDF files. Issuers should *not* submit an individual agreement in the form of multiple Word or PDF files.

3. College agreement documents must use the following file naming convention.

a. DUNSnumber_Y.doc(x) (or .pdf)

i. Y = the name of the institution of higher education or affiliated organization

4. Issuers also must submit a metadata file with information describing each of the college agreement documents.

a. The naming convention for the college agreement metadata file is DUNSnumber_CollegeMetadata.txt.

b. Addendum A provides an example of a college agreement metadata file.

5. Documents in the college agreement directory must include only the college agreement document(s) and the metadata file.

### III. File Specifications

Both the transmittal sheet file and the college agreement metadata file must be submitted in a tab delimited text format. The transmittal sheet file must be submitted in the root directory of the CD/DVD. The college agreement metadata file must be included with the college agreement documents in the college agreement directory.

*Transmittal Sheet File*

The following file layout defines the required fields that must be included in the transmittal sheet file. The file is a one record file that provides issuer identification and contact information.

[1] Contact person who is submitting the agreements on behalf of the issuer.

[2] Section 508 of the Rehabilitation Act of 1973, 29 U.S.C. 794d, as amended, and implementing regulations, 36 CFR Part 1194.

| Element label | Comments, values, keys, etc. |
|---|---|
| Datestamp | Date of submission.<br>Format is century, year, month, day. For example, February 22, 2010, would be 20100222. |
| D–U–N–S (Data Universal Numbering System) number | Dun and Bradstreet unique numbering system.<br>Format is 999999999 (no hyphens). |
| Federal Tax ID number | Issuer's Federal Tax Identification Number (also known as Employer Identification Number or EIN).<br>Format is 999999999 (no hyphens). |
| FFIEC Regulator Code | If issuer is a federally regulated financial institution, enter one of the following to indicate the institution's primary federal regulator:<br>1—OCC<br>2—FRS<br>3—FDIC<br>4—OTS<br>5—NCUA<br>If issuer is not a federally regulated financial institution, enter NA. |
| Financial Regulator Identification Number | If issuer is a federally regulated financial institution, enter the Charter Number for OCC- and NCUA-regulated institutions, the RSSD ID for FRS-regulated institutions, the Certificate Number for FDIC-regulated institutions, or the Docket Number for OTS-regulated institutions.<br>If issuer is not a federally regulated financial institution, enter NA. |
| Issuer Name | Organization/business name. |
| Issuer Address | Organization/business street address. |
| Issuer City | Organization/business city. |
| Issuer State | Organization/business state (two character abbreviation). |
| Issuer Zip Code | Organization/business zip code. |
| Filer Name | Name of contact person who is submitting agreements on behalf of the issuer. |
| Filer Phone Number | Contact person's phone number.<br>Format is XXX–XXX–XXXX. |
| Filer Email Address | Contact person's e-mail address. |
| Agreement Type | Value is Consumer Agreement, College Agreement or Both. |

*College Agreement Metadata File*

The following data must be included in the college agreement metadata file. Each record provides descriptive information about one college agreement.

| Element label | Comments, values, keys, etc. |
|---|---|
| Agreement File Name | Name of the college agreement document.<br>Format is DUNSnumber_Y.pdf/doc(x).<br>Y = the name of the institution of higher education or affiliated organization. |
| Institution/Affiliated Organization Type | Value is University, Alumni Association, or Foundation. |
| Payment Amount | Amount of payments to institution/affiliated organization during reporting period. |
| Payment Terms Reference | Page number(s) in the college agreement document where terms under which payments are calculated are located or NA. |
| New Accounts | Number of accounts opened pursuant to the agreement during the reporting period. |
| Total Accounts | Total number of accounts opened pursuant to the agreement that were open at end of the reporting period. |

**Addendum A—Examples**

*Transmittal Sheet File*

The following is an example of a transmittal sheet file. The data fields should be tab-delimited.

| | | | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| 20100222 | 123456789 | 987654321 | 2 | 123456 | Issuer Bank | 123 Main Street | Credit City | DC | 20551 | Joe Filer | 202–555–9999 | j.filer@issuer.com | Both |

*College Agreement Metadata File*

The following is an example of a college agreement metadata file for a submission of two college agreements. The data fields should be tab-delimited.

| | | | | | |
|---|---|---|---|---|---|
| 123456789_CreditUniversity.doc ..... | University ..... | $XX,XXX | Page 3, Page 18, Page 30. | 25 | 1049 |
| 123456789_CollegeofCreditAlumniAssn.pdf .. | Alumni Association .... | $XX,XXX | Page 6, Page 24 ..... | 40 | 2098 |

[FR Doc. 2010–624 Filed 2–19–10; 8:45 am]

BILLING CODE 6210–01–P

## 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; withdrawal.

**SUMMARY:** The Board is withdrawing a final rule amending Regulation Z and the staff commentary to the regulation published on January 29, 2009 (January 2009 Regulation Z Rule). *See* 72 FR 5244. The Board is publishing a new final rule elsewhere in this **Federal Register** amending Regulation Z in order to implement the provisions of the Credit Card Accountability Responsibility and Disclosure Act of 2009 that are effective on February 22, 2010. The requirements of the January 2009 Regulation Z Rule have been revised for consistency with the Credit Card Act and incorporated in the new final rule. Therefore, the Board is withdrawing the January 2009 Regulation Z Rule as unnecessary.

**DATES:** The final rule published on January 29, 2009, at 74 FR 5244, is withdrawn as of February 22, 2010.

**FOR FURTHER INFORMATION CONTACT:** Stephen Shin, Attorney, or Amy Henderson or Benjamin K. Olson, Senior Attorneys, 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:** On December 18, 2008, the Board adopted a final rule amending Regulation Z, which implements the Truth in Lending Act (TILA), and the official staff commentary. The rule followed a comprehensive review of TILA's provisions for open-end (not home-secured) credit, including credit cards. The rule made comprehensive changes to those provisions, including amendments that affect all of the five major types of required disclosures: Credit card applications and solicitations, account-opening disclosures, periodic statements, notices of changes in terms, and advertisements. The rule was published in the **Federal Register** on January 29, 2009, and the effective date for the amendments was July 1, 2010. *See* 74 FR 5244 (January 2009 Regulation Z Rule).

On May 22, 2009, the Credit Card Accountability Responsibility and Disclosure Act of 2009 (Credit Card Act) was signed into law. *See* Public Law 111–24, 123 Stat. 1734 (2009). The Credit Card Act primarily amends TILA and establishes a number of new substantive and disclosure requirements to establish fair and transparent practices pertaining to open-end consumer credit plans, including credit card accounts. Elsewhere in today's **Federal Register,** the Board has published a new final rule amending Regulation Z and the staff commentary in order to implement provisions of the Credit Card Act that are effective on February 22, 2010. The provisions of the Board's January 2009 Regulation Z Rule have been revised for consistency with the Credit Card Act and incorporated into the new final rule. Accordingly, the Board is withdrawing the January 2009 Regulation Z Rule.

The new final rule is effective on February 22, 2010. However, to the extent consistent with the Credit Card Act, the Board has retained the July 1, 2010 mandatory compliance date for many of the provisions incorporated from the January 2009 Regulation Z Rule. The Board has provided additional discussion of the withdrawal of the January 2009 Regulation Z Rule and the mandatory compliance dates in the Supplementary Information for the new final rule.

The final rule published on January 29, 2009, at 74 FR 5244, is withdrawn as of February 22, 2010.

* * * * *

By order of the Board of Governors of the Federal Reserve System, January 11, 2010.

