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Part II

Federal Reserve System

12 CFR Part 226
Truth in Lending; Proposed Rule

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: Proposed rule; request for public comment.

SUMMARY: The Board proposes to amend Regulation Z, which implements the Truth in Lending Act (TILA), and the staff commentary to the regulation, following a comprehensive review of TILA's rules for open-end (revolving) credit that is not home-secured. The proposed revisions take into consideration comments from the public on an initial advance notice of proposed rulemaking (ANPR) published in December 2004 on a variety of issues relating to the format and content of open-end credit disclosures and the substantive protections provided under the regulation. The proposal also considers comments received on a second ANPR published in October 2005 that addressed several amendments to TILA's open-end credit rules contained in the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005. Consumer testing was conducted as a part of the review.

Except as otherwise noted, the proposed changes apply solely to open-end credit. Disclosures accompanying credit card applications and solicitations would highlight fees and reasons penalty rates might be applied, such as for paying late. Creditors would be required to summarize key terms at account opening and when terms are changed. The proposal would identify specific fees that must be disclosed to consumers in writing before an account is opened, and give creditors flexibility regarding how and when to disclose other fees imposed as part of the open-end plan. Periodic statements would break out costs for interest and fees. Two alternatives are proposed dealing with the ''effective'' or ''historical'' annual percentage rate disclosed on periodic statements.

Rules of general applicability such as the definition of open-end credit and dispute resolution procedures would apply to all open-end plans, including home-equity lines of credit. Rules regarding the disclosure of debt cancellation and debt suspension agreements would be revised for both closed-end and open-end credit transactions. Loans taken against employer-sponsored retirement plans would be exempt from TILA coverage.

DATES: Comments must be received on or before October 12, 2007.

ADDRESSES: You may submit comments, identified by Docket No. R–1286, by any of the following methods:

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

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

FOR FURTHER INFORMATION CONTACT: Amy Burke or Vivian Wong, Attorneys, Krista Ayoub, Dan Sokolov, Ky Tran-Trong, or John Wood, Counsels, or Jane Ahrens, Senior Counsel, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, at (202) 452–3667 or 452–2412; for users of Telecommunications Device for the Deaf (TDD) only, contact (202) 263–4869.

SUPPLEMENTARY INFORMATION:

I. Background on TILA and Regulation Z

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

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

II. Summary of Major Proposed Changes

The goal of the proposed amendments to Regulation Z is to improve the effectiveness of the disclosures that creditors provide to consumers at application and throughout the life of an open-end (not home-secured) account. The proposed changes are the result of the Board's review of the provisions that apply to open-end (not home-secured) credit. The Board's last comprehensive review of Regulation Z was in 1981. The Board is proposing changes to format, timing, and content requirements for the five main types of open-end credit disclosures governed by Regulation Z: (1) Credit and charge card application and solicitation disclosures; (2) account-opening disclosures; (3) periodic statement disclosures; (4) change-in-terms notices; and (5) advertising provisions.

Applications and solicitations. The proposal contains changes to the format and content to make the credit and charge card application and solicitation disclosures more meaningful and easier for consumers to use. The proposed changes include:

- Adopting new format requirements for the summary table, including rules regarding: Type size and use of boldface type for certain key terms, placement of information, and the use of cross-references.
- Revising content, including: A requirement that creditors disclose the duration that penalty rates may be in effect, a shorter disclosure about variable rates, new disclosures highlighting the effect of creditors' payment allocation practices, and a reference to consumer education materials on the Board's Web site.

Account-opening disclosures. The proposal also contains revisions to the cost disclosures provided at account opening to make the information more conspicuous and easier to read. The proposed changes include:

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

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

Periodic statement disclosures. The proposal also contains revisions to make disclosures on periodic statements more understandable, primarily by making changes to the format requirements, such as by grouping fees, interest charges, and transactions together. The proposed changes include:

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

• Modifying the provisions for disclosing the ''effective APR,'' including format and terminology requirements to make it more understandable. Because of concerns about the disclosure's effectiveness, however, the Board is also soliciting comment on whether this rate should be required to be disclosed.

• Requiring disclosure of the effect of making only the minimum required payment on repayment of balances (changes required by the Bankruptcy Act).

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

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

• Requiring creditors to provide 45 days' prior notice before the creditor increases a rate due to the consumer's delinquency or default.

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

Advertising provisions. The proposal would revise the rules governing advertising of open-end credit to help ensure consumers better understand the credit terms offered. These proposed revisions include:

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

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

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

A. December 2004 Advance Notice of Proposed Rulemaking

The Board began a review of Regulation Z in December 2004.[1] The Board initiated its review of Regulation Z by issuing an advance notice of proposed rulemaking (December 2004 ANPR). 69 FR 70925; December 8, 2004. At that time, the Board announced its intent to conduct its review of Regulation Z in stages, focusing first on the rules for open-end (revolving) credit accounts that are not home-secured, chiefly general-purpose credit cards and retailer credit card plans. The December 2004 ANPR sought public comment on a variety of specific issues relating to three broad categories: the format of open-end credit disclosures, the content of those disclosures, and the substantive protections provided for open-end credit under the regulation. The December 2004 ANPR solicited comment on the scope of the Board's review, and also requested commenters to identify other issues that the Board should address in the review. The comment period closed on March 28, 2005.

The Board received over 200 comment letters in response to the December 2004 ANPR. More than half of the comments were from individual consumers. About 60 comments were received from the industry or industry representatives, and about 20 comments were received from consumer advocates and community development groups. The Office of the Comptroller of the Currency, one state agency, and one member of Congress also submitted comments.

Scope. Commenters' views on a staged review of Regulation Z were divided. Some believe reviewing the regulation in stages makes the process manageable and focuses discussion and analysis. Others supported an independent focus on open-end credit rules because they believe open-end credit by its nature is distinct from other credit products covered by TILA and Regulation Z.

Some commenters supported the Board's approach generally, but voiced concern that looking at the regulation in a piecemeal fashion may lead to decisions in the early stages of the review that may need to be revisited later. If the review is staged, these commenters want all changes implemented at the same time, to ensure consistency between the open-end and closed-end rules.

Some commenters urged the Board to include open-end rules affecting home-equity lines of credit (HELOCs) in the initial stage of the review. If the Board chooses not to expand its review of open-end credit rules to cover home-secured credit, these commenters urged the Board to avoid making any revisions that would be inconsistent with existing HELOC requirements.

A few commenters concurred with the Board's approach of reviewing Regulation Z in stages, but they preferred that the Board start with rules of general applicability, such as definitions. These commenters generally urged the Board to provide additional clarity on the definition of ''finance charge,'' TILA's dollar cost of credit.

Finally, a few commenters stated the Board needs to review the entire regulation at the same time. They suggested a staged approach is not workable, and cited concerns about duplicating efforts, creating inconsistencies, and revisiting changes made in earlier stages of a lengthy review.

Format. In general, commenters representing both consumers and industry stated that the tabular format requirements for TILA's direct-mail credit card application and solicitation disclosures have proven useful to consumers, although a variety of suggestions were made to add or delete specific disclosures. Many, however, noted that typical account-opening disclosures are lengthy and complex, and suggested that the effectiveness of account-opening disclosures could be improved if key terms were summarized in a standardized format, perhaps in the same format as TILA's direct-mail credit card application and solicitation

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

disclosures. These suggestions were consistent with the views of some members of the Board's Consumer Advisory Council. Industry commenters supported the Board's plan to use focus groups or other consumer research tools to test the effectiveness of any proposed revisions.

To combat ''information overload,'' many commenters asked the Board to emphasize only the most important information that consumers need at the time the disclosure is given. They asked the Board to avoid rules that require the repetitive delivery of complex information, not all of which is essential to comparison shopping, such as a lengthy explanation of the creditor's method of calculating balances now required at account opening and on periodic statements. Commenters suggested that the Board would most effectively promote comparison shopping by focusing on essential terms in a simplified way. They believe some information could also be provided to consumers through nonregulatory, educational methods. Taken together, these approaches could lead to simpler disclosures that consumers might be more inclined to read and understand.

Content. In general, commenters provided a variety of views on how to simplify TILA's cost disclosures. For example, some suggested that creditors should disclose only interest as the ''finance charge'' and simply identify all other fees and charges. Others suggested all fees associated with an open-end plan should be disclosed as the ''finance charge.'' Creditors sought, above all, clear rules.

Comments were divided on the usefulness of open-end APRs. TILA requires creditors to disclose an ''interest rate'' APR for shopping disclosures (such as in advertisements and solicitations) and at account opening, and an ''effective'' APR on periodic statements that reflects interest *and* fees, such as transaction charges assessed during the billing period. In general, consumer groups suggested that the Board mandate for shopping disclosures an ''average'' or ''typical'' effective APR based on an historical average cost to consumers with similar accounts. An average APR, consumer representatives stated, would give consumers a more accurate picture of what consumers' actual cost might be. Regarding the effective APR on periodic statements, consumer advocates stated that it is a key disclosure that is helpful, and can provide ''shock value'' to consumers when fees cause the APR to spike for the billing cycle. Commenters representing industry argued that an effective APR is not meaningful, confuses consumers, and is difficult to explain. Some commenters suggested that a disclosure on the periodic statement that provides context by explaining what costs are included in the effective APR might improve its usefulness.

Regarding advance notice of changes to rates and fees, comments were sharply divided. Creditors generally believe the current notice requirements are adequate, although for rate (and other) changes not involving a consumer's default, a number of creditors supported increasing the advance notice requirement from 15 to 30 days. Consumers and consumer representatives generally believe that when terms change, consumers should have the right under TILA to opt out of the new terms, or be allowed a much longer time period to find alternative credit products. They suggested a two-billing cycle advance notice or as long as 90 days. More fundamentally, these commenters believe card issuers should be held to the initial terms of the credit contract, at least until the credit card expires.

Where triggering events are set forth in the account agreement such as events that might trigger penalty pricing, creditors believe there is no need to provide additional notice when the event occurs; they are not changing a term, they stated, but merely implementing the agreement. Some suggest that instead of providing a notice when penalty pricing is triggered, penalty pricing and the triggers should be better emphasized in the application and account-opening disclosures. Consumers and consumer representatives agree that creditors' policies about when terms may change should be more prominently displayed, including in the credit card application disclosures. They further believe the Board should provide new substantive protections to consumers, such as prohibiting the practice of increasing rates merely because the consumer paid late on another credit account.

B. The Bankruptcy Act's Amendments to TILA and October 2005 Advance Notice of Proposed Rulemaking

The Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (the ''Bankruptcy Act'') primarily amended the federal bankruptcy code, but also contained several provisions amending TILA. Public Law 109–8, 119 Stat. 23. The Bankruptcy Act's TILA amendments principally deal with open-end credit accounts and require new disclosures on periodic statements, on credit card applications and solicitations, and in advertisements.

In October 2005, the Board published a second ANPR to solicit comment on implementing the Bankruptcy Act amendments (October 2005 ANPR). 70 FR 60235; October 17, 2005. In the October 2005 ANPR, the Board stated its intent to implement the Bankruptcy Act amendments as part of the Board's ongoing review of Regulation Z's open-end credit rules. The comment period for the October 2005 ANPR closed on December 16, 2005.

The Board received approximately 50 comment letters in response to the October 2005 ANPR. Forty-five letters were submitted by financial institutions and their trade groups. Five letters were submitted by consumer groups.

Minimum payment warnings. Under the Bankruptcy Act, creditors that offer open-end accounts must provide standardized disclosures on each periodic statement about the effects of making only minimum payments, including an example of how long it would take to pay off a specified balance, along with a toll-free telephone number that consumers can use to obtain an estimate of how long it will take to pay off their own balance if only minimum payments are made. The Board must develop a table that creditors can use in responding to consumers requesting such estimates.

Industry commenters generally favored limiting the minimum payment disclosure to credit card accounts (thus, excluding HELOCs and overdraft lines of credit) and to those consumers who regularly make only minimum payments. Consumer groups generally favored broadly applying the rule to all types of open-end credit and to all open-end accountholders.

Industry commenters supported having an option to provide customized information (reflecting a consumer's actual account status) on the periodic statement or in response to a consumer's telephone call, but also wanted the option to use a standardized formula developed by the Board. Consumer group commenters asked the Board to require creditors to provide more customized estimates of payoff periods through the toll-free telephone number and to not allow creditors to use a standardized formula, and supported disclosure of an ''actual'' repayment time on the periodic statement.

Late-payment fees. Under the Bankruptcy Act, creditors offering open-end accounts must disclose on each periodic statement the earliest date on which a late payment fee may be charged, as well as the amount of the fee.

Industry commenters urged the Board to base the disclosure requirement on

the contractual payment due date and to disregard any ''courtesy'' period that creditors informally recognize following the contractual payment due date. Although the industry provided mixed comments on any format requirements, most opposed a proximity requirement for disclosing the amount of the fee and the date. Comments were mixed on adding information about penalty APRs and ''cut-off times'' to the late payment disclosures. While supporters (a mix of industry and consumer commenters) believe the additional information is useful, others were concerned about the complexity of such a disclosure, and opposed the approach for that reason. Consumer commenters suggested substantive protections to ensure consumers' payments are timely credited, such as considering the postmark date to be the date of receipt.

Internet solicitations. The Bankruptcy Act provides that credit card issuers offering cards on the Internet must include the same tabular summary of key terms that is currently required for applications or solicitations sent by direct mail.

Although the Bankruptcy Act refers only to solicitations (where no application is required), most commenters (both industry and consumer groups) agreed that Internet applications should be treated the same as solicitations. Many industry commenters stated that the Board's interim final rule on electronic disclosures, issued in 2001, would be appropriate to implement the Bankruptcy Act. Regarding accuracy standards, the majority of industry commenters addressing this issue indicated that issuers should be required to update Internet disclosures every 30 days, while consumer groups suggested that the disclosures should be updated in a ''timely fashion,'' with 30 days being too long in some instances.

Introductory rate offers. Under the Bankruptcy Act, credit card issuers offering discounted introductory rates must clearly and conspicuously disclose in marketing materials the expiration date of the offer, the rate that will apply after that date, and an explanation of how the introductory rate may be revoked (for example, if the consumer makes a late payment).

In general, industry commenters asked for flexibility in complying with the new requirements. Consumer groups supported stricter standards, such as requiring an equivalent typeface for the word ''introductory'' in immediate proximity to the temporary rate and requiring the expiration date and subsequent rate to appear either side-by-side with, or immediately under or above, the most prominent statement of the temporary rate.

Account termination. Under the Bankruptcy Act, creditors are prohibited from terminating an open-end account before its expiration date solely because the consumer has not incurred finance charges on the account. Creditors are permitted, however, to terminate an account for inactivity.

Regarding guidance on what should be considered an ''expiration date,'' several industry commenters suggested using card expiration dates as the account expiration date. Others cautioned against using such an approach, because *accounts* do not terminate upon a card expiration date. Regarding what constitutes ''inactivity,'' many industry commenters stated no further guidance is necessary. Among those suggesting additional guidance, most suggested ''activity'' should be measured only by consumers' actions (charges and payments) as opposed to card issuer activity (for example, refunding fees, billing inactivity fees, or waiving unpaid balances).

High loan-to-value mortgage credit. For home-secured credit that may exceed the dwelling's fair-market value, the Bankruptcy Act amendments require creditors to provide additional disclosures at the time of application and in advertisements (for both open-end and closed-end credit). The disclosures would warn consumers that interest on the portion of the loan that exceeds the home's fair-market value is not tax deductible and encourage consumers to consult a tax advisor. Because these amendments deal with home-secured credit, the Board is not proposing revisions to Regulation Z to implement these provisions at this time. The Board anticipates implementing these provisions in connection with the upcoming review of Regulation Z's rules for mortgage transactions. Nevertheless, the following is a summary of the comments received.

In general, creditors asked for flexibility in providing the disclosure, either by permitting the notice to be provided to all mortgage applicants, or to be provided later in the approval process after creditors have determined the disclosure is triggered. Similarly, a number of industry commenters advocated limiting the advertising rule to creditors that specifically market high loan-to-value mortgage loans. Creditor commenters asked for guidance on loan-to-value calculations and safe harbors for how creditors determine property values. Consumer advocates favored triggering the disclosure when the possibility of negative amortization could occur.

C. Consumer Testing

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

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

Working closely with the Board, Macro International conducted several tests. Each round of testing was conducted in a different city, throughout the United States. In addition, the consumer testing groups contained participants with a range of ethnicities, ages, educational levels, credit card behavior, and whether a consumer likely has a prime or subprime credit card.

Exploratory focus groups. In May and June 2006, the Board worked with Macro International to conduct two sets of focus groups with credit card consumers, in part, to learn more about what information consumers currently use in making decisions about their credit card accounts. Each focus group consisted of between eight and thirteen people that discussed issues identified by the Board and raised by a moderator from Macro International. Through these focus groups, the Board gathered information on what credit terms consumers usually consider when shopping for a credit card, what information they find useful when they receive a new credit card in the mail, and what information they find useful on periodic statements.

Cognitive interviews on existing disclosures. In August 2006, the Board worked with Macro International to conduct nine cognitive interviews with credit card customers. These cognitive interviews consisted of one-on-one discussions with consumers, during

which consumers were asked to view existing sample credit card disclosures. The goals of these interviews were: (1) To learn more about what information consumers read when they receive current credit card disclosures; (2) to research how easily consumers can find various pieces of information in these disclosures; and (3) to test consumers' understanding of certain credit card-related words and phrases.

1. *Initial design of disclosures for testing.* In the fall of 2006, the Board worked with Macro International to develop sample credit card disclosures to be used in the later rounds of testing, taking into account information learned through the focus groups and the cognitive interviews.

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

Results of testing. Several of the model forms were developed through the testing. A report summarizing the results of the testing is available on the Board's public Web site: *http://www.federalreserve.gov.*

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

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

With respect to periodic statement disclosures, testing participants found it beneficial to have the different types of transactions grouped together by type. Thus, the proposal requires creditors to group transactions together by type, such as purchases, cash advances, and balance transfers. In addition, many consumers more easily noticed the number and amount of fees when the fees were itemized and grouped together with interest charges. Consumers also noticed fees and interest charges more readily when they were located near the disclosure of the transactions on the account. Thus, under the proposal, creditors would be required to group all fees together and describe them in a manner consistent with consumers' general understanding of costs (''interest charge'' or ''fee''), without regard to whether the fees would be considered ''finance charges,'' ''other charges'' or neither under the regulation.

With respect to change-in-terms notices, consumer testing indicates that much like the account-opening disclosures, consumers may not typically read such notices, because they are often in small print and dense prose. To enhance the effectiveness of change-in-terms notices, when a creditor is changing terms which were required to be disclosed in the summary table provided at account opening, the proposed rules would require the creditor to include a table summarizing any such changed terms. Creditors commonly provide notices about changes to terms or rates in the same envelope with periodic statements. Consumer testing indicates that consumers may not typically look at the notices if they are provided as separate inserts given with periodic statements. Thus, in such cases, a table summarizing the change would have to appear on the periodic statement directly above the transaction list, where consumers are more likely to notice the changes.

Additional testing after comment period. After receiving comments from the public on the proposal and the revised disclosure forms, the Board will work with Macro International to revise the model disclosures. Macro International then will conduct additional rounds of cognitive interviews to test the revised disclosures. After the cognitive interviews, quantitative testing will be conducted. The goal of the quantitative testing is to measure consumers' comprehension and the usability of the newly-developed disclosures relative to existing disclosures and formats.

D. Other Outreach and Research

The Board also solicited input from members of the Board's Consumer Advisory Council on various issues presented by the review of Regulation Z's open-end credit rules. During 2005 and 2006, for example, the Council discussed the feasibility and advisability of reviewing Regulation Z in stages, ways to improve the summary table provided on or with credit card applications and solicitations, issues related to TILA's substantive protections (including dispute resolution procedures), and issues related to the Bankruptcy Act amendments. In addition, the Board met or conducted conference calls with various industry and consumer group representatives throughout the review process leading to this proposal. The Board also reviewed disclosures currently provided by creditors, consumer complaints received by the federal banking agencies, and surveys on credit card usage to help inform the proposal.[2]

E. Reviewing Regulation Z in Stages

Based on the comments received and upon its own analysis, the Board is proceeding with a review of Regulation Z in stages. This proposal largely contains revisions to rules affecting open-end plans other than HELOCs subject to § 226.5b. These open-end (not home-secured) plans are distinct from other TILA-covered products, and conducting a review in stages allows for a manageable process. Possible revisions to rules affecting HELOCs will be considered in the Board's review of home-secured credit, currently underway. To minimize compliance burden for creditors offering HELOCs as well as other open-end credit, many of the open-end rules would be reorganized to delineate clearly the requirements for HELOCs and other forms of open-end credit. Although this reorganization would increase the size of the regulation and commentary, the Board believes a clear delineation of rules for HELOCs and other forms of open-end credit pending the review of HELOC rules provides a clear compliance benefit to creditors. Creditors that generate a single periodic statement for all open-end products would be given the option to retain the existing periodic statement disclosure scheme for HELOCs, or to disclose information on periodic statements under the revised rules for other open-end plans.

F. Implementation Period

The Board contemplates providing creditors sufficient time to implement

[2] Surveys reviewed include: Thomas A. Durkin, *Credit Cards: Use and Consumer Attitudes, 1970-2000,* Federal Reserve Bulletin, (September 2000); Thomas A. Durkin, *Consumers and Credit Disclosures: Credit Cards and Credit Insurance,* Federal Reserve Bulletin (April 2002).

any revisions that may be adopted. The Board seeks comment on an appropriate implementation period.

IV. The Board's Rulemaking Authority

TILA mandates that the Board prescribe regulations to carry out the purposes of the act. TILA also specifically authorizes the Board, among other things, to do the following:

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

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

Also as explained in this notice, the Board believes that the specific exemptions proposed are appropriate because the existing requirements do not provide a meaningful benefit to consumers in the form of useful information or protection. In reaching this conclusion, the Board considered (1) the amount of the loan and whether the disclosure provides a benefit to consumers who are parties to the transaction involving a loan of such amount; (2) the extent to which the requirement complicates, hinders, or makes more expensive the credit process; (3) the status of the borrower, including any related financial arrangements of the borrower, the financial sophistication of the borrower relative to the type of transaction, and the importance to the borrower of the credit, related supporting property, and coverage under TILA; (4) whether the loan is secured by the principal residence of the borrower; and (5) whether the exemption would undermine the goal of consumer protection. The rationales for these proposed exemptions are explained below.

V. Discussion of Major Proposed Revisions

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

To shop for and understand the cost of credit, consumers must be able to identify and understand the key terms of open-end accounts. But the terms and conditions affecting credit card account pricing can be complex. The proposed revisions to Regulation Z are intended to provide the most essential information to consumers when the information would be most useful to them, with content and formats that are clear and conspicuous. The proposed revisions are expected to improve consumers' ability to make informed credit decisions and enhance competition among credit card issuers. Many of the changes are based on the consumer testing that was conducted in connection with the review of Regulation Z.

In considering the proposed revisions, the Board has also sought to balance the potential benefits for consumers with the compliance burdens imposed on creditors. For example, the proposed revisions seek to provide greater certainty to creditors in identifying what costs must be disclosed for open-end plans, and when those costs must be disclosed. More effective disclosures may also reduce customer confusion and misunderstanding, which may also ease creditors' costs relating to consumer complaints and inquiries.

A. Credit Card Applications and Solicitations

Under Regulation Z, credit and charge card issuers are required to provide information about key costs and terms with their applications and solicitations.[3] This information is abbreviated, to help consumers focus on only the most important terms and decide whether to apply for the credit card account. If consumers respond to the offer and are issued a credit card, creditors must provide more detailed disclosures at account opening, before the first transaction occurs.

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

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

Consumer testing indicated that many consumers did not notice the information about penalty pricing when it was disclosed outside the table. Under the proposal, card issuers would be required to include in the table the specific actions that trigger penalty APRs (such as a late payment), the rate that will apply, the balances to which the penalty rate will apply, and the circumstances under which the penalty rate will expire or, if true, the fact that the penalty rate could apply indefinitely. The regulation would require card issuers to use the term ''penalty APR'' because the testing demonstrated that some consumers are confused by the term ''default rate.''

Similarly, the proposal requires card issuers to disclose inside (rather than outside) the table the fees for paying late, exceeding a credit limit, or making a payment that is returned, along with

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

a cross-reference to the penalty rate if, for example, paying late could also trigger the penalty rate. Cash advance fees and balance transfer fees would also be disclosed inside the table. This proposed change is also based on consumer testing results; fees disclosed outside the table were often not noticed. Requiring card issuers to disclose returned-payment fees would be a new disclosure.

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

Payment allocation. The proposal would add a new disclosure to the table about the effect on credit costs of creditors' payment allocation methods when payments are applied entirely to transferred balances at low introductory APRs. If, as is common, a creditor allocates payments to low-rate balances first, consumers who make purchases on the account will not be able to take advantage of any ''grace period'' on purchases, without paying off the entire balance, including the low-rate balance transfer. Consumer testing indicated that consumers are often confused about this aspect of balance transfer offers. The new disclosure would alert consumers that they will pay interest on their purchases until the transferred balance is paid in full.

Web site reference. The proposal would also require card issuers to include a reference to the Board's Web site, where additional information is available about how to compare credit cards and what factors to consider. This responds to commenters who suggested that the Board consider nonregulatory approaches to provide opportunities for consumers to learn about credit products.

Subprime accounts. The proposal also addresses a concern that has been raised about subprime credit cards, which are generally offered to consumers with low credit scores or credit problems. Subprime credit cards often have substantial fees associated with opening the account. Typically, fees for the issuance or availability of credit are billed to consumers on the first periodic statement, and can substantially reduce the amount of credit available to the consumer. For example, the initial fees on an account with a $250 credit limit may reduce the available credit to less than $100. Consumer complaints received by the federal banking agencies state that consumers were unaware when they applied for cards of how little credit would be available after all the fees were assessed at account opening.

To address this concern, the proposal would require additional disclosures if the card issuer requires fees or a security deposit to issue the card that are 25 percent or more of the minimum credit limit offered for the account. In such cases, the card issuer would be required to include an example in the table of the amount of available credit the consumer would have after paying the fees or security deposit, assuming the consumer receives the minimum credit limit.

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

B. Account-Opening Disclosures

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

Account-opening summary table. Account-opening disclosures have often been criticized because the key terms TILA requires to be disclosed are often interspersed within the credit agreements, and such agreements are long and complex. The proposal to require creditors to include a table summarizing the key terms addresses that concern by making the information more conspicuous. Creditors may continue, however, to provide other account-opening disclosures, aside from the fees and terms specified in the table, with other terms in their account agreements.

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

The table required at account opening would include more information than the table required at application. For example, it would include a disclosure of any fee for transactions in a foreign currency or that take place in a foreign country. However, to reduce compliance burden for creditors that provide account-opening disclosures at application, the proposal would allow creditors to provide the more specific and inclusive account-opening table at application in lieu of the table otherwise required at application.

How charges are disclosed. Under the current rules, a creditor must disclose any ''finance charge'' or ''other charge'' in the written account-opening disclosures. A subsequent written notice is required if one of the fees disclosed at account opening increases or if certain fees are newly introduced during the life of the plan. The terms ''finance charge'' and ''other charge'' are given broad and flexible meanings in the regulation and commentary. This ensures that TILA adapts to changing

conditions, but it also creates uncertainty. The distinctions among finance charges, other charges, and charges that do not fall into either category are not always clear. As creditors develop new kinds of services, some find it difficult to determine if associated charges for the new services meet the standard for a ''finance charge'' or ''other charge'' or are not covered by TILA at all. This uncertainty can pose legal risks for creditors that act in good faith to comply with the law. Examples of included or excluded charges are in the regulation and commentary, but these examples cannot provide definitive guidance in all cases. Creditors are subject to civil liability and administrative enforcement for underdisclosing the finance charge or otherwise making erroneous disclosures, so the consequences of an error can be significant. Furthermore, overdisclosure of rates and finance charges is not permitted by Regulation Z for open-end credit.

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

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

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

C. Periodic Statements

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

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

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

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

Consumer testing also indicated that many consumers more quickly and accurately determined the total dollar cost of credit for the billing cycle when a total dollar amount of fees for the cycle was disclosed. Thus, the proposal would require creditors to disclose the (1) total fees and (2) total interest imposed for the cycle. The proposal would also require disclosure of year-to-date totals for interest charges and fees. For many consumers, costs disclosed in dollars are more readily understood than costs disclosed as percentage rates. The year-to-date figures are intended to assist consumers in better understanding the overall cost of their credit account and would be an important disclosure and an effective aid in understanding annualized costs, especially if the Board were to eliminate the requirement to disclose the effective APR on periodic statements, as discussed below.

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

For the reasons discussed below, the Board is proposing two alternative approaches to address the effective APR. The first approach would try to improve consumer understanding of this rate and reduce creditor uncertainty about its calculation. The second approach would eliminate the requirement to disclose the effective APR.

Creditors believe the effective APR should be eliminated. They believe consumers do not understand the effective APR, including how it differs from the corresponding (interest rate) APR, why it is often ''high,'' and which fees the effective APR reflects. Creditors say they find it difficult, if not impossible, to explain the effective APR to consumers who call them with questions or concerns. They note that

callers sometimes believe, erroneously, that the effective APR signals a prospective increase in their interest rate, and they may make uninformed decisions as a result. And, creditors say, even if the consumer does understand the effective APR, the disclosure does not provide any more information than a disclosure of the total dollar costs for the billing cycle. Moreover, creditors say the effective APR is arbitrary and inherently inaccurate, principally because it amortizes the cost for credit over only one month (billing cycle) even though the consumer may take several months (or longer) to repay the debt.

Consumer groups acknowledge that the effective APR is not well understood, but argue that it nonetheless serves a useful purpose by showing the higher cost of some credit transactions. They contend the effective APR helps consumers decide each month whether to continue using the account, to shop for another credit product, or to use an alternative means of payment such as a debit card. Consumer groups also contend that reflecting costs, such as cash advance fees and balance transfer fees, in the effective APR creates a ''sticker shock'' and alerts consumers that the overall cost of a transaction for the cycle is high and exceeds the advertised corresponding APR. This shock, they say, may persuade some consumers not to use certain features on the account, such as cash advances, in the future. In their view, the utility of the effective APR would be maximized if it reflected all costs imposed during the cycle (rather than only some costs as is currently the case).

As part of the consumer testing, mock periodic statements were developed in an attempt to improve consumers' understanding of the effective APR. A written explanation and varying terminology were tested. In most rounds participants showed little understanding of the effective APR, but the form was adjusted between rounds as to terminology and format, and in the last round a number of participants showed more understanding of the effective APR.

Thus, the draft proposal includes a number of revisions to the presentation of the effective APR intended to help consumers understand the figure. In addition, the proposal seeks to improve consumer understanding and reduce creditor uncertainty by specifying more clearly which fees are to be included in the effective APR.[4] As mentioned, however, the Board is also seeking comment on an alternative proposal to eliminate the disclosure on the basis that it may not provide consumers a meaningful benefit.

Transactions. Currently, there are no format requirements for disclosing different types of transactions, such as purchases, cash advances, and balance transfers on periodic statements. Often, transactions are presented together in chronological order. Consumer testing indicated that participants found it helpful to have similar types of transactions grouped together on the statement. Consumers also found it helpful, within the broad grouping of fees and transactions, when transactions were segregated by type (*e.g.*, listing all purchases together, separate from cash advances or balance transfers). Further, consumers noticed fees and interest charges more readily when they were located near the transactions. For these reasons, the proposal requires creditors to: (1) Group similar transactions together by type, such as purchases, cash advances, and balance transfers, and (2) group fees and interest charges together, itemized by type, with the list of transactions.

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

Under the proposal, creditors would be required to disclose the payment due date on the front side of the periodic statement and, closely proximate to the date, any cut-off time if it is before 5 p.m. Consumer testing indicates that many consumers believe cut-off times are the close of the business day and more readily notice the cut-off time when it is located near the due date.

Creditors would also be required to disclose, in close proximity to the due date, the amount of the late-payment fee and the penalty APR that could be triggered by a late payment. Applying the penalty APR to outstanding balances can significantly increase costs. Thus, it is important for consumers to be alerted to the consequence of paying late.

Minimum payments. The Bankruptcy Act requires creditors offering open-end plans to provide a warning about the effects of making only minimum payments. The proposal would implement this requirement solely for credit card issuers. Under the proposal, card issuers must provide (1) a ''warning'' statement indicating that making only the minimum payment will increase the interest the consumer pays and the time it takes to repay the consumer's balance; (2) a hypothetical example of how long it would take to pay a specified balance in full if only minimum payments are made; and (3) a toll-free telephone number that consumers may call to obtain an estimate of the time it would take to repay their actual account balance using minimum payments. Most card issuers must establish and maintain their own toll-free telephone numbers to provide the repayment estimates. However, the Board is required to establish and maintain, for two years, a toll-free telephone number for creditors that are depository institutions having assets of $250 million or less. This number is for the customers of those institutions to call to get answers to questions about how long it will take to pay their account in full making only the minimum payment. The Federal Trade Commission (FTC) must maintain a similar toll-free telephone number for use by customers of creditors that are not depository institutions. In order to standardize the information provided to consumers through the toll-free telephone numbers, the Bankruptcy Act amendments direct the Board to prepare a ''table'' illustrating the approximate number of months it would take to repay an outstanding balance if the consumer pays only the required minimum monthly payments and if no other advances are made (''generic repayment estimate'').

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

The proposal also allows card issuers to provide the actual repayment disclosure on their periodic statements. Card issuers would be encouraged to use this approach. Participants in consumer testing who typically carry

[4] The proposal also would reverse a staff commentary provision that excludes ATM fees from the finance charge and effective APR; and it would address for the first time foreign transaction fees, which it would clarify are to be included in the finance charge and effective APR.

credit card balances (revolvers) found an estimated repayment period based on terms that apply to their own account more useful than a hypothetical example. To encourage card issuers to provide the actual repayment disclosure on their periodic statements, the proposal provides that if card issuers do so, they need not disclose the warning, the hypothetical example and a toll-free telephone number on the periodic statement, nor need they maintain a toll-free telephone number to provide the actual repayment disclosure.

As described above, the Bankruptcy Act also requires the Board to develop a ''table'' that creditors, the Board and the FTC must use to create generic repayment estimates. Instead of creating a table, the proposal contains guidance for how to calculate generic repayment estimates. Consumers that call the toll-free telephone number could be prompted to input information about their outstanding balance and the APR applicable to their account. Although issuers have the ability to program their systems to obtain consumers' account information from their account management systems, for the reasons discussed in the section-by-section analysis to Appendix M–1, the proposal does not require issuers to do so.

D. Changes in Consumer's Interest Rate and Other Account Terms

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

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

Timing. Currently, Regulation Z generally requires creditors to mail a change-in-terms notice 15 days before a change takes effect. Consumer groups and others have criticized the 15-day period as providing too little time after the notice is sent for the consumer to receive the notice, shop for alternative credit and possibly pay off the existing credit card account. Under the proposal, notice must be sent at least 45 days before the effective date of the change, which would give consumers about a month to pursue their options.

Penalty rates. Currently, creditors must inform consumers about rates that are increased due to default or delinquency, but not in advance of implementation of the increase. Contractual thresholds for default are sometimes very low, and penalty pricing commonly applies to all existing balances, including low-rate promotional balances. An event triggering the default may occur a year or more after the account is opened. For example, a consumer may open an account, and a year or more later may take advantage of a low promotional rate to transfer balances from another account. That consumer reasonably may not recall reading in the account-opening disclosure that a single transaction exceeding the credit limit could cause the interest rates on existing balances, including on the promotional transfer, to increase. Thus, the proposal would expand the events triggering advance notice to include increases triggered by default or delinquency. Advance notice of a potentially significant increase in the cost of credit is intended to allow consumers to consider alternatives before the increase is imposed, such as making other financial arrangements or choosing not to engage in additional transactions that will increase the balances on their account. Comment is solicited on whether a shorter time period than 45 days' advance notice would be adequate. Actions creditors may engage in to mitigate risk, such as by lowering credit limits or suspending credit privileges, are not affected by the proposal.

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

Under the proposal, creditors may continue to notify consumers about changes to terms required to be disclosed by Regulation Z, along with other changes to the account agreement. However, if a changed term is one that must be provided in the account-opening summary table, creditors must provide that change in a summary table to enhance the effectiveness of the change-in-terms notice.

Creditors commonly enclose notices about changes to terms or rates with periodic statements. Under the proposal, if a notice enclosed with a periodic statement discusses a change to a term that must be disclosed in the account-opening summary table, or announces that a penalty rate will be imposed on the account, a table summarizing the impending change must appear on the periodic statement. The table would have to appear directly above the transaction list, in light of testing that shows many consumers tend to focus on the list of transactions. Consumers who participated in testing set aside change-in-terms pamphlets that accompanied periodic statements. Participants uniformly looked at the front side of periodic statements and reviewed at least the transactions.

E. Advertisements

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

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

F. Other Disclosures and Protections

''Open-end'' plans comprised of closed-end features. Some creditors give open-end credit disclosures on credit plans that include closed-end features, that is, separate loans with fixed repayment periods. These creditors treat these loans as advances on a revolving credit line for purposes of Regulation Z even though the consumer's credit information is separately evaluated and he or she may have to complete a separate application for each ''advance,'' and the consumer's payments on the ''advance'' do not replenish the ''line.'' Provisions in the commentary lend support to this approach. The proposal would revise these provisions to indicate closed-end disclosures rather than open-end disclosures are appropriate when the credit being extended is individual loans that are individually approved and underwritten.

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

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

Consumers may receive these checks throughout the life of the credit card account. Thus, significant time may elapse between the time account-opening disclosures are provided and the time a consumer considers using the check. In addition, consumer testing indicates that consumers may not notice references to other documents such as the account-opening disclosures or periodic statements for rate information because they tend to look for percentages and dollar figures when looking for the costs of using the checks. Under the proposed revisions, checks that can access credit card accounts must be accompanied by information about the rates and fees that will apply if the checks are used, and about whether a grace period exists. To ensure the disclosures are conspicuous, creditors would be required to provide the information in a table, on the front side of the page containing the checks.

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

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

Under the current rules, charges for credit insurance and debt cancellation coverage are deemed not to be finance charges if a consumer requests coverage after an open-end credit account is opened or after a closed-end credit transaction is consummated (the coverage is deemed not to be ''written in connection'' with the credit transaction). Because in such cases the charges are defined as non-finance charges, Regulation Z does not require a disclosure or written evidence of consent to exclude them from the finance charge. The proposed revisions to Regulation Z would implement a broader interpretation of ''written in connection'' with a credit transaction and require creditors to provide disclosures, and obtain evidence of consent, on sales of credit insurance or debt cancellation or suspension coverage during the life of an open-end account. If a consumer requests the coverage by telephone, creditors may provide the disclosures orally, but in that case they must mail written disclosures within three days of the call.[5]

VI. Section-by-Section Analysis

In reviewing the rules affecting open-end credit, the Board has reorganized some provisions to make the regulation easier to use. Rules affecting home-equity lines of credit (HELOCs) subject to § 226.5b are separately delineated in § 226.6 (account-opening disclosures), § 226.7 (periodic statements), and § 226.9 (subsequent disclosures) Footnotes have been moved to the text of the regulation or commentary, as appropriate. These proposed revisions are identified in a table below.

See IX. Redesignation Table.

Introduction

The official staff commentary to Regulation Z begins with an Introduction. Comment I–6 discusses reference materials published at the end of each section of the commentary adopted in 1981. 46 FR 50,288; October 9, 1981. The references were intended as a compliance aid during the transition to the 1981 revisions to Regulation Z. The Board would delete these references and comment I–6, as obsolete. Comment I–3, I–4(b), and I–7, which address 1981 rules of transition, also would be deleted as obsolete.

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

Section 226.1(c) generally outlines the persons and transactions covered by Regulation Z. Comment 1(c)–1 provides, in part, that the regulation applies to consumer credit extended to residents (including resident aliens) of a state. Technical revisions are proposed for clarity. Comment is requested if further guidance on the scope of coverage would be helpful.

Section 226.1(d)(2), which summarizes the organization of the regulation's open-end credit rules (Subpart B), would be amended to reinsert text inadvertently deleted in a previous rulemaking. *See* 54 FR 24670; June 9, 1989. Section 226.1(d)(4), which summarizes miscellaneous provisions in the regulation (Subpart D), would be updated to describe amendments made in 2001 to Subpart D relating to

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

disclosures made in languages other than English. *See* 66 FR 17339; March 30, 2001. The substance of Footnote 1 would be deleted as unnecessary.

Section 226.2 Definitions and Rules of Construction

2(a) Definitions

2(a)(2) Advertisement

For clarity, the Board proposes technical revisions to the commentary to § 226.2(a)(2), with no intended change in substance or meaning. No changes are proposed for the text of § 226.2(a)(2).

2(a)(4) Billing Cycle

TILA Section 127(b) provides that, for an open-end credit plan, the creditor shall send the consumer a periodic statement for each billing cycle at the end of which there is an outstanding balance or with respect to which a finance charge is imposed. 15 U.S.C. 1637(b). ''Billing cycle'' is not defined in the statute, but is defined in § 226.2(a)(4) of Regulation Z as ''the interval between the days or dates of regular periodic statements.'' In addition, § 226.2(a)(4) requires that billing cycles be equal and no longer than a quarter of a year, and allows a variance of up to four days from the regular day or date of the statement. Comment 2(a)(4)–3 provides an exception to the requirement for equal cycles: the ''transitional billing cycle that can occur when the creditor occasionally changes its billing cycles so as to establish a new statement day or date.'' Under the proposal, the Board would clarify that creditors may also vary the length of the first cycle on an open-end account in certain situations.

Questions have sometimes arisen about the first cycle that occurs when a consumer opens an open-end credit account, and specifically, about whether the first cycle may vary by more than four days from the regular cycle interval without violating the equal-cycle requirement. For example, in order to establish the consumer's account on the creditor's billing system, the first cycle may need to be longer or shorter than a monthly period by more than four days, depending upon the date the account is opened. The Board believes that such a variance for a first cycle, within reason, would not harm consumers and would facilitate compliance. Comment 2(a)(4)–3 would be revised to clarify this point.

2(a)(15) Credit Card

TILA defines ''credit card'' as ''any card, plate, coupon book or other credit device existing for the purpose of obtaining money, property, labor, or services on credit.'' TILA Section 103(k); 15 U.S.C. 1602(k). In addition, Regulation Z provides that a credit card is a ''single credit device that may be usable *from time to time* to obtain credit.'' *See* § 226.2(a)(15). The definition of ''credit card'' in the regulation would remain largely unchanged; however, the current reference to a ''coupon book'' in the definition would be deleted as obsolete.

Checks that access credit card accounts. Credit card issuers sometimes provide cardholders with checks that access a credit card account, which can be used to obtain cash, purchase goods or services, or pay the outstanding balance on another account. These checks are often mailed to consumers unsolicited, sometimes with consumers' monthly statements. When a consumer uses such a check, the amount of the check will be billed to the cardholder's account.

Historically, checks that access credit card accounts have not been treated as ''credit cards'' under TILA because each check can be used only once and not ''from time to time.'' *See* comment 2(a)(15)–1. As a result, TILA's protections involving merchant disputes, unauthorized use of the account, and the prohibition against unsolicited issuance, which apply only to ''credit cards,'' do not apply to these checks. *See* § 226.12. However, other protections do apply to such checks. *See* § 226.13. In the December 2004 ANPR, the Board solicited comment as to whether it should extend TILA's protections for credit cards to other extensions on credit card accounts, in particular checks that access credit card accounts. Q45. The Board also asked whether the industry is developing open-end credit plans that would allow consumers to conduct transactions using only account numbers and that do not involve the issuance of physical devices traditionally considered to be credit cards. Q44.

In response to the December 2004 ANPR, several consumer commenters urged the Board to expand the definition of ''credit card'' to include checks that access a credit card account, in particular to address the risk of increased fraud and heightened identity theft stemming from the unrestricted issuance of such checks. Specifically, these commenters cited concerns that these checks could be sent to a consumer at any time without the consumer's request. Alternatively, some consumer commenters suggested that if these checks continued to be issued on an unsolicited basis, consumers should at least be able to opt out from receiving them. In addition, one consumer group commented that the Board could address non-physical credit cards by clarifying that the term ''device'' as it appears in the definition of ''credit card'' can include any physical object or a method or process.

Industry commenters opposed expanding the definition of ''credit card'' to cover checks that access credit card accounts, for various reasons. In general, industry commenters stated that they were aware of few complaints regarding such checks, and that in their experience, most consumers find the checks useful and convenient, as demonstrated by their frequent use. In addressing unsolicited issuance concerns specifically, industry commenters noted that upon a consumer's request, most issuers will discontinue sending checks that access a credit card account.

Industry commenters also stated that it was unnecessary to extend the unauthorized use protections to convenience checks because convenience check transactions are generally subject to the Uniform Commercial Code (UCC) provisions governing checks, and thus a consumer generally would not have any liability for a forged check, provided the consumer complies with certain timing requirements. Industry commenters also opposed applying the merchant dispute provisions (in § 226.12) to checks that access a credit card account, stating that these checks are not processed through the payment card associations' networks. Because card issuers may have no connection to or relationship with merchants that accept these checks, industry commenters stated that issuers do not have the ability to charge back to that merchant transactions conducted with these checks. Accordingly, industry commenters believed that the consumer was in the best position to contact the merchant in the event of a dispute involving a transaction using one of these checks.

In the proposal, the definition of ''credit card'' would remain unchanged. The Board believes it may be unnecessary to address unauthorized use concerns by treating checks that access credit card accounts as credit cards, to the extent existing law or agreements provide protections to these transactions. Moreover, under Regulation Z, a consumer is currently able to assert billing error claims for transactions involving checks that access a credit card account because the billing error provisions in § 226.13 apply to any extension of credit under an open-end plan, and are not limited to credit cards. The Board also does not

believe that it is necessary to require issuers to provide consumers with the ability to opt out of receiving checks that access credit card accounts. The Board understands that in many instances, issuers will honor consumer requests to opt out of receiving such checks, and the Board encourages creditors to continue the practice. In addition, as noted above, consumers would be able to assert a billing error claim with respect to any unauthorized transactions involving such checks and is not liable for unauthorized transactions, as provided for under § 226.13.

Plans in which no physical device is issued. The proposal does not address circumstances where a consumer may conduct a transaction on an open-end plan that does not have a physical device. The Board had solicited comment on such plans because it has received anecdotal information about limited cases in which consumers obtained credit by providing an account number (for example, to obtain food and services at a resort) and where a physical device was not issued to the consumer. Industry commenters stated that, in general, they were unaware of any plans to provide open-end accounts that did not involve the issuance of a card or other physical device. In particular, industry commenters noted that creditors will continue to issue physical devices because transactions where a card or other physical device is present are generally far more secure and less likely to involve fraud compared to those in which only the account number, along with other information, is used to verify the identity of the user. Moreover, industry commenters noted that consumers still need a tangible device bearing account information that they can easily carry with them. As a result, industry commenters generally believed that issuers would be unlikely to abandon the issuance of a physical card or device.

The Board believes that it is not necessary at this time to address this issue, but it will continue to monitor developments in the marketplace. Of course, to the extent a creditor has issued a device that meets the definition of a ''credit card'' for an account, transactions on that account are subject to the provisions that apply to transactions involving the use of a ''credit card,'' even if the particular transaction itself is not conducted using the device (for example, in the case of phone or Internet transactions).

Coupon books. As noted above, the definition of ''credit card'' under both TILA and Regulation Z includes a reference to a ''coupon book.'' Neither the statute nor the regulation provides any guidance on the types of devices that would constitute a ''coupon book'' so as to qualify as a ''credit card'' under the definition. Comment 2(a)(15)–1, as discussed above, states that checks and similar instruments that can be used only once to obtain a single credit extension are not ''credit cards,'' and, logically such instruments, even if issued in a separate booklet or in conjunction with a periodic statement, also would not be considered to be coupon books. Thus, as the Board is not aware of devices existing today that would qualify as a coupon book under the statute and regulation, the Board is proposing to delete the reference to such devices in the definition of ''credit card'' as obsolete. Comment is requested as to whether removal of the reference to ''coupon book'' in § 226.2(a)(15) would help clarify the definition of ''credit card'' without inadvertently limiting the availability of Regulation Z protections.

Charge cards. Comment 2(a)(15)–3 discusses charge cards and identifies provisions in Regulation Z in which a charge card is distinguished from a credit card. As discussed in detail in the section-by-section analysis to § 226.7(b)(11) and § 226.7(b)(12), the new late payment and minimum payment disclosure requirements contained in the Bankruptcy Act do not apply to charge card issuers. Thus, comment 2(a)(15)–3 is updated to reflect those changes.

2(a)(17) Creditor

For reasons explained in the section-by-section analysis to § 226.3, the Board is proposing to exempt from TILA coverage credit extended under employee-sponsored retirement plans. Comment 2(a)(17)(i)–8, which provides guidance on whether such a plan is a creditor for purposes of TILA, would be deleted. The guidance would no longer be necessary because loans granted under such plans would be exempt from TILA and, as such, the definition of ''creditor'' would not need to be clarified.

In addition, the substance of footnote 3 would be moved to a new § 226.2(a)(17)(v), and references revised, accordingly. The dates used to illustrate numerical tests for determining whether a creditor ''regularly'' extends consumer credit are updated in comments 2(a)(17)–3 through –6.

2(a)(20) Open-End Credit

Under TILA Section 103(i), as implemented by § 226.2(a)(20) of Regulation Z, ''open-end credit'' is consumer credit extended by a creditor under a plan in which (1) the creditor reasonably contemplates repeated transactions, (2) the creditor may impose a finance charge from time to time on an outstanding unpaid balance, and (3) the amount of credit that may be extended to the consumer during the term of the plan, up to any limit set by the creditor, generally is made available to the extent that any outstanding balance is repaid. Comment 2(a)(20)–1 reiterates that consumer credit must meet all three of these criteria to be open-end credit. Comment 2(a)(20)–5 currently states, with respect to replenishment of the credit line, that a creditor need not establish a specific credit limit for the line of credit and that the line need not always be replenished to its original amount.

''Spurious'' open-end credit. The Board has received comments from time to time from state attorneys general and consumer groups voicing concern that the definition of open-end credit permits creditors to treat as open-end plans certain credit transactions that would be more properly characterized as closed-end credit. These commenters note that as a practical matter, such ''spurious'' open-end credit is unlikely to be used for repeated transactions and the credit line does not replenish to the extent that the consumer pays down his or her balance. Furthermore, these open-end plans may be established primarily to finance an infrequently purchased product or service, the credit limits for many of the creditor's customers may be close to the cost of that product or service, and the creditor may have no reasonable grounds for expecting that there will be repeated transactions by many of its customers. When open-end disclosures are given for such products, the concern voiced by state attorneys general and consumer groups is that those disclosures fail to adequately disclose the period of time that it will take to repay the balance, the total of the payments that a consumer will be required to make (assuming in both cases that the consumer makes only the minimum required payments).

In an effort to address these concerns, in 1997 the Board proposed adding two sets of factors to the commentary, one set that creditors should consider when determining whether they ''reasonably contemplate repeated transactions,'' and another set to provide guidance on whether a credit line is ''reusable.''[6]

[6] The factors that were proposed regarding the ''repeated transactions'' portion of the definition were: (1) Whether the product is something that consumers would most likely not purchase in multiples, (2) whether the line of credit is established for the purpose of purchasing a

The Board received many comments from industry in response to this proposal, most of which criticized the factors on the grounds that they would result in excluding from the definition of ''open-end credit'' legitimate open-end credit products. In particular, commenters were concerned about the status of private label credit cards that offer an incentive to the consumer to make a large initial purchase. In response to these concerns, the two sets of factors were not adopted in the final commentary revisions.

As discussed further in the section-by-section analysis to § 226.16, the Board proposes to address potential ''spurious'' open-end credit transactions through improved advertising disclosures. The Board believes this to be a more targeted and effective approach than revising the definition of open-end credit. One of the major problems with ''spurious'' open-end credit highlighted by commenters is that creditors advertise a low minimum monthly payment which can mislead consumers, who may not be aware of the total amount of payments they would be required to make, or the term over which they would be obligated to make those payments. As discussed below in the section-by-section analysis to § 226.16(b), the proposed rule would require a creditor that states a minimum monthly payment in an advertisement also to state the term that it will take to repay the debt at that minimum payment level, as well as the total amount of the payments. The proposed rule would require that disclosure of the term and total amount of payments be equally prominent to the advertisement of the minimum payment. The Board believes that disclosure of the term and total of payments in advertisements will help to improve consumer understanding about the cost of credit products for which a low monthly payment is advertised, addressing one of the major concerns regarding ''spurious'' open-end credit.

''Open-end'' plans comprised of closed-end features. The Board also is concerned that, under current guidance in the commentary, some credit products are treated as open-end plans, with open-end disclosures given to consumers, when such products would more appropriately be treated as closed-end transactions. Closed-end disclosures are more appropriate than open-end disclosures when the credit being extended is individual loans that are individually approved and underwritten. The Board is particularly concerned about certain credit plans, where each individual credit transaction is separately evaluated.

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

Currently, some creditors may be treating such plans as open-end credit, in light of several sections in the current commentary. Current comment 2(a)(20)–2 provides that if a program as a whole meets the definition of open-end credit, such a program may be considered a single multifeatured plan, notwithstanding the fact that certain features might be used infrequently. In addition, current comment 2(a)(20)–3 indicates that, for a multifeatured open-end plan, a creditor need not believe a consumer will reuse a particular feature of the plan. Also, current comment 2(a)(20)–5 indicates that a creditor may verify credit information such as a consumer's continued income and employment status or information for security purposes.

The Board believes that in certain circumstances treating such credit as open-end is inappropriate under Regulation Z, and accordingly proposes a number of revisions to § 226.2(a)(20) and the accompanying commentary. Closed-end disclosures are more appropriate than open-end disclosures unless the consumer's credit line generally replenishes to the extent that he or she repays outstanding balances so that the consumer may continue to borrow and take advances under the plan without having to obtain separate approval for each subsequent advance. Replenishment of the amount of credit available to a consumer in good standing without the need for separate underwriting or approval of each advance distinguishes open-end credit from a series of advances made pursuant to separate closed-end loan commitments, such as the automobile loan described above. For example, if a consumer makes two payments of $500 that reduce the outstanding principal balance on the line of credit, the consumer generally should be able to obtain an additional $1,000 of credit under the open-end plan without having a creditor separately underwriting or evaluating whether the consumer can borrow the $1,000.

The Board proposes to revise comment 2(a)(20)–2 to clarify that while a consumer's account may contain different sub-accounts, each with different minimum payment or other payment options, each sub-account must meet the self-replenishing criterion. In particular, proposed comment 2(a)(20)–2 would provide that repayments of an advance for any sub-account must generally replenish a single credit line for that sub-account so that the consumer may continue to borrow and take advances under the plan to the extent that he or she repays outstanding balances without having to obtain separate approval for each subsequent advance.

Due to the concerns noted above regarding closed-end automobile loans being characterized as features of so-called open-end plans, the Board proposes to delete comment 2(a)(20)–3.ii. While there may be circumstances under which it would be more reasonable for a financial institution to make advances from an open-end line of credit for the purchase of an automobile than for an automobile dealer to sell a car under an open-end plan, the Board believes that the current example places inappropriate emphasis on the identity of the creditor rather than the type of credit being extended by that creditor.

TILA Section 103(i) provides that a plan can be an open-end credit plan even if the creditor verifies credit information from time to time. 15 U.S.C. 1602(i). The Board believes this provision is not intended to permit a creditor to separately underwrite each advance made to a consumer under an open-end plan or account. Such a process could result in closed-end credit being deemed open-end credit. The Board proposes to clarify in comment 2(a)(20)–5 that in general, a credit line is self-replenishing if a consumer can obtain further advances or funds without being required to separately

designated item, (3) the amount of the initial purchase relative to the credit limit, (4) the extent to which the creditor reasonably solicits customers to make additional purchases, and (5) whether the creditor has information on consumers with the credit line showing that they have made repeat purchases. The proposed revisions also would have provided that a line of credit generally is not self-replenishing if the initial line of credit is less than, or not much more than, the amount of the item purchased to open the credit line (or the minimum monthly payments are so low that the credit line is not reusable for an extended period of time). *See* 62 FR 64,769, December 9, 1997.

apply for those additional advances, and without undergoing a separate review by the creditor of that consumer's credit information, in order to obtain approval for each such additional advance.

Notwithstanding this proposed change, a creditor could verify credit information to ensure that the consumer's creditworthiness has not deteriorated (and could revise the consumer's credit limit or account terms accordingly). However, to perform such an inquiry for each specific credit request would go beyond verification and would more closely resemble underwriting of closed-end credit. The Board recognizes that a creditor may need to review, and as appropriate, decrease the amount of credit available to a consumer from time to time to address safety and soundness and other concerns. Such a review would not be affected by the proposed changes, as explained in proposed comment 2(a)(20)–5.

These revisions are not intended to impact home-equity lines of credit (HELOCs), which may have a fixed draw period (during which time a consumer may continue to take advances to the extent that he or she repays the outstanding balance) followed by a repayment period where the consumer may no longer draw against the line, as closed-end credit. The Board seeks comment regarding the proposed rule's impact on HELOCs.

Comment 2(a)(20)–5.ii. currently notes that a creditor may reduce a credit limit or refuse to extend new credit due to changes in the economy, the creditor's financial condition, or the consumer's creditworthiness. The Board's proposal would delete the reference to changes in the economy to simplify this provision.

The Board also proposes a technical update to comment 2(a)(20)–4 to delete a reference to ''china club plans,'' which may no longer be very common. No substantive change is intended.

2(a)(24) Residential Mortgage Transaction

Comment 2(a)(24)–1, which identifies key provisions affected by the term ''residential mortgage transaction,'' is revised to include a reference to § 226.32, correcting an inadvertent omission.

Section 226.3 Exempt Transactions

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

The Board proposes a number of substantive and technical revisions to § 226.3 as described below. The substance of footnote 4 is moved to the commentary. *See* comment 3–1.

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

Section 226.3(a) provides, in part, that the regulation does not apply to extensions of credit primarily for business, commercial or agricultural purposes. The Board received no comments regarding this exemption in regard to the December 2004 ANPR. Questions have arisen from time to time, however, regarding whether transactions made for business purposes on a consumer purpose credit card are exempt from TILA. The Board seeks to provide clarification regarding this question. The determination as to whether a credit card account is primarily for consumer purposes or business purposes is best made when the account is opened, rather than on a transaction-by-transaction basis, and thus the Board is proposing to add a new comment 3(a)–2 to clarify that transactions made for business purposes on a consumer-purpose credit card are covered by TILA (and, conversely, that purchases made for consumer purposes on a business-purpose credit card are exempt from TILA). Other sections of the commentary regarding § 226.3(a) would be renumbered accordingly. A new comment 3(a)–7 would provide guidance on card renewals, consistent with proposed comment 3(a)–2.

3(b) Credit Over $25,000 Not Secured by Real Property or a Dwelling

Section 226.3(b) exempts from Regulation Z extensions of credit not secured by real property or a dwelling, 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. The $25,000 threshold in § 226.3(b) is the same as the statutory threshold set in TILA Section 104(3). 15 U.S.C. 1603(3).

In the December 2004 ANPR, the Board solicited comment as to whether the rules implementing TILA Section 104 needed to be updated. Q58. The Board received several comments regarding the $25,000 threshold. One consumer group noted that the $25,000 figure is outdated due to inflation and should be increased. One bank noted that the threshold remains appropriate for unsecured credit but suggested that the Board might consider at a later stage of the Regulation Z review whether the $25,000 figure should be raised for secured credit, such as automobile loans. The Board agrees that the § 226.3(b) threshold would be more appropriately considered in connection with its planned review of the closed-end credit provisions of Regulation Z and is not proposing to take any action at the present time. In delaying consideration of the $25,000 threshold to the closed-end Regulation Z review, the Board expresses no view on whether the $25,000 threshold is appropriate for open-end (not home-secured) credit. Rather, the Board proposes to review the threshold for all credit covered by TILA at the same time.

3(c) Public Utility Credit

Section 226.3(c) exempts from Regulation Z extensions of credit involving public utility services provided through pipe, wire, other connected facilities, or radio or similar transmission, if the charges for service, delayed payment, or any discounts for prompt payment are filed with or regulated by any government unit. 15 U.S.C. 1603(4).

The Board received no comments on the December 2004 ANPR regarding the applicability and scope of § 226.3(c). However, the Board has received inquiries from time to time regarding the applicability of Regulation Z to service plans for cellular telephones. In addition, in light of the deregulation in recent years by some states of utilities such as gas and electric services, the Board believes that it may be appropriate to reconsider the scope of the public utility credit exemption more generally. The Board also notes that due to technological advances, there may be additional types of services, such as certain Internet services, for which exemption from Regulation Z may be appropriate. The Board is not proposing to take any action at the present time, however, because these issues would be better considered in the context of the Board's upcoming rulemaking regarding the closed-end credit provisions of Regulation Z.

3(g) Employer-Sponsored Retirement Plans

The Board has received questions from time to time regarding the applicability of TILA to loans taken against employer-sponsored retirement plans. Pursuant to TILA Section 104(5), the Board has the authority to exempt transactions for which it determines that coverage is not necessary in order to carry out the purposes of TILA. 15 U.S.C. 1603(5). The Board also has the authority pursuant to TILA Section 105(a) to provide adjustments and exceptions for any class of transactions, as in the judgment of the Board are necessary or proper to effectuate the purposes of TILA. 15 U.S.C. 1604(a). The Board proposes to add to the regulation a new § 226.3(g), which

would exempt loans taken by employees against their employer-sponsored retirement plans qualified under Section 401(a) of the Internal Revenue Code and tax-sheltered annuities under Section 403(b) of the Internal Revenue Code, provided that the extension of credit is comprised of fully-vested funds from such participant's account and is made in compliance with the Internal Revenue Code. 26 U.S.C. 1 *et seq.*; 26 U.S.C. 401(a); 26 U.S.C. 403(b).

The Board believes that an exemption for loans taken against funds invested in such types of employer-sponsored retirement plans is appropriate for the following reasons. The consumer's interest and principal payments on such a loan are reinvested in the consumer's own account, and there is no third-party creditor imposing finance charges on the consumer. Also, TILA disclosures would be of very limited, if any, value. The costs of a loan taken against assets invested in a 401(k) plan, for example, are not comparable to the costs of a third party loan product, because a consumer pays the interest on a 401(k) loan to himself or herself rather than to a third party. Moreover, plan administration fees must be disclosed under Department of Labor regulations. *See* 29 CFR 2520.1023(1).

Family Trusts

The Board also has from time to time received inquiries regarding TILA coverage of family trusts created for estate planning purposes. Because most of these questions pertain to real-estate secured loans, the applicability of the exemptions in § 226.3 to these types of estate planning arrangements would be better considered in the context of the Board's upcoming closed-end Regulation Z review.

Section 226.4 Finance Charge

Various provisions of TILA and Regulation Z specify how and when the cost of consumer credit as a dollar amount, the ''finance charge,'' is to be disclosed. The rules for determining which charges make up the finance charge are set forth in TILA Section 106 and Regulation Z § 226.4. 15 U.S.C. 1605. Some rules apply only to open-end credit and others apply only to closed-end credit, while some apply to both. With limited exceptions discussed below, the Board is not proposing to change § 226.4 for either closed-end credit or open-end credit.

The Board is aware of longstanding criticisms that the definition of the ''finance charge'' in § 226.4, as interpreted in the regulation and the related commentary, is too narrow, too broad, or too vague. In a 1998 report to Congress, the Board discussed these concerns, and proposed solutions, in the context of closed-end mortgage loans.[7] In this proposal, the Board addresses concerns about the definition of the ''finance charge'' in the context of open-end (not home-secured) plans through changes to § 226.5, § 226.6, and § 226.7 to simplify disclosure of charges on such plans. The Board is not proposing to address these concerns through changes to § 226.4, with limited exceptions. The Board proposes to revise § 226.4 and related commentary to address (1) transaction charges imposed by credit card issuers, such as charges for obtaining cash advances from ATMs and for making purchases in foreign currencies, and (2) charges for credit insurance, debt cancellation coverage, and debt suspension coverage.

4(a) Definition

Under the definition of ''finance charge'' in TILA Section 106 and Regulation Z § 226.4(a), a charge specific to a credit transaction is ordinarily a finance charge. *15* U.S.C. 1605. *See* also § 226.4(b)(2). However, also under Section 106 and § 226.4(a), the finance charge does not include any charge of a type payable in a ''comparable cash transaction.'' Under the staff commentary to § 226.4(a), in determining whether a charge associated with a credit transaction is a finance charge, the creditor should compare the credit transaction in question with a ''similar'' cash transaction, if one exists. *See* comment 4(a)–1. The commentary states a general principle for applying this rule in the case of credit that finances the sale of property or services: the creditor should compare charges with those that would be payable if the services or property were purchased using cash rather than a loan. Thus, for example, if an escrow agent charges the same fee regardless of whether real estate is bought in cash or with a mortgage loan, then the agent's fee is not a finance charge.

In other cases, however, particularly in cases involving credit cards, determining which, if any, transaction is a ''similar'' or ''comparable'' cash transaction for purposes of § 226.4(a) can be difficult. For example, when consumers became able to take cash advances on credit card accounts using ATMs, a question arose as to whether a fee charged by a card issuer for the transaction was a finance charge if the issuer charged the same fee for using a debit card to withdraw cash from an asset account. The Board solicited comment on this question in 1983 and adopted staff comment 4(a)–4 in 1984. 48 FR 54,642; December 6, 1983 and 49 FR 40,560; October 17, 1984. That comment indicates that the fee is not a finance charge to the extent that it does not exceed the charge imposed by the card issuer on its cardholders for using the ATM to withdraw cash from a consumer asset account, such as a checking or savings account. Another comment indicates that the fee is an ''other charge.'' *See* current comment 6(b)–1(vi). Accordingly, the fee must be disclosed at account opening and on the periodic statement, but it is not labeled as a ''finance charge'' nor included in the effective APR.

Since comment 4(a)–4 was adopted, questions have been raised about its scope and application. For example, the comment does not address whether it applies when an affiliate of the card issuer, but not the card issuer itself, issues a debit card. Even in the seemingly simple case where the credit card issuer itself issues a debit card, a variety of complexities arise. The issuer may assess an ATM fee for one kind of deposit account (for example, an account with a low minimum balance) but not for another. The comment does not indicate which account is the proper basis for comparison.

Questions have also been raised about whether disclosure of the charge pursuant to comments 4(a)–4 and 6(b)–1.iv. is meaningful to consumers. Under the comment, the disclosure a consumer receives after incurring a fee for taking a cash advance through an ATM depends on the structure of the institution that issued the credit card. If the credit card issuer does not provide asset accounts and is not affiliated with an institution that does, then it must disclose the charge as a finance charge. If the credit card issuer provides asset accounts and offers debit cards on those accounts, then, depending on the circumstances, the issuer must not disclose the charge as a finance charge. It is not clear that the distinction is meaningful to consumers.

Recently, a question has arisen about the proper disclosure of another kind of transaction fee imposed on credit cards. The question is whether fees that credit cardholders are assessed for making purchases in a foreign currency or outside the United States—for example, when the cardholder travels abroad—are finance charges. The question has arisen in litigation between consumers

[7] Board of Governors of the Federal Reserve System and Department of Housing and Urban Development, *Joint Report to the Congress Concerning Reform to the Truth in Lending Act and the Real Estate Settlement Procedures Act*, July 1998.

and major card issuers.[8] Some card issuers have argued by analogy to comment 4(a)–4 that a foreign transaction fee is not a finance charge if the fee does not exceed the issuer's fee for using a debit card for the same purchase. Some card issuers disclose the foreign transaction fee as a finance charge and include it in the effective APR, but others do not.

The uncertainty about proper disclosure of charges for foreign transactions and for cash advances from ATMs reflects the inherent complexity of seeking to distinguish transactions that are ''comparable cash transactions'' to credit card transactions from transactions that are not. The Board believes that clearer guidance may result from a new and simpler approach that treats as a finance charge any fee charged by credit card issuers for transactions on their credit card plans. This guidance may be helpful to creditors in determining which charges must be included in the computation of the effective APR, if the Board retains the effective APR. *See* section-by-section analysis to § 226.7(b)(7). Such an approach would also provide more meaningful disclosures to consumers by assuring a consistent approach to the disclosure of transaction fees.

The current approach of providing guidance on a case-by-case (fee-by-fee) basis, such as for ATM fees, has not provided sufficient certainty for many creditors about how to disclose transaction charges on credit cards. Moreover, to the extent creditors have adopted different disclosure practices in the face of regulatory uncertainty, consumers may have had difficulty understanding the disclosures, since, for example, one creditor might disclose an ATM fee as a finance charge while another creditor may disclose the fee as an ''other'' charge. Thus, while the Board could adopt guidance specific to fees as they arise, such as the Board did in 1984 for the ATM fee and could do for the foreign transaction fee, it is not clear that fee-by-fee guidance is sufficient to both facilitate compliance by credit card issuers and promote understanding by consumers.

It is also not clear that an attempt to adopt general rules for distinguishing comparable transactions from non-comparable transactions, in the case of credit cards, would adequately facilitate compliance by credit card issuers and promote understanding by cardholders. One major difficulty in formulating such rules would be deciding whether to adopt the perspective of the card issuer or that of the cardholder. For example, a transaction on an asset account with a card issuer may be comparable to a credit card transaction from the perspective of the card issuer, but not from the perspective of a cardholder who does not have an asset account with the issuer. A rule based on the issuer's perspective may confuse consumers; it may not be reasonable to expect a consumer to understand that one transaction fee is a finance charge and the other is not because one card issuer issues a debit card and the other does not. Yet a rule based on the cardholder's perspective may not be practicable for the issuer to implement; the issuer may not be able to determine whether a particular consumer has an asset account with another institution and, if so, the amount of the fee charged on the account. As explained above in the context of the fee for cash advances from ATMs, even when a rule is based on the card issuer's perspective, the card issuer may have difficulty determining which asset account, precisely, is the relevant basis for comparison. The difficulty of determining which perspective to adopt increases in a case such as a fee for a purchase conducted in a foreign currency. From the perspective of the consumer, the debit card is not the only alternative to the credit card; the consumer may also pay in cash.

Thus, having considered alternative approaches, the Board is proposing to adopt a simple interpretive rule that any transaction fee on a credit card plan is a finance charge, regardless of whether the issuer in its capacity as a depository institution imposes the same or lesser charge on withdrawals of funds from an asset account such as a checking or savings account. This proposal would be implemented by removing staff comment 4(a)–4 and replacing it with a new comment of the same number reflecting this rule. The comment would give as examples of such finance charges a fee imposed by the issuer for foreign transactions and a fee imposed by the issuer for taking a cash advance at an ATM.[9] Such guidance would be consistent with TILA Section 106, 15 U.S.C. 1605, which gives the Board discretion to determine whether a given credit transaction has a comparable cash transaction within the meaning of the statute. This guidance would also facilitate compliance and promote consumer understanding. *See* TILA Section 105(a), 15 U.S.C. 1604(a).

The Board seeks comment on whether this new approach would facilitate compliance and improve consumer understanding without causing unintended consequences.

Comment 4(a)–1 provides examples of charges in comparable cash transactions that are not finance charges. Among the examples are discounts available to a particular group of consumers because they meet certain criteria, such as being members of an organization or having accounts at a particular institution. The Board solicits comment on whether the example is still useful, or should be deleted as unnecessary or obsolete.

4(b) Examples of Finance Charges

Charges for credit insurance or debt cancellation or suspension coverage. Premiums or other charges for credit life, accident, health, or loss-of-income insurance are finance charges if the insurance or coverage is ''written in connection with'' a credit transaction. 15 U.S.C. 1605(b); § 226.4(b)(7). Creditors may exclude from the finance charge premiums for credit insurance if they disclose the cost of the insurance and the fact that the insurance is not required to obtain credit. In addition, the statute requires creditors to obtain an affirmative written indication of the consumer's desire to obtain the insurance, which, as implemented in § 226.4(d)(1)(iii), requires creditors to obtain the consumer's initials or signature. 15 U.S.C. 1605(b). In 1996, the Board expanded the scope of the rule to include plans involving charges or premiums for debt cancellation coverage. *See* § 226.4(b)(10), § 226.4(d)(3). *See* also 61 FR 49,237; September 19, 1996. Currently, however, insurance or coverage sold after consummation of a closed-end credit transaction or after the opening of an open-end plan and upon a consumer's request is considered not to be ''written in connection with the credit transaction,'' and, therefore, a charge for such insurance or coverage is not a finance charge. *See* comment 4(b)(7) and (8)–2.

The Board is proposing a number of revisions to these rules:

(1) The same rules that apply to debt cancellation coverage would be applied explicitly to debt suspension coverage. However, to exclude the cost of debt suspension coverage from the finance charge, creditors would be required to inform consumers, as applicable, that the obligation to pay loan principal and interest is only suspended, and that interest will continue to accrue during the period of suspension. These

[8] *See* Third Consolidated Amended Class Action Complaint at 47–48, In re Currency Conversion Fee Antitrust Litigation, MDL Docket No. 1409 (S.D.N.Y.). The court approved a settlement on a preliminary basis on November 8, 2006.

[9] The proposed change to comment 4(a)–4 would not affect disclosure of ATM fees assessed by institutions other than the credit card issuer. *See* proposed § 226.6(b)(1)(ii)(A).

proposed revisions would apply to all open-end plans and closed-end credit transactions.

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

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

(4) For telephone sales, creditors offering open-end (not home-secured) plans would be provided with flexibility in evidencing consumers' requests for optional insurance or debt cancellation or suspension coverage, consistent with rules published by federal banking agencies to implement Section 305 of the Gramm-Leach-Bliley Act regarding the sale of insurance products by depository institutions and guidance published by the Office of the Comptroller of the Currency (OCC) regarding the sale of debt cancellation and suspension products. *See* 12 CFR part 208.81 *et seq.* regarding insurance sales; 12 CFR part 37 regarding debt cancellation and debt suspension products. For telephone sales, creditors could provide disclosures orally, and consumers could request the insurance or coverage orally, if the creditor maintains evidence of compliance with the requirements, and mails written information within 3 days after the sale. HELOCs subject to § 226.5b and closed-end transactions would not be affected by this proposed revision.

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

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

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

Accordingly, under proposed revisions to comment 4(b)(7) and (8)–2, insurance purchased after an open-end (not home-secured) plan was opened would be considered to be written ''in connection with a credit transaction.'' Proposed new comment 4(b)(10)–2 would give the same treatment to purchases of debt cancellation or suspension coverage. As proposed, therefore, purchases of voluntary insurance or coverage after account opening would trigger disclosure and consent requirements. For purchases by telephone, creditors would be permitted to provide disclosures and obtain consent orally, so long as they meet requirements intended to ensure the purchase is voluntary. *See* proposed § 226.4(d)(4).

4(b)(9) Discounts

Comment 4(b)(9)–2, which addresses cash discounts to induce consumers to use cash or other payment means instead of credit cards or open-end plans is revised for clarity. No substantive change is intended.