**Jennifer J. Johnson,**

*Secretary of the Board.*

[FR Doc. 2010–606 Filed 2–19–10; 8:45 am]

BILLING CODE 6210–01–P

## FEDERAL RESERVE SYSTEM

## 12 CFR Part 227

**[Regulation AA; Docket No. R–1383]**

## Unfair or Deceptive Acts or Practices

**AGENCY:** Board of Governors of the Federal Reserve System.

**ACTION:** Final rule.

**SUMMARY:** On January 29, 2009, the Board published a final rule amending Regulation AA and the staff commentary to the regulation. The substantive requirements in the January 2009 Regulation AA Rule, which were scheduled to go into effect on July 1, 2010, have been superseded by provisions of the Credit Card Accountability Responsibility and Disclosure Act of 2009 (Credit Card Act) that go into effect on February 22, 2010. Elsewhere in this issue of the **Federal Register**, the Board is implementing these Credit Card Act provisions in a new final rule amending Regulation Z. Accordingly, in order to avoid duplication and inconsistency, the Board is further amending Regulation AA to remove the substantive requirements in the January 2009 Regulation AA Rule. For procedural reasons, these requirements will be removed effective July 1, 2010. However, it is the Board's intent that the substantive requirements of the January 2009 Regulation AA Rule will not take effect.

The Board issued its January 2009 Regulation AA Rule jointly with rules issued by the Office of Thrift Supervision (OTS) and the National Credit Union Administration (NCUA). This final rule applies only to the Board's Regulation AA and does not affect the rules issued by the OTS and NCUA.

**DATES:** This rule is effective July 1, 2010.

**FOR FURTHER INFORMATION CONTACT:** Stephen Shin, Attorney, or Amy Henderson or Benjamin K. Olson, Senior Attorneys, 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:** On December 18, 2008, the Board used its authority under the Federal Trade

Commission Act (FTC Act) to adopt a final rule amending Regulation AA (12 CFR Part 227) and the staff commentary to the rule in order to protect consumers from unfair acts or practices with respect to consumer credit card accounts. In addition to imposing new substantive requirements, the rule also made several non-substantive amendments to Regulation AA. For example, the Board revised certain subpart headings and consolidated the consumer complaint provisions in §§ 227.1 and 227.2 into a new § 227.1 and added an e-mail address and Web site where consumers can submit complaints.

The rule was published in the **Federal Register** on January 29, 2009 (*See* 74 FR 5498 (January 2009 Regulation AA Rule)), and the effective date for the amendments is July 1, 2010. The Board issued its January 2009 Regulation AA Rule jointly with a rule issued by the Office of Thrift Supervision (OTS) amending 12 CFR Part 535 and a rule issued by the National Credit Union Administration (NCUA) amending 12 CFR Part 706.

On May 22, 2009, the Credit Card Accountability Responsibility and Disclosure Act of 2009 (Credit Card Act) was signed into law. *See* Public Law 111–24, 123 Stat. 1734 (2009). The Credit Card Act primarily amends the Truth in Lending Act (TILA) and establishes a number of new substantive and disclosure requirements to establish fair and transparent practices pertaining to open-end consumer credit plans, including credit card accounts. The majority of the Credit Card Act's provisions go into effect on February 22, 2010, including provisions that supersede the substantive requirements in the Board's January 2009 Regulation AA Rule. Elsewhere in today's **Federal Register,** the Board has published a new final rule amending Regulation Z and the staff commentary to the regulation in order to implement those provisions of the Credit Card Act.

Accordingly, because the substantive requirements in the Board's January 2009 Regulation AA Rule are no longer necessary and—in some cases—are inconsistent with the provisions of the Credit Card Act, the Board is amending Regulation AA to remove those requirements. However, the Board is retaining the non-substantive amendments in the January 2009 Regulation AA Rule, such as the revisions to the consumer complaint provisions.