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

As discussed above, premiums or other charges for credit life, accident, health, or loss-of-income insurance are finance charges if the insurance or coverage is written in connection with a credit transaction. In 1996, the Board amended § 226.4 to make clear that the term ''finance charge'' includes charges or premiums paid for debt cancellation coverage. *See* § 226.4(b)(10). Although debt cancellation fees meet the definition of ''finance charge,'' they may be excluded from the finance charge on the same conditions as credit insurance premiums. *See* § 226.4(d)(3).

Recent years have seen two developments in the market for coverage of this type. First, creditors have been selling a related, but different, product called debt suspension. Debt suspension is essentially the creditor's agreement to suspend, on the occurrence of a specified event, the consumer's obligation to make the minimum payment(s) that would otherwise be due. During the suspension period, interest may continue to accrue or it may be suspended as well, depending on the plan. The borrower may be prohibited from using the credit plan during the suspension period. In a second development, creditors have been selling debt suspension coverage for events other than loss of life, health, or income, such as a wedding, a divorce, the birth of child, a medical emergency, and military deployment.

The Board is proposing to revise § 226.4(b)(10) to make it explicit that charges for debt suspension coverage are finance charges. In the proposed commentary, debt suspension coverage would be defined as coverage that suspends the consumer's obligation to make one or more payments on the date(s) otherwise required by the credit agreement, when a specified event occurs. The commentary would clarify that the term debt suspension coverage as used in § 226.4(b)(10) does not include ''skip payment'' arrangements in which the triggering event is the borrower's unilateral election to defer repayment, or the bank's unilateral decision to allow a deferral of payment. (A skip payment fee, although a finance charge, would not be factored into the effective APR under the proposal. *See* proposed § 226.14(e).) These revisions would apply to closed-end as well as open-end credit transactions. It appears appropriate to consider charges for debt suspension products to be finance charges, because these products operate in a similar manner to debt cancellation, and re-allocate the risk of non-payment between the borrower and the creditor. The conditions under which debt cancellation and debt suspension charges may be excluded from the finance charge are discussed under § 226.4(d)(3), below.

4(c) Charges Excluded From the Finance Charge

4(c)(1)

Section 226.4(c)(1) excludes from the finance charge application fees charged to all applicants for credit, whether or not credit is actually extended. Application fees are charged for both closed-end and open-end credit transactions, and represent an additional cost to consumers who obtain credit. Because application fees are more prevalent for home-secured credit, the Board will consider whether to revise § 226.4(c)(1) in its upcoming review of rules for home-secured credit.

As discussed below in the section-by-section analysis to § 226.6, the Board proposes to require for open-end (not home-secured) plans, the disclosure of charges imposed as part of the plan, which include fees that must be paid to receive access to the plan, without regard to whether the fees are or are not finance charges. Application fees charged to all applicants for credit, whether or not credit is actually extended, would be considered charges imposed as part of the plan, and would be included in the account-summary table given at account opening. *See* proposed § 226.6(b)(1)(i). This would provide useful information to consumers about the total cost of obtaining credit. The fee, if financed, would also be included among the fees required to be grouped on periodic statements. *See* proposed § 226.7(b)(6).

4(d) Insurance and Debt Cancellation Coverage

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

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

To address the development of debt cancellation and debt suspension coverage discussed earlier, the OCC adopted, for national banks, substantive limitations and procedures for disclosure and affirmative election on the sale of such coverage. *See* 12 CFR part 37. Some states have also adopted regulations that address these products, or incorporate the OCC regulations under parity laws.

The Board solicited comment in 2003 on whether and how to address disclosure of these kinds of coverage under TILA. 68 FR 68,793; December 10, 2003. About 30 commenters responded, the vast majority of them creditors or vendors. Several creditors and vendors urged the Board to expressly permit creditors to exclude from the finance charge fees for products that cover any event to which a creditor and borrower agree, not just the events listed in the regulation, and fees for agreements that suspend, rather than cancel, debt repayment. Some commenters disagreed. A major consumer group urged the Board to include even voluntary credit insurance premiums and debt cancellation fees in the finance charge. The Board deferred a decision on these issues until this review.

The December 2004 ANPR did not specifically seek comment again on these issues. Nonetheless, a coalition of companies that issue or administer debt cancellation and debt suspension agreements submitted two comments in response to the December 2004 ANPR reiterating the 2003 request by industry commenters that the Board modify § 226.4(d)(3) to cover any triggering event and explicitly recognize that debt suspension agreements are also covered by that provision. These companies also requested that the Board revise § 226.4(d)(3) to provide that the disclosures and consumer affirmative request required as conditions to excluding the fee from the finance charge may be provided orally.

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

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

The same industry coalition has also requested that charges for debt cancellation or debt suspension coverage be excludable from the finance charge when the coverage applies to events other than the events covered by the product lines identified in current § 226.4(d)(3)(ii), namely, accident or loss of life, health, or income. The identification of those events in § 226.4(d)(3)(ii) is based on TILA Section 106(b), which addresses credit insurance for accident or loss of life or health. 15 U.S.C. 1605(b). That statutory provision reflects the regulation of credit insurance by the states, which may limit the types of insurance that insurers may sell. Many states, however, do not restrict debt cancellation or debt suspension coverage to a select few events, and regulations of the OCC expressly permit national banks to sell debt cancellation and debt suspension coverage for any event.

The Board proposes to continue to limit the exclusion permitted by § 226.4(d)(3) to charges for coverage for accident or loss of life, health, or income. The Board also proposes, however, to add comment 4(d)(3)–3 to clarify that, if debt cancellation or debt suspension coverage for two or more events is sold at a single charge, the entire charge may be excluded from the finance charge if at least one of the events is accident or loss of life, health, or income. This approach would recognize that debt cancellation and suspension coverage often are not limited by applicable law to the events allowed for insurance and it also would be consistent with the purpose of Section 106(b). 15 U.S.C. 1605(b).

The regulation provides guidance on how to disclose the cost of debt cancellation coverage. *See* proposed § 226.4(d)(3)(ii). The Board seeks comment on whether additional

guidance is needed for debt suspension coverage, particularly for closed-end loans.

For the reasons discussed below, § 226.4(d)(4) would be added to provide flexibility in telephone sales to obtain consumers' requests for voluntary debt cancellation and debt suspension coverage on open-end (not home-secured) plans.

In a technical revision, the substance of footnotes 5 and 6 would be moved to the text.

4(d)(4) Telephone Purchases

As discussed above, TILA Section 106(b), 15 U.S.C. 1605(b), permits creditors to exclude from the finance charge premiums for credit insurance if, among other conditions, the creditor obtains a specific written indication of the consumer's desire to obtain the insurance. This requirement is implemented in § 226.4(d)(1) by requiring written initials or a signature. The Board expanded in 1996 the types of products covered by the exclusion to include debt cancellation agreements, and now proposes to extend the exclusion to debt suspension products. As mentioned, an industry coalition has requested that the Board permit the disclosures and affirmative consumer request, which are conditions to this exclusion, to be provided orally.

Congress has recognized the practice of telephone sales for the purchase of insurance products. 12 U.S.C. 1831x(c)(1)(E). Similarly, the OCC has issued telephone sales guidelines for national banks that sell debt cancellation and debt suspension coverage. 12 CFR parts 37.6(c)(3), 37.7(b). Accordingly, the Board is proposing an exception to the requirement to obtain a written signature or initials for telephone purchases of credit insurance or debt cancellation and debt suspension coverage on an open-end (not home-secured) plan. Under new § 226.4(d)(4), for telephone purchases the creditor may make the disclosures orally and the consumer may affirmatively request the insurance or coverage orally, provided that the creditor (1) maintains reasonable procedures to provide the consumer with the oral disclosures and maintains evidence that demonstrates the consumer then affirmatively elected to purchase the insurance or coverage; and (2) mails the disclosures under § 226.4(d)(1) or § 226.4(d)(3) within three business days after the telephone purchase. Comment 4(d)(4)–1 would provide that a creditor does not satisfy the requirement to obtain an affirmative request if the creditor uses a script with leading questions or negative consent.

Requiring a consumer's written signature or initials is intended to evidence that the consumer is purchasing the product voluntarily; the proposal contains safeguards intended to insure that oral purchases are voluntary. Under the proposal, creditors must maintain tapes or other evidence that the consumer received required disclosures orally and affirmatively requested the product. Comment 4(d)(4)–1 indicates that a creditor does not satisfy the requirement to obtain an affirmative request if the creditor uses a script with leading questions or negative consent. In addition to oral disclosures, under the proposal consumers will receive written disclosures shortly after the transaction. The fee will also appear on the first monthly periodic statement after the purchase, and, as applicable, thereafter. Consumer testing conducted for the Board suggests that consumers review the transactions on their statements carefully. Moreover, the Board proposes to better highlight fees, including insurance and coverage fees, on statements. Consumers who are billed for insurance or coverage they did not purchase may dispute the charge as a billing error. These safeguards are expected to ensure that purchases of credit insurance or debt cancellation or suspension coverage by telephone are voluntary.

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

The Board has considered each of these factors carefully, and based on that review, believes it is appropriate to exempt, for open-end (not home-secured) plans, telephone sales of credit insurance or debt cancellation or debt suspension plans from the requirement to obtain a written signature or initials from the consumer. As noted above, the consumer would continue to be protected by a variety of safeguards to assure that the purchase is voluntary, including a requirement that the creditor maintain tapes or other evidence of the transaction, the receipt of written disclosures shortly after the transaction, and inclusion of fees on periodic statements, for which consumers may dispute billing errors. At the same time, the proposal should facilitate the convenience to both consumers and creditors of conducting transactions by telephone. The proposal, therefore, has the potential to better inform consumers and further the goals of consumer protection and the informed use of credit for open-end (not home-secured) credit. The Board welcomes comment on this matter.

Section 226.5 General Disclosure Requirements

Section 226.5 contains format and timing requirements for open-end credit disclosures. Under the current rules, a creditor must disclose a charge that is a ''finance charge'' or ''other charge'' before the account is opened, before the charge is added to the plan after account opening and before the charge is increased. These disclosures must be in writing. As discussed below, the proposal seeks to reform the rules governing disclosure of charges before they are imposed. Under the proposal: (1) All charges imposed as part of the plan would be disclosed before they are imposed; (2) specified charges would continue to be disclosed in writing at account opening, and before being increased or newly introduced; and (3) other charges imposed as part of the plan could be disclosed orally at any relevant time before the consumer becomes obligated to pay the charge. The proposed reform is intended to assure that all charges imposed as part of the plan are disclosed before they are imposed, simplify the rules for identifying such charges, and better

match the timing and method of disclosure with reasonable industry practices and consumer expectations. The proposal responds to comments received on the December 2004 ANPR that criticize current rules (1) as unduly vague and inconsistent in identifying charges covered by TILA, and (2) as failing to recognize that some transactions on the plan between the consumer and the creditor are appropriately, or even necessarily, conducted by telephone.

5(a) Form of Disclosures

The Board is proposing substantive changes to § 226.5(a) and the associated commentary regarding the standard to provide ''clear and conspicuous'' disclosures. In addition, creditors would be required to use consistent terminology in all open-end TILA-required disclosures. In technical revisions, the Board proposes to rearrange certain provisions in § 226.5(a) for clarity.

5(a)(1) General

Clear and conspicuous standard. TILA Section 122(a) mandates that all TILA-required disclosures be made clearly and conspicuously. 15 U.S.C. 1632(a). The Board has implemented this requirement for open-end credit plans in § 226.5(a)(1). Under current comment 5(a)(1)–1, the Board has interpreted clear and conspicuous to mean that the disclosure must be in a reasonably understandable form. In most cases, this standard does not require that disclosures be segregated from other material or located in any particular place on the disclosure statement, nor that numerical amounts or percentages be in any particular type size.

However, the Board has previously determined that certain disclosures in Subpart B of Regulation Z are subject to a higher standard in meeting the clear and conspicuous requirement due to the importance of the disclosures and the context in which they are given. Specifically, disclosures in credit and charge card applications and solicitations subject to § 226.5a must be both in a reasonably understandable form and readily noticeable to the consumer. *See* current comment 5a(a)(2)–1, which the Board is proposing to amend as discussed below.

1. *Readily noticeable standard.* The Board is proposing to highlight certain information in a tabular format in the account-opening disclosures pursuant to § 226.6(b)(4); on checks that access a credit card account pursuant to § 226.9(b)(3); in change-in-terms notices pursuant to § 226.9(c)(2)(iii)(B); and in disclosures when a rate is increased due to delinquency, default or as a penalty pursuant to § 226.9(g)(3)(ii). As discussed in further detail in the section-by-section analysis to §§ 226.6(b), 226.9(b), 226.9(c), and 226.9(g), consumer testing conducted for the Board suggests that highlighting important information in a tabular format helps consumers locate the information disclosed in these tables much more easily. Because these disclosures would be highlighted in a tabular format similar to the table required with respect to credit card applications and solicitations under § 226.5a, the Board is proposing that these disclosures also be in a reasonably understandable form and readily noticeable to the consumer. The Board is proposing to amend comment 5(a)(1)–1 accordingly. The Board also is proposing to move the guidance on the meaning of ''reasonably understandable form'' to comment 5(a)(1)–2. Current comment 5(a)(1)–2, which provides guidance on what constitutes an ''integrated document,'' is moved to comment 5(a)(1)–4.

The Board also proposes to add comment 5(a)(1)–3 to provide guidance on the meaning of the readily noticeable standard. Specifically, new comment 5(a)(1)–3 provides that to meet the readily noticeable standard, disclosures for credit card applications and solicitations under § 226.5a, highlighted account-opening disclosures under § 226.6(b)(4), 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)(iii)(B), and highlighted disclosures when a rate is increased due to delinquency, default or as a penalty under § 226.9(g)(3)(ii) must be given in a minimum of 10-point font. The Board believes that with respect to these disclosures, special formatting requirements, such as a tabular format and font size requirements, are needed to highlight for consumers the importance and significance of the disclosures. The Board notes that this approach of requiring a minimum of 10-point font for certain disclosures is consistent with the approach taken recently by eight federal agencies (including the Board) in issuing a proposed model form that financial institutions may use to comply with the privacy notice requirements under Section 503 of the Gramm-Leach-Bliley Act. 15 U.S.C. 6803(e); 72 FR 14,940; Mar. 29, 2007. In the privacy proposal, the eight federal agencies indicate that financial institutions that use the privacy model form must use an easily readable type font; easily readable type font includes a minimum of 10-point font and sufficient spacing between the lines of type.

2. *Disclosures subject to the clear and conspicuous standard.* The Board has received questions on the types of communications that are subject to the clear and conspicuous standard. Thus, the Board proposes comment 5(a)(1)–5 to make clear that all required disclosures and other communications under Subpart B of Regulation Z are considered disclosures required to be clear and conspicuous. This would include, for example, the disclosure by a person other than the creditor of a finance charge imposed at the time of honoring a consumer's credit card under § 226.9(d) and the correction notice required to be sent to the consumer under § 226.13(e).

Oral disclosure. In order to give guidance about the meaning of clear and conspicuous for oral disclosures, the Board proposes to amend the guidance on what constitutes a ''reasonably understandable form,'' in proposed comment 5(a)(1)–2. This amendment is based in part on the Federal Trade Commission's (FTC) guidance on oral disclosure in its publication *Complying with the Telemarketing Sales Rule* (available at the FTC's Web site). Oral disclosures would be considered to be in a reasonably understandable form when they are given at a volume and speed sufficient for a consumer to hear and comprehend the disclosures.

5(a)(1)(ii)

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

Oral disclosures. The Board is proposing that certain charges may be disclosed after account opening. *See* proposed § 226.5(b)(1)(ii). The goal of this proposal is to better ensure that consumers receive disclosures at relevant times; some charges may not be relevant to a consumer at account opening but may become relevant later. The Board is also proposing to permit creditors to make the form of disclosure more relevant to consumers. A written form of disclosure has obvious merit at account opening, when a consumer must assimilate a lot of information that may influence major decisions by the consumer about how, or even whether, to use the account. During the life of the account, in contrast, a consumer will sometimes need to decide whether to purchase a single service from the creditor, a service that may not be central to the consumer's use of the account (for example, the service of

providing documentary evidence of transactions). Moreover, during the life of the account, the consumer may become accustomed to purchasing such services by telephone. The consumer and the creditor may find it convenient to conduct the transaction by telephone, and will, accordingly, expect to receive a disclosure of the charge for the service during the same telephone call. For these reasons, the Board is proposing to permit creditors to disclose orally charges not specifically identified by the proposed regulation in § 226.6(b)(4) as critical to disclose in writing at account opening. Further, the Board proposes that creditors be provided with the same flexibility when the cost of such a charge changes or is newly introduced, as discussed in the section-by-section analysis to § 226.9(c). The proposal, set forth in§ 226.5(a)(1)(ii)(A), is intended to be consistent with consumers' expectations and with the business practices of card issuers.

Under the proposal, creditors may continue to comply with TILA by providing written disclosures at account-opening for all fees. In proposing to permit creditors to disclose certain costs orally for purposes of TILA, the Board anticipates that creditors will continue to identify fees in the account agreement for contract and other reasons, although the proposal would not require creditors to do so. For example, some creditors identify the types of fees that could be assessed on the account in the account agreement. The Board anticipates that such practices will continue.

Creditors are permitted to provide in electronic form any TILA disclosure that is required to be provided or made available to consumers in writing if the consumer affirmatively consents to receipt of electronic disclosures in a prescribed manner. Electronic Signatures in Global and National Commerce Act (the E-Sign Act), 15 U.S.C. 7001 *et seq.* The Board requests comment on whether there are circumstances in which creditors should be permitted to provide cost disclosures in electronic form to consumers who have not affirmatively consented to receive electronic disclosures for the account, such as when a consumer seeks to make a payment online, and the creditor imposes a fee for the service.

In technical revisions, the Board proposes to move to proposed § 226.5(a)(1)(ii)(A) the current exemption that disclosures required by § 226.9(d) need not be in writing. (This exemption currently is in footnote 7 under § 226.5(a)(1).) Section 226.9(d) requires disclosure when a finance charge is imposed by a person other than the card issuer at the time of a transaction.

In another technical revision, the substance of footnote 8, regarding disclosures that do not need to be in a retainable form the consumer may keep, is moved to proposed § 226.5(a)(1)(ii)(B).

Electronic communication. In April 2007, the Board issued for public comment a proposal on electronic communication which would withdraw portions of the interim final rules issued in 2001 and to implement certain provisions of the Bankruptcy Act (''2007 Electronic Disclosure Proposal''). *See* 72 FR 21,141; April 30, 2007. Proposed § 226.5(a)(1)(iii) and the proposal to delete current § 226.5(a)(5) is also proposed in the 2007 Electronic Disclosure Proposal. The language in proposed § 226.5(a)(1)(iii) clarifies that creditors may provide open-end disclosures to consumers in electronic form, subject to compliance with the consumer consent and other applicable provisions of the E-Sign Act. 15 U.S.C. 1001, *et seq.* The language also provides that the open-end disclosures required by §§ 226.5a, 226.5b, and 226.16 may be provided to the consumer in electronic form, under the circumstances set forth in those sections, without regard to the consumer consent or other provisions in the E-Sign Act.

5(a)(2) Terminology

Consistent terminology. Currently, disclosures given pursuant to §§ 226.5a(b), 226.6, and 226.7 must use consistent terminology. *See* current § 226.5a(a)(2)(iv), comment 5a(a)(2)–6, and comment 6–1. The Board proposes to expand this requirement more generally in new § 226.5(a)(2)(i) to include other disclosures required by the open-end provisions of the regulation (Subpart B), such as subsequent disclosures under § 226.9. A new comment 5(a)(2)–4 would clarify that terms do not need to be identical but must be close enough in meaning to enable the consumer to relate the disclosures to one another, which is consistent with current guidance in current comment 5a(a)(2)–6 and current comment 6–1. The Board believes that the use of consistent terminology should be applied to all open-end TILA-required disclosures to allow consumers to better identify the terms across all disclosures.

As discussed above, the Board is proposing to highlight certain information in a tabular format in the account-opening disclosures pursuant to § 226.6(b)(4); on checks that access a credit card account pursuant to § 226.9(b)(3); in change-in-terms notices pursuant to § 226.9(c)(2)(iii)(B); and in disclosures when a rate is increased due to delinquency, default or as a penalty pursuant to § 226.9(g)(3)(ii). These disclosures are meant to be highlighted in a tabular format similar to the table currently required with respect to credit card applications and solicitations under § 226.5a.

Currently, disclosures required for credit card applications and solicitation under § 226.5a must use the term ''grace period'' to describe the date by which or the period within which any credit extended for purchases may be repaid without incurring a finance charge. The Board proposes in new § 226.5(a)(2)(iii) to extend this requirement to use the term ''grace period'' to all references to such a term for the disclosures required to be in the form of a table as discussed above. In addition, proposed § 226.5(a)(2)(iii) provides that if disclosures are required to be presented in a tabular format, the term ''penalty APR'' shall be used to describe an increased rate that may result because of the occurrence of one or more specific events specified in the account agreement, such as a late payment or an extension of credit that exceeds the credit limit. For example, creditors would be required to provide information about penalty rates in the table given with credit card applications and solicitations under § 226.5a; in the summary table given at account opening under § 226.6(b)(4); if the penalty rate is changing, in the summary table given on or with the change-in-terms notice under § 226.9(c)(2)(iii)(B), or if a penalty rate is triggered, in the table given under § 226.9(g)(3)(ii).

Requiring card issuers to use a uniform term to describe the grace period and disallowing variants like ''free-ride period'' may improve consumers' understanding of the concept. Similarly, requiring card issuers to use a uniform term to describe the increased rate may improve consumers' understanding of the rate and when it applies. In the consumer testing conducted for the Board, many participants believed the term ''Penalty APR'' as opposed to ''Default APR'' or ''Highest Possible APR'' more clearly conveyed the increased rate. In testing the term ''Default APR,'' some participants said that the word ''default'' indicated to them that it would only apply when the account was closed due to delinquent payments. Some other participants said that the word ''default'' seemed like the ''normal'' rate, not something that occurs because a cardholder does something wrong. Some participants

also were confused by the term ''Highest Possible APR;'' one participant, for example, assumed that this was the highest point to which variable rates could increase.

Moreover, if credit insurance or debt cancellation or debt suspension coverage is required as part of the plan and information about that coverage is required to be disclosed in a tabular format, proposed § 226.5(a)(2)(iii) requires that in describing the coverage, the term ''required'' shall be used and the program shall be identified by its name. For example, creditors would be required to provide information about the required coverage in the table given with credit card applications and solicitations under § 226.5a, in the summary table given at account opening under § 226.6(b)(4), and if certain information about the coverage is changing, in the summary table given in change-in-terms notice under § 226.9(c)(2)(iii)(B). In consumer testing conducted for the Board, the Board tested disclosing information about the required debt suspension coverage in the disclosure table given with a mock credit card solicitation. The Board found that describing the coverage by its name allowed participants to link disclosures that were provided in the table to other information about the coverage that was provided elsewhere in the solicitation materials given to the participants.

Furthermore, the Board proposes in § 226.5(a)(2)(iii) that if required to be disclosed in a tabular format, APRs may be described as ''fixed'' or any similar term only if that rate will remain in effect unconditionally until the expiration of a specified time period. If no time period is specified, then the term ''fixed'' or any similar term may not be used unless the rate remains in effect unconditionally until the plan is closed. As further discussed in the section-by-section analysis to proposed § 226.16(g) below, the Board is proposing these rules in order to avoid consumer confusion and the uninformed use of credit.

Terms required to be more conspicuous than others. TILA Section 122(a) requires that the terms ''annual percentage rate'' and ''finance charge'' be disclosed more conspicuously than other terms, data, or information. 15 U.S.C. 1632(a). The Board has implemented this provision in current § 226.5(a)(2)(iii) by requiring that the terms ''finance charge'' and ''annual percentage rate,'' when disclosed with a corresponding amount or percentage rate, be disclosed more conspicuously than any other required disclosure. Under current footnote 9, however, the terms do not need to be more conspicuous when used under §§ 226.5a, 226.7(d), 226.9(e), and 226.16.

In September 2006, the United States Government Accountability Office (GAO) issued a report that analyzed current credit card disclosures and recommended improvements to these disclosures (GAO Report on Credit Card Rates and Fees).[10] The GAO criticized credit card disclosure documents that ''unnecessarily emphasized specific terms.'' *GAO Report on Credit Card Rates and Fees*, p. 43. As an illustration of this point, the GAO reprinted a paragraph of text from a creditor's credit card disclosure documents where the phrase ''periodic finance charge'' was singled out for emphasis each time the phrase was used, even when such term was not disclosed with a corresponding amount or percentage rate. The usability consultant used by the GAO commented that this type of emphasis potentially required readers to work harder to understand the passage's message.

The Board agrees that overemphasis of these terms may make disclosures more difficult for consumers to read. In order to address this problem, the Board considered a proposal to prohibit the terms ''finance charge'' and ''annual percentage rate'' from being disclosed more conspicuously than other required disclosures except when the regulation so requires. However, this proposal could produce unintended consequences. For example, in a change-in-terms notice, the term ''annual percentage rate'' may appear as a heading, and thus be disclosed more conspicuously than other disclosures in the notice even though the term is not disclosed with a rate figure. It appears, therefore, that a rule prohibiting more conspicuous terms in certain cases would need to include detailed safe harbors or exceptions, which might make it unworkable. Therefore, the Board seeks comment on how to address this issue.

Furthermore, the Board is proposing to amend the regulation to expand the list of disclosures where the terms ''finance charge'' and ''annual percentage rate'' need not be more conspicuous to include the account-opening disclosures that would be highlighted under proposed § 226.6(b)(4), the disclosure of the effective APR under proposed § 226.7(b)(7), disclosures on checks that access a credit card account under proposed § 226.9(b)(3), the information on change-in-terms notices that would be highlighted under proposed § 226.9(c)(2)(iii)(B), the disclosures given when a rate is increased due to delinquency, default or as a penalty under proposed § 226.9(g)(3)(ii). Currently, the requirement that the terms ''finance charge'' and ''annual percentage rate'' be more conspicuous than other disclosures does not apply to disclosures highlighted in the tabular format used for credit card application and solicitations under § 226.5a. All of the disclosures discussed above must be highlighted in a tabular format similar to the table required for credit card applications and solicitations under § 226.5a. The Board believes the rule should be consistent across these disclosures. Moreover, the Board believes that the tabular format sufficiently highlights the disclosures, so that the ''more conspicuous'' rule is not needed. Finally, for organizational purposes, the Board proposes to consolidate current § 226.5(a)(2) and current footnote 9 into § 226.5(a)(2)(ii).

5(a)(3) Specific Formats

There are special rules regarding the specific format for disclosures under § 226.5a for credit and charge card applications and solicitations and § 226.5b for home-equity plans, as noted in current § 226.5(a)(3) and current § 226.5(a)(4), respectively. These rules would be consolidated in proposed § 226.5(a)(3), for clarity. In addition, as discussed below, the Board is proposing that certain account-opening disclosures, periodic statement disclosures and subsequent disclosures, such as change-in-terms disclosures, must be provided in specific formats under proposed § 226.6(b)(4); §§ 226.7(b)(6), (b)(7) and (b)(13); and §§ 226.9(b), (c) and (g) and these special format rules are noted in proposed § 226.5(a)(3).

5(b) Time of Disclosures

5(b)(1) Account-opening Disclosures

TILA Section 127(a) requires creditors to provide disclosures ''before opening any account.'' 15 U.S.C. 1637(a). Section 226.5(b)(1) requires these disclosures (identified in § 226.6) to be furnished ''before the first transaction is made under the plan,'' which is interpreted as ''before the consumer becomes obligated on the plan.'' Comment 5(b)(1)–1. Also under the existing commentary, creditors may provide the disclosures required by § 226.6 after the first transaction only in limited circumstances. This guidance would be moved from the commentary to the

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

regulation. *See* proposed § 226.5(b)(1)(iii)–(v). In addition, the Board is proposing revisions to the timing rules for disclosing certain costs imposed on an open-end (not home-secured) plan, and in connection with certain transactions conducted by telephone, as discussed below. Additional guidance is proposed on providing timely disclosures when the first transaction is a balance transfer. Technical revisions would change references from ''initial'' disclosures required by § 226.6 to ''account-opening'' disclosures, without any intended substantive change. In today's marketplace, there are few open-end products for which consumers receive the disclosures required under § 226.6 as their ''initial'' Truth in Lending disclosure. *See* §§ 226.5a, 226.5b, which require creditors to provide disclosures before consumers apply for a credit or charge card, or for a HELOC.

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

Section 226.5(b)(1)(i), as renumbered, would state the general timing rule for furnishing account-opening disclosures. Specifically, creditors generally must provide the account-opening disclosures before the first transaction is made under the plan.

Balance transfers. Creditors commonly extend credit to consumers for the purpose of paying off consumers' existing credit balances with other creditors. Requests for these ''balance transfers'' are often part of an offer to open a credit card account, and consumers may request transfers as part of the application for the new account. Comment 5(b)(1)(i)–5, as renumbered, provides that creditors must provide account-opening disclosures before the balance transfer occurs.

The Board proposes to update this comment to reflect current business practices. Some creditors provide account-opening disclosures, including APRs, along with the balance transfer offer and account application, and these creditors would not be affected by the proposal. Other creditors offer balance transfers for which the APRs that may apply are disclosed as a range, depending on the consumer's creditworthiness. Consumers who respond to such an offer and apply for the transfer later receive account-opening disclosures, including the APR that will apply to the transferred balance. The proposed change would clarify that the creditor must provide disclosures sufficiently in advance of the transfer to allow the consumer to respond to the terms that will apply to the transfer, including to contact the creditor before the balance is transferred and decline the transfer.

Guidance in current comment 5(b)(1)–1 regarding account-opening disclosures provided with cash advance checks would be deleted as unnecessary.

Assessing fees on an account as acceptance of the account. Comment 5(b)(1)(i)–1(i), as renumbered, currently provides that if after receiving the account-opening disclosures, the consumer uses the account, pays a fee or negotiates a cash advance check, the creditor may consider the account not rejected. The comment would be amended to clarify that if the only activity on account is the creditors' assessment of fees (such as start-up fees), the consumer is not considered to have accepted the account until the consumer is provided with a billing statement and makes a payment. The clarification addresses concerns about some subprime card accounts that assess a large number of fees at account opening. Consumers who have not made purchases or otherwise obtained credit on the account would have an opportunity to review their account-opening disclosures and decide whether to reject the account and decline to pay the fees.

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

Currently, charges imposed on an open-end plan that are a ''finance charge'' or an ''other charge'' must be disclosed before the first transaction. *15* U.S.C. 1637(a); current § 226.5(b)(1) and § 226.6(a) and (b). When a new service (and associated charge) is introduced or an existing charge is increased, creditors must provide a change-in-terms notice to update account-opening disclosures for all accountholders if the new charge is a finance charge or an other charge. *See* current § 226.9(c).

For the reasons discussed in the section-by-section analysis to § 226.6, the Board is proposing revisions to the rules identifying charges required to be disclosed under open-end (not home-secured) plans. The current rule requiring the disclosure of costs before the first transaction (in writing and in a retainable form) would continue to apply to specified costs. *See* proposed § 226.6(b)(4)(iii) for the charges, and § 226.9(c)(2) where such charges are changing or newly introduced. These costs are fees of which consumers should be aware before using the account such as annual or late payment fees, or fees that the creditor would not otherwise have an opportunity to disclose before the fee is triggered, such as a fee for using a cash advance check during the first billing cycle. The Board proposes to except charges imposed as part of an open-end (not home-secured) plan, other than those specified in proposed § 226.6(b)(4)(iii), from the requirement to disclose charges before the first transaction. Creditors would be permitted, at their option, to disclose those charges either before the first transaction or later, though before the cost is imposed. Examples of these charges would be fees to obtain documentary evidence or to expedite payments or delivery of a credit card. Creditors may, of course, continue to disclose any charge imposed as part of an open-end (not home-secured) plan at account opening (or when increased or newly introduced under § 226.9(c)(2)).

The charges covered by the proposed exception are triggered by events or transactions that may take place months, or even years, into the life of the account, when the consumer may not reasonably be expected to recall the amount of the charge from the account-opening disclosure, nor readily to find or obtain a copy of the account-opening disclosure or most recent change-in-term notice. Requiring such charges to be disclosed before account opening may not provide a meaningful benefit to consumers in the form of useful information or protection. Consumers would benefit, however, from a rule that permits creditors to disclose charges when consumers reasonably expect to receive the disclosures, and, thus, are most likely to notice and use the disclosures. The proposal assures that consumers continue to receive disclosure of charges imposed as part of the plan before they become obligated to pay them.

Examples of the charges to which the proposed exception would apply are fees to expedite payments or delivery of a card. Fees to expedite payments or card delivery are now excluded from TILA coverage. In a 2003 rulemaking concerning those two charges, the Board determined that neither was required to be disclosed under TILA. 68 FR 16,185; April 3, 2003. In the supplementary information accompanying the final rule, the Board noted some commenters' views that requiring a written disclosure of a charge for a service long before the consumer might consider purchasing the service did not provide the consumer material benefit. The Board also noted creditors' practice of disclosing the charge when the service is requested, and encouraged them to continue that practice. The Board believes that flexible disclosure of such charges may better serve TILA's purposes than the present exclusion of the charges from TILA's coverage altogether.

The Board also believes the proposed exception may facilitate compliance by creditors. As stated earlier, it can be challenging under the current rule to determine whether charges are a finance charge or an other charge or not covered by TILA, and thus whether advance notice is required if a charge is increased or newly introduced. The proposal reduces these uncertainties and risks. Under the proposal, the creditor could disclose a new or increased charge only to those consumers for whom it is relevant because they are considering at the time of disclosure whether to take the action that would trigger the charge. Moreover, the creditor would not have to determine whether a charge was a finance charge or other charge or not covered by TILA so long as the creditor disclosed the charge, orally or in writing, before the consumer became obligated to pay it, which creditors, in general, already do for business and other legal reasons.

The proposal would allow flexibility in the timing of certain cost disclosures. In proposing to permit creditors to disclose certain charges—orally or in writing—before the fee is imposed, the Board would require creditors to disclose a charge at a time consumers would likely notice the charge when the consumer decides whether to take the action that would trigger the charge, such as purchasing a service. Proposed comment 5(b)(1)(ii)–1 would provide an example that illustrates the standard.

The limited exception to TILA's requirement to disclose charges imposed as part of the plan before the first transaction is proposed pursuant to TILA Section 105(a). Specifically, the Board has authority under TILA Section 105(a) to adopt ''such adjustments and exceptions for any class of transactions, as in the judgment of the Board are necessary or proper to effectuate the purposes of the title, to prevent circumvention or evasion thereof, or to facilitate compliance therewith.'' 15 U.S.C. 1604(a). The class of transactions that would be affected is transactions on open-end plans not secured by a dwelling, though only with respect to certain charges. On the basis of the information currently available to the Board, a narrow adjustment and exception appears necessary and proper to effectuate TILA's purpose to assure meaningful disclosure and informed credit use, and to facilitate compliance.

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

Consumers who call a retailer to order goods by telephone commonly use an existing credit card account to finance the purchase. Some retailers, however, offer discounted purchase prices or promotional payment plans to consumers who finance the purchase by establishing a new open-end credit plan with the retailer. Under the current timing rule, retailers must provide TILA account-opening disclosures before the first transaction. This means retailers must delay the shipment of goods until a consumer has received the disclosures. Consumers who want goods shipped immediately may use another credit card to finance the purchase but they lose any discount or promotion that may be associated with opening a new plan. The Board proposes to provide additional flexibility to retailers and consumers for such transactions.

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

Proposed commentary provisions would clarify that creditors may provide disclosures with the goods, or for creditors that have separate distribution systems for credit documents and for goods, by establishing procedures reasonably designed to have the disclosures sent within the same time period after the purchase as when the goods will be sent. A return policy would be of sufficient duration if the consumer is likely to receive the disclosures and have sufficient time to decide about the financing plan. A return policy would include returns via the United States Postal Service for goods delivered by private couriers. The commentary would also clarify that retailers' policies regarding the return of merchandise need not provide a right to return goods if the consumer consumes or damages the goods. The proposal does not affect merchandise purchased after the plan was initially established, or purchased by other means such as a credit card issued by another creditor. *See* proposed comments 5(b)(1)(iii)–1.

5(b)(2) Periodic Statements

TILA Sections 127(b) and 163 provide the timing requirements for providing periodic statements for open-end credit accounts. 15 U.S.C. 1637(b) and 15 U.S.C. 1666b. The Board proposes to retain the existing regulation and commentary, with a few changes discussed below.

5(b)(2)(i)

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

De minimis amounts. Creditors need not send periodic statements if an account balance (debit or credit) is $1 or less (and no finance charge is imposed). In the December 2004 ANPR, the Board requested comment on whether the de minimis amount should be adjusted. Q53. Few commented on this issue; there was little support for an adjustment. One major credit card issuer stated that the cost to reprogram systems would exceed the benefit. Thus, the Board proposes to retain the $1 threshold.

Uncollectible accounts. Creditors are not required to send periodic statements on accounts the creditor has deemed ''uncollectible.'' That term is not defined. The Board understands that creditors typically send statements on past-due accounts until the account is charged-off for purposes of loan-loss provisions, which is typically after 180 days of nonpayment. The Board is not proposing regulatory or commentary provisions on when an account is deemed ''uncollectible'' but seeks comment on whether additional guidance would be helpful.

Instituting collection proceedings. Creditors need not send statements if ''delinquency collection proceedings have been instituted.'' Over the years, the Board's staff has been asked for guidance on what actions a creditor must take to be covered by the exception. The Board proposes to add comment 5(b)(2)(i)–3 to clarify that a collection proceeding entails a filing of a court action or other adjudicatory process with a third party, and not merely assigning the debt to a debt collector.

Workout arrangements. Comment 5(b)(2)(i)–2 provides that creditors must continue to comply with all the rules for open-end credit, including sending a periodic statement, when credit privileges end, such as when a consumer stops taking draws and pays off the outstanding balance over time. Another comment provides that ''if an open-end credit account is converted to

a closed-end transaction under a written agreement with the consumer, the creditor must provide a set of closed-end credit disclosures before consummation of the closed-end transaction.'' *See* comment 17(b)–2.

Over the years, the Board's staff has received requests for guidance on the effect of certain work-out arrangements for past-due open-end accounts. For example, a borrower with a delinquent credit card account may agree by telephone to a workout plan to reduce or extinguish the debt and the conversation is later memorialized in a writing. The Board proposes to clarify that creditors entering into workout agreements for delinquent open-end plans without converting the debt to a closed-end transaction comply with the regulation if creditors continue to follow the regulations and procedures under Subpart B during the work-out period. The Board's proposal is intended to provide flexibility and reduce burden and uncertainty. The Board seeks comment on whether further guidance would be helpful, such as by establishing a safe harbor for when an open-end plan is deemed to be satisfied and replaced by a new closed-end obligation.

5(b)(2)(ii)

Credit card issuers commonly offer consumers a ''grace period'' or ''free-ride period'' during which consumers can avoid finance charges on purchases by paying the balance in full. TILA does not require creditors to provide a grace period, but if creditors provide one, TILA Section 163(a) requires them to send statements at least 14 days before the grace period ends. 15 U.S.C. 1666c(a). The rule is a ''mailbox'' rule; that is, the 14-day period runs from the date creditors mail their statements, not from the end of the statement period nor from the date consumers receive their statements.

The Board is aware of anecdotal evidence of consumers receiving statements relatively close to the payment due date, with little time remaining before the payment must be mailed to meet the due date. This may be due to the fact that at the end of a billing cycle, it may take several days for a consumer to receive a statement. In addition, for consumers who mail their payments, they may need to mail their payments several days before the due date to ensure that the payment is receive by the creditor by the due date. Although the Board notes that using the Internet to make payments is increasingly common, the Board requests comment on (1) whether it should recommend to Congress that the 14-day period be increased to a longer time period, so that consumer will have additional time to receive their statements and mail their payments to ensure that payments will be received by the due date, and (2) if so, what time period the Board should recommend to Congress.

5(b)(2)(iii)

In a technical revision, the substance of footnote 10 is moved to the regulatory text.

5(c) Through 5(e)

Sections 226.5(c), (d), and (e) address, respectively: The basis of disclosures and the use of estimates; multiple creditors and multiple consumers; and the effect of subsequent events. The Board does not propose any changes to these provisions, except that the Board proposes to add new comment 5(d)–3, referencing the statutory provisions pertaining to charge cards with plans that allow access to an open-end credit plan maintained by a person other than the charge card issuer. TILA 127(c)(4)(D); 15 U.S.C. 1637(c)(4)(D). (*See* the section-by-section analysis to § 226.5a(f).)

Section 226.5a Credit and Charge Card Applications and Solicitations

TILA Section 127(c), implemented by § 226.5a, requires card issuers to provide certain cost disclosures on or with an application or solicitation to open a credit or charge card account.[11] 15 U.S.C. 1637(c). The format and content requirements differ for cost disclosures in card applications or solicitations, depending on whether the applications or solicitations are given through direct mail, provided electronically, provided orally, or made available to the general public such as in ''take-one'' applications and in catalogs or magazines. Disclosures in applications and solicitations provided by direct mail or electronically must be presented in a table. For oral applications and solicitations, certain cost disclosures must be provided orally, except that issuers in some cases are allowed to provide the disclosures later in a written form. Applications and solicitations made available to the general public, such as in a take-one application, must contain one of the following: (1) The same disclosures as for direct mail presented in a table; (2) a narrative description of how finance charges and other charges are assessed, or (3) a statement that costs are involved, along with a toll-free telephone number to call for further information.

The Board proposes a number of substantive and technical revisions to § 226.5a and the accompanying commentary, as described in more detail below. For example, the proposal contains a number of revisions to the format and content of application and solicitation disclosures, to make the disclosures more meaningful and easier to understand. Format changes would affect type size, placement of information within the table, use of cross-references to related information, and use of boldface type for certain key terms. Information concerning penalty APRs and the reasons they may be triggered would be more noticeable, and information would be added about how long penalty APRs may apply. The existing disclosures about how variable rates are determined would be shortened and simplified. Creditors that allocate payments to transferred balances that carry low rates would be required to disclose to consumers that they will pay interest on their (higher rate) purchases until (lower rate) transferred balances are paid in full. Creditors also would be required to include a reference to the Board's Web site where additional information about shopping for credit cards is available.

To address concerns about subprime credit cards programs that have high fees with low credit limits, additional disclosures would be required if the fees or security deposits required to receive the card are 25 percent or more of the minimum credit limit that the consumer may receive. For example, the initial fees on an account with a $250 credit limit may reduce the available credit to less than $100.

Under the proposal, the disclosure of the balance computation method, which now appears in the table, would be required to be outside the table so that the table emphasizes information that is more useful to consumers when they are shopping for a card.

With respect to take-one applications and solicitations, under the proposal, card issuers that provide cost disclosures in take-one applications and solicitations would be required to provide the disclosures in the form of a table, and would no longer be allowed to meet the requirements of § 226.5a by providing a narrative description of account-opening disclosures. This proposed revision is consistent with other revisions contained in the proposal that would require certain account-opening information (such as information about key rates and fees) to be given in the form of a table. *See*

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

section-by-section analysis to § 226.6(b)(4).

5a(a) General Rules

Combining disclosures. Currently, comment 5a–2 states that account-opening disclosures required by § 226.6 do not substitute for the disclosures required by § 226.5a; however, a card issuer may establish procedures so that a single disclosure document meets the requirements of both sections. The Board proposes to retain this comment, but to revise it to account for proposed revisions to § 226.6. Specifically, the Board is proposing to require that certain information given at account opening must be disclosed in the form of a table. *See* proposed § 226.6(b)(4). The account-opening table would be substantially similar to the table required by § 226.5a, but the content required would not be identical. The account-opening table would require information that would not be required in the § 226.5a table, such as a reference to billing error rights. The Board proposes to revise comment 5a–2 to provide that a card issuer may satisfy § 226.5a by providing the account-opening summary table on or with a card application or solicitation, in lieu of the § 226.5a table. For various reasons, card issuers may want to provide the account-opening disclosures with the card application or solicitation. When issuers do so, this comment allows them to provide the account-opening summary table in lieu of the table containing the § 226.5a disclosures.

Clear and conspicuous standard. Section 226.5(a) requires that disclosures made under subpart B (including disclosures required by § 226.5a) must be clear and conspicuous. Currently, comment 5a(a)(2)–1 provides guidance on the clear and conspicuous standard as applied to the § 226.5a disclosures. The Board proposes to provide guidance on applying the clear and conspicuous standard to the § 226.5a disclosures in comment 5(a)(1)–1. Thus, guidance currently in comment 5a(a)(2)–1 would be deleted as unnecessary. The Board proposed to add comment 5a–3 to cross reference the clear and conspicuous guidance in comment 5a(a)(1)–1.

5a(a)(1) Definition of Solicitation

Firm offers of credit. The term ''solicitation'' is defined in § 226.5a(a)(1) of Regulation Z to mean ''an offer by the card issuer to open a credit card account that does not require the consumer to complete an application.'' 15 U.S.C. 1637(c). Board staff has received questions about whether card issuers making ''firm offers of credit'' as defined in the Fair Credit Reporting Act (FCRA) are considered to be making solicitations for purposes of § 226.5a. 15 U.S.C. 1681 *et seq.* The Board proposes to amend the definition of ''solicitation'' to clarify that such ''firm offers of credit'' for credit cards are solicitations for purposes of § 226.5a, as discussed below.

The definition ''solicitation'' was adopted in 1989 to implement part of the Fair Credit and Charge Card Disclosure Act of 1988. It captures situations where an issuer has preapproved a consumer to receive a card, and thus, no application is required. In 1996, the FCRA was amended to allow creditors to use consumer report information in connection with pre-selecting consumers to receive ''firm offers of credit.'' 15 U.S.C. 1681a(l), 1681b(c). A ''firm offer of credit'' is an offer that must be honored by a creditor if a consumer continues to meet the specific criteria used to select the consumer for the offer. 15 U.S.C. 1681a(l). Creditors may obtain additional credit information from consumers, such as income information, when the consumer responds to the offer. However, creditors may decline to extend credit to the consumer based on this additional information only where the consumer does not meet specific criteria established by the creditor before selecting the consumer for the offer. Thus, because consumers who receive ''firm offers of credit'' have been preapproved to receive a credit card and may be turned down for credit only under limited circumstances, the Board believes that these preapproved offers are of the type intended to be captured as a ''solicitation,'' even though consumers are asked to provide some additional information in connection with accepting the offer.

Invitations to apply. The Board also proposes to add comment 5a(a)(1)–1 to distinguish solicitations from ''invitations to apply,'' which are not covered by § 226.5a. An ''invitation to apply'' occurs when a card issuer contacts a consumer who has not been preapproved for a card account about opening an account (whether by direct mail, telephone, or other means) and invites the consumer to complete an application, but the contact itself does not include an application. The Board believes that these ''invitations to apply'' do not meet the definition of ''solicitation'' because the consumer must still submit an application in order to obtain the offered card. Thus, proposed comment 5a(a)(1)–1 would clarify that this ''invitation to apply'' is not covered by § 226.5a 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 and Tabular Format

Fees for late payment, over-the-credit-limit, balance transfers and cash advances. Currently, § 226.5a(a)(2)(ii) and comment 5a(a)(2)–5, which implement TILA Section 127(c)(1)(B), provide that card issuers may disclose late payment fees, over-the-credit-limit fees, balance transfer fees, and cash advance fees in the table or outside the table. 15 U.S.C. 1637(c)(1)(B). In the December 2004 ANPR, the Board requested comment on whether these fees should be required to be in the table. Q8. Many commenters indicated that the Board should require these fees to be in the table, because these are core fees, and uniformity in the placement of the fees would make the disclosures more familiar and predictable for consumers. Some commenters, however, urged the Board to retain the flexibility for card issuers to place the fee disclosures either in the table or immediately outside the table.

The Board proposes to require that these fees be disclosed in the table. In the consumer testing conducted for the Board, participants consistently identified these fees as among the most important pieces of information they consider as part of the credit card offer. With respect to the disclosure of these fees, the Board tested placement of these fees in the table and immediately below the table. Participants who were shown forms where the fees were disclosed below the table tended not to notice these fees compared to participants who were shown forms where the fees were presented in the table. The Board proposes to amend § 226.5a(a)(2)(i) to require these fees to be disclosed in the table, so that consumers can easily identify them. Current § 226.5a(a)(2)(ii) and comment 5a(a)(2)–5, which currently allow issuers to place the fees outside the table, would be deleted. These proposed revisions are based in part on TILA Section 127(c)(5), which authorizes the Board to add or modify § 226.5a disclosures. 15 U.S.C. 1637(c)(5).

Highlighting APRs and fee amounts in the table. Section 226.5a generally requires that certain information about rates and fees applicable to the card offer be disclosed to the consumer in

card applications and solicitations. This information includes not only the annual percentage rates and fee amounts that will apply, but also explanatory information that gives context to these figures. The Board seeks to enable consumers to identify easily the rates and fees disclosed in the table. Thus, the Board proposes to add § 226.5a(a)(2)(iv) to require that when a tabular format is required, issuers must disclose in bold text any APRs required to be disclosed, any discounted initial rate permitted to be disclosed, and any fee amounts or percentages required to be disclosed, except for any maximum limits on fee amounts disclosed in the table. Proposed Samples G–10(B) and G–10(C) provide guidance on how to show the rates and fees described in bold text. Proposed Samples G–10(B) and G–10(C) also provide guidance to issuers on how to disclose the percentages and fees described above in a clear and conspicuous manner, by including these percentages and fees generally as the first text in the applicable rows of the table so that the highlighted rates and fees generally are aligned vertically. In consumer testing conducted for the Board, participants who saw a table with the APRs and fees in bold and generally before any text in the table were more likely to identify the APRs and fees quickly and accurately than participants who saw other forms in which the APRs and fees were not highlighted in such a fashion.

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

In September 2000, the Board revised § 226.5a, and as part of these revisions, provided guidance on how card issuers using electronic disclosures may comply with the § 226.5a requirement that certain disclosures be ''prominently located'' on or with the application or solicitation. 65 FR 58,903; October 3, 2000. In March 2001, the Board issued interim final rules, which are not mandatory, containing additional guidance for the electronic delivery of disclosures under Regulation Z, consistent with the requirements of the E-Sign Act. 66 FR 17,329; March 30, 2001. As discussed above, in April 2007, the Board issued for public comment the 2007 Electronic Disclosure Proposal. *See* section-by-section analysis to § 226.5(a)(1).

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

In addition, although this Bankruptcy Act provision refers to credit card solicitations (where no application is required), the Board requested comment in the October 2005 ANPR on whether the provision should be interpreted also to include applications. Q93. Almost all commenters on this issue stated that there is no reason to treat electronic applications differently from electronic solicitations. With respect to both electronic applications and solicitations, it is important for consumers who are shopping for credit to receive accurate cost information before submitting an electronic application or responding to an electronic solicitation. The Board proposes to apply the Bankruptcy Act provision relating to electronic offers to both electronic solicitations and applications to promote the informed use of credit and avoid circumvention of TILA. 15 U.S.C. 1601(a), 1604(a). Thus, in implementing the Bankruptcy Act provision, the Board proposes to amend § 226.5a(c) to require that applications and solicitations that are provided in electronic form contain the same disclosures as applications and solicitations sent by direct mail. The same proposal is included in the Board's 2007 Electronic Disclosure Proposal.

With respect to the form of disclosures required under § 226.5a, the Board proposes to amend § 226.5a(a)(2) by adding a new paragraph (v) to provide that if a consumer accesses an application or solicitation for a credit card in electronic form, the disclosures required on or with an application or solicitation for a credit card must be provided to the consumer in electronic form on or with the application or solicitation. A consumer accesses an application or solicitation in electronic form when, for example, the consumer views the application or solicitation on his or her personal computer. On the other hand, if a consumer receives an application or solicitation in the mail, the creditor would *not* satisfy its obligation to provide § 226.5a disclosures at that time by including a reference in the application or solicitation to the Web site where the disclosures are located. *See* proposed comment 5a(a)(2)–6. The same proposal is included in the Board's 2007 Electronic Disclosure Proposal. *See* § 226.5a(a)(2)(v) and comment 5a(a)(2)–9 in the 2007 Electronic Disclosure Proposal.

The Board also proposes to revise existing comment 5a(a)(2)–8 added by the 2001 interim final rule, which states that a consumer must be able to access the electronic disclosures at the time the application form or solicitation reply form is made available by electronic communication. The Board proposes to revise this comment to describe alternative methods for presenting electronic disclosures. This comment is intended to provide examples of the methods rather than an exhaustive list. The same proposal was included in the Board's 2007 Electronic Disclosure Proposal.

The Board also proposes to provide guidance on a Bankruptcy Act provision requiring that the § 226.5a disclosures must be ''readily accessible to consumers in close proximity'' to an application or solicitation that is made electronically. In the October 2005 ANPR, the Board asked whether additional or different guidance is needed from the guidance previously issued by the Board in 2000 regarding how card issuers using electronic disclosures may comply with the § 226.5a requirement that certain disclosures be ''prominently located'' on or with the application or solicitation. Q95.

In particular, the 2000 guidance states that the disclosures required by § 226.5a must be prominently located on or with electronic applications and solicitations. 65 FR 58,903; October 3, 2000. The guidance provides flexibility for satisfying this requirement. For example, a card issuer could provide on the application or reply form a link to disclosures provided elsewhere, as long as consumers cannot bypass the disclosures before submitting the application or reply form. Alternatively, if a link to the disclosures is not used,

the electronic application or reply form could clearly and conspicuously indicate where the fact that rate, fee or other cost information could be found. Or the disclosures could automatically appear on the screen when the application or reply form appears. (*See* current comment 5a(a)(2)–2, which would be renumbered as 5a(a)(2)–1 under the proposal.)

Most commenters stated that the Board should retain this existing guidance to interpret the ''close proximity'' standard. A few industry commenters stated that the existing guidance should not apply, and that, for example, it should suffice to provide a link to the disclosures that the consumer could choose to access or not. Some commenters urged the Board generally to allow maximum flexibility to creditors regarding the display of electronic disclosures, and stated that no guidance or specific rules were necessary.

The Board proposes to revise the existing guidance to interpret the ''close proximity'' standard. The existing guidance would be revised to be consistent with proposed changes to comment 5a(a)(2)–8, that provides guidance to issuers on providing access to electronic disclosures at the time the application form or solicitation reply form is made available by electronic communication. Specifically, the Board proposes to provide that electronic disclosures are deemed to be closely proximate to an application or solicitation if, for example, (1) they automatically appear on the screen when the application or reply form appears, (2) they are located on the same Web ''page'' as the application or reply form without necessarily appearing 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, or (3) they are posted on a Web site and the application or solicitation reply form is linked to the disclosures in a manner that prevents the consumer from by-passing the disclosures before submitting the application or reply form. *See* proposed comment 5a(a)(2)–1.ii.

The Board proposes to retain the requirement that if an electronic link to the disclosures is used, the consumer must not be able to bypass the link before submitting an application or a reply form. The Board believes that the ''close proximity'' standard is designed to ensure that the disclosures are easily noticeable to consumers, and this standard is not met when consumers are only given a link to the disclosures, but not to the disclosures themselves. The Board proposes to incorporate the ''close proximity'' standard for electronic applications and solicitations in § 226.5a(a)(2)(vi)(B), and the guidance regarding the location of the § 226.5a disclosures in electronic applications and solicitations in comment 5a(a)(2)–1.ii.

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

5a(a)(4) Certain Fees That Vary by State

Currently, under § 226.5a, if the amount of a late-payment fee, over-the-credit-limit fee, cash advance fee or balance transfer fee varies from state to state, a card issuer may disclose the range of the fees instead of the amount for each state, if the disclosure includes a statement that the amount of the fee varies from state to state. *See* existing § 226.5a(a)(5), renumbered as new § 226.5a(a)(4). As discussed below, the Board proposes to require card issuers to disclose in the table any fee imposed when a payment is returned. *See* proposed § 226.5a(b)(12). The Board proposes to amend new § 226.5a(a)(4) to add returned payment fees to the list of fees for which an issuer may disclose a range of fees. The Board requests comment on whether other fees required to be disclosed under § 226.5a should be added to the list of fees for which the issuer may disclose a range of fees, such as fees for required insurance or debt cancellation or suspension coverage under proposed § 226.5a(b)(14).

5a(a)(5) Exceptions

Section 226.5a currently contains several exceptions to the disclosure requirements. Some of these exceptions are in the regulation itself, while others are contained in the commentary. For clarity, all exceptions would be placed together in new § 226.5a(a)(5), as indicated in the redesignation table below.

5a(b) Required Disclosures

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

5a(b)(1) Annual Percentage Rate

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

16-point font for disclosure of purchase APRs. Currently, under § 226.5a(b)(1), the purchase rate must be disclosed in the table in at least 18-point font. This font requirement does not apply to (1) a temporary initial rate for purchases that is lower than the rate that will apply after the temporary rate expires; or (2) a penalty rate that will apply upon the occurrence of one or more specified events. In response to the December 2004 ANPR, several industry commenters suggested that the Board delete this 18-point font requirement. These commenters indicated that disclosing the purchase rate in 18-point font size might distract consumers from other important terms being disclosed, and that disclosing the purchase rate in the table in large font size is not necessary because simply disclosing the purchase rate in the table provides consumers meaningful and comparable disclosure of that term.

The Board is proposing to reduce the 18-point font requirement to a 16-point font. The purchase rate is one of the most important terms disclosed in the table, and it is essential that consumers be able to identify that rate easily. A 16-point font size requirement for the purchase APR appears to be sufficient to highlight the purchase APR. (The Board is proposing that other disclosures in the table are required to be in 10-point type. *See* proposed comment 5(a)(1)–3.) In consumer testing conducted for the Board, versions of the table in which the purchase rate was the same font as other rates included in the table were reviewed. In other versions, the purchase rate was in 16-point type while other disclosures were in 10-point type. Participants tended to notice the purchase rate more often when it was in a font bigger than the font used for other rates. Nonetheless, there was no evidence from consumer testing that it was necessary to use a font size of 18-point in order for the purchase APR to be noticeable to participants. Given that the proposal is requiring a minimum of 10-point type for the disclosure of other terms in the table, based on document design principles, the Board believes that a 16-point font size for the purchase

APR would be effective in highlighting the purchase APR in the table.

Periodic rate. Currently, comment 5a(b)(1)–1 allows card issuers to disclose the periodic rate in the table in addition to the required disclosure of the corresponding APR. The Board proposes to delete comment 5a(b)(1)–1, and thus, prohibit disclosure of the periodic rate in the table. Based on consumer testing conducted for the Board, consumers do not appear to shop using the periodic rate, nor is it clear that this information is important to understanding a credit card offer. Allowing the periodic rate to be disclosed in the table may distract from more important information in the table, and contribute to ''information overload.'' Thus, in an effort to streamline the information that appears in the table, the Board proposes to prohibit disclosure of the periodic rate in the table. Nonetheless, card issuers may disclose this information outside of the table.

Variable rate information. Section 226.5a(b)(1)(i), which implements TILA Section 127(c)(1)(A)(i)(II), currently requires for variable-rate accounts, that the card issuer must disclose the fact that the rate may vary and how the rate is determined. 15 U.S.C. 1637(c)(1)(A)(i)(II). In disclosing how the applicable rate will be determined, the card issuer is required to provide the index or formula used and disclose any margin or spread added to the index or formula in setting the rate. The card issuer may disclose the margin or spread as a range of the highest and lowest margins that may be applicable to the account. A disclosure of any applicable limitations on rate increases or decreases may also be included in the table. *See* current comment 5a(b)(1)–3.

1. *Index and margins.* Currently, the variable rate information is required to be disclosed separately from the applicable APR, in a row of the table with the heading ''Variable Rate Information.'' Some card issuers will include the phrase ''variable rate'' with the disclosure of the applicable APR and include the details about the index and margin under the ''Variable Rate Information'' heading. In the consumer testing conducted for the Board, many participants who saw the variable rate information presented as described above understood that the label ''variable'' meant that a rate could change, but could not locate information on the tested form regarding how or why these rates could change. This was true even if the index and margin information was taken out of the row of the table with the heading ''Variable Rate Information'' and placed in a footnote to the phrase ''variable rate.'' Many participants who did find the variable rate information were confused by the variable-rate margins, often interpreting them erroneously as the actual rate being charged. In addition, very few participants indicated that they would use the margins in shopping for a credit card account.

Accordingly, the Board proposes to amend § 226.5a(b)(1)(i) to specify that issuers may not disclose the amount of the index or margins in the table. Specifically, card issuers would not be allowed to disclose in the table the current value of the index (for example, that the prime rate currently is 7.5 percent) or the amount of the margin that is used to calculate the variable rate. Card issuers would be allowed to indicate only that the rate varies and the type of index used to determine the rate (such as the ''prime rate,'' for example.) In describing the type of index, the issuer may not include details about the index in the table. For example, if the issuer uses a prime rate, the issuer must just describe the rate as tied to a ''prime rate'' and may not disclose in the table that the prime rate used is the highest prime rate published in the Wall Street Journal two business days before the closing date of the statement for each billing period. *See* proposed comment 5a(b)(1)–2. Also, the Board would require that the disclosure about a variable rate (the fact that the rate varies and the type of index used to determine the rate) must be disclosed with the applicable APRs, so that consumers can more easily locate this information. *See* proposed Model Form G–10(A), Samples G–10(B) and G–10(C). Proposed Samples G–10(B) and G–10(C) provide guidance to issuers on how to disclose the fact that the applicable rate varies and how it is determined.

2. *Rate floors and ceilings.* Currently, card issuers may disclose in the table, at their option, any limitations on how high (i.e., a rate ceiling) or low (i.e., a rate floor) a particular rate may go. For example, assume that the purchase rate on an account could not go below 12 percent or above 24 percent. An issuer would be required to disclose in the table the current rate offered on the credit card (for example, 18 percent), and would be permitted to disclose in the table that the rate would not go below 12 percent and above 24 percent. *See* current comment 5a(b)(1)–4. The Board proposes to revise the commentary to prohibit the disclosure of the rate floors and ceilings in the table. Based on consumer testing conducted for the Board, consumers do not appear to shop based on these rate floors and ceilings, and allowing them to be disclosed in the table may distract from more important information in the table, and contribute to ''information overload.'' Thus, in an effort to streamline the information that may appear in the table, the Board proposes to prohibit disclosure of the rate floors and ceilings in the table. Nonetheless, card issuers may disclose this information outside of the table.

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

In addition, under TILA Section 127(c)(6)(A), as added by Section 1303(a) of the Bankruptcy Act, the term ''introductory'' must be used in immediate proximity to each listing of a discounted initial rate in the application, solicitation, or promotional materials accompanying such application or solicitation. Thus, the Board proposes to revise new § 226.5a(b)(1)(ii) to specify that if an issuer provides a discounted initial rate in the table along with the rate required to be disclosed, the card issuer must use the term ''introductory'' in immediate proximity to the listing of the initial discounted rate.

In the October 2005 ANPR, commenters asked the Board to consider permitting creditors to use the term ''intro'' as an alternative to the word ''introductory.'' Because ''intro'' is a commonly understood abbreviation of the term ''introductory,'' and consumer testing indicates that consumers understand this term, the Board proposes to allow creditors to use ''intro'' as an alternative to the requirement to use the term ''introductory'' and is proposing to clarify this approach in new § 226.5a(b)(1)(ii). Also, to give card issuers guidance on the meaning of ''immediate proximity,'' the Board is

proposing to provide guidance for creditors that place the word ''introductory'' or ''intro'' within the same phrase as each listing of the discounted initial rate. This guidance is set forth in proposed comment 5a(b)(1)–3. The Board believes that interpreting ''immediate proximity'' to mean adjacent to the rate may be too restrictive. Moreover, the Board has proposed the ''within the same phrase'' standard as a safe harbor instead of requiring this placement, recognizing that even if the term ''introductory'' is not ''within the same phrase'' as the rate it may still meet the ''immediate proximity'' standard.

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

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

In the December 2004 ANPR, the Board solicited comment on whether the table was effective as currently designed. Q7. In response to this question, many commenters suggested that the specific event or events that may result in the penalty rate should be disclosed in the table along with the penalty rate, because this would enhance comparison shopping and consumer understanding by highlighting penalty pricing and its effect on the other rates for the account.

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

As a result, the Board proposes to add § 226.5a(b)(1)(iv) and amend new comment 5a(b)(1)–4 (previously comment 5a(b)(1)–7) to require card issuers to briefly disclose in the table the specific event or events that may result in the penalty rate. In addition, the Board is proposing that the penalty rate and the specific events that cause the penalty rate to be imposed must be disclosed in the same row of the table. *See* proposed Model Form G–10(A). In describing the specific event or events that may result in an increased rate, new comment 5a(b)(1)–4 provides that the descriptions of the triggering events in the table should be brief. For example, if an issuer may increase a rate to the penalty rate if 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.'' Proposed Samples G–10(B) and G–10(C) provide additional guidance on the level of detail that issuers should use in describing the specific events that result in the penalty rate.

The Board also proposes to specify in new § 226.5a(b)(1)(iv) that in disclosing a penalty rate, a card issuer also must specify the balances to which the increased rate will apply. Typically, card issuers apply the increased rate to all balances on the account. The Board believes that this information helps consumers better understand the consequences of triggering the penalty rate.

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

Also, the Board proposes to add language to new § 226.5a(b)(1)(iv) to specify that in disclosing a penalty rate, card issuers must include a brief description of the circumstances under which any discounted initial rates may be revoked and the rate that will apply after the discounted initial rate is revoked. Section 1303(a) of the Bankruptcy Act requires that a credit card application or solicitation must contain in a prominent location on or with the application or solicitation a clear and conspicuous disclosure of a general description of the circumstances that may result in revocation of a discounted initial rate offered with the card, and the rate that will apply after the discounted initial rate is revoked. 15 U.S.C. 1637(c)(6)(C). The Board is proposing that this information be disclosed in the table along with other penalty rate information. Often, the same events that trigger a loss of a discounted initial rate and an increase to the penalty rate also trigger an increase in other rates on the account.

Rates that depend on consumers' creditworthiness. Credit card issuers often engage in risk-based pricing such that the rates offered on a credit card will depend on later determinations of a consumer's creditworthiness. For example, an issuer may use information collected in a consumer's application or solicitation reply form (e.g., income information) or obtained through a credit report from a consumer reporting agency to determine the rate for which a consumer qualifies. For preapproved solicitations, issuers that engage in risk-based pricing typically will disclose the

specific rates offered to the consumer, because for these offers, issuers typically will have some indication of a consumer's creditworthiness based on the prescreening process done through a consumer reporting agency. For applications not involving prescreens, however, issuers that use risk-based pricing may not be able to disclose the specific rate that would apply to a consumer, because issuers may not have sufficient information about a consumer's creditworthiness at the time the application is given.

In response to the December 2004 ANPR, industry commenters asked for guidance on how rates should be disclosed under § 226.5a when an issuer does not know the specific rate for which the consumer will qualify at the time the disclosures are made because the specific rate depends on a later determination of the consumer's creditworthiness. Some industry commenters asked the Board to clarify that issuers may disclose the range of possible rates, with an explanation that the rate obtained by the consumer is based on the consumer's creditworthiness. Another industry commenter suggested that the Board should allow issuers to disclose a recent APR or the median rate within the range of possible rates, with an explanation that the rate could be higher or lower depending on the consumer's creditworthiness. Several consumer group commenters suggested that the Board should not allow issuers to disclose a range of possible rates. Instead, issuers should be required to disclose the actual APR that the creditor is offering, because otherwise, consumers do not know the rate for which they are applying.

The Board proposes to add § 226.5(b)(1)(v) and comment 5a(b)(1)–5 to clarify that in circumstances in which an issuer cannot state a single specific rate being offered at the time disclosures are given because the rate will depend on a later determination of the consumer's creditworthiness, issuers must disclose the possible rates that might apply, and a statement that the rate for which the consumer may qualify at account opening depends on the consumer's creditworthiness. A card issuer may disclose the possible rates as either specific rates or a range of rates. For example, if there are three possible rates that may apply (e.g., 9.99, 12.99 or 17.99 percent), an issuer may disclose specific rates (9.99, 12.99 or 17.99 percent) or a range of rates (9.99 to 17.99 percent). Proposed Samples G–10(B) and G–10(C) provide guidance for issuers on how to meet these requirements. In addition, the Board solicits comment on whether card issuer should alternatively be permitted to list only the highest possible rate that may apply instead of a range of rates (e.g., up to 17.99 percent).

As discussed above, one industry commenter suggested that the Board should allow issuers to disclose a recent APR or the median rate within the range of possible rates, with an explanation that the APR could be higher or lower depending on the consumer's creditworthiness. The Board believes that requiring card issuers to disclose all the possible rates (as either specific rates, or as a range of rates) provides more useful information to consumers than allowing issuers to disclose a median APR within the range. If only one rate is disclosed in the table, consumers may mistake the rate disclosed as the specific rate offered on the account, and not understand that it is a median rate within a certain range, even if there is an explanation that the rate could be higher or lower. If a consumer sees a range or several specific rates, the consumer may be better able to determine that more than one rate is being disclosed.

Transactions with both rate and fee. When a consumer initiates a balance transfer or cash advance, card issuers typically charge consumers both interest on the outstanding balance of the transaction, and a fee to complete the transaction. It is important that consumers understand when both a rate and a fee apply to specific transactions. In the consumer testing conducted for the Board, several ways of presenting rate and fee information were reviewed. In some tests, the cash advance and balance transfer rates were included in a section with other rates, and cash advance and balance transfer fees were included in a section with other fees. In other tests, cash advance and balance transfer fees were not included with other fees, but instead were included with the cash advance and balance transfer rates. Participants in the first test (the one where balance transfer and cash advance fees were grouped with other fees) were more likely to notice the balance transfer and cash advance fees than participants in the other tests. Participants tended to notice rates more easily when they were grouped together, and fees more easily when they are grouped together. Thus, the Board is proposing to group APRs together in the table and fees together in the table, rather than grouping APRs and fees related to cash advances together and APRs and fees related to balance transfers together.

Nonetheless, because the rates and the fees related to cash advances and balance transfers are not grouped together, a cross reference from the cash advance and balance transfer rates to the applicable fees may help consumers notice both the rate and the fee. In consumer testing conducted for the Board, some participants were more aware that an interest rate applies to cash advances and balance transfers than they were aware of the fee component, so a cross reference between the rate and the fee may help those consumers notice both the rate and the fee components. Therefore, the Board proposes to add new § 226.5a(b)(1)(vi) to require that if a rate and fee both apply to a balance transfer or cash advance transaction, a card issuer must disclose that a fee also applies when disclosing the rate, and a cross-reference to the fee. 15 U.S.C. 1637(c)(5).

Typical APR. In response to the December 2004 ANPR, several consumer groups indicated that the current disclosure requirements in § 226.5a allow card issuers to promote low APRs, that include interest but not fees, while charging high penalty fees and penalty rates when consumers, for example, pay late or exceed the credit limit. As a result, these consumer groups suggested that the Board require credit card issuers to disclose in the table a ''typical rate'' that would include fees and charges that consumers pay for a particular open-end credit products. This rate would be calculated as the average effective rate disclosed on periodic statements over the last three years for customers with the same or similar credit card product. These consumer groups believe that this ''typical rate'' would reflect the real rate that consumers pay for the credit card product.

The Board is not proposing that card issuers disclose the ''typical rate'' as part of the § 226.5a disclosures. Although a single cost figure (like the APR on closed-end credit) is a laudable objective, the Board does not believe that the proposed typical APR would be helpful to consumers that seek credit cards. There are many different ways consumers may use their credit cards, such as the features they use, what fees they incur, and whether a balance is carried from month to month. For example, some consumers use their cards only for purchases, always pay off the bill in full, and never pay fees. Other consumers may use their cards for purchases, balance transfers or cash advances, but never pay late-payment fees, over-the-credit-limit fees or other penalty fees. Still others may pay penalty fees and incur penalty rates. A ''typical rate,'' however, would be based

on average fees and average balances that may not be typical for many consumers. Moreover, such a rate may confuse consumers about the actual rate that may apply to their account.

Nonetheless, the Board believes it is important that consumers understand the penalty rates and penalty fees that apply to a credit card account. Thus, the Board is proposing to make penalty rates more prominent in the table and require card issuers to describe in the table the reasons why a penalty rate may apply and how long the penalty rate will apply. *See* proposed § 226.5a(b)(1)(iv). Likewise, the Board is proposing to highlight penalty fees by requiring that late payment fees, over-the-credit-limit fees, and returned-payment fees be disclosed in the table. *See* proposed § 226.5a(a)(2)(i).

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

Section 226.5a(b)(2), which implements TILA Section 127(c)(1)(A)(ii)(I), requires card issuers to disclose any annual or other periodic fee, expressed as an annualized amount, that is imposed for the issuance or availability of a credit card, including any fee based on account activity or inactivity. 15 U.S.C. 1637(c)(1)(A)(ii)(I). In 1989, the Board used its authority under TILA Section 127(c)(5) to require that issuers also disclose non-periodic fees related to opening the account, such as one-time membership or participation fees. 15 U.S.C. 1637(c)(5); 54 FR 13,855, April 6, 1989.

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

The Board proposes to amend § 226.5a(b)(2) to require additional information about periodic fees. 15 U.S.C. 1637(c)(5). Currently, issuers are required to disclose only the annualized amount of the fee. The Board proposes to amend § 226.5a(b)(2) to require issuers also to disclose the amount of the periodic fee, and how frequently it will be imposed. For example, if an issuer imposes a $10 monthly maintenance fee for a card, the issuer must disclose in the table that there is a $10 monthly maintenance fee, and that the fee is $120 on an annual basis.

In addition, the Board proposes to amend § 226.5a(b)(2) to require additional information about non-periodic fees related to opening the account. Currently, issuers are required to disclose the amount of the non-periodic fee, but not that it is a one-time fee. The Board proposes to amend § 226.5a(b)(2) to require card issuers to disclose the amount of the fee and that it is a one-time fee. This additional information will allow consumers to better understand set-up and maintenance fees that are often imposed in connection with subprime credit cards. For example, the proposed changes would provide consumers with additional information about when the fees will be imposed by identifying which fees are one-time fees, which fees are periodic fees (such as monthly fees), and which fees are annual fees.

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

5a(b)(3) Minimum Finance Charge

Currently, § 226.5a(b)(3), which implements TILA Section 127(c)(1)(A)(ii)(II), requires that card issuers must disclose any minimum or fixed finance charge that could be imposed during a billing cycle. Card issuers typically impose a minimum charge (e.g., $.50) in lieu of interest in those months where a consumer would otherwise incur an interest charge that is less than the minimum charge (a so-called ''minimum interest charge''). In response to the December 2004 ANPR, one industry commenter suggested that the Board no longer require that the minimum finance charge be disclosed in the table because these fees are typically small (e.g., $.50) and consumers do not shop on them. Another industry commenter suggested that the Board only require that the minimum finance charge be included in the table if the charge is a significant amount. On the other hand, several consumer groups urged the Board to continue to include the minimum finance charge in the table because this charge can have a significant effect on the cost of credit.