For procedural reasons, these requirements will be removed effective July 1, 2010. However, it is the Board's intent that the substantive requirements in the January 2009 Regulation AA Rule will not take effect. In addition, the Board does not intend to finalize the proposed amendments to the January 2009 Regulation AA Rule, which were published in the **Federal Register** on May 5, 2009. *See* 74 FR 20804. This final rule applies only to the Board's Regulation AA and does not affect the rule issued by the OTS amending 12 CFR Part 535 or the rule issued by the NCUA amending 12 CFR Part 706.

**List of Subjects in 12 CFR Part 227**

Banks, Banking, Credit, Intergovernmental relations, Trade practices.

**Board of Governors of the Federal Reserve System**

**12 CFR Chapter II**

**Authority and Issuance**

■ For the reasons discussed in the preamble, the Board amends 12 CFR part 227 as set forth below:

## PART 227—UNFAIR OR DECEPTIVE ACTS OR PRACTICES (REGULATION AA)

■ 1. The authority citation for part 227 continues to read as follows:

**Authority:** 15 U.S.C. 57a(f).

## Subpart A—General Provisions

■ 2. Section 227.1 is revised to read as follows:

### § 227.1 Authority, purpose, and scope.

(a) *Authority.* This part is issued by the Board under section 18(f) of the Federal Trade Commission Act, 15 U.S.C. 57a(f) (section 202(a) of the Magnuson-Moss Warranty—Federal Trade Commission Improvement Act, Pub. L. 93–637).

(b) *Purpose.* The purpose of this part is to prohibit unfair or deceptive acts or practices in violation of section 5(a)(1) of the Federal Trade Commission Act, 15 U.S.C. 45(a)(1). This part defines and contains requirements prescribed for the purpose of preventing specific unfair or deceptive acts or practices of banks. The prohibitions in this part do not limit the Board's or any other agency's authority to enforce the FTC Act with respect to any other unfair or deceptive acts or practices.

(c) *Scope.* This part applies to banks, including subsidiaries of banks and other entities listed in paragraph (c)(2) of this section. This part does not apply to savings associations as defined in 12 U.S.C. 1813(b). Compliance is to be enforced by:

(1) The Comptroller of the Currency, in the case of national banks and federal branches and federal agencies of foreign banks;

(2) The Board of Governors of the Federal Reserve System, in the case of banks that are members of the Federal Reserve System (other than banks referred to in paragraph (c)(1) of this section), 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; and

(3) The Federal Deposit Insurance Corporation, in the case of banks insured by the Federal Deposit Insurance Corporation (other than banks referred to in paragraphs (c)(1) and (c)(2) of this section), and insured state branches of foreign banks.

(d) *Definitions.* Unless otherwise noted, the terms used in paragraph (c) of this section that are not defined in the Federal Trade Commission Act or in section 3(s) of the Federal Deposit Insurance Act (12 U.S.C. 1813(s)) shall have the meaning given to them in section 1(b) of the International Banking Act of 1978 (12 U.S.C. 3101).

## Subpart C—[Removed and Reserved]

■ 3. Subpart C is removed and reserved.

■ 4. Supplement I is revised to read as follows:

**Supplement I to Part 227—Official Staff Commentary**

## Subpart A—General Provisions for Consumer Protection Rules

### § 227.1 Authority, purpose, and scope.

**1(c) Scope**

1. *Penalties for noncompliance.* Administrative enforcement of the rule for banks may involve actions under section 8 of the Federal Deposit Insurance Act (12 U.S.C. 1818), including cease-and-desist orders requiring that actions be taken to remedy violations and civil money penalties.

2. *Industrial loan companies.* Industrial loan companies that are insured by the Federal Deposit Insurance Corporation are covered by the Board's rule.

By order of the Board of Governors of the Federal Reserve System, February 3, 2010.

**Jennifer J. Johnson,**

*Secretary of the Board.*

[FR Doc. 2010–2672 Filed 2–19–10; 8:45 am]

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# Reader Aids

**Federal Register**

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