The Board proposes to retain the minimum finance charge disclosure in the table. Although minimum charges currently may be small, card issuers may increase these charges in the future. Also, Board is aware of at least one credit card product for which no APR is charged, but each month a fixed charge is imposed based on the outstanding balance (for example, $6 charge per $1,000 balance). If the minimum finance charge disclosure was eliminated from the table, card issuers that offer this type of pricing would no longer be required to disclose the fixed charge in the table. The Board is not proposing to require the minimum finance charge only if it is a significant amount. This approach could undercut the uniformity of the table, and could be misleading to consumers. If consumers do not see a minimum finance charge disclosed in the table, the Board is concerned that most consumers might assume that there is not a minimum finance charge on the card, when the charge was below a certain threshold.

Under § 226.5a(b)(3), card issuers are only required to disclose the amount of any minimum or fixed finance charge that could be imposed during a billing cycle. Card issuers currently are not required to provide a description of when this charge may be imposed. In consumer testing conducted for the Board, model forms were tested that only included the amount of the minimum interest charge in the table. In viewing these forms, some participants misunderstood that they would pay the minimum interest charge every month, not just those months where they otherwise would incur interest that was less than the minimum charge. Thus, the Board proposes to amend § 226.5a(b)(3) to require card issuers to disclose in the table a brief description of the minimum finance charge, to give consumers context for when this charge will be imposed. 15 U.S.C. 1637(c)(5). Proposed Samples G–10(B) and G–10(C) provide guidance regarding how to disclose a minimum interest charge.

5a(b)(4) Transaction Charges

Section 226.5a(b)(4), which implements TILA Section 127(c)(1)(A)(ii)(III), requires that card issuers disclose any transaction charge imposed on purchases. The current commentary to this provision clarifies that only transaction fees on purchases imposed by the issuer must be disclosed. (*See* comment 5a(b)(4)–1.) For clarity, the Board would amend § 226.5a(b)(4) to incorporate this commentary provision.

In addition, the Board proposes to amend § 226.5a(b)(4) to specify that fees charged for transactions in a foreign currency or that take place in a foreign country may not be disclosed in the table. In an effort to streamline the contents of the table, the Board proposes to highlight only those fees that may be important for a significant number of consumers. In consumer testing for the Board, participants did not tend to mention foreign transaction fees as important fees they use to shop. There are few consumers who may pay these fees with any frequency. Thus, the Board proposes to except foreign transaction fees from disclosure of transaction fees. The Board proposes to include foreign transaction fees in the account-opening summary table that is required under § 226.6(b)(4), so that interested consumers can learn of the fees before using the card.

5a(b)(5) Grace Period

Section 226.5a(b)(5), which implements TILA Section 127(c)(A)(iii)(I), requires that card issuers disclose in the table the date by which or the period within which any credit extended for purchases may be repaid without incurring a finance charge. If no grace period is provided, that fact must be disclosed. Comment 5a(b)(5)–1 provides that a card issuer may, but need not, refer to the beginning or ending point of any grace period and briefly state any conditions on the applicability of the grace period. For example, the grace period disclosure might read ''30 days'' or ''30 days from the date of the periodic statement (provided you have paid your previous balance in full by the due date).''

The consumer testing conducted for the Board indicated that some participants misunderstood the word ''grace period'' to mean the time after the payment due date that an issuer may give the consumer to pay the bill without charging a late-payment fee. The GAO found similar misunderstandings by consumers in its consumer testing. Furthermore, many participants in the GAO testing incorrectly indicated that the grace period was the period of time promotional interest rates applied. *See GAO Report on Credit Card Rates and Fees*, at page 50.

In consumer testing conducted for the Board, participants tended to understand the grace period more clearly when additional context was added, such as describing that if the consumer paid the bill in full each month, the consumer would have some period of time (e.g., 25 days) to pay the new purchase balance in full to avoid interest. Thus, the Board proposes to amend § 226.5a(b)(5) to require card issuers to disclose briefly any conditions on the applicability of the grace period. 15 U.S.C. 1637(c)(5). The Board also proposes to amend comment 5a(b)(5)–1 to provide guidance for how issuers may meet the requirements in proposed § 226.5a(b)(5).

5a(b)(6) Balance Computation Method

TILA Section 127(c)(1)(A)(iv) calls for the Board to name not more than five of the most common balance computation methods used by credit card issuers to calculate the balance on which finance charges are computed. 15 U.S.C. 1637(c)(1)(A)(iv). If issuers use one of the balance computation methods named by the Board, § 226.5a(b)(6) requires that issuers must disclose the name of that balance computation method in the table as part of the disclosures required by § 226.5a, and issuers are not required to provide a description of the balance computation method. If the issuer uses a balance computation method that is not named by the Board, the issuer must disclose a detailed explanation of the balance computation method. *See* current § 226.5a(b)(6); § 226.5a(a)(2)(i).

In response to the December 2004 ANPR, several commenters suggested that the Board delete the description of the balance computation method from the table. These commenters believed that the implications of the balance computation method on the actual cost of credit are simply too complex and too contingent on future purchasing patterns to be of any use to consumers in shopping for credit.

The Board agrees that balance computation methods are too complex to explain in a simple fashion in the table. Most card issuers use one of two methods—either the ''average daily balance method (including new purchases)'' or the ''two-cycle average daily balance method (including new purchases).'' For consumers that carry a balance on their credit card every month or for consumers that pay off their balance in full every month, there essentially is no difference between these two methods. There is a difference between the two methods only in those months where a consumer paid off their previous balance in full, but did not pay off their current balance in full. In those months, the consumer will pay more interest under the ''two-cycle average daily balance method'' than under the ''average daily balance method.'' How much more interest the consumer pays depends on the amount of the purchases in the previous billing cycle, when those purchases were made, the amount of any payments made in that billing cycle, and when those payments were made.

In consumer testing conducted for the Board, virtually no participants understood the two balance computation methods most used by card issuers—the average daily balance method and the two-cycle average daily balance method—when those methods were just described by name. The GAO found similar results in its consumer testing. *See GAO Report on Credit Card Rates and Fees*, at pages 50–51. In the consumer testing conducted for the Board, a version of the table was used which attempted to explain briefly that the ''two-cycle average daily balance method'' would be more expensive than the ''average daily balance method'' for those consumers that sometimes pay their bill in full and sometimes do not. Participants' answers suggested they did not understand this disclosure. They appeared to need more information about how balances are calculated. Nonetheless, the addition of more information would likely add too much detail to the disclosures and result in ''information overload.'' In addition, it is unclear whether most consumers would consider the balance computation method when shopping for a credit card.

As a result, the Board proposes to retain a brief reference to the balance computation method, but move the disclosure from the table to directly below the table. *See* § 226.5a(a)(2)(iii). TILA Section 122(c)(2) states that for certain disclosures set forth in Section TILA 127(c)(1)(A), including the balance computation method, the Board shall require that the disclosure of such information shall, to the extent the Board determines to be practicable and appropriate, be in the form of a table. 15 U.S.C. 1632(c)(2). The Board believes that it is no longer appropriate to continue to disclose the balance computation method in the table, because the name of the balance computation method used by issuers does not appear to be meaningful to consumers without additional context and may distract from more important information contained in the table. The Board proposes to continue to require that issuers disclose the name of the balance computation method beneath the table, so that consumers and others will have access to this information if they find it useful.

5a(b)(8) Cash Advance Fee

Currently, comment 5a(b)(8)–1 provides that a card issuer must disclose only those fees it imposes for a cash advance that are finance charges under

§ 226.4. For example, a charge for a cash advance at an automated teller machine (ATM) would be disclosed under § 226.5a(b)(8) if no similar charge is imposed for ATM transactions not involving an extension of credit. As discussed in the section-by-section analysis to § 226.4, the Board proposes to provide that all transaction fees on credit cards would be considered finance charges. Thus, the Board proposes to delete the current guidance discussed in comment 5a(b)(8)–1 as obsolete.

5a(b)(12) Returned Payment Fee

Currently, § 226.5a does not require a card issuer to disclose a fee imposed when a payment is returned. The Board proposes to add § 226.5a(b)(12) to require issuers to disclose this fee in the table. Typically, card issuers will impose a fee and a penalty rate if a cardholder's payment is returned. As discussed above, the Board proposes to require card issuers to disclose in the table the reasons that a penalty rate may be imposed. *See* proposed § 226.5a(b)(1)(iv). The Board proposes that the returned payment fee be disclosed too, so that consumers are told both consequences of returned payments.

5a(b)(13) Cross References from Fees to Penalty Rate

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

5a(b)(14) Required Insurance, Debt Cancellation Or Debt Suspension Coverage

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

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

5a(b)(15) Payment Allocation

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

The Board believes that it is important that consumers understand payment allocation in these circumstances, so that they can better understand the offer and decide whether to use this particular card for purchases. For example, if consumers knew that they would pay interest on all purchases made while paying off the balance transfer at the discounted rate, they might not use that particular card for purchases. They might use another card for purchases and pay that card in full every month to take advantage of the grace period on purchases. Or they might use another card with a lower purchase rate, if they did not plan to pay off the purchases in full each month.

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

payment allocation can affect their interest charges. Nonetheless, because some participants did benefit from the disclosure, and in light of further testing, the Board, under its authority pursuant to TILA Section 127(c)(5), proposes to add § 226.5a(b)(15) to require a card issuer to explain payment allocation to consumers. 15 U.S.C. 1637(c)(5). Proposed § 226.5a(b)(15) states that if (1) a card issuer offers a discounted initial rate on a balance transfers or cash advance that is lower than the rate on purchases, (2) the issuer offers a grace period on purchases, and (3) the issuer may allocate payments to the lower rate balance first, then the issuer must make certain disclosures in the table. Specifically, issuers would be required to disclose: (1) that the discounted initial rate applies only to balance transfers or cash advances, as applicable, and not to purchases; (2) that payments will be allocated to the balance transfer or cash advance balance, as applicable, before being allocated to any purchase balance during the time the discounted initial rate is in effect; and (3) that the consumer will incur interest on the purchase balance until the entire balance is paid, including the transferred balance or cash advance balance, as applicable. The Board would require these disclosures in the table only if the discounted initial rate applies to balance transfers or cash advances that consumers can request as part of accepting the offer. If the discounted initial rate only applies to subsequent balance transfers or checks that access a credit card account, the issuer would not need to provide this disclosure with the offer. The Board proposes to add comment 5a(b)(15)–1 to provide examples of when these disclosures must be given. The Board also proposes to add comment 5a(b)(15)–2 to specify that a card issuer may comply with the requirements in new § 226.5a(b)(15) by providing the applicable disclosures contained in proposed Samples G–10(B) and G–10(C).

5a(b)(16) Available Credit

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

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

In addition, the Board proposes comment 5a(b)(16)–1 to clarify that in calculating the amount of available credit that must be disclosed in the table, an issuer must consider all fees for the issuance or availability of credit described in § 226.5a(b)(2), and any security deposit, that will be imposed when the account is opened and charged to the account, such as one-time issuance and set-up fees that will be imposed when the card is opened. For example, in calculating the available credit, issuers must consider the first year's annual fee and the first month's maintenance fee (if applicable) if they are charged to the account immediately at account opening. Proposed Sample G–10(C) provides guidance to issuers on how to provide this disclosure. (*See* proposed comment 5a(b)(16)–2).

As described above, a card issuer would consider only required fees for issuance or availability of credit, or a security deposit, that will be charged against the card when the account is opened in determining whether the 25 percent threshold test is met. The Board requests comment on whether there are other fees (other than fees required for issuance or availability of credit) that are typically imposed on these types of accounts when the account is opened, and should be included in determining whether the 25 percent threshold test is met.

5a(b)(17) Reference to Board Web Site for Additional Information

In the December 2004 ANPR, the Board requested comment on suggestions for non-regulatory approaches that may further the Board's goal of improving the effectiveness of TILA's disclosures and substantive protections. Q57. In response to the ANPR, several commenters encouraged the Board to develop educational materials, such as pamphlets, targeted media, and interactive Web sites, that could educate consumers on a variety of topics related to shopping for and using credit cards. These commenters believe that certain topics that are difficult to explain to consumers, such as balance computation methods, are better provided in educational materials than in the TILA disclosures.

The Board proposes to revise § 226.5a to require that credit card issuers must disclose in the table a reference to a Board Web site and a statement that consumers can find on this Web site educational materials on shopping for and using credit card accounts. *See* proposed § 226.5a(b)(17). Such materials would expand those already available on choosing a credit card at the Board's Web site.[12] The Board recognizes that some consumers may need general education about how credit cards work and an explanation of typical account terms that apply to credit cards. In the consumer testing conducted for the Board, participants showed a wide range of knowledge about how credit cards work generally, with some participants showing a firm understanding of terms that relate to

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

credit card accounts, while others had difficulty expressing basic financial concepts, such as how the interest rate differs from a one-time fee. The Board's current Web site explains some basic financial concepts—such as what an annual percentage rate is—as well as terms that typically apply to credit card accounts. Through the Web site, the Board could expand the explanation of other credit card terms, such as balance computation methods, that may be difficult to explain concisely in the disclosures given with applications and solicitations.

As part of consumer testing, participants were asked whether they would use a Board Web site to obtain additional information about credit cards generally. Some participants indicated they might use the Web site, while others indicated that it was unlikely they would use such a Web site. Although it is hard to predict from the results of the testing how many consumers might use the Board's Web site, and recognizing that not all consumers have access to the Internet, the Board believes that this Web site may be helpful to some consumers as they shop for a credit card and manage their account once they obtain a credit card. Thus, the Board is proposing that a reference to a Board Web site be included in the table because this is a cost-effective way to provide consumers with supplemental information on credit cards. The Board seeks comments on the content for the Web site.

Additional disclosures. In response to the December 2004 ANPR, several consumer groups suggested that the Board require information about the minimum payment formula, credit limit, any security interest, and all fees imposed on the account be disclosed in the table. The Board has decided not to propose this additional information in the table for the reasons detailed below.

1. *Minimum payment formula.* In the consumer testing conducted for the Board, participants did not tend to mention the minimum payment formula as one of the terms on which they shop for a card. In addition, minimum payment formulas used by card issuers can be complicated formulas that would be hard to describe concisely in the table. For example, while some issuers still use a percentage to calculate the payment, such as 2 percent of the outstanding balance or $10, whichever is less, other issuers use much more complicated formulas, such as ''the greater of (1) $15 or (2) 2 percent of the balance or (3) the applicable finance charges, and if the finance charges are largest, add $15 to that amount.'' Even if the Board were to require issuers to provide an example showing the amount of the minimum payment for a certain balance (for example, $1000), this example would be of doubtful usefulness for the many consumers who have balances different from the example. In addition, the example might mislead consumers, because one card might yield a lower minimum payment amount than another card for one balance (for example, $1000), but the second card might yield a lower minimum payment than the first card if the minimum payment was calculated on a different balance.

2. *Credit limit.* Card issuers often indicate a credit limit in a cover letter sent with an application or solicitation. Frequently, this credit limit is not stated as a specific amount but, instead, is stated as an ''up to'' amount, indicating the maximum credit limit for which a consumer may qualify. The actual credit limit for which a consumer qualifies depends on the consumer's creditworthiness, which is evaluated after the application or solicitation is submitted. Several consumer groups suggested that the Board include the credit limit in the table because it is a key factor for many consumers in shopping for a credit card. These groups also suggested that the Board require issuers to state a specific credit limit, and not an ''up to'' amount.

The Board is not proposing to include the credit limit in the table. As explained above, in most cases, the credit limit for which a consumer qualifies depends on the consumer's creditworthiness, which is fully evaluated after the application or solicitation has been submitted. In addition, in consumer testing conducted for the Board, participants were not generally confused by the ''up to'' credit limit. Most participants understood that the ''up to'' amount on the solicitation letter was a maximum amount, rather than the amount the issuer was promising them. Almost all participants tested understood that the credit limit for which they would qualify depended on their creditworthiness, such as credit history.

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

The Board is not proposing to include a disclosure of any required security interest in the table at this time. Credit card-issuing merchants may include in their account agreements a security interest in the goods that are purchased with the card. It is not apparent that consumers would shop on whether a retail card has this type of security interest. Requiring or allowing this type of security interest to be disclosed in the table may distract from important information in the table, and contribute to ''information overload.'' Thus, in an effort to streamline the information that may appear in the table, the Board is not proposing to include this disclosure in the table.With respect to security deposits, if a consumer is required to pay a security deposit prior to obtaining a credit card and that security deposit is not charged to the account but is paid by the consumer from separate funds, a card issuer must necessarily disclose to the consumer that a security deposit is required, so that the consumer knows to submit the deposit in order to obtain the card. A security deposit in these instances may already be sufficiently highlighted in the materials accompanying the application or solicitation, and may not need to appear in the table. Nonetheless, the Board recognizes that a security deposit may need to be highlighted when the deposit is not paid from separate funds but is charged to the account when the account is opened. In those cases, consumers may not realize that the security deposit may significantly decrease their available credit when the account is opened. Thus, as described above, the Board proposes to provide that if (1) a card agreement requires payment of a fee for issuance or availability of credit, or a security deposit, (2) the fee or security deposit will be charged to the account when it is opened, and (3) the total of those fees and security deposit equal 25 percent or more of the minimum credit limit offered with the card, the card issuer must disclose in the table an example of the amount of the available credit that a consumer would have remaining after these fees or security deposit are debited to the account, assuming that the consumer receives the minimum credit limit offered on the card.

4. *Fees.* In response to the December 2004 ANPR, several consumer groups suggested that all fees imposed on an account should be included in the table. They believed that by requiring only certain fees in the table, card issuers have an incentive to devise new fees

that do not have to be disclosed so prominently. They indicate that if the Board excludes any fees, the list of such fees should be an exclusive list. They also suggested that the Board should require card issuers to report periodically on the volume of the excluded fees collected. If a certain type of fee increases in volume, these commenters suggested that the Board should delete this fee from the list of excluded fees on the grounds that that fee has become a more significant component of the cost of credit.

As described above, the Board is proposing to include certain transaction fees and penalty fees, such as cash advance fees, balance transfer fees, late-payment fees, and over-the-credit limit fees, in the table because these fees are frequently paid by consumers, and consumers have indicated these fees are important for shopping purposes. The Board is not proposing to include other fees in the table, such as copying fees and stop-payment fees, in the table because these fees tend to be imposed less frequently and are not fees on which consumers tend to shop. In consumer testing conducted for the Board, participants tended to mention cash advance fees, balance transfer fees, late-payment fees, and over-the-credit-limit fees as the most important fees they would want to know when shopping for a credit card. In addition, most participants understood that issuers were allowed to impose additional fees, beyond those disclosed in the table. Thus, the Board believes it is important to highlight in the table the fees that consumers want to know when shopping for a card, rather than including infrequently-paid fees, to avoid creating ''information overload'' such that consumers could not easily identify the fees that are most important to them. Nonetheless, the Board recognizes that fees can change over time, and the Board plans to monitor the market and update the fees required to be disclosed in the table as necessary.

5a(c) Direct-Mail and Electronic Applications

5a(c)(1) General

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

The Bankruptcy Act also requires that the disclosures for electronic offers must be ''updated regularly to reflect the current policies, terms, and fee amounts.'' In the October 2005 ANPR, the Board also solicited comment on what guidance the Board should provide on how to apply that standard for credit card accounts. The Board's 2001 interim final rules provided guidance that disclosures for a variable-rate credit card plan provided electronically must be based on an APR in effect within the last 30 days. The 2001 guidance did not contain specific guidance on accuracy requirements for other disclosures provided electronically, such as disclosure of fees. The majority of commenters on the October 2005 ANPR which addressed the accuracy of variable rates agreed that a 30-day standard would be appropriate to implement the ''updated regularly'' standard in the Bankruptcy Act. Some commenters advocated longer periods such as 60 days or shorter periods such as daily or weekly updating, or suggested that the Board should not provide specific guidance or rules, instead allowing maximum flexibility in this area.

The Board proposes to revise § 226.5a(c) to implement the ''updated regularly'' standard in the Bankruptcy Act with regard to the accuracy of variable rates. A new § 226.5a(c)(2) would be added to address the accuracy of variable rates in direct mail and electronic applications and solicitations. This new section would require issuers to update variable rates disclosed on mailed applications and solicitations every 60 days and variable rates disclosed on applications and solicitations provided in electronic form every 30 days, and to update other terms when they change. The Board believes the 30-day and 60-day accuracy requirements for variable rates strike an appropriate balance between seeking to ensure consumers receive updated information and avoiding imposing undue burdens on creditors. The Board believes it is unnecessary for creditors to disclose to consumers the exact variable APR in effect on the date the application or solicitation is accessed by the consumer, so long as consumers understand that variable rates are subject to change. Moreover, it would be costly and operationally burdensome for creditors to comply with a requirement to disclose the exact variable APR in effect at the time the application or solicitation is accessed. The obligation to update the other terms when they change ensures that consumers receive information that is accurate and current, and should not impose significant burdens on issuers. These terms generally do not fluctuate with the market like variable rates. In addition, based on discussions with industry representatives concerning operational issues, the Board staff understands that issuers typically change other terms infrequently, perhaps once or twice a year.

Section 226.5a(c)(2) consists of two subsections. Section 226.5a(c)(2)(i) would provide that § 226.5a disclosures mailed to a consumer must be accurate as of the time the disclosures are mailed. This section would also provide that an accurate variable APR is one that is in effect within 60 days before mailing. Section 226.5a(c)(2)(ii) would provide that § 226.5a disclosures provided in electronic form (except for a variable APR) must be accurate as of the time they are sent to a consumer's e-mail address, or as of the time they are viewed by the public on a Web site. For the reasons discussed above, this section would provide that a variable APR is accurate if it is in effect within 30 days before it is sent, or viewed by the public. Presently, variable APRs on most credit cards may change on a monthly basis, so a 30-day accuracy requirement for variable APRs appears appropriate.

Many of the provisions included in proposed § 226.5a(c)(2) have been incorporated from current § 226.5a(b)(1). To eliminate redundancy, the Board proposes to revise § 226.5a(b)(1) by deleting § 226.5a(b)(1)(ii), § 226.5a(b)(1)(iii), and comment 5a(c)–1. The same revisions were included in the Board's 2007 Electronic Disclosure Proposal.

5a(d) Telephone Applications and Solicitations

5a(d)(2) Alternative Disclosure

Section 226.5a(d) specifies rules for providing cost disclosures in oral applications and solicitations initiated by a card issuer. Card issuers generally must provide certain cost disclosures during the oral conversation in which the application or solicitation is given. Alternatively, an issuer is not required to give the oral disclosures if the card issuer either does not impose a fee for the issuance or availability of a credit card (as described in § 226.5a(b)(2)) or does not impose such a fee unless the

consumer uses the card, provided that the card issuer provides the disclosures later in a written form. Specifically, the issuer must provide the disclosures required by § 226.5a(b) in a tabular format in writing within 30 days after the consumer requests the card (but in no event later than the delivery of the card), and disclose the fact that the consumer need not accept the card or pay any fee disclosed unless the consumer uses the card. The Board proposes to add comment 5a(d)–2 to indicate that an issuer may disclose in the table that the consumer is not required to accept the card or pay any fee unless the consumer uses the card.

5a(d)(3) Accuracy

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

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

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

Narrative that Describes How Finance Charges and Other Charges Are Assessed. TILA Section 127(c)(3)(D) and § 226.5a(e)(2) allow issuers to meet the requirements of § 226.5a for take-one applications and solicitations by giving a narrative description of certain account-opening disclosures (such as information about how finance charges and other charges are assessed), a statement that the consumer should contact the card issuer for any change in the required information, and a toll-free telephone number or a mailing address for that purpose. 15 U.S.C. 1637(c)(3)(D). Currently, this information does not need to be in the form of a table, but may be a narrative description, as is also currently allowed for account-opening disclosures. The Board is proposing, however, to require that certain account-opening information (such as information about key rates and fees) must be given in the form of a table. *See* the section-by-section analysis to § 226.6(b)(4). Therefore, the Board also is proposing that card issuers give this same information in a tabular form in take-one applications and solicitations. Thus, the Board proposes to delete § 226.5a(e)(2) and comments 5a(e)(2)–1 and –2 as obsolete. Card issuers that provide cost disclosures in take-one applications and solicitations would be required to provide the disclosures in the form of a table, for which they could use the account-opening summary table. *See* § 226.5a(e)(1) and comment 5a–2.

5a(e)(4) Accuracy

For applications or solicitations that are made available to the general public, if a creditor chooses to provide the cost disclosures, § 226.5a(b)(1)(ii) currently requires that any variable APR disclosed must be accurate within 30 days before printing. The proposal would move this provision to § 226.5a(e)(4). Proposed § 226.5a(e)(4) also would specify that other disclosures must be accurate as of the date of printing.

5a(f) In-Person Applications and Solicitations

Card issuer and person extending credit are not the same. Existing § 226.5a(f) and its accompanying commentary contain special charge card rules that address circumstances in which the card issuer and the person extending credit are not the same person. (These provisions implement TILA Section 127(c)(4)(D), 15 U.S.C. 1637(c)(4)(D).) The Board understands that these types of cards are no longer being offered. Thus, the Board proposes to delete these provisions and the Model Clause G–12 from Regulation Z as obsolete, recognizing that the statutory provision in TILA Section 127(c)(4)(D) will remain in effect if these products are offered in the future. The Board requests comment on whether these provisions should be retained in the regulation. A commentary provision referencing the statutory provision would be added to § 226.5(d), which addresses disclosure requirements for multiple creditors. *See* proposed comment 5(d)–3.

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

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

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

The Board proposes to cover in-person applications and solicitations under § 226.5a, pursuant to the Board's authority under TILA Section 105(a). Requiring in-person applications and solicitations to include credit terms under § 226.5a could help serve TILA's purpose to provide meaningful disclosure of credit terms so that

consumers will be able to compare more readily the various credit terms available to him or her, and avoid the uninformed use of credit. 15 U.S.C. 1601(a). Also, the Board understands that card issuers routinely provide § 226.5a disclosures in these circumstances; therefore, any additional compliance burden would be minimal.

Card issuers must provide the disclosures required by § 226.5a in the form of a table, and those disclosures must be accurate when given (consistent with the direct mail rules) or when printed (consistent with one option for the take-one rules). *See* § 226.5a(c), (e)(1). These two alternatives appear to provide issuers flexibility, while also providing consumers with the information they need to make informed credit decisions. Existing comment 5a(a)(3)–2 (which would be moved to comment 5a(a)(5)–1) and comment 5a(e)–2 would be revised to be consistent with § 226.5a(f).

5a(g) Balance Computation Methods Defined

TILA Section 127(c)(1)(A)(iv) calls for the Board to name not more than five of the most common balance computation methods used by credit card issuers to calculate the balance on which finance charges are computed. 15 U.S.C. 1637(c)(1)(A)(iv). If issuers use one of the balance computation methods named by the Board, the issuer must disclose that name of the balance computation method as part of the disclosures required by § 226.5a, and is not required to provide a description of the balance computation method. If the issuer uses a balance computation method that is not named by the Board, the issuer must disclose a detailed explanation of the balance computation method. *See* current § 226.5a(b)(6). Currently, the Board has named four balance computation methods: (1) Average daily balance (including new purchases) or (excluding new purchases); (2) two-cycle average daily balance (including new purchases) or (excluding new purchases); (3) adjusted balance; and (4) previous balance. The Board proposes to retain these four balance computation methods. The Board requests comment on whether the list should be revised, along with data indicating why.

Section 226.6 Account-Opening Disclosures

TILA Section 127(a), implemented in § 226.6, requires creditors to provide information about key credit terms before an open-end plan is opened, such as rates and fees that may be assessed on the account. Consumers' rights and responsibilities in the case of unauthorized use or billing disputes are also explained. *15* U.S.C. 1637(a). *See* also Model Forms G–2 and G–3 in Appendix G.

Home-equity lines of credit. Account-opening disclosure and format requirements for home-equity lines of credit (HELOCs) subject to § 226.5b would be unaffected by the proposal, consistent with the Board's plan to review Regulation Z's disclosure rules for home-secured credit in a separate rulemaking. To facilitate compliance, the substantively unrevised rules applicable only to HELOCs are grouped together in proposed § 226.6(a), including rules relating to the disclosure of finance charges, other charges, and specific HELOC-related disclosures. (*See* redesignation table below.) For the reasons set forth in the section-by-section analysis to § 226.6(b)(1), the Board would update references to ''free-ride period'' as ''grace period'' in the regulation and commentary, without any intended substantive change.

Open-end (not home-secured) plans. The Board proposes two significant revisions to account-opening disclosures for open-end (not home-secured) plans, which are set forth in proposed § 226.6(b). The rule would (1) require a tabular summary of key terms to be provided before an account is opened (*see* proposed § 226.6(b)(4)), and (2) reform how and when cost disclosures must be made (*see* proposed § 226.6(b)(1) for content, § 226.5(b) and § 226.9(c) for timing). The Board proposes to apply the tabular summary requirement to all open-end loan products, except HELOCs. Such products include credit card accounts, traditional overdraft credit plans, personal lines of credit, and revolving plans offered by retailers without a credit card. The benefit to consumers from receiving a concise summary of rates and important fees appears to outweigh the costs, such as developing the new disclosures and revising them as needed.

Disclosure requirements in § 226.6 that potentially affect all open-end creditors, namely rules relating to security interests and billing error disclosure requirements, are grouped together in proposed § 226.6(c). The section also would be retitled ''Account-opening disclosures'' to more accurately reflect the timing of the disclosures. In today's marketplace, there are few open-end products for which consumers receive the disclosures required under § 226.6 as their ''initial'' Truth in Lending disclosure. *See* § 226.5a, § 226.5b. The substance of footnotes 11 and 12 is moved to the regulation; the substance of footnote 13 is moved to the commentary. (*See* redesignation table below.)

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

Tabular summary. As provided by Regulation Z, creditors may, and typically do, include account-opening disclosures as a part of an account agreement document that also contains other contract terms and state-law disclosures. The agreement is typically lengthy and in small print. In the December 2004 ANPR, the Board sought comment on possible approaches to ease consumers' ability to navigate account-opening disclosures, such as a summary paragraph, a table similar to the one required on or with credit and charge card applications, or a table of contents to highlight key features and terms of the account. Q2–Q3.

Commenters generally encouraged the Board to consider format rules that focus on providing essential terms in a simplified way. In general, commenters suggested that a summary of key terms would improve the effectiveness of the now-lengthy and complex account agreement documents. Some industry commenters, however, opposed a summary. These commenters noted that the current format rules integrating account terms and TILA disclosures allow creditors to explain features coherently, and noted that summarizing information and repeating it in detail in the contract document may result in information overload. As a part of consumer research conducted for the Board regarding consumer understanding of current TILA disclosures, tests simulated consumers' review of packets of information typically received when new accounts are opened. Most of the consumers in the Board's sample group set aside the lengthy multi-fold account agreement pamphlets without reading them, saying they were too long, the type was too small, and the language too legalistic. Consumers who reviewed packets that included a summary of account terms generally noticed and reviewed the summary, even if they set aside the contract document.

Based on public comment, consumer testing, and its own analysis, the Board is proposing to introduce format requirements for account-opening disclosures for open-end (not home-

secured) plans. The Board proposes to summarize key information most important to informed decision-making in a table similar to that required on or with credit and charge card applications and solicitations. The proposal would permit TILA disclosures that are typically lengthy or complex and less-often used in determining how to use an account, such as how variable rates are determined, to be integrated with the account agreement terms. The content requirements for the proposed summary are set forth in new § 226.6(b)(4) and are discussed below; proposed Model Form G–17(A) and Samples G–17(B) and G–17(C) in Appendix G illustrate the table.

Charges imposed as part of the plan. The Board proposes to reform its rules regarding cost disclosures provided at account opening for open-end (not home-secured) plans. Under TILA and current Regulation Z, account-opening disclosures must include charges that are either a ''finance charge'' or an ''other charge'' (TILA charges). According to TILA, a charge is a finance charge if it is payable directly or indirectly by the consumer and imposed directly or indirectly by the creditor ''as an incident to the extension of credit.'' The Board implemented the definition by including as a finance charge under Regulation Z, any charge imposed ''as an incident to or a condition of the extension of credit.'' TILA also requires a creditor to disclose, before opening an account, ''other charges which may be imposed as part of the plan * * * in accordance with regulations of the Board.'' The Board implemented the provision virtually verbatim, and the staff commentary interprets the provision to cover ''significant charges related to the plan.'' *15* U.S.C. 1605(a), § 226.4; 15 U.S.C. 1637(a)(5), § 226.6(b), current comment 6(b)–1.

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

A 2003 rulemaking concerning charges for two services—expediting payments and expediting card delivery—illustrates the challenges in applying current rules. 68 FR 16,185; April 3, 2003. Public comments on the proposal reflected a lack of consensus about the proposed interpretations of expedited payment fee as an ''other charge'' and expedited card delivery fee as not covered by TILA. More broadly, the comments reflected a lack of consensus over the basic principles that should determine whether a charge is a finance charge or an ''other charge.''

In the final rule, staff adopted official interpretations indicating that neither charge was a charge covered by TILA. In the supplementary information accompanying the final rule, Board staff recognized that requiring a written disclosure of a charge for a service long before the consumer might consider purchasing the service did not provide the consumer with any material benefit. The staff also noted creditors' current practice of disclosing the charge when the service is requested, and encouraged the continuation of that practice.

Board staff also indicated that a more comprehensive review of existing rules was needed. Accordingly, the December 2004 ANPR solicited comment on the effectiveness of the rules governing disclosure of charges covered by TILA, and on potential alternatives. The comments indicated a consensus that the current approach should be replaced with a new one. Commenters split, however, on the proper approach. Most focused on the definition of ''finance charge'' or ''other charge.'' Approaches ranged from industry's suggestions to restrict finance charges to interest or to charges required as a condition to the extension of credit, to consumer groups' suggestion to include virtually all charges the consumer would pay. While commenters disagreed over which approach would best serve TILA's purposes, they shared a common objective: Provide a clear test.

In light of the comments received, consumer testing, and the Board's experience and analysis, the Board is proposing to reform the rules governing disclosure of charges before they are imposed, as discussed below. The proposed rule is intended to respond collectively to these concerns by (1) giving full effect to TILA's requirement that all charges imposed as part of an open-end (not home-secured) plan be disclosed before they are imposed, (2) specifying precisely important costs that must be disclosed in writing at account opening (e.g., interest rates, annual fees, and late-payment or over-the-credit-limit fees), and (3) permitting the creditor to disclose all other charges imposed as part of the plan (e.g., fees to expedite payments or to provide an additional card) at account opening *or* orally at any time before the consumer agrees to or becomes obligated to pay the charge. Charges added or increased during the life of the plan would be subject to similar rules. *See* § 226.9(c)(2).

Under the proposal, some charges would be covered by TILA that the current regulation, as interpreted by the staff commentary, excludes from TILA coverage, such as fees for expedited payment and expedited delivery. It may not have been useful to consumers to cover such charges under TILA when such coverage would have meant only that the charges were disclosed long before they became relevant to the consumer. It may, however, be useful to cover such charges under TILA as part of a rule that permits their disclosure at a (later) more relevant time. Further, as new services (and associated charges) are developed, the proposal is intended to reduce uncertainty of how to disclose such fees and risks of civil liability. The list of charges creditors must disclose in the account-opening table would be specific and exclusive, not open-ended as is the case today. Creditors could otherwise comply with the rule by disclosing other costs at any other relevant time.

6(a) Rules Affecting Home-Equity Plans

For the reasons discussed above and as illustrated in the redesignation table below, the proposal would set forth in § 226.6(a) all requirements applying exclusively to home-equity plans subject to § 226.5b (HELOCs). Rules relating to the disclosure of finance charges currently in § 226.6(a)(1) through (4) would be moved to proposed § 226.6(a)(1)(i) through (iv); those rules and accompanying official staff interpretations are substantively unchanged. Rules relating to the disclosure of other charges would be moved from current § 226.6(b) to proposed § 226.6(a)(2), and specific HELOC-related disclosure requirements would be moved from current § 226.6(e) to proposed § 226.6(a)(3). Several technical revisions to commentary provisions are proposed for clarity and in some cases for consistency with corresponding comments to proposed § 226.6(b)(2), which addresses rate disclosures for open-end (not home-secured) plans, but these revisions are not intended to be substantive. *See*, for example, proposed comments 6(a)(1)(ii)–1 and 6(b)(2)(i)(B)–1, which address disclosing ranges of balances. Also, commentary provisions that

currently apply to open-end plans generally but are inapplicable to HELOCs would not be moved. For example, guidance in current 6(a)(2)–2 regarding a creditor's general reservation of the right to change terms would not be moved to proposed comment 6(a)(1)(ii)–2, because § 226.5b(f)(1) prohibits ''rate-reservation'' clauses for HELOCS. Comment 6–1, which addresses the need for consistent terminology with periodic statement disclosures, would be deleted as duplicative. *See* proposed § 226.5(a)(2)(i).

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

6(b)(1) Charges Imposed as Part of Open-End (Not Home-Secured) Plans

Proposed § 226.6(b)(1) would apply to all open-end plans except HELOCs subject to § 226.5b. It retains TILA's general requirements for disclosing costs for open-end plans: Creditors would be required to continue to disclose the circumstances under which charges are imposed as part of the plan, including the amount of the charge (e.g., $3.00) or an explanation of how the charge is determined (e.g., 3 percent of the transaction amount). For finance charges, creditors must include a statement of when the finance charge begins to accrue and an explanation of whether or not a ''grace period'' or ''free-ride period'' exists (a period within which any credit that has been extended may be repaid without incurring the charge). Regulation Z generally refers to this period as a ''free-ride period.'' Since 1989, creditors have been required to use the term ''grace period'' in complying with disclosure requirements for credit and charge card applications and solicitations in § 226.5a. *15* U.S.C. 1632(c)(2)(C); current § 226.5a(a)(2)(iii); 54 FR 13,856; April 6, 1989. For consistency and the reasons set forth in the section-by-section analysis to § 226.6(b)(1), the Board would update references to ''free-ride period'' as ''grace period'' in the regulation and commentary, without any intended substantive change.

Currently, the rules for disclosing costs related to open-end plans create two categories of charges covered by TILA: finance charges (§ 226.6(a)) and ''other charges'' (§ 226.6(b)). Under the proposal, the rules would create a single category of ''charges imposed as part of an open-end (not home-secured) plan'' as identified in proposed § 226.6(b)(1)(i). This new section would identify a complete description of the types of charges that would be considered to be imposed as part of a plan. These charges include finance charges under § 226.4(a) and (b), penalty charges, taxes, and charges for voluntary credit insurance, debt cancellation or debt suspension coverage.

Charges to be disclosed would also include any charge the payment, or nonpayment, of which affects the consumer's access to the plan, duration of the plan, the amount of credit extended, the period for which credit is extended, and the timing or method of billing or payment. This proposed provision is intended to be broad but provide greater clarity than current rules and capture charges that relate to the key attributes of a credit plan. The proposed commentary would provide examples of charges covered by the provision, such as application fees and participation fees (which affect access to the plan), fees to expedite card delivery (which also affect access to the plan), and fees to expedite payment (which affect the timing and method of payment). *See* proposed comment 6(b)(1)(i)–2.

Three examples of types of charges that are not imposed as part of the plan are listed in proposed § 226.6(b)(1)(ii). These examples include charges imposed on a cardholder by an institution other than the card issuer for the use of the other institution's ATM; and charges for a package of services that includes an open-end credit feature, if the fee is required whether or not the open-end credit feature is included and the non-credit services are not merely incidental to the credit feature. Comment 6(b)(1)(ii)–1 provides examples of fees for packages of services that are considered to be imposed as part of the plan and fees for packages of services that are not. This comment is substantively identical to current comment 6(b)–1.v.

The proposal would not completely eliminate ambiguity about what are TILA charges. To mitigate ambiguity, however, the proposal provides a complete list in new § 226.6(b)(4) of which charges identified under § 226.6(b)(1) must be disclosed in writing at account opening (or before they are increased or newly introduced). *See* proposed § 226.5(b)(1) and § 226.9(c)(2) for timing rules. Any fees aside from those identified in proposed § 226.6(b)(4) would not be required to be disclosed in writing at account opening. However, other charges imposed as part of an open-end (not home-secured) plan may be disclosed at account opening, or orally at any relevant time before the consumer agrees to or becomes obligated to pay the charge. This approach is intended in part to reduce creditor burden. Creditors presumably disclose fees at relevant times, such as when a consumer orders a service by telephone, for business reasons and to comply with other state and federal laws. Moreover, compared to the approach reflected in the current regulation, the proposed broad application of the statutory standard of fees ''imposed as part of the plan'' should make it easier for a creditor to determine whether a fee is a charge covered by TILA, and reduce litigation and liability risks. In addition, this approach will help ensure that consumers receive the information they need when it would be most helpful to them.

6(b)(2) Rules Relating to Rates for Open-End (Not Home-Secured) Plans

Rules for disclosing rates that affect the amount of interest that will be imposed would be reorganized and consolidated in proposed § 226.6(b)(2). (*See* redesignation table below.)

6(b)(2)(i)

Finance charges attributable to periodic rates. Currently, creditors must disclose finance charges attributable to periodic rates. These costs are typically interest but may include other costs such as premiums for required credit insurance. As discussed earlier, in consumer testing for the Board, participants understood credit costs in terms of interest and fees. The text of proposed § 226.6(b)(2)(i) reflects the Board's intention to make the distinction between interest and fees clear.

Balance computation methods. Proposed § 226.6(b)(2)(i) sets forth rules relating to the disclosure of rates. Proposed § 226.6(b)(2)(i)(D) (currently § 226.6(a)(3)) requires creditors to explain the method used to determine the balance to which rates apply. 15 U.S.C. 1637(a)(2). Model Clauses that explain commonly used methods, such as the average daily balance method, are at Appendix G–1. The Board requests comment on whether model clauses for methods such as ''adjusted balance'' and ''previous balance'' should be deleted as obsolete, and more broadly, whether G–1 should be eliminated entirely because creditors no longer use the model clauses.

In the December 2004 ANPR, the Board sought comment on how significantly the choice of a balance computation method might affect consumers' cost of credit, and on possible ways to enhance the effectiveness of any required disclosure. Q28–Q30. Commenters acknowledged that balance computation methods can affect consumers' cost of credit but in

general would favor an approach that emphasizes other key cost terms instead of the details of balance computation methods. The Board concurs with these views.

Calculating balances on open-end plans can be complex, and requires an understanding of how creditors allocate payments, assess fees, and record transactions as they occur during a billing cycle. Currently, neither TILA nor Regulation Z requires creditors to disclose all the information necessary to compute balances to which periodic rates are applied, and requiring that level of detail would not appear to benefit consumers because consumers are unlikely to review such detailed information. Although the Board's model clauses are intended to assist creditors in explaining common methods, consumers continue to find explanations in account agreements to be lengthy and complex, and are not understood. The proposal would require creditors to continue to explain the balance computation methods in the account-opening agreement, but the explanation would not be permitted in the account-opening summary. As discussed below, along with the account-opening summary proposed in § 226.6(b)(4), creditors would name the balance computation method and refer consumers to the account-opening disclosures for an explanation of the balance computation method.

6(b)(2)(ii)

New § 226.6(b)(2)(ii) would set forth the rules for variable-rate disclosures now contained in footnote 12. In addition, guidance on the accuracy of variable rates provided at account opening would be moved from the commentary to the regulation, and revised. Currently, comment 6(a)(2)–3 provides that creditors may provide the current rate, a rate as of a specified date if the rate is updated from time to time, or an estimated rate under § 226.5(c). The Board proposes an accuracy standard that is consistent with the Board's 2007 Electronic Disclosure Proposal; that is, the rate disclosed is accurate if it was in effect as of a specified date within 30 days before the disclosures are provided. *See* 72 FR 21,1141; April, 30, 2007. The proposal would eliminate creditors' option to provide an estimate as the rate in effect for a variable-rate account. The Board believes creditors are provided with sufficient flexibility under the proposal to provide a rate as of a specified date, so the use of an estimate would not be appropriate. New proposed comment 6(b)(2)(ii)–5, which addresses discounted variable-rate plans and is substantively unchanged from current comment 6(a)(2)–10, contains technical revisions.

The Board also proposes to require that, in describing how a variable rate is determined, creditors must disclose the applicable margin, if any. *See* proposed § 226.6(b)(2)(ii)(B). Creditors state the margin for purposes of contract or other law and are currently required to disclose margins related to penalty rates, if applicable. No particular format requirements would apply. Thus, the Board does not expect the revision would add burden.

6(b)(2)(iii)

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

6(b)(3) Voluntary Credit Insurance; Debt Cancellation or Suspension

As discussed in the section-by-section analysis to § 226.4, the Board is proposing revisions to the requirements to exclude charges for voluntary credit insurance or debt cancellation or debt suspension coverage from the finance charge. *See* proposed § 226.4(d). Creditors must provide information about the voluntary nature and cost of the credit insurance or debt cancellation or suspension product, and about the nature of coverage for debt suspension products. Because creditors must obtain the consumer's affirmative request for the product as a part of the disclosure requirements, the Board expects the disclosures proposed under § 226.4(d) will be provided at the time the product is offered to the consumer. Thus, consumers may receive the disclosures at the time they open an open-end account, or earlier in time, such as at application.

6(b)(4) Tabular Format Requirements for Open-End (Not Home-Secured) Plans

Proposed § 226.6(b)(4) would introduce format requirements for account-opening disclosures for open-end (not home-secured) plans. The proposed summary of account-opening disclosures is based on the format and content requirements for the tabular disclosures provided with direct mail applications for credit and charge cards under § 226.5a, as it would be revised under the proposal. Proposed forms under G–17 in Appendix G illustrate the account-opening tables. As proposed, comment 6(b)(4)–1 would refer generally to guidance in § 226.5a regarding format and disclosure requirements for the application and solicitation table. For clarity, rules under § 226.5a that do not apply to account-opening disclosures are specifically noted. Comment is requested on this approach, or whether importing essentially identical guidance from § 226.5a to § 226.6 would ease compliance.

Rates. Proposed § 226.6(b)(4)(ii) sets forth disclosure requirements for rates that would apply to accounts. Periodic rates and index and margin values would not be permitted to be disclosed in the table, for the same reasons underlying, and consistent with, the proposed requirements for the table provided with credit card applications and solicitations. *See* comment 6(b)(4)(ii)–1. Creditors would continue to disclose periodic rates, and index and margin values as part of the account opening disclosures, and these could be provided in the credit agreement, as is likely currently the case.

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

Fees. Fees that would be highlighted in the account-opening summary are identified in § 226.6(b)(4)(iii). The Board believes that these fees, among the charges that TILA covers, are the most important fees, at least in the current marketplace, for consumers to know about before they start to use an account. They include charges that the consumer could incur without creditors otherwise being able to disclose the cost in advance of the consumers' act that triggers the cost, such as fees triggered

by a consumer's use of a cash advance check or by a consumers' late payment. Transaction fees imposed for transactions in a feign currency or that take place in a foreign country would be among the fees disclosed at account opening, though the Board is not proposing to require that foreign transaction fees be disclosed in the table provided with credit card applications and solicitations. *See* section-by-section analysis to § 226.5a(b)(4). Although consumer testing for the Board indicated that consumers do not choose to apply for a card based on foreign transaction fees, the Board believes highlighting the fee may be useful for some consumers before they obtain credit on the account.

The Board intends this list of fees to be exclusive, for two reasons. An exclusive list eases compliance and reduces the risk of litigation; creditors have the certainty of knowing that as new services (and associated fees) develop, the new fees need not be highlighted in the account-opening summary unless and until the Board requires their disclosure after notice and public comment. And as discussed in the section-by-section analysis to § 226.5(a)(1) and § 226.5(b)(1), charges required to be highlighted under new § 226.6(b)(4) would have to be provided in a written and retainable form before the first transaction and before being increased or newly introduced. Creditors would have more flexibility regarding disclosure of other charges imposed as part of an open-end (not home-secured) plan.

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

The Board notes that if the amount of a fee such as a late-payment fee or balance transfer fee varies from state to state, for disclosures required to be provided with credit card applications and solicitations, card issuers may disclose a range of fees and a statement that the amount of the fee varies from state to state. *See* existing § 226.5a(a)(5), renumbered as new § 226.5a(a)(4). A goal of the proposed account-opening summary table is to provide to a consumer with key information about the terms of the account. Permitting creditors to disclose a range of fees seems not to meet that standard. Nonetheless, the Board solicits comment on whether there are any operational issues presented by the proposed rule to disclose fees applicable to the consumer's account in the account-opening summary table, and if so, suggested solutions.

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

Required insurance, debt cancellation or debt suspension. For the reasons discussed in the section-by-section analysis to § 226.5a(b)(14), as permitted by applicable law, creditors that require credit insurance, or debt cancellation or debt suspension coverage, as part of the plan would be required to disclose the cost of the product and a reference to the location where more information about the product can be found with the account-opening materials, as applicable. *See* proposed § 226.6(b)(4)(v).

Payment allocation. In the December 2004 ANPR, the Board asked about creditors' payment allocation methods, how the methods are typically disclosed, and whether additional disclosures about payment allocation should be required. Q34–Q36. Responses suggest that in general, creditors tend to apply consumers' payments to satisfy low-rate balances first, but that payment allocation methods vary. The timing and detail of disclosures also vary. Some card issuers disclose their payment allocation policies in materials accompanying credit card applications, while others provide information as part of the account agreement. Descriptions of payment allocation are typically general.

The Board proposes in § 226.6(b)(4)(vi) to require creditors to disclose, if applicable, the information proposed to be required with credit card applications and solicitations regarding how payments will be allocated if the consumer transfers balances at a low rate and then makes purchases on the account. The Board believes the information is useful to the consumer, although perhaps more so at the time of application when consumers may establish an account to take advantage of a promotional balance transfer rate. Because the Board is proposing to allow the account-opening table to substitute for the table given with an application or solicitation, the Board proposes also to include the payment allocation disclosure in the account-opening summary, to ensure that consumers receive this information, if applicable, at the time of application or solicitation.

Available credit. For the reasons discussed under § 226.5a(b)(16), the Board proposes a disclosure targeted at subprime card accounts that assess substantial fees at account opening and leave consumers with a limited amount of available credit. Proposed § 226.6(b)(4)(vii) would require creditors to disclose in the account-opening table the disclosures required under § 226.5a(b)(16). The proposed requirements would apply to creditors that require fees for the availability or issuance of credit, or a security deposit, that equals 25 percent or more of the minimum credit limit offered on the account. If that threshold is met, card issuers must disclose in the table an example of the amount of available credit the consumer would have after the fees or security deposit are debited to the account, assuming the consumer receives the minimum credit limit.

Web site reference. For the reasons stated under § 226.5a(b)(17), credit card issuers would be required under proposed § 226.6(b)(4)(viii) to provide a reference to the Board's Web site for additional information about shopping for and using credit card accounts.

Balance computation methods. TILA requires creditors to explain as part of the account-opening disclosures the method used to determine the balance to which rates are applied. 15 U.S.C. 1637(a)(2). Explaining balance computation methods in the account-opening table may not benefit consumers, because the explanations can be lengthy and complex, and consumer testing indicates the explanations are not understood. Including an explanation in the table also may undermine the goal of presenting essential information in a simplified way. Nonetheless, some balance computation methods are more favorable to consumers than others, and the Board believes it is appropriate to highlight the method used, if not the technical computation details. For those reasons, the Board proposes that the name of balance computation methods used be disclosed beneath the table, along with a statement that an explanation of the method is provided in the account agreement or disclosure statement. *See* proposed § 226.6(b)(4)(ix). To determine the name of the balance computation method to be disclosed, creditors would refer to § 226.5a(g) for a list of commonly-used

methods; if the method used is not among those identified, creditors would provide a brief explanation in place of the name.

Billing error rights reference. All creditors offering open-end plans must provide notices of billing rights at account opening. *See* current § 226.6(d); proposed § 226.6(c)(2). This information is important, but lengthy. The Board proposes to draw consumers' attention to the notices by requiring a statement that information about billing rights and how to exercise them is provided in the account-opening disclosures. *See* proposed § 226.6(b)(4)(x). The statement, along with the name of the balance computation method, would be located directly below the table.

6(c) Rules of General Applicability

6(c)(1) Security Interests

Comments to proposed § 226.6(c)(1) (current § 226.6(c)) are revised for clarity, without any substantive change. &

6(c)(2) Statement of Billing Rights

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

Section 226.7 Periodic Statement

TILA Section 127(b), implemented in § 226.7, identifies information about an open-end account that must be disclosed when a creditor is required to provide periodic statements. 15 U.S.C. 1637(b).

Home-equity lines of credit. Periodic statement disclosure and format requirements for home-equity lines of credit (HELOCs) subject to § 226.5b would be unaffected by the proposal, consistent with the Board's plan to review Regulation Z's disclosure rules for home-secured credit in a separate rulemaking. To facilitate compliance, the substantively unrevised rules applicable only to HELOCs are grouped together in proposed § 226.7(a). (*See* redesignation table below.)

Open-end (not home-secured) plans. The Board proposes a number of significant revisions to periodic statement disclosures for open-end (not home-secured) plans. These rules are grouped together in proposed § 226.7(b). First, interest and fees imposed as part of the plan during the statement period would be disclosed in a simpler manner and in a consistent location. Second, the Board is proposing for comment two alternative approaches to disclose the effective APR: The first approach would try to improve consumer understanding of this rate and reduce creditor uncertainty about its computation. The second approach would eliminate the requirement to disclose the effective APR. Third, if an advance notice of changed rates or terms is provided on or with a periodic statement, a summary of the change would be required on the front of the periodic statement. Model clauses would illustrate the proposed revisions, to facilitate compliance. In addition, the Board proposes to add new paragraphs § 226.7(b)(11) and (12) to implement disclosures regarding late-payment fees and the effects of making minimum payments in Section 1305(a) and 1301(a) of the Bankruptcy Act (further discussed below). TILA Section 127(b)(11) and (12); 15 U.S.C. 1637(b)(11) and (12).

A number of technical revisions are made for clarity. For the reasons set forth in the section-by-section analysis to § 226.6(b)(1), the Board would update references to ''free-ride period'' as ''grace period'' in the regulation and commentary, without any intended substantive change. Current comment 7–2, which addresses open-end plans involving more than one creditor, would be deleted as obsolete and unnecessary.

Format requirements for periodic statements. TILA and Regulation Z contain few formatting requirements for periodic statement disclosures. In the December 2004 ANPR, the Board noted that some information about past account activity also may be useful to consumers in making future decisions concerning the plan. The Board sought comment on possible ways to format information to improve the effectiveness of periodic statement disclosures, including proximity requirements or grouping of terms or fees. Q4–Q6.

Commenters' views were mixed. Industry commenters generally opposed mandating specific format requirements. They suggested that consumers are not confused by basic information conveyed on periodic statements, and that mandated format requirements would be expensive to implement and could stifle creditors' ability to tailor statements to specific products. Some of these commenters suggested that grouping of terms or fees might be helpful, but cautioned against a total of fees that would not differentiate interest from other charges such as penalty fees (late or over-the-credit-limit, for example). Some consumer group commenters suggested importing format requirements similar to the tabular disclosures for credit card applications and solicitations.

Consumer testing conducted for the Board has shown that targeted proximity requirements on periodic statements tend to improve the effectiveness of cost disclosures for consumers. For the reasons discussed below, the Board proposes several proximity requirements. For example, the proposal would link by proximity the payment due date with the late payment fee and penalty rate that could be triggered by an untimely payment. The minimum payment amount also would be linked by proximity with the new warning required by the Bankruptcy Act about the effects of making such payments on the account. The Board believes grouping these disclosures together would enhance consumers' informed use of credit.

To ensure consumers are alerted to rate increases and other changes that increase the cost of using their account, a summary of key rate and term changes would precede the transactions when an advance notice of a change in term or rate accompanies a periodic statement. Transactions would be grouped by type, and fee and interest charge totals would be located with the transactions. Participants in the consumer testing conducted for the Board tended to review their transactions and to notice fees and interest charges when placed there. The Board notes that some financial institutions presently group transactions by type. Form G–18(A) would illustrate these requirements.

The Board is publishing for the first time forms illustrating front sides of a periodic statement. The Board is publishing forms G–18(G) and G–18(H) to illustrate how a periodic statement might be designed to comply with the requirements of § 226.7. Forms G–18(G) and G–18(H) contain some additional disclosures that are not required by Regulation Z. The forms also present information in some additional formats that are not required by Regulation Z. The Board is publishing the front side of a statement form as a compliance aid.

Consumer testing for the Board indicates that the effectiveness of periodic statement disclosures is improved when certain information is grouped together. The Board seeks comment on any alternative approaches that would provide creditors more flexibility in grouping related

information together on the periodic statement.

7(a) Rules Affecting Home-Equity Plans

For HELOCs, creditors are required to comply with the disclosure requirements under proposed § 226.7(a)(1) through (10), including existing rules and guidance regarding the disclosure of finance charges and other charges, which would be combined in a new § 226.7(a)(6). These rules and accompanying commentary are substantively unchanged from current § 226.7(a) through (k). Proposed § 226.7(a) also provides that at their option, creditors offering HELOCs may comply with the requirements of § 226.7(b). The Board understands that some creditors may use a single processing system to generate periodic statements for all open-end products they offer, including HELOCs. These creditors would have the option to generate statements according to a single set of rules.

In technical revisions, the substance of footnotes referenced in § 226.7(d) is moved to proposed § 226.7(a)(4) and comment 7(a)(4)-6.

7(a)(7) Annual Percentage Rate

The Board is proposing two alternative approaches to address concerns about the effective APR. These approaches are discussed in detail in the section-by-section analysis to proposed § 226.7(b)(7). The first approach seeks to improve the effective APR. For HELOCs subject to § 226.5b, creditors would have an option to comply with the new rules or continue to comply with the current rules applicable to the effective APR. This is intended as a temporary measure until the Board reviews comprehensively the rules for HELOCs subject to § 226.5b. The second approach would eliminate the requirement to disclose the effective APR; thus, under this approach, the effective APR would be optional for HELOC creditors pending the Board's review of home-secured disclosure rules.

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

Current comment 7–3 provides guidance on various periodic statement disclosures for deferred-payment transactions, such as when a consumer may avoid interest charges if a purchase balance is paid in full by a certain date. Under the proposal, the substance of comment 7–3, revised to conform to other proposed revisions in § 226.7(b), is proposed as comment 7(b)–1. The Board believes the guidance is unnecessary for HELOCs.

7(b)(2) Identification of Transactions

Proposed § 226.7(b)(2) requires creditors to identify transactions in accordance with rules set forth in § 226.8. The Board proposes to revise and significantly simplify those rules, as discussed in the section-by-section analysis relating to § 226.8 below.

The Board would introduce a format requirement to group transactions by type, such as purchases and cash advances. In consumer testing conducted for the Board, participants found such groupings helpful. Moreover, consumers noticed fees and interest charges more readily when transactions were grouped together, the fees imposed for the statement period were not interspersed among the transactions, and the interest and fees were disclosed in proximity to the transactions. Comment 7(b)(2)–1 would reflect the new requirement. Sample G–18(A) would illustrate the proposal.

7(b)(3) Credits

Creditors are required to disclose any credits to the account during the billing cycle. Creditors typically disclose credits among other transactions. The Board proposes no substantive changes to the disclosure requirements for credits. However, consistent with the format requirements proposed in § 226.7(b)(2), the proposal would require credits and payments to be grouped together. Consumers who participated in testing conducted for the Board consistently identified credits as statement information they review each month, and favored a separation of credits and payments among the transactions.

Current comment 7(c)–2, which permits creditors to commingle credits related to extensions of credit and credits related to non-credit accounts, such as a deposit account, is not proposed under new § 226.7(b)(3). The Board solicits comment on the need for alternatives to the proposed format requirements to segregate transactions and credit, such as when a depository institution provides on a single periodic statement account activity for a consumer's checking account and an overdraft line of credit. Sample G–18(A) would illustrate the proposal. Comment 7(b)(3)–3, as renumbered, is revised for clarity.

7(b)(4) Periodic Rates

Periodic rates. TILA Section 127(b)(5) and current § 226.7(d) require creditors to disclose all periodic rates that may be used to compute the finance charge, and an APR that corresponds to the periodic rate multiplied by the number of periods in the years. 15 U.S.C. 1637(b)(5); § 226.14(b). The Board is proposing to eliminate, for open-end (not home-secured) plans, the requirement to disclose periodic rates on periodic statements.

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

The Board has considered each of these factors carefully, and based on that review, believes that proposing the exemption is appropriate. In consumer testing conducted for the Board, consumers indicated they do not use periodic rates to verify interest charges. Consistent with the Board's proposal to not allow periodic rates to be disclosed in the tabular summary on or with credit card applications and disclosures, the Board believes that requiring periodic rates to be disclosed on periodic statements may distract from more important information on the statement, and contribute to information overload. The proposal to eliminate periodic rates from the periodic statement therefore has the potential to better inform consumers and further the goals of consumer protection and the

informed use of credit for open-end (not home-secured) credit. The Board welcomes comment on this matter.

Labeling APRs. Currently creditors are provided with considerable flexibility in identifying the APR that corresponds to the periodic rate. Current comment 7(d)–4 permits labels such as ''corresponding annual percentage rate,'' ''nominal annual percentage rate,'' or ''corresponding nominal annual percentage rate.'' To promote uniformity, creditors offering open-end (not home-secured) plans would be required to label the annual percentage rate disclosed under proposed § 226.7(b)(4) as ''annual percentage rate.'' In combination with the Board's proposed approach to improve consumers' understanding of the effective APR discussed in the section-by-section analysis to proposed § 226.7(b)(7), it is important that the ''interest only'' APR be uniformly distinguishable from the effective APR that includes interest and fees. Forms G–18(G) and G–18(H) illustrate periodic statements that disclose an APR but no periodic rates.

Rates that ''may be used.'' Currently, comment 7(d)–1 interprets the requirement to disclose all periodic rates that ''may be used'' to mean ''whether or not [the rate] is applied during the cycle.'' For example, rates on cash advances must be disclosed on all periodic statements, even for billing periods with no cash advance activity or balances. The regulation and commentary do not clearly state whether promotional rates, such as those offered for using checks accessing credit card accounts, that ''may be used'' should be disclosed under current § 226.7(d) regardless of whether they are imposed during the period. *See* current comment 7(d)–2. The Board is proposing a limited exception to TILA Section 127(b)(5) to effectuate the purposes of TILA to require disclosures that are meaningful and to facilitate compliance.

Under the proposal, creditors would be required to disclose promotional rates only if the rate actually applied during the billing period. *See* proposed § 226.7(b)(4)(ii). For example, a card issuer may impose a 22 percent APR for cash advances but offer for a limited time a 1.99 percent promotional APR for advances obtained through the use of a check accessing a credit card account. Creditors are currently required to disclose, in this example, the 22 percent cash advance APR on periodic statements whether or not the consumer obtains a cash advance during the previous statement period. The proposal would make clear that creditors are not required to disclose the 1.99 percent promotional APR unless the consumer used the check during the statement period. The Board believes that interpreting TILA to require the disclosure of all promotional rates would be operationally burdensome for creditors and result in information overload for consumers. The proposed exception would not apply to HELOCs covered by § 226.5b. The Board requests comment on whether the class of transactions under the proposed exceptions should be tailored more broadly to include HELOCs subject to § 226.5b, and if so, why.

Combining interest and other charges. Currently, creditors must disclose finance charges attributable to periodic rates. These costs are typically interest but may include other costs such as premiums for required credit insurance. If applied to the same balance, creditors may disclose each rate, or a combined rate. *See* current comment 7(d)–3. As discussed earlier, consumer testing for the Board indicates that participants appeared to understand credit costs in terms of ''interest'' and ''fees,'' and the proposal would require disclosures to distinguish between interest and fees. To the extent consumers associate periodic rates with ''interest,'' it seems unhelpful to consumers' understanding to permit creditors to include periodic rate charges other than interest into the dollar cost disclosed. Thus, guidance about combining periodic rates attributable to interest and other finance charges would be retained for HELOCs in proposed comment 7(a)(4)–3, but would be eliminated for open-end (not home-secured) plans.

A new comment 7(b)(4)–7 would be added to provide guidance to creditors when a fee is imposed, remains unpaid, and accrues interest on the unpaid balance. The comment provides that creditors disclosing fees in accordance with the format requirements of § 226.7(b)(6) need not separately disclose which periodic rate applies to the unpaid fee balance.

In technical revisions, the substance of footnotes referenced in § 226.7(d) is moved to the regulation and comment 7(b)(4)–5.

7(b)(5) Balance on which Finance Charge is Computed

Creditors must disclose the amount of the balance to which a periodic rate was applied and an explanation of how the balance was determined. The Board provides model clauses creditors may use to explain common balance computation methods. 15 U.S.C. 1637(b)(7); current § 226.7(e); Model Clauses G–1, Appendix G. The staff commentary to current § 226.7(e) interprets how creditors may comply with TILA in disclosing the ''balance,'' which typically changes in amount throughout the cycle, on periodic statements.

Amount of balance. The proposal does not change how creditors are required to disclose the amount of the balance on which finance charges are computed. It would, however, permit creditors, at their option, not to include an explanation of how the finance charge may be verified for creditors that use a daily balance method. Currently, creditors that use a daily balance method are permitted to disclose an average daily balance for the period, provided they explain that the amount of the finance charge can be verified by multiplying the average daily balance by the number of days in the statement period, and then applying the periodic rate. The Board would retain the rule permitting creditors to disclose an average daily balance but would eliminate the requirement to provide the explanation. Consumer testing conducted for the Board suggests that the explanation may not be used by consumers as an aid to calculate their interest charges. Participants suggested that if they attempted without satisfaction to calculate balances and verify interest charges based on information on the periodic statement, they would call the creditor for assistance.

The section-by-section analysis to § 226.7(b)(6) discusses proposed revisions intended to further consumers' understanding of interest charges, as distinguished from fees. To complement those proposed revisions, the Board would require creditors to refer to the balance as ''balances subject to interest rate,'' for consistency. Forms G–18(G) and 18(H) illustrate this format requirement. For the reasons discussed regarding guidance on disclosing periodic rates, guidance about disclosing balances to which periodic rates attributable to interest and other finance charges are applied would be retained for HELOCs in proposed comment 7(a)(5)–1, but would be eliminated for open-end (not home-secured) plans.

Explanation of balance computation method. The Board is proposing an alternative to providing an explanation of how the balance was determined. Under the proposal, a creditor that uses a balance computation method identified in § 226.5a(g) has two options. The creditor may: (1) Provide an explanation, as the rule currently requires, or (2) identify the name of the balance computation method and

provide a toll-free telephone number where consumers may obtain more information from the creditor about how the balance is computed and resulting finance charges are determined. If the creditor uses a balance computation method that is not identified in § 226.5a(g), the creditor would provide a brief explanation of the method. The Board's proposal is guided by the following factors.

Calculating balances on open-end plans can be complex, and requires an understanding of how creditors allocate payments, assess fees, and record transactions as they occur during the cycle. Currently, neither TILA nor Regulation Z requires creditors to disclose on periodic statements all the information necessary to compute a balance, and requiring that level of detail appears not to be warranted. Although the Board's model clauses are intended to assist creditors in explaining common methods, consumers continue to find these explanations lengthy and complex. As stated earlier, consumer testing indicates that consumers call the creditor for assistance when they attempt without satisfaction to calculate balances and verify interest charges.

The Board believes that providing the name of the balance computation method (or a brief explanation, if the name is not identified in § 226.5a(g)), along with a reference to where additional information may be obtained provides essential information in a simplified way, and in a manner consistent with how consumers obtain further balance computation information. The proposal is consistent with the views of some commenters who responded to the December 2004 ANPR and suggested that the Board simplify some of the more complex disclosures not used by most consumers. Current comment 7(e)–6, which refers creditors to guidance in § 226.6 about disclosing balance computation methods would be deleted as unnecessary.

7(b)(6) Charges Imposed

As discussed in the section-by-section analysis to § 226.6, the Board proposes to reform cost disclosure rules for open-end (not home-secured) plans, in part, to ensure that all charges assessed as part of an open-end (not home-secured) plan are disclosed before they are imposed and to simplify the rules for creditors to identify such charges. Consistent with the proposed revisions at account opening, the proposed revisions to cost disclosures on periodic statements are intended to simplify how creditors identify the dollar amount of charges imposed during the statement period.

Consumer testing conducted for the Board indicates that most participants reviewing mock periodic statements could not correctly explain the term ''finance charge.'' The proposed revisions are intended to conform labels of charges more closely to common understanding, ''interest'' and ''fees.'' Format requirements would also help ensure that consumers notice charges imposed during the statement period.

Two alternatives are proposed: One addresses interest and fees in the context of an effective APR disclosure, the second assumes no effective APR is disclosed.

Charges imposed as part of the plan. Proposed § 226.7(b)(6) would require creditors to disclose the amount of any charge imposed as part of an open-end (not home-secured) plan, as stated in § 226.6(b)(1). Guidance on which charges are deemed to be imposed as part of the plan is in proposed § 226.6(b)(1) and accompanying commentary. Although coverage of charges would be broader under the proposed standard of ''charges imposed as part of the plan'' than under current standards for finance charges and other charges, the Board understands that creditors have been disclosing on the statement all charges debited to the account regardless of whether they are now defined as ''finance charges,'' ''other charges,'' or charges that do not fall into either category. Accordingly, the Board understands that creditors already disclose all charges that would be considered ''imposed as part of the plan,'' and it does not expect this proposed change to affect significantly the disclosure of charges on the periodic statement.

Interest charges and fees. For creditors complying with the new proposed cost disclosure requirements, the current requirement in § 226.7(f) to label finance charges as such would be eliminated. *See* current § 226.7(f). Testing of this term with consumers found that it did not help them to understand charges. Instead, charges imposed as part of an open-end (not home-secured) plan would be disclosed under the labels of ''interest charges'' and ''fees.'' Consumer testing supplies evidence that consumers may generally understand interest as the cost of borrowing money over time and characterize other costs—regardless of their characterization under TILA and Regulation Z—as fees (other than interest). The Board's proposal is consistent with this evidence.

TILA Section 127(b)(4) requires creditors to disclose on periodic statements the amount of any finance charge added to the account during the period, itemized to show amounts due to the application of periodic rates and the amount imposed as a fixed or minimum charge. 15 U.S.C. 1637(b)(4). This requirement is currently implemented in § 226.7(f), and creditors are given considerable flexibility regarding totaling or subtotaling finance charges attributable to periodic rates and other fees. *See* current § 226.7(f) and comments 7(f)–1, –2, and –3. To improve uniformity and promote the informed use of credit, creditors would be required under proposed § 226.7(b)(6)(ii) to itemize finance charges attributable to interest, by type of transaction labeled as such, and would be required to disclose, for the statement period, a total interest charge, labeled as such. Although creditors are not currently required to itemize interest charges by transaction type, creditors often do so. For example, creditors may disclose the dollar interest costs associated with cash advance and purchase balances. Based on consumer testing, the Board believes consumers' ability to make informed decisions about the future use of their open-end plans—primarily credit card accounts—may be promoted by a simply-labeled breakdown of the current interest cost of carrying a purchase or cash advance balance. The breakdown would enable consumers to better understand the cost for using each type of transaction, and uniformity among periodic statements would allow consumers to compare one account with other open-end plans the consumer may have. Under the proposal, finance charges attributable to periodic rates other than interest charges, such as required credit insurance premiums, would be identified as fees and would no longer be permitted to be combined with interest costs. *See* proposed comment 7(b)(4)–3.

Current § 226.7(h) requires the disclosure of ''other charges'' parallel to the requirement in TILA Section 127(a)(5) and current § 226.6(b) to disclose such charges at account opening. 15 U.S.C. 1637(a)(5). Consistent with current rules to disclose ''other charges,'' revised § 226.7(b)(6)(iii) would require that other costs be identified consistent with the feature or type, and itemized. The proposal differs from current requirements in the following respect: fees would be required to be grouped together and a total of all fees for the statement period would be required. Currently, creditors typically include fees among other transactions identified

under § 226.7(b). In consumer testing, consumers were able to more accurately and easily determine the total cost of non-interest charges when fees were grouped together and a total of fees was given than when fees were scattered among the transactions without a total. (Section 226.7(b)(6)(iii) also would require that certain fees that are included in the computation of the effective APR pursuant to § 226.14 must be labeled either as ''transaction fees'' or ''fixed fees.'' This proposed requirement is discussed in further detail in the section-by-section analysis to § 226.7(b)(7).)

To highlight the overall cost of the credit account to consumers, creditors would disclose the total amount of interest charges and fees for the statement period and calendar year to date. Participants in consumer testing conducted for the Board noticed the year-to-date cost figures and indicated they would find the numbers helpful in making future financial decisions. The Board believes that disclosure of year-to-date totals would better inform consumers about the cumulative cost of their credit plans over a significant period of time. Comment 7(b)(6)–3 would provide guidance on how creditors may disclose the year to date totals at the end of a calendar year.

Proposed § 226.7(b)(6)(iv) in Alternative 1 contains requirements for calculating and disclosing totals for interest and certain fees in connection with the disclosure of the effective APR pursuant to § 226.7(b)(7). These requirements are in addition to the total interest and fee disclosures disclosed in proximity to transactions, and are discussed in further detail in the section-by-section analysis to § 226.7(b)(7).

Format requirements. In consumer testing, consumers consistently reviewed transactions identified on their periodic statements and noticed fees and interest charges, itemized and totaled, when they were grouped together with transactions. Some creditors also disclose these costs in account summaries or in a progression of figures associated with disclosing finance charges attributable to periodic rates. The proposal would not affect creditors' flexibility to provide this information in such summaries. *See* Forms G–18(G) and G–18(H), which illustrate, but do not require, such summaries. However, the Board believes TILA's purpose to promote the informed use of credit would be furthered significantly if consumers are uniformly provided, in a location they routinely review, basic cost information—interest and fees—that enables consumers to compare costs among their open-end plans. The Board proposes that charges required to be disclosed under § 226.7(b)(6)(i) would be grouped together with the transactions identified under § 226.7(b)(2), substantially similar to Sample G–18(A) in Appendix G. Proposed § 226.7(b)(6)(iii) would require non-interest fees to be itemized and grouped together, and a total of fees would be disclosed for the statement period and calendar year to date. Interest charges would be itemized by type of transaction, grouped together, and a total of interest charges would be disclosed for the statement period and year to date. Sample G–18(A) in Appendix G illustrates the proposal.

7(b)(7) Effective Annual Percentage Rate

TILA Section 127(b)(6) requires disclosure of an APR calculated as the quotient of the total finance charge for the period to which the charge relates divided by the amount on which the finance charge is based, multiplied by the number of periods in the year. *15* U.S.C. 1637(b)(6). This rate has come to be known as the ''historical APR'' or ''effective APR.'' (This APR will be referred to as the ''effective APR'' in this section-by-section analysis, and in the regulation and accompanying commentary.) Section 127(b)(6) exempts a creditor from disclosing an effective APR when the total finance charge does not exceed 50 cents for a monthly or longer billing cycle, or the *pro rata* share of 50 cents for a shorter cycle. In such a case, TILA Section 127(b)(5) requires the creditor to disclose only the periodic rate and the annualized rate that corresponds to the periodic rate. *15* U.S.C. 1637(b)(5). When the finance charge exceeds 50 cents, the act requires creditors to disclose the periodic rate but not the corresponding APR. Since 1970, however, Regulation Z has required disclosure of the corresponding APR in all cases. *See* current § 226.7(d). Current § 226.7(g) implements TILA Section 127(b)(6)'s requirement to disclose an effective APR.

The effective APR and corresponding APR for any given plan feature are the same when the finance charge in a period arises only from application of the periodic rate to the applicable balance (the balance calculated according to the creditor's chosen method, such as average daily balance method). When the two APRs are the same, Regulation Z requires that the APR be stated just once. The effective and corresponding APRs diverge when the finance charge in a period arises (at least in part) from a charge not determined by application of a periodic rate and the total finance charge exceeds 50 cents. When they diverge, Regulation Z requires that both be stated.

The following example illustrates the relationship between the effective APR and the corresponding APR in a simple case. A credit cardholder with no balance in the previous cycle takes a cash advance of $100 on the first day of the cycle. A cash advance fee of 3 percent applies (a finance charge of $3), as does a periodic rate of 1½ percent per month on the average daily balance of $100 (a finance charge of $1.50). No other transactions, and no payments, occur during the cycle, which is 30 days. The corresponding APR is 18 percent (1½ percent times 12). To determine the effective APR, first the total finance charge of $4.50 is divided by the balance of $100. This quotient, 4½ percent, is the rate of the total finance charge on a monthly basis. The monthly rate is annualized, or multiplied by 12, to yield an effective APR of 54 percent. Under Regulation Z, the creditor would disclose on the periodic statement both the corresponding APR of 18 percent and the effective APR of 54 percent.

The controversy over the effective APR. The statutory requirement of an effective APR is intended to provide the consumer with an annual rate that reflects the total finance charge, including both the finance charge due to application of a periodic rate (interest) and finance charges that take the form of fees. This rate, like other APRs required by TILA, presumably was intended to provide consumers information about the cost of credit that would help consumers compare credit costs and make informed credit decisions and, more broadly, strengthen competition in the market for consumer credit. 15 U.S.C. 1601(a). There is, however, a longstanding controversy about the extent to which the requirement to disclose an effective APR advances TILA's purposes or, as some argue, undermines them. This controversy has been reflected in such forums as discussions by the Board's Consumer Advisory Council and comments on the ANPR. Q23–Q25. The following discussion seeks to place the controversy over the effective APR in the context of certain objective characteristics of the disclosure.

The effective APR is essentially retrospective, or ''historical.'' An effective APR on a particular periodic statement represents the cost of transactions in which the consumer engaged during the cycle to which that statement pertains. It is not likely, however, that the effective APR for a transaction in a given cycle will predict accurately the cost of a transaction in a

future cycle. If any one of several factors is different in the future cycle than it was in the past cycle, such as the balance at the beginning of the cycle or the amount and timing of each transaction and payment during the cycle, then the effective APRs in the two cycles will be different, too.[13] In short, the effective APR is by nature retrospective and idiosyncratic and, therefore, provides limited information about the cost of future transactions.

Consumer groups argue that the information the rate provides about the cost of future transactions, even if limited, is meaningful. The effective APR for a specific transaction or set of transactions in a given cycle may provide the consumer a rough indication that the cost of repeating such transactions is high in some sense or, at least, higher than the corresponding APR alone conveys. Industry commenters respond that the cost of a transaction is not usually as high as the effective APR makes it appear, and that this tendency of the rate to exaggerate the cost makes this APR misleading. Commenters generally agree that the effective APR can be ''shocking,'' but they disagree as to whether it conveys meaningful information.

One reason that effective APRs appear high is the assumption built into the disclosure that the borrower paid the balance at the end of the cycle. This assumption tends to make the APR higher, and more volatile, than if a longer repayment period were used. In the example given above, the effective APR on cash advances, 54 percent, is three times the corresponding APR, 18 percent. Moreover, the effective APR would have been 18 percent (the same as the corresponding APR) in the previous cycle if no cash advances had been taken then, and it will fall back to 18 percent in the next cycle if no cash advance is taken then (assuming the rate is fixed). Use of a longer repayment period would, other things being equal, yield a lower, and less volatile, effective APR. A lower APR based on available information about the consumer's expected time to repay might seem more realistic. But its disclosure would require making assumptions about activity in future cycles, such as the timing and amount of future transactions and payments—or it would require assuming that there is to be no activity on the account until the balance is repaid. Such assumptions would often appear arbitrary and unrealistic. Accordingly, Regulation Z has always required that the effective APR be calculated on the premise that payment was made at the end of the cycle. The likelihood that the premise is often wrong accounts, at least in part, for the controversy as to whether the effective APR can supply meaningful information about credit costs.

Consumer advocates and industry representatives also disagree as to whether the effective APR promotes credit shopping. The dependence of the effective APR on the particular activity in a given cycle means that any given effective APR in any given cycle is not typically a practical shopping tool. Comparing two particular effective APRs for any two cycles on two different accounts is not usually a reliable basis to determine which account costs the consumer more. Moreover, an effective APR for a given month on an existing account cannot be compared reliably to the corresponding APR advertised on a different account, which by definition does not reflect any finance charges imposed in the form of fees. There may be cases in which repeated disclosure of effective APRs in consecutive cycles, as opposed to one effective APR for one cycle, would facilitate shopping. For example, if an account had a periodic rate and a corresponding APR of zero, the effective APRs disclosed on the account might provide the most practical basis for assessing the cost of the account in relationship to other advertised accounts. This example, though, does not appear to be common in today's market.

Although the effective APR is not commonly usable as a shopping tool in itself, consumer group commenters argue that the effective APR promotes credit shopping by encouraging consumers to seek out other sources of credit, especially when the rate reaches levels that ''shock'' consumers. Industry commenters respond, however, that the tendency of the effective APR to exaggerate the cost of credit may lead consumers to make invalid comparisons. They say that disclosure of a high effective APR in a cycle may cause a consumer to discontinue using the account in favor of another account that appears less expensive based on its corresponding APR but is in fact more expensive, because of fixed or minimum charges or other factors.

Supporters of the effective APR also argue that high effective APRs typical for cash advances and balance transfers benefit consumers by discouraging them from engaging in these transactions. Industry commenters respond that consumers do not necessarily benefit if they refrain categorically from a particular kind of credit transaction; depending on the alternatives consumers choose, they may be worse-off rather than better-off. Some of these commenters also argue that discouraging particular kinds of credit transactions is not a valid objective of Regulation Z.

Industry and community group commenters find some common ground in their observations that consumers do not understand the effective APR well. Industry commenters argue from their experience with their customers that consumers do not understand how this APR differs from the corresponding APR, why it is ''so high,'' or which fees it reflects. Creditor commenters say that when their customers call them and express alarm or confusion over the effective APR, the creditors find it difficult, if not impossible, to make the caller understand the disclosure. Nor, they argue, does a consumer find the disclosure any more useful than disclosure of interest and fees in dollars and cents, even if the consumer understands the disclosure. Consumer groups concede that, as implemented today, the effective APR is difficult for consumers to understand, and they support efforts to make it more understandable, such as improved presentation on the periodic statement. Industry commenters expressed doubt that such efforts would be worthwhile.

Industry commenters also claim the effective APR imposes direct costs on creditors that consumers pay indirectly. They represent that the effective APR raises compliance costs when they introduce new services, including legal analysis of Regulation Z to determine whether the fee for the new service must be included in the effective APR and software programming if it is included; they are also concerned about litigation risks. Also, responding to telephone inquiries from confused customers and accommodating them (e.g., with fee waivers or rebates) increases operational costs. Costs associated with adverse consumer reactions to the effective APR may influence creditors to take steps to minimize the frequency with which

[13] An example demonstrates how the effective APR depends critically on the timing of transactions during two different cycles. Assume for the sake of simplicity that the transaction amount and beginning balance remain the same in both cycles. In the example discussed above, a cash advance of $100 on the first day of a 30-day cycle yielded an effective APR of 54 percent, three times the corresponding APR of 18 percent. If in a later cycle the consumer were to take the cash advance on the last day of the 30-day cycle, the effective APR would be 36.6 percent, about twice the corresponding APR. (The finance charge produced by the periodic rate would be $.05 (1½ percent times the average daily balance of $3.33). The total finance charge of $3.05 divided by the transaction amount of $100 yields a quotient of 3.05 percent, which is multiplied by 12 to yield an effective APR of 36.6 percent.)

they must disclose it. One such step would be to price credit mostly through a periodic rate rather than fees. Although this effect is difficult to measure, a trade association commenter concedes a policy argument for retaining the effective APR as a hedge against creditors shifting their pricing from periodic rates to transaction-triggered fees and charges.

Like most other industry commenters, however, this same commenter concludes that the effective APR should be eliminated because, for the reasons discussed above, its costs outweigh its benefits. Some industry commenters support replacing the effective APR with enhanced fee disclosures (for example, grouping fees on the statement or summing them for each period or for the year), but many do not. Consumer groups urge the Board not only to retain the effective APR, but to expand it in two respects: (1) Include in the rate all charges, including charges not currently defined as finance charges in Regulation Z; and (2) require creditors to disclose a ''typical effective APR'' (an average of effective APRs) on solicitations and account-opening disclosures.[14]

Consumer research conducted for the Board. It is difficult to measure directly how the effective APR ultimately affects consumers, creditors, and the credit market generally. It is feasible, however, at a minimum, to assess to some degree consumers' awareness and understanding of the disclosure. Such assessments may support inferences about the disclosure's effectiveness.

Accordingly, the Board undertook research, through a consultant, to shed light on consumer awareness and understanding of the effective APR; and on whether changes to the presentation of the disclosure could increase awareness and understanding. A Board consultant used a qualitative testing method, one-on-one cognitive interviews with consumers. Consumers were provided mock disclosures of periodic statements that included effective APRs and asked questions about the disclosure designed to elicit their understanding of the rate. In the first round the statements were copied from examples in the market. For subsequent testing rounds, however, statements were modified in language and design to better convey how the effective APR differs from the corresponding APR. Several different approaches and many variations on those approaches were tested.

In most of the rounds, a minority of participants correctly explained that the effective APR for cash advances in the last cycle was higher than the corresponding APR for cash advances because a cash advance fee had been imposed. A smaller minority correctly explained that the effective APR for purchases was the same as the corresponding APR for purchases because no transaction fee had been imposed on purchases. A majority offered incorrect explanations or did not offer any explanation. Results changed at the final testing site, however, when a majority of participants evidenced an understanding that the effective APR for cash advances would be elevated for the statement period when a cash advance fee was imposed during that period, that the effective APR would not be as elevated for periods where a cash advance balance remained outstanding but no fee had been imposed, and that the effective APR for purchases was the same as the corresponding APR for purchases because no transaction fee had been imposed on purchases.

The form in the final round labeled the rate ''Fee-Inclusive APR'' and placed it in a table separate from the corresponding APR. The ''Fee-Inclusive APR'' table included the amount of interest and the amount of transaction fees. An adjacent sentence stated that the ''Fee-Inclusive APR'' represented the cost of transaction fees as well as interest. Similar approaches had been tried in some of the earlier rounds, except that the effective APR had been labeled ''Effective APR.''

The Board's two alternative proposals. The considerations and data discussed above lead the Board to propose two alternative approaches for disclosing the effective APR: The first approach would try to improve consumer understanding of this rate and reduce creditor uncertainty about its computation. The second approach would eliminate the requirement to disclose the effective APR. The evidence of consumer understanding of the effective APR supplied by the qualitative research conducted for the Board is mixed, but it suggests that it may be possible to increase current levels of understanding by modifying the presentation of the rate on the periodic statement. The Board's experience with Regulation Z also suggests that it may be possible to reduce burdens by simplifying computation of the effective APR.

The Board plans to conduct further research into consumer understanding of the effective APR after the comment period has ended. The Board will evaluate this additional research with the research conducted to date, and with other information, including comments received on this proposal, and determine whether the effective APR should be retained with modifications as proposed, eliminated, or addressed in some other way.

1. *First alternative proposal.* Under the first alternative, the Board proposes to impose uniform terminology and formatting on disclosure of the effective APR and the fees included in its computation. *See* proposed §§ 226.7(b)(7)(i), 226.7(b)(6)(iv). This proposal is based largely on a form developed through several rounds of one-on-one interviews with consumers. The Board also proposes under this alternative to revise § 226.14, which governs computation of the effective APR, in an effort to increase certainty about which fees the rate must include. *See* proposed § 226.14(d). *See* section-by-section analysis to § 226.7(a)(7) regarding how the proposal affects HELOCs subject to § 226.5b.

Under proposed § 226.7(b)(7)(i) and Sample Form G–18(B), creditors would label the effective APR ''Fee-Inclusive APR'' and indicate that the Fee-inclusive APRs are the ''APRs that you paid this period when transactions or fixed fees are taken into account as well as interest.'' Creditors would disclose an effective APR for each feature, such as purchases and cash advances, in a tabular format. A composite effective APR for two or more features would no longer be permitted, as it is more difficult to explain to consumers. The effective APR(s) would appear in a table, by feature, with the total of interest, labeled as ''interest charges,'' and the total of the fees included in the effective APR, labeled as ''transaction and fixed charges.'' To facilitate understanding, proposed § 226.7(b)(6)(iii) would require creditors to label the specific fees used to calculate the effective APR either as ''transaction'' or ''fixed'' fees, depending whether the fee relates to a specific transaction; such fees would be disclosed in the list of transactions. If the only finance charges in a billing cycle are interest charges, the corresponding and effective APRs are identical. In those cases, creditors would disclose only the corresponding APRs and would not be required to label fees as ''transaction'' or ''fixed'' fees. These requirements would be illustrated in forms under G–18 in Appendix G, and creditors would be required to use the model or a substantially similar presentation.

To facilitate compliance, the proposed regulation would give specific guidance about how to attribute fees to account

[14] Consumer group comments about a ''typical APR'' disclosure are summarized in the section-by-section analysis to § 226.5a.

features. For convenience and uniformity, two kinds of charges, when used to calculate the effective APR, would be grouped under the purchase feature of the account: (1) Charges that relate to specific purchase transactions; and (2) minimum, fixed and other non-interest charges not related to a specific transaction. *See* proposed § 226.7(b)(6)(iv)(B). If there are purchase features other than the standard purchase feature—such as a promotional purchase feature—then the minimum, fixed or other non-interest charges would be grouped with other charges relating to the balance on the standard purchase feature. *See* proposed comment 7(b)(6)–5. In addition, a minimum charge would be disclosed as a fee, rather than as interest, and it would be grouped together with other fees related to standard purchases and used to calculate the effective APR with respect to the standard purchase feature. *See* proposed comment 7(b)(6)–4.

The proposal also seeks to simplify computation of the effective APR, both to increase consumer understanding of the disclosure and facilitate creditor compliance. New § 226.14(e) would provide a specific and exclusive list of finance charges that would be included in calculating the effective APR.[15] This proposed change is discussed further in the section-by-section analysis to § 226.14.

The Board seeks comment on the potential benefits and costs of the first alternative proposal.

2. *Second alternative proposal.* Under the second alternative proposal, for the reasons discussed in the introduction to the discussion of the effective APR, the effective APR would no longer be disclosed. The Board proposes this approach pursuant to its exception and exemption authorities under TILA Section 105. Section 105(a) authorizes the Board to make exceptions to TILA to effectuate the statute's purposes, which include facilitating consumers' ability to compare credit terms and helping consumers avoid the uniformed use of credit. 15 U.S.C. 1601(a), 1604(a). Section 105(f) authorizes the Board to exempt any class of transactions (with an exception not relevant here) from coverage under any part of TILA if the Board determines that coverage under that part does not provide a meaningful benefit to consumers in the form of useful information or protection. 15 U.S.C. 1604(f)(1). Section 105(f) directs the Board to make this determination in light of specific factors. 15 U.S.C. 1604(f)(2). These factors are (1) the amount of the loan and whether the disclosure provides a benefit to consumers who are parties to the transaction involving a loan of such amount; (2) the extent to which the requirement complicates, hinders, or makes more expensive the credit process; (3) the status of the borrower, including any related financial arrangements of the borrower, the financial sophistication of the borrower relative to the type of transaction, and the importance to the borrower of the credit, related supporting property, and coverage under TILA; (4) whether the loan is secured by the principal residence of the borrower; and (5) whether the exemption would undermine the goal of consumer protection.

The Board has considered each of these factors carefully, and based on that review, believes that proposing the exemption is appropriate. Consumer testing suggests that consumers find the current requirement of disclosing an APR that combines rates and fees to be confusing. The proposal would require disclosure of the nominal interest rate and fees in a manner that is more readily understandable and comparable across institutions. It therefore has the potential to better inform consumers and further the goals of consumer protection and the informed use of credit for all types of open-end credit. A potentially competing consideration is the extent to which ''sticker shock'' from the effective APR benefits consumers, even if the disclosure is somewhat arbitrary. A second consideration is whether the effective APR is a hedge against fee-intensive pricing by creditors, and if so, the extent to which it promotes transparency. On balance, however, the Board believes that the benefits of the proposal would outweigh these considerations.

The Board welcomes comment on this matter.

7(b)(9) Address for Notice of Billing Errors

Consumers who allege billing errors must do so in writing. 15 U.S.C. 1666; § 226.13(b). Creditors must provide on or with periodic statements an address for this purpose. *See* current § 226.7(k). Currently, comment 7(k)–2 provides that creditors may also provide a telephone number along with the mailing address as long as the creditor makes clear a telephone call to the creditor will not preserve consumers' billing error rights. The Board would update comment 7(k)–2, renumbered as comment 7(b)(9)–2, to address notification by e-mail or via a Web site. The comment would provide that the address is deemed to be clear and conspicuous if a precautionary instruction is included that telephoning or notifying the creditor by e-mail or 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

Creditors must disclose the closing date of the billing cycle and the account balance outstanding on that date. As a part of its proposal to implement TILA amendments in the Bankruptcy Act regarding late payment and the effect of making minimum payments, the Board is proposing to require creditors to group together, as applicable, disclosures of related information about due dates and payment amounts, including the new balance. This is discussed in the section-by-section analysis to §§ 226.7(b)(11) and (b)(13) below, and illustrated in Forms G–18(G) and G–18(H) in Appendix G.

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

TILA Section 127(b)(12), added by Section 1305(a) of the Bankruptcy Act, requires creditors that charge a late-payment fee to disclose on the periodic statement (1) the payment due date or, if different, the earliest date on which the late-payment fee may be charged, and (2) the amount of the late-payment fee. 15 U.S.C. 1637(b)(12). The October 2005 ANPR solicited comment on the need for additional guidance on the date to be disclosed under the new rule, and whether the Board should consider any format requirements, such as proximity rules, or the publication of model disclosures. Q97–Q99.

Home-equity plans. The Board intends to implement the late payment disclosure for HELOCs as a part of its review of rules affecting home-secured credit. Creditors offering HELOCs may comply with proposed § 226.7(b)(11), at their option.

Charge card issuers. TILA Section 127(b)(12) applies to ''creditors.'' TILA's definition of ''creditor'' includes card issuers and other persons that offer consumer open-end credit. Issuers of ''charge cards'' (which are typically products where outstanding balances cannot be carried over from one billing

[15] Under the statute, the numerator of the quotient used to determine the historical APR is the total finance charge. *See* Section 107(a)(2), 15 U.S.C. 1606(a)(2). The Board has authority to make exceptions and adjustments to this calculation method to serve TILA's purposes and facilitate compliance. *See* Section 105(a), 15 U.S.C. 1604(a). The Board has used this authority before to exclude certain kinds of finance charges from the historical APR. *See* current § 226.14(c)(2), fn. 33.

period to the next and are payable when a periodic statement is received) are ''creditors'' for purposes of specifically enumerated TILA disclosure requirements. 15 U.S.C. 1602(f); § 226.2(a)(17). The new disclosure requirement in TILA Section 127(b)(12) is not among those specifically enumerated.

The Board proposes that charge card issuers are not subject to the late payment disclosure requirements contained in the Bankruptcy Act and to be implemented in new § 226.7(b)(11); the new requirement is not specifically enumerated to apply to charge card issuers. In addition, the Board understands that for some charge card issuers, payments are not considered ''late'' for purposes of imposing a fee until a second statement is received without a payment. The Board believes 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; such a disclosure could cause issuers to change such a practice.

Payment due date. Under the proposal, creditors must disclose the due date for a payment if a late-payment fee could be imposed under the credit agreement. The Board interprets this to be a date that is required by the legal obligation and not to encompass informal ''courtesy periods'' that are not part of the legal obligation and that creditors may observe for a short period after the stated due date before a late-payment fee is imposed, to account for minor delays in payments such as mail delays. Several commenters asked the Board to clarify that in complying with the new late-payment fee disclosure, creditors need not disclose informal ''courtesy periods'' not part of the legal obligation. The Board proposes a comment to this effect. *See* proposed comment 7(b)(11)–1.

Under the statute, creditors must disclose on periodic statements the payment due date or, if different, the earliest date on which the late-payment fee may be charged. Some state laws require that a certain number of days must elapse following a due date before a late-payment fee may be imposed. Under such a state law, the later date arguably would be required to be disclosed on periodic statements. The Board is concerned, however, that such a disclosure would not provide a meaningful benefit to consumers in the form of useful information or protection and would result in consumer confusion. For example, assume a payment is due on March 10 and state law provides that a late payment fee cannot be assessed before March 21. The Board is concerned that highlighting March 20 as the last date to avoid a late payment fee may mislead consumers into thinking that a payment made any time on or before March 20 would have no adverse financial consequences. However, failure to make a payment when due is considered an act of default under most credit contracts, and can trigger higher costs due to interest accrual and perhaps penalty APRs. Particularly in the case of an increased rate that applies to all account balances, the cost of paying late may be significant.

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 appears cumbersome and overly complicated. For those reasons, the Board proposes that creditors must disclose the due date under the terms of the legal obligation, and not a date different than the due date, such as when creditors are required by state or other law to delay for a specified period imposing a late-payment fee when a payment is received after the due date. Consumers' rights under state laws to avoid the imposition of late-payment fees during a specified period following a due date are unaffected by the proposal; that is, in the above example, the creditor would disclose March 10 as the due date for purposes of § 226.7(b)(11), but could not, under state law, assess a late-payment fee before March 21. However, the proposal would provide additional protections to consumers by not requiring a disclosure that a late-payment fee will be imposed only after a specified period after the due date, which, if followed, may result in even more costly consequence of an increased penalty rate.

Cut-off time for making payments. As discussed in the section-by-section analysis to § 226.10(b), the Board proposes to require that creditors disclose any cut-off time for receiving payments closely proximate to each reference of the due date, if the cut-off time is before 5 p.m. on the due date. If cut-off times prior to 5 p.m. differ depending on the method of payment (such as by check or via the Internet), the creditor must state the earliest time without specifying the method to which it applies. This avoids information overload by potentially identifying several cut-off times. Cut-off hours of 5 p.m. or later may continue to be disclosed under the existing rule (including on the reverse side of periodic statements).

Amount of late payment fee; penalty APR. Creditors must disclose the amount of the late-payment fee and the payment due date on periodic statements, under TILA amendments contained in the Bankruptcy Act. The purpose of the new late payment disclosure requirement is to ensure consumers know the consequences of paying late. To fulfill that purpose, the Board proposes that the amount of the late-payment fee must be disclosed in close proximity to the due date. If the amount of the late-payment fee is based on outstanding balances, the proposal would permit the creditor to disclose either the fee that would apply to that specific balance, or the highest fee in the range (e.g., ''up to'' a stated dollar amount).

In addition, the Board believes that an equally (or more) important consequence of paying late is the potential increase in APRs. The extent of rate increases may be substantial, particularly where the increased APR applies to all existing balances, including balances at low promotional rates. Further, the increased APR may apply for a lengthy period of time (although if the creditor imposes a penalty rate, the increase would not become effective for at least 45 days, under the Board's proposal). *See* proposed § 226.9(g). The Board is concerned that if the disclosure refers to only the late payment fee, consumers may overlook the more costly consequence of penalty rates. Therefore, the Board proposes to require creditors to disclose any increased rate that may apply if consumers' payments are received after the due date. If, under the terms of the account agreement, a late payment could result in the loss of a promotional rate, the imposition of a penalty rate, or both, the creditor must disclose the highest rate that could apply, to avoid information overload. Under the proposal, the increased APR would be disclosed closely proximate to the fee and due date, as set forth in proposed § 226.7(b)(13). The Board believes this fulfills Congress's intent to warn consumers about the effects of paying late.

7(b)(12) Minimum Payment

The Bankruptcy Act amends TILA Section 127(b) to require creditors that extend open-end credit to provide a disclosure on the front of each periodic statement in a prominent location about the effects of making only minimum payments. 15 U.S.C. § 1637(b)(11). This disclosure must include: (1) A ''warning'' statement indicating that

making only the minimum payment will increase the interest the consumer pays and the time it takes to repay the consumer's balance; (2) a hypothetical example of how long it would take to pay off a specified balance if only minimum payments are made; and (3) a toll-free telephone number that the consumer may call to obtain an estimate of the time it would take to repay their actual account balance.

Under the Bankruptcy Act, depository institutions may establish and maintain their own toll-free telephone numbers or use a third party. In order to standardize the information provided to consumers through the toll-free telephone numbers, the Bankruptcy Act directs the Board to prepare a ''table'' illustrating the approximate number of months it would take to repay an outstanding balance if the consumer pays only the required minimum monthly payments and if no other advances are made. The Board is directed to create the table by assuming a significant number of different APRs, account balances, and minimum payment amounts; instructional guidance must be provided on how the information contained in the table should be used to respond to consumers' requests. The Board is also required to establish and maintain, for two years, a toll-free telephone number for use by customers of creditors that are depository institutions having assets of $250 million or less. The Federal Trade Commission (FTC) must maintain a toll-free telephone number for creditors that are not depository institutions. 15 U.S.C. 1637(b)(11)(A)–(C).

The Bankruptcy Act provides that consumers who call the toll-free telephone number may be connected to an automated device through which they can obtain repayment information by providing information using a touch-tone telephone or similar device, but consumers who are unable to use the automated device must have the opportunity to be connected to an individual from whom the repayment information may be obtained. Creditors, the Board and the FTC may not use the toll-free telephone number to provide consumers with repayment information other than the repayment information set forth in the ''table'' issued by the Board. 15 U.S.C. 1637(b)(11)(F)–(H).

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

For ease of reference, the Board will refer to the above disclosures about the effects of making only the minimum payment as ''the minimum payment disclosures.''

Proposal to limit the minimum payment disclosure requirements to credit card accounts. Under the Bankruptcy Act, the minimum payment disclosures apply to all open-end accounts (such as credit card accounts, HELOCs, and general-purpose credit lines). The Act expressly states that these disclosure requirements do not apply, however, to any ''charge card'' account, the primary aspect of which is to require payment of charges in full each month.

In the October 2005 ANPR, the Board requested comment on whether certain open-end accounts should be exempted from some or all of the minimum payment disclosure requirements. Q59. Many industry commenters urged the Board to limit the minimum payment disclosure requirements to credit card accounts because they believed that Congress intended the minimum payment disclosures only for such accounts. On the other hand, several consumer groups urged the Board to apply the minimum payment disclosures to all open-end plans because they believed that these disclosures could be useful to consumers for all open-end products, including HELOCs.

The Board is proposing to exempt open-end credit plans other than credit card accounts from the minimum payment disclosure requirements. This exemption would cover, for example, HELOCs (including open-end reverse mortgages), overdraft lines of credit and other general-purpose personal lines of credit.

The debate in Congress about the minimum payment disclosures focused on credit card accounts. For example, Senator Grassley, a primary sponsor of the Bankruptcy Act, in discussing the minimum payment disclosures, stated:

> [The Bankruptcy Act] contains significant new disclosures for consumers, mandating that credit card companies provide key information about how much [consumers] owe and how long it will take to pay off their credit card debts by only making the minimum payment. That is very important consumer education for every one of us.
>
> Consumers will also be given a toll-free number to call where they can get information about how long it will take to pay off their own credit card balances if they only pay the minimum payment. This will educate consumers and improve consumers' understanding of what their financial situation is.

Remarks of Senator Grassley (2005), *Congressional Record* (daily edition), vol. 151, March 1, p. S 1856.

Thus, it appears the principal concern of Congress was that consumers may not be fully aware of the length of time it takes to pay off their credit card accounts if only minimum monthly payments are made. The concern expressed by Congress for credit card accounts does not necessarily apply to other types of open-end credit accounts. These other types of open-end accounts are discussed below.

1. *HELOCs.* Many industry commenters requested that HELOCs be exempted from the minimum payment disclosure requirements. These commenters indicated that most HELOCs have a fixed repayment period specified in the account agreement, so that consumers know from the account agreement the length of the draw period and the length of the repayment period. Nonetheless, several consumer groups urged that HELOCs should not be exempted entirely. They advocated a warning to HELOC consumers that they can pay down the balance faster and save on finance charges if they pay more than the minimum monthly payment required.

Based on the comments received in response to the October 2005 ANPR as well as other information, the Board understands that most HELOCs have a fixed repayment period. Thus, for those HELOCs, consumers could learn from the current disclosures the length of the draw period and the repayment period. *See* current § 226.6(e)(2). The minimum payment disclosures would not appear to provide useful information to consumers that is not already disclosed to them. The cost of providing this information a second time, including the costs to reprogram periodic statement systems and to establish and maintain a toll-free telephone number, may not be justified by the limited benefit to consumers. Thus, the Board proposes to exempt HELOCs from the minimum payment disclosures requirements at this time, but will consider changes to HELOC disclosures as part of the HELOC review.

2. *Open-end reverse mortgages.* An open-end reverse mortgage is a HELOC that is designed to allow consumers to convert the equity in their homes into cash. During an extended ''draw'' period consumers continue living in their homes, can draw on the line of credit to the extent they repay any outstanding balance. The principal and interest become due when the homeowner

moves, sells the home, or dies. Consumers with open-end reverse mortgages would not likely benefit from the minimum payment disclosures, because these disclosures would be based on assumptions about events difficult to predict, such as when the homeowner will move, sell the house or die.

3. *Overdraft lines of credit and other general-purpose personal lines of credit.* In response to the October 2005 ANPR, several industry commenters suggested that the Board exempt overdraft lines of credit from the minimum payment disclosure requirements. For example, one industry trade group indicated that overdraft lines of credit have relatively low credit limits and are not intended as a long term credit option. The commenter also indicated that features and terms of overdraft lines of credit vary widely from institution to institution. Some banks require that an overdraft line of credit be paid in full within a short period after the consumer receives notice that the overdraft line has been used. Other banks permit longer periods of time to repay, but those periods and the size of any minimum payment vary significantly from bank to bank. This commenter indicated that the cost to small institutions of providing the minimum payment disclosures might cause them to stop providing overdraft products.

The Board is proposing to exempt overdraft lines of credit and other general-purpose credit lines from the minimum payment disclosure requirements for several reasons. First, these lines of credit are not in wide use. The 2004 Survey of Consumer Finances data indicates that few families—1.6 percent—had a balance on lines of credit other than a home-equity line or credit card at the time of the interview. (In terms of comparison, 74.9 percent of families had a credit card, and 58 percent of these families had a credit card balance at the time of the interview.) [16] Second, these lines of credit typically are neither promoted, nor used, as long-term credit options of the kind for which the minimum payment disclosures are intended. Third, the Board is concerned that the operational costs of requiring creditors to comply with the minimum payment disclosure requirements with respect to overdraft lines of credit and other general-purpose lines of credit may cause some institutions to no longer provide these products as accommodations to consumers, to the detriment of consumers who currently use these products. For these reasons, the Board is proposing to exempt overdraft lines of credit and other general-purpose credit lines from the minimum payment disclosure requirements.

7(b)(12)(i) General Disclosure Requirements

Under the Bankruptcy Act, the hypothetical example that creditors must disclose on periodic statements varies depending on the creditor's minimum payment requirement. Generally, creditors that require minimum payments equal to 4 percent or less of the account balance must disclose on each statement that it takes 88 months to pay off a $1,000 balance at an interest rate of 17 percent if the consumer makes a ''typical'' 2 percent minimum monthly payment. Creditors that require minimum payments exceeding 4 percent of the account balance must disclose that it takes 24 months to pay off a balance of $300 at an interest rate of 17 percent if the consumer makes a ''typical'' 5 percent minimum monthly payment (but a creditor may opt instead to disclose the statutory example for 2 percent minimum payments). The 5 percent minimum payment example must be disclosed by creditors for which the FTC has the authority under the Truth in Lending Act to enforce the act and this regulation. Creditors also have the option to substitute an example based on an APR that is greater than 17 percent. The Bankruptcy Act authorizes the Board to periodically adjust the APR used in the hypothetical example and to recalculate the repayment period accordingly. 15 U.S.C. 1637(b)(11)(A)–(E).

Wording of the examples. The Bankruptcy Act sets forth specific language for issuers to use in disclosing the applicable hypothetical example on the periodic statement. The Board proposes to amend the statutory language to facilitate consumers' use and understanding of the disclosures, pursuant to its authority under TILA Section 105(a) to make adjustments that are necessary to effectuate the purposes of TILA. 15 U.S.C. 1604(a). First, the Board proposes to require that issuers disclose the payoff periods in the hypothetical examples in years, rounding fractional years to the nearest whole year, rather than in months as provided in the statute. Thus, issuers would disclose that it would take over 7 years to pay off the $1,000 hypothetical balance, and about 2 years for the $300 hypothetical balance. The Board believes that disclosing the payoff period in years allows consumers to better comprehend the repayment period without having to convert it themselves from months to years. Participants in the consumer testing conducted for the Board reviewed disclosures with the estimated payoff period in years, and they indicated they understood the length of time it would take to repay the balance if only minimum payments were made. Consumers may also appreciate more that the repayment periods are merely estimates.

Second, the statute requires that issuers disclose in the examples the minimum payment formula used to calculate the payoff period. In the $1,000 example above, the statute would require issuers to indicate that a ''typical'' 2 percent minimum monthly payment was used to calculate the repayment period. In the $300 example above, the statute would require issuers to indicate that a 5 percent minimum monthly payment was used to calculate the repayment period. The Board proposes to eliminate the specific minimum payment formulas from the examples. The references to the 2 percent minimum payment in the $1,000 example, and a 5 percent minimum payment in the $300 example, are incomplete descriptions of the minimum payment requirement. In the $1,000 example, the minimum payment formula used to calculate the repayment period is the greater of 2 percent of the outstanding balance or $20. In the $300 example, the minimum payment formula used to calculate the repayment period is the greater of 5 percent of the outstanding balance or $15. In fact, in each example, the hypothetical consumer always pays the absolute minimum ($20 or $15, depending on the example).

The Board believes that including the entire minimum payment formula, including the floor amount, in the disclosure could make the example too complicated and have the unintended consequence of misleading a consumer who reads the language set out in the statute into concluding that the payment is smaller than it actually is. While the disclosures could be revised to indicate that the repayment period in the $1,000 balance was calculated based on a $20 payment, and repayment period in the $300 balance was calculated based on a $15 payment, the Board believes that revising the statutory language in this way changes the disclosure to focus consumers on the effects of making a fixed payment each month as opposed to the effects of making minimum payments. Moreover, disclosing the

[16] Brian Bucks, et al., *Recent Changes in U.S. Family Finances: Evidence from the 2001 and 2004 Survey of Consumer Finances,* Federal Reserve Bulletin (March 2006).

minimum payment formula is not necessary for consumers to understand the essential point of the examples—that it can take a significant amount of time to pay off a balance if only minimum payments are made. In testing conducted for the Board, the $1,000 balance example was tested without including the 2 percent minimum payment disclosure required by the statute. Consumers appeared to understand the purpose of the disclosure—that it would take a significant amount of time to repay a $1,000 balance if only minimum payments were made. For these reasons, the Board is proposing to require the hypothetical examples without a minimum payment formula.

The proposed regulatory language for the examples is set forth in new § 226.7(b)(12)(i). In addition to the revisions mentioned above, the Board also proposes several stylistic revisions to the statutory language, based on plain language principles, in an attempt to make the language of the examples more understandable to consumers.

Adjustments to the APR used in the examples. The Bankruptcy Act specifically authorizes the Board to periodically adjust the APR used in the hypothetical example and to recalculate the repayment period accordingly. In the October 2005 ANPR, the Board requested comment on whether the Board should adjust the APR used in the hypothetical examples, because current APRs on credit cards may be less than the 17 percent APR in the examples. Q62. Commenters were split on whether the Board should adjust the APR in the examples.

The Board is not proposing to adjust the APR used in the hypothetical examples. The Board recognizes that the examples are intended to provide consumers with an indication that it can take a long time to pay off a balance if only minimum payments are made. Revising the APR used in the example to reflect the average APR paid by consumers would not significantly improve the disclosure, because for many consumers an average APR would not be the APR that applies to the consumer's account. Moreover, consumers will be able to obtain a more tailored disclosure of a repayment period based on the APR applicable to their accounts by calling the toll-free telephone number provided as part of the minimum payment disclosure.

7(b)(12)(ii) Estimate of Actual Repayment Period

Under the Bankruptcy Act, a creditor may use a toll-free telephone number to provide consumers with the actual number of months that it will take consumers to repay their outstanding balance instead of providing an estimate based on the Board-created table. Creditors that choose to give the actual number via the telephone number need not include a hypothetical example on their periodic statements. Instead, they must disclose on periodic statements a warning statement that making the minimum payment will increase the interest the consumer pays and the time it takes to repay the consumer's balance and a toll-free telephone number that consumers may use to obtain the actual repayment disclosure. 15 U.S.C. 1637(b)(11)(I) and (K). The Board proposes to implement this statutory provision in new § 226.7(b)(12)(ii)(A).

In addition, the Board proposes to provide that if card issuers provide the actual repayment disclosure on the periodic statement, they need not disclose the warning, the hypothetical example and a toll-free telephone number on the periodic statement, nor need they maintain a toll-free telephone number to provide the actual repayment disclosure. *See* proposed § 226.7(b)(12)(ii)(B).

The Board strongly encourages card issuers to provide the actual repayment disclosure on periodic statements, and solicits comments on whether the Board can take other steps to provide incentives to card issuers to use this approach. A recent study conducted by the GAO on minimum payments suggests that certain cardholders would find the actual repayment disclosure more helpful than the generic disclosures required by the Bankruptcy Act. For this study, the GAO interviewed 112 consumers and collected data on whether these consumers preferred to receive on the periodic statement (1) customized minimum payment disclosures that are based on the consumers' actual account terms (such as the actual repayment disclosure), (2) generic disclosures such as the warning statement and the hypothetical example required by the Bankruptcy Act; or (3) no disclosure.[17] According to the GAO's report, in the interviews with the 112 consumers, most consumers who typically carry credit card balances (revolvers) found customized disclosures very useful and would prefer to receive them in their billing statements. Specifically, 57 percent of the revolvers preferred the customized disclosures, 30 percent preferred the generic disclosures, and 14 percent preferred no disclosure. In addition, 68 percent of the revolvers found the customized disclosure extremely useful or very useful, 9 percent found the disclosure moderately useful, and 23 percent found the disclosure slightly useful or not useful. According to the GAO, the consumers that preferred the customized disclosures liked that such disclosures would be specific to their accounts, would change based on their transactions, and would provide more information than generic disclosures. *GAO Report on Minimum Payments*, pages 25, 27.

In addition, the Board believes that disclosing the actual repayment disclosure on the periodic statement would simplify the process for consumers and creditors. Consumers would not need to take the extra step to call the toll-free telephone number to receive the actual repayment disclosure, but instead would have that disclosure each month on their periodic statements. Card issuers (other than issuers that may use the Board or the FTC toll-free telephone number) would not have the operational burden of establishing a toll-free telephone number to receive requests for the actual repayment disclosure and the operational burden of linking the toll-free telephone number to consumer account data in order to calculate the actual repayment disclosure.

The Board proposes this approach pursuant to its exception and exemption authorities under TILA Section 105. Section 105(a) authorizes the Board to make exceptions to TILA to effectuate the statute's purposes, which include facilitating consumers' ability to compare credit terms and helping consumers avoid the uniformed use of credit. 15 U.S.C. 1601(a), 1604(a). Section 105(f) authorizes the Board to exempt any class of transactions (with an exception not relevant here) from coverage under any part of TILA if the Board determines that coverage under that part does not provide a meaningful benefit to consumers in the form of useful information or protection. 15 U.S.C. 1604(f)(1). Section 105(f) directs the Board to make this determination in light of specific factors. 15 U.S.C. 1604(f)(2). These factors are (1) the amount of the loan and whether the disclosure provides a benefit to consumers who are parties to the transaction involving a loan of such amount; (2) the extent to which the requirement complicates, hinders, or

[17] United States Government Accountability Office, *Customized Minimum Payment Disclosures Would Provide More Information to Consumers, but Impact Could Vary,* 06–434 (April 2006). (The GAO indicated that the sample of 112 consumers was not designed to be statistically representative of all cardholders, and thus the results cannot be generalized to the population of all U.S. cardholders.)

makes more expensive the credit process; (3) the status of the borrower, including any related financial arrangements of the borrower, the financial sophistication of the borrower relative to the type of transaction, and the importance to the borrower of the credit, related supporting property, and coverage under TILA; (4) whether the loan is secured by the principal residence of the borrower; and (5) whether the exemption would undermine the goal of consumer protection.

The Board has considered each of these factors carefully, and based on that review, believes it is appropriate to provide an exemption from the requirement to provide on periodic statements a warning about the effects of making minimum payments, a hypothetical example, and a toll-free telephone number consumers may call to obtain repayment periods, and to maintain a toll-free telephone number for responding to consumers' requests, if the creditor instead provides the actual repayment period on the periodic statement. As noted above, consumer testing indicated that actual repayment period information is more useful to consumers than estimated information. Providing that disclosure on a statement rather than over the telephone provides consumers with easier access to the information. Thus, the proposal has the potential to better inform consumers and further the goals of consumer protection and the informed use of credit for credit card accounts. The Board welcomes comment on this matter.

7(b)(12)(iii) Exemptions

As explained above, the Board proposes to require the minimum payment disclosures only for credit card accounts. *See* proposed § 226.7(b)(12)(i). Thus, creditors would not need to provide the minimum payment disclosures for HELOCs (including open-end reverse mortgages), overdraft lines of credit or other general-purpose personal lines of credit. For the same reasons, the Board proposes to exempt these products regardless of whether they can be accessed by a credit card device. Specifically, proposed § 226.7(b)(12)(iii) would exempt the following types of credit card accounts: (1) HELOCs accessible by credit cards that are subject to § 226.5b; (2) overdraft lines of credit tied to asset accounts accessed by check-guarantee cards or by debit cards; and (3) lines of credit accessed by check-guarantee cards or by debit cards that can be used only at automated teller machines. *See* proposed § 226.7(b)(12)(iii)(A)–(C). The Board also proposes to exempt charge cards from the minimum payment disclosure requirements, to implement TILA Section 127(b)(11)(I). 15 U.S.C. 1637(b)(11)(I); *See* proposed § 226.7(b)(12)(iii)(D).

Exemption for credit card accounts with a specific repayment period. In the October 2005 ANPR, the Board requested comment on whether certain open-end accounts should be exempted from some or all of the minimum payment disclosure requirements, such as open-end plans that have a fixed repayment period. Q59. Industry commenters generally supported an exemption for open-end plans that have a fixed repayment period. These commenters indicated that the minimum payment disclosures are not necessary in this context, because the consumer will already know from the account agreement how long it will take to repay the balance.

The Board proposes to exempt credit card accounts where a fixed repayment period for the account is specified in the account agreement and the required minimum payments will amortize the outstanding balance within the fixed repayment period. *See* proposed § 226.7(b)(12)(iii)(E). The minimum payment disclosures would not appear to provide useful information to consumers that they do not already have in their account agreements. The cost of providing this information a second time, including the costs to reprogram periodic statement systems and to establish and maintain a toll-free telephone number, may not be justified by the limited benefit to consumers.

In order for this proposed exemption to apply, a fixed repayment period must be specified in the account agreement. As proposed, this exemption would include, for example, accounts where the account has been closed due to delinquency and the required monthly payment has been reduced or the balance decreased to accommodate a fixed payment for a fixed period of time designed to pay off the outstanding balance. *See* proposed comment 7(b)(12)(iii)–1. This exemption would not apply where the credit card may have a fixed repayment period for one credit feature, but an indefinite repayment period on another feature. For example, some retail credit cards have several credit features associated with the account. One of the features may be a general revolving feature, where the 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 minimum payments for that feature will pay off the purchase within a fixed period of time, such as one year. New comment 7(b)(12)(iii)–1 makes clear that the exemption relating to a fixed repayment period does not apply to the above situation, because the retail card account as a whole does not have a fixed repayment period.

Exemption where cardholders have paid their accounts in full for two consecutive months. In the October 2005 ANPR, the Board requested comment on whether the Board should exempt credit card accounts of consumers who typically do not revolve balances or make monthly payments that regularly exceed the minimum. Q60. In response to the October 2005 ANPR, several industry commenters urged the Board to exempt card issuers from providing minimum payment disclosures to consumers who do not regularly make minimum payments. These commenters indicated that excluding non-minimum payers is appropriate because the minimum payment disclosures are less meaningful to those consumers. On the other hand, several consumer groups indicated that the Board should not provide an exemption based on the characteristics or habits of the accountholder, such as whether they typically pay in full. These commenters indicated that the typical behavior of a particular consumer can change quickly, due either to a temporary change in circumstances (a move, a layoff, or a major medical expense) or a permanent change (the death of a spouse or a disability). The consumer groups believed that in these circumstances, it is important that consumers have disclosure about the effects of paying the minimum payments in a timely fashion, before an outstanding balance grows unmanageable.

The Board proposes to provide that card issuers are not required to comply with minimum payment disclosure requirements for a particular billing cycle if a consumer has paid the entire balance in full for the previous two billing cycles. *See* proposed § 226.7(b)(12)(iii)(F). The GAO found in its study on minimum payment disclosures that cardholders who pay their balances in full each month (non-revolvers) were generally satisfied with receiving generic disclosures or none at all, and did not prefer customized disclosures such as actual repayment disclosures. Thirty-seven percent of non-revolvers found the customized disclosure extremely or very useful. Eight percent of non-revolvers found the customized disclosure moderately

useful and 55 percent found it slightly or not useful. The GAO indicated that many of the non-revolvers it interviewed who preferred not to receive a customized disclosure explained that they paid their balance in full each month, already understood the consequences of making only minimum payments, and did not need the additional reminder. *See GAO Report on Minimum Payments*, pages 26, 30–31.

Thus, because non-revolvers may not find the minimum payment disclosures very useful or meaningful, the Board proposes to exempt card issuers from the requirement to provide the minimum payment disclosures in a particular billing cycle if a consumer has paid the entire balance in full for the two previous billing cycles. For example, if a consumer paid the entire balance in full for account activity in March and April, the creditor would not be required to provide the minimum payment disclosure for the statement representing account activity in May. The Board believes this approach strikes an appropriate balance between benefits to consumers from the disclosures, and compliance burdens on issuers in providing the disclosures. Consumers who might benefit from the disclosures will receive them. Consumers who carry a balance each month will always receive the disclosure, and consumers who pay in full each month will not. Consumers who sometimes pay their bill in full and sometimes do not will receive the minimum payment disclosures if they do not pay in full the prior two consecutive months (cycles). Also, if a consumer's typical payment behavior changes from paying in full to revolving, the consumer will begin receiving the minimum payment disclosures after not paying in full one billing cycle, when the disclosures would appear to be timely. In addition, creditors already typically track whether a consumer has paid their balance in full for two consecutive months. Typically, creditors provide a grace period on new purchases to consumers (that is, creditors do not charge interest to consumers on new purchases) if consumers paid both the current balance and the previous balance in full. Thus, creditors currently capture payment history for consumers for two billing cycles.

In response to the October 2005 ANPR, one industry commenter indicated that many creditors do not have the processing systems that are capable of selectively pricing the disclosures from month-to-month based on customers' prior payment patterns. Card issuers are not required to take advantage of this exemption from providing the minimum payment disclosures for a particular billing cycle if a consumer has paid the entire balance in full for the previous two billing cycles. Card issuers may provide the minimum payment disclosures to all of its cardholders, even to those cardholders that fall within this exemption. If issuers choose to provide voluntarily the minimum payment disclosures to those cardholders that fall within this exemption, issuers should follow the disclosures rules set forth in § 226.7(b)(12), the accompanying commentary, and Appendices M1–M3 (as appropriate) for those cardholders.

Exemption where balance has fixed repayment period. In response to the October 2005 ANPR, several industry commenters urged the Board to exempt credit cards with fixed payment features from the minimum payment disclosures. As described above, some retail credit cards may have several features on the card. One of those features may allow consumers to make certain types of purchases with the feature (such as furniture purchases, or other large purchases), and the minimum payments for that feature will pay off the purchase within a specific period of time, such as one year. Some commenters indicated that these types of accounts should be exempted from the minimum payment disclosure requirements because consumers would know the repayment period from the account agreement.

The Board proposes to exempt credit card issuers from providing the minimum payment disclosures on periodic statements in a billing cycle where the entire outstanding balance held by consumers in that billing cycle is subject to a fixed repayment period specified in the account agreement and the required minimum payments applicable to this feature will amortize the outstanding balance within the fixed repayment period. This exemption is meant to cover the retail cards described above in those cases where the entire outstanding balance held by a consumer in a particular billing cycle is subject to a fixed repayment period specified in the account agreement. The minimum payment disclosures would not appear to provide useful information to consumers in this context because consumers would be able to learn from their account agreements how long it would take to repay the balance. The cost of providing this information a second time, including the costs to reprogram periodic statement systems and to establish and maintain a toll-free telephone number, may not be justified by the limited benefit to consumers. *See* proposed comment 7(b)(12)(iii)–2.

Other exemptions. In response to the October 2005 ANPR, several commenters suggested other exemptions to the minimum payment requirements, as discussed below. For the reasons discussed below, the Board is not proposing to include these exemptions.

1. *Exemption for discontinued credit card products.* In response to the October 2005 ANPR, one commenter urged the Board to provide a partial exemption for credit card products for which no new accounts are being opened and for which existing accounts are closed to new transactions. With respect to these products, the commenter urged the Board to exempt issuers of these products from having to place the minimum payment disclosures on the periodic statement, but instead allow issuers to provide these notices in freestanding inserts to the periodic statements. The commenter indicates that the number of accounts that are discontinued are usually very small and the computer systems used to produce the statements for the closed accounts are being phased out.

The Board solicits further comment on why this exemption is needed. What are the costs of redesigning the old computer systems to provide the minimum payment disclosures (that is, the warning statement, the hypothetical example, and the toll-free telephone number) on the periodic statements?

2. *Exemption for credit card accounts purchased within the last 18 months.* In response to the October 2005 ANPR, one commenter urged the Board to provide an exemption for accounts purchased by a credit card issuer. With respect to these purchased accounts, the commenter urged the Board to exempt issuers from placing the minimum payment disclosures on the periodic statement during a transitional period (up to 18 months) while the purchasing issuer converts the new accounts to its statement system. In this situation, the commenter indicated that issuers should be allowed to provide these notices in freestanding inserts to the periodic statements.

The Board solicits further comment on why this exemption is needed. Why could the purchasing issuer not continue to use the periodic statement system and toll-free telephone numbers used by the selling issuer to meet the requirements of the minimum payment disclosures, until the purchased accounts are converted to the purchaser's systems?

3. *Credit card products that do not use declining balance amortization.* One commenter suggested that the Board

exempt from the minimum payment disclosure requirements credit card products that do not use declining balance amortization to calculate the minimum payment. For example, some retail credit cards base their minimum payment formula on the original purchase price or similar amount, rather than on the declining balance. The commenter indicates that these products should be exempt because amortization schedules for these products result in far shorter repayment periods. The Board is proposing not to adopt this exemption because even though the amortization schedules for these products may be shorter than for cards where the minimum payment is calculated on the declining balance, the payoff time may not be so short as to justify an exemption. For example, assume the minimum payment formula is 3.33 percent of the highest balance or $10, whichever is greater. It could still take around 4 years to pay off a $500 balance at a 21.9 percent APR if a consumer only made minimum payments. (For contrast, the repayment period would be around 7 years if the minimum payment was calculated based on the outstanding balance, instead of the highest balance.)

4. *Credit cards with balances of less than $500*. One commenter suggested that the Board exempt credit card accounts from the minimum payment disclosure requirements in cases where the balance on the card is less than $500. This commenter indicated in cases of low balances, the repayment period is fairly short and so the minimum payment disclosure is less needed. The Board is not proposing to exempt these credit card accounts. Depending on how the minimum payment is calculated, it can still take a significant amount of time to pay off a $500 balance if only minimum payments are made. For example, assume the minimum payment is calculated based on the following formula: the greater of (1) 1 percent of the outstanding balance plus interest charges that accrued in the past month; or (2) $10. It could still take around 5 years to repay a $500 balance at a 7.99 percent APR if only minimum payments are made.

7(b)(12)(iv) Toll-free Telephone Numbers

Under Section 1301(a) of the Bankruptcy Act, depository institutions generally must establish and maintain their own toll-free telephone numbers or use a third party to disclose the repayment estimates based on the ''table'' issued by the Board. 15 U.S.C. 1637(b)(11)(F)(i). At the issuer's option, the issuer may disclose the actual repayment disclosure through the toll-free telephone number. The Board also is required to establish and maintain, for two years, a toll-free telephone number for use by customers of depository institutions having assets of $250 million or less. 15 U.S.C. 1637(b)(11)(F)(ii). The FTC must maintain a toll-free telephone number for creditors other than depository institutions. 15 U.S.C. 1637(b)(11)(F).

The Bankruptcy Act also provides that consumers who call the toll-free telephone number may be connected to an automated device through which they can obtain repayment information by providing information using a touch-tone telephone or similar device, but consumers who are unable to use the automated device must have the opportunity to be connected to an individual from whom the repayment information may be obtained. Unless the issuer is providing an actual repayment disclosure, the issuer may not provide through the toll-free telephone number a repayment estimate other than estimates based on the ''table'' issued by the Board. 15 U.S.C. 1637(b)(11)(F). These same provisions apply to the FTC's and the Board's toll-free telephone numbers as well.

The Board proposes to add new § 226.7(b)(12)(iv) and accompanying commentary to implement the above statutory provisions related to the toll-free telephone numbers. In addition, new comment 7(b)(12)(iv)–3 would provide that once a consumer has indicated that he or she is requesting the generic repayment estimate or the actual repayment disclosure, as applicable, card issuers may not provide advertisements or marketing information to the consumer prior to providing the repayment information required or permitted by Appendix M1 or M2, as applicable.

7(b)(12)(v) Definitions

As discussed above, Section 1301(a) of the Bankruptcy Act requires the Board to establish and maintain, for two years, a toll-free telephone number for use by customers of depository institutions having assets of $250 million or less. 15 U.S.C. 1637(b)(11)(F)(ii). For ease of reference in the regulation, the Board proposes to define the above depository institutions as ''small depository institution issuers.'' *See* proposed § 226.7(b)(12)(v).

7(b)(13) Format Requirements

As discussed throughout this section-by-section analysis to § 226.7, consumer testing conducted for the Board indicates improved understanding when related information is grouped together. Under the proposal, creditors would group together when a payment is due (due date and cut-off time if before 5 p.m.), how much is owed (minimum payment and ending balance), and what the potential costs are for paying late (late-payment fee, and penalty APR if triggered by a late payment). *See* proposed Samples G–18(E) and G–18(F) in Appendix G. The proposed format requirements are intended to fulfill Congress's intent to have the new late payment and minimum payment disclosures ensure consumers' ability to understand the consequences of paying late or making only minimum payments.

7(b)(14) Change-in-Terms and Increased Penalty Rate Summary for Open-End (Not Home-Secured) Plans

A major goal of its review of Regulation Z's open-end credit rules is to address consumers' surprise at increased rates (and/or fees). In part, the Board is addressing the issue in § 226.9(c) and § 226.9(g) to give more time before new rates and changes to significant costs become effective. *See* proposed § 226.9(c)(2) and § 226.9(g). The proposed new § 226.7(b)(14) is intended to enable consumers to notice more easily changes in their account terms. Increasing the time period to act is ineffective if consumers do not see the change-in-term notice. Consumers who participated in testing conducted for the Board consistently set aside change of term notices that accompanied periodic statements. Research conducted for the Board indicates that consumers do look at the front side of periodic statements and do look at transactions. Therefore, when a change-in-terms notice is provided on or with a periodic statement the proposal would require a summary of key changes to precede transactions. In addition, when a notice of a rate increase due to delinquency or default or as a penalty is provided on or with a periodic statement, the proposal would require this notice to precede transactions. Samples G–20 and G–21 in Appendix G illustrate the proposed format requirement under § 226.7(b)(14) and the level of detail required for the notice under § 226.9(c)(2)(iii) and § 226.9(g)(3). Forms G–18(G) and G–18(H) illustrate the placement of these notices on a periodic statement.

Section 226.8 Identifying Transactions on Periodic Statements

TILA Section 127(b)(2) requires creditors to identify on periodic statements credit extensions that occurred during a billing cycle. 15

U.S.C. 1637(b)(2). The statute calls for the Board to implement requirements that are sufficient to identify the transaction or to relate the credit extension to sales vouchers or similar instruments previously furnished. The rules for identifying transactions are implemented in § 226.8, and vary depending on whether: (1) The sales receipt or similar credit document is included with the periodic statement, (2) the transaction is sale credit (purchases) or nonsale credit (cash advances, for example), and (3) the creditor and seller are the ''same or related.'' TILA's billing error protections include consumers' requests for additional clarification about transactions listed on a periodic statement. 15 U.S.C. 1666(b)(2); § 226.13(a)(6).

The Board proposes to update and simplify the rules for identifying sales transactions when the sales receipt or similar document is not provided with the periodic statement (so called ''descriptive billing''), which is typical today. The rules for identifying transactions where such receipts accompany the periodic statement are not affected by the proposal. The proposed changes reflect current business practices and consumer experience, and are intended to ease compliance. Currently, creditors that use descriptive billing are required to include on periodic statements an amount and date as a means to identify transactions, and the proposal would not affect those requirements. As an additional means to identify transactions, current rules contain description requirements that differ depending on whether the seller and creditor are ''same or related.'' For example, a retail department store with its own credit plan (seller and creditor are same or related) sufficiently identifies purchases on periodic statements by providing the department such as ''jewelry'' or ''sporting goods;'' item-by-item descriptions are not required. Periodic statements provided by issuers of general purpose credit cards, where the seller and creditor are not the same or related, identify transactions by the seller's name and location.

The Board proposes to provide additional flexibility to creditors that do not provide sales slips or similar documents with the periodic statement. Under the proposal, all creditors would be permitted to identify sales transactions (in addition to the amount and date) by the seller's name and location. Thus, creditors and sellers that are the same or related could, at their option, identify transactions by a brief identification of goods or services, which they are currently required to do in all cases, or they could provide the seller's name and location for each transaction. Guidance on the level of detail required to describe amounts, dates, the identification of goods, or the seller's name and location remains unchanged.

The Board's proposal is guided by several factors. The standard set forth by TILA for identifying transactions on periodic statements is quite broad. 15 U.S.C. 1637(b)(2). Whether a general description such as ''sporting goods'' or the store name and location would be more helpful to a consumer can depend on the situation. Many retailers permit consumers to purchase in a single transaction items from a number of departments; in that case, the seller's name and location may be as helpful as the description of a single department from which several dissimilar items were purchased. Also, the seller's name and location has become the more common means of identifying transactions, as the use of general purpose cards increases and the number of store-only cards decreases. Under the proposed rule, retailers that commonly accept general purpose credit cards but also offer a credit card account or other open-end plan for use only at their store would not be required to maintain separate systems that enable different descriptions to be provided, depending on the type of card used. Finally, it appears that any consumer benefits would be minimally affected by the proposed change because many retailers permit purchases from different departments to be charged in a single transaction. Moreover, consumers are likely to carefully review transactions on periodic statements and inquire about transactions they do not recognize, such as when a retailer is identified by its parent company on sales slips which the consumer may not have noticed at the time of the transaction. Moreover, consumers are protected under TILA with the ability to assert a billing error to seek clarification about transactions listed on periodic statements, and are not required to pay the disputed amount while the creditor obtains the necessary clarification. Maintaining rules that require more standardization and detail would be costly, and likely without significant corresponding consumer benefit. Thus, the proposal is intended to provide flexibility for creditors without reducing consumer protection.

The Board notes, however, that some retailers offering their own open-end credit plans tie their inventory control systems to their systems for generating sales receipts and periodic statements. In these cases, purchases listed on periodic statements may be described item by item, for example, to indicate brand name such as ''XYZ Sweater.'' This item-by-item description, while not required under current or proposed rules, would remain permissible under the proposal; thus, no operational changes would be required for these retailers.

To implement the approach described above, § 226.8 would be revised as follows. Section 226.8(a)(1) would set forth the proposed rule providing flexibility in identifying sales transactions, as discussed above. Section 226.8(a)(2) would contain the existing rules for identifying transactions when sales receipts or similar documents accompany the periodic statement. Section 226.8(b) is revised for clarity. A new § 226.8(c) would be added to set forth rules now contained in footnotes 16 and 19; and, without references to ''same or related'' parties, footnotes 17 and 20. The substance of footnote 18, based on a statutory exception where the creditor and seller are the same person, would be deleted as unnecessary. The title of the section would be revised for clarity.

The commentary to § 226.8 would be reorganized and consolidated but would not be substantively changed. Comments 8–1, 8(a)–1, and 8(a)(2)–4 would be deleted as duplicative. Similarly, comments 8–6 through 8–8, which provide creditors with flexibility in describing certain specific classes of transactions regardless of whether they are ''related'' or ''nonrelated'' sellers or creditors, would be deleted as unnecessary. Existing comments 8–4 and 8(a)(2)–3, which provide guidance when copies of credit or sales slips accompany the statement, also would be deleted. The Board believes this practice is no longer common, and to the extent sales or similar credit documents accompany billing statements, additional guidance seems unnecessary. Proposed § 226.8(a)(1)(ii) and comments 8(a)–3 and 8(a)–7, which provide guidance for identifying mail or telephone transactions, also would refer to Internet transactions. Proposed comment 8(a)–1 would provide an example of new services that are now commonly purchased from creditors as well as third party service providers (sale credit).

Section 226.9 Subsequent Disclosure Requirements

Section 226.9 sets forth a number of disclosure requirements that apply after an account is opened, including a requirement to provide billing rights

statements annually, a requirement to provide at least 15 days advance notice whenever a term required to be disclosed in the account-opening disclosures is changed, and a requirement to provide finance charge disclosures whenever credit devices or features are added on terms different from those previously disclosed.

With respect to open-end (not home-secured) plans, the Board proposes a number of substantive and technical revisions to § 226.9 and the accompanying commentary, as further described below. The proposal would require certain disclosures to accompany checks that access a credit card account. In addition, the proposal would require creditors to provide a summary table of a limited number of key terms if those terms are changed. The summary table would appear on the first page of the notice or a separate piece of paper. Moreover, if the change-in-terms notice is included with a periodic statement, that summary table would be required to be provided on the front of the first page of the periodic statement, before the list of transactions for the statement period. Also, the Board would require creditors to provide advance notice when a rate is increased due to a consumer's delinquency or default or as a penalty. The Board's proposal also would require creditors to provide 45 days advance notice for changes in terms or increases in rates due to delinquency or default or penalty pricing. Home-equity lines of credit (HELOCs) subject to § 226.5b would not be affected by these proposed revisions. For the reasons set forth in the section-by-section analysis to § 226.6(b)(1), the Board would update references to ''free-ride period'' as ''grace period'' in the regulation and commentary, without any intended substantive change.

9(a) Furnishing Statement of Billing Rights

TILA Section 127(a)(7) and § 226.9(a) require creditors to mail or deliver a billing error rights statement annually, either to all consumers or to each consumer entitled to receive a periodic statement. 15 U.S.C. 1637(a)(7). (*See* Model Form G–3.) Alternatively, creditors may provide a billing rights statement on each periodic statement. (*See* Model Form G–4.) Both the regulation and commentary would be unchanged under the proposal. However, the Board proposes to revise both Model Forms G–3 and G–4 to improve the readability of these notices. The revised forms are in G–3(A) and G–4(A) of Appendix G. For open-end (not home-secured) plans, creditors may use Model Forms G–3(A) and G–4(A). For HELOCs subject to the requirements of § 226.5b, creditors may use the current Model Forms G–3 and G–4, or the revised forms.

9(b) Disclosures for Supplemental Credit Access Devices and Additional Features

Section 226.9(b) requires certain disclosures when a creditor adds a credit device or feature to an existing open-end plan. When a creditor adds a credit feature or delivers a credit device to the consumer within 30 days of mailing or delivering the account-opening disclosures under current § 226.6(a), and the device or feature is subject to the same finance charge terms previously disclosed, the creditor is not required to provide additional disclosures. If the credit feature or credit device is added more than 30 days after mailing or delivering the account-opening disclosures, and is subject to the same finance charge terms previously disclosed in the account-opening agreement, the creditor must disclose that the feature or device is for use in obtaining credit under the terms previously disclosed. However, if the added credit device or feature has finance charge terms that differ from the disclosures previously given under § 226.6(a), then the disclosures required by § 226.6(a) that are applicable to the added feature or device must be given before the consumer uses the new feature or device.

In the December 2004 ANPR, the Board solicited comment as to whether there are formatting tools or navigational aids that could more effectively link information in account-opening disclosures with information provided in subsequent disclosures under § 226.9(b), such as checks that access a credit card account. Q45. Many creditors commented that there would be no benefit to linking subsequent disclosures and account-opening disclosures because many consumers fail to retain the information they receive at account opening. Several creditors commented that improved formatting could improve consumer understanding; however, they were concerned about overly prescriptive requirements that might hinder creditors' ability to tailor their disclosure formats to their products and product terms. Some creditors and consumer groups suggested importing the tabular format used to disclose information in credit card or charge card applications and solicitations to the subsequent disclosure context.

The Board is proposing to retain the current rules set forth in §§ 226.9(b)(1) and 226.9(b)(2) for all credit devices and credit features except checks that access a credit card account. With respect to such checks, the Board is concerned that the current rule in § 226.9(b)(1) may not communicate effectively to the consumer the material terms of checks that access a credit card account, when those checks are mailed or sent to a consumer 30 days or more after the § 226.6 disclosures for the underlying account are provided. The Board agrees with commenters that, after a significant time has passed, it becomes less likely that consumers will still have a copy of the account-opening disclosures, and all relevant change-in-terms notices.

With respect to open-end (not home-secured) plans, the Board is proposing to create a new § 226.9(b)(3) that would require that certain information be disclosed each time that checks that access a credit card account are mailed to a consumer, for checks mailed more than 30 days following the delivery of the account-opening disclosures. This provision would apply regardless of whether that information was previously included in the account-opening disclosures. As under the current regulation, no additional disclosures would be required when a creditor provides, within 30 days of the account-opening disclosures, checks that access a credit card account, if the finance charge terms are the same as those that were previously disclosed. HELOCs would not be affected by this proposed revision.

Creditors would be required to provide the new § 226.9(b)(3) disclosures on the front of the page containing the checks that access a credit card account. Specifically, the proposed amendments would require the following key terms be disclosed on the front of the page containing the checks: (1) Any discounted initial rate, and when that rate will expire, if applicable; (2) the type of rate that will apply to the checks after expiration of any discounted initial rate (such as whether the purchase or cash advance rate applies) and the applicable annual percentage rate; (3) any transaction fees applicable to the checks; and (4) whether a grace period applies to the checks, and if one does not apply, that interest will be charged immediately. If a discounted initial rate applies, a creditor must disclose the type of rate that will apply after the discounted initial rate expires, and the rate that will apply after the discounted initial rate expires. The disclosures must be accurate as of the time the disclosures are given. A variable annual percentage rate is accurate if it was in effect within 30 days of when the disclosures are given. Proposed § 226.9(b)(3) would

require that these key terms be disclosed in a tabular format substantially similar to Sample G–19 in Appendix G.

It is the Board's understanding that checks that access a credit card account often are mailed with the periodic statement, so consumers will frequently receive an updated disclosure of the periodic rate in the same envelope as the checks. The Board considered permitting creditors to disclose the rate that applies to a check by means of a reference to the type of applicable periodic rate (*e.g.*, balance transfer or cash advance) accompanied by a reference to the consumer's periodic statement. However, consumer testing conducted for the Board showed that while participants looked at actual numbers on the front of the page of checks, they generally did not notice or pay attention to a cross reference to the periodic statement.

Thus, the Board proposes that the actual APRs and fees applicable to the checks must be disclosed pursuant to § 226.9(b)(3). The Board understands, however, that creditors may engage in risk-based pricing with regard to checks used by consumers, and seeks with this proposal to strike an appropriate balance between meaningful disclosure for consumers and the operational burden on creditors. The proposed rule would require that creditors customize each set of checks sent to reflect a particular consumer's rate. The Board seeks comment on the operational burden associated with customizing the checks, and on alternatives, such as whether providing a reference to the type of rate that will apply, accompanied by a toll-free telephone number that a consumer could call to receive additional information, would provide sufficient benefit to consumers while limiting burden on creditors.

The Board also seeks comment as to whether there are other credit devices or additional features that creditors add to consumers' accounts to which this proposed rule should apply.

The Board has proposed several technical revisions to improve the clarity of § 226.9(b) and the associated commentary.

9(c) Change in Terms

Under § 226.9(c) of Regulation Z, certain changes to the terms of an open-end plan require specific notice of the change. (TILA does not address changes in terms to open-end plans.) The general rule is that creditors must provide 15 days' advance notice of changes in terms required to be included in the account-opening disclosures, with some exceptions, or to increase the minimum payment. *See* current § 226.9(c)(1).

Advance notice currently is not required in all cases. For example, if an interest rate or other finance charge increases due to a consumer's default or delinquency, notice is required, but need not be given in advance. *See* current § 226.9(c)(1); comment 9(c)(1)–3. Furthermore, no change-in-terms notice is required if the specific change is set forth initially by the creditor in the account-opening disclosures. *See* current comment 9(c)–1. For example, some credit card account agreements permit the card issuer to increase the periodic rate if the consumer makes a late payment. Because the circumstances of the increase are specified in advance in the account agreement, the creditor currently need not provide a change-in-terms notice; under current § 226.7(d) the new rate will appear on the periodic statement for the cycle in which the increase occurs.

In the December 2004 ANPR, the Board sought comment as to whether mailing a notice 15 days prior to the effective date of a change in an interest rate provided timely notice to consumers. Q26. The Board also asked whether existing disclosure rules for increases to interest rates and other finance charges were adequate to enable consumers to make timely decisions about how to manage their accounts. Q27. Some commenters noted that consumers are surprised by changes to the terms of their accounts and are not aware that such changes are possible before they take effect, because they do not receive advance notice of those changes and do not remember the information regarding those changes that was contained in the account-opening disclosures. Consumer advocates expressed concern that consumers are not aware when they have triggered rate increases, for example by paying late, and thus are unaware that it might be in their best interest to shop for alternative financing before the rate increase takes effect. Some consumer commenters requested that the Board ban certain practices, such as ''universal default clauses,'' which permit a creditor to raise a consumer's interest rate to the penalty rate if the consumer, for example, makes a late payment on any account, not just on accounts with that creditor.

The Board proposes three revisions to the regulation and commentary to improve consumers' awareness about changes in their account terms or increased rates due to delinquency or default or as a penalty. These revisions also are intended to enhance consumers' ability to shop for alternative financing before such account terms become effective. The proposed revisions generally apply when a creditor is changing terms that must be disclosed in the account-opening summary table under § 226.6(b)(4). *See* section-by-section analysis to § 226.6(b)(4). First, the Board proposes to expand the circumstances under which consumers receive advance notice of changed terms, or increased rates due to delinquency, or for default or as a penalty. Second, the Board proposes to give consumers earlier notice of a change in terms, or for increased rates due to delinquency or default or as a penalty. Third, the Board proposes to introduce format requirements to make the disclosures about changes in terms or for increased rates due to delinquency, default or as a penalty more effective. HELOCs would not be affected by these proposed revisions. The provisions dealing with notices about increased rates due to delinquency, or default or as a penalty are discussed in the section-by-section analysis to § 226.9(g).

Changes in late-payment fees and over-the-credit limit fees. Creditors currently do not have to provide notice of changes to late-payment fees and over-the-credit-limit charges, pursuant to current § 226.9(c)(2). For open-end (not home-secured) plans, the Board's proposal would require 45 days advance notice for changes involving late-payment charges or over-the-credit-limit charges, other than a reduction in the amount of the charges. *See* proposed § 226.9(c)(2)(i). The Board believes that it would be beneficial for consumers to have advance notice of changes to these charges, which can be substantial depending on how a consumer uses his or her account. Late-payment charges and over-the-credit-limit charges can have a large aggregate effect, particularly since they need not be one-time charges, and can be charged month after month if a consumer repeatedly makes late payments or exceeds his or her credit limit. Advance notice regarding changes in the amount of these charges may assist consumers to make better decisions regarding their account usage and regarding when and in what amount they should make payments in order to avoid these potentially recurring charges. This amendment would require that 45 days' advance notice be given only when the amount of a late-payment fee or over-the-credit-limit fee changes, not when such a fee is applied to a consumer's account.

Timing. As discussed above, § 226.9(c)(1) currently provides that whenever any term required to be disclosed under § 226.6 is changed or the required minimum payment is

increased, a written notice must be mailed or delivered to the consumer at least 15 days before that change becomes effective. Commenters responding to the December 2004 ANPR expressed a number of opinions about this requirement. One consumer group and a number of individual consumers stated that 15 days is not enough time for a consumer to seek alternative financing, and recommended that consumers be given more time. Some creditors stated that 15 days' advance notice was adequate. Other industry commenters stated that they did not oppose increasing the notice period from 15 days to 30 days, and added that many consumers already receive notice approximately one month before a change in terms becomes effective, because the notices often are sent with periodic statements. A few consumer group commenters recommended 90 days' advance notice for all changes to terms.

In light of the comments received and upon further consideration of this issue, for open-end (not home-secured) plans, the Board proposes to add § 226.9(c)(2)(i) to extend the notice period from 15 days to 45 days. For changes that require advance notice, the Board believes that consumers should have sufficient time, following the notice and before the change becomes effective, to change the usage of their plan or to pursue alternative means of financing their purchases, such as using another credit card, utilizing a home-equity line or installment loan, or shopping for a new credit card.

The Board considered requiring that advance notice of changes in terms be sent 30 days in advance, but concluded that 30 days could be inadequate in some circumstances. The rule governs when notices must be sent, not received by the consumer, so in practice the notice will be received by the consumer with less days remaining to act than the full advance notice period specified in the rule. In light of delays in mail delivery, for example, a notice sent to a consumer 30 days in advance may give a consumer only 25 days to seek alternative financing before the change in terms takes effect. For example, if a consumer wants to shop for another credit card, apply for, open, and transfer a balance from an existing card to a new card, 30 days may be too short a time in some cases. The Board's proposal that notice be sent 45 days in advance should ensure, in most cases, that a consumer will have at least one calendar month following receipt of the notice and before the change in terms takes effect, to seek alternative financing or otherwise mitigate the effect of the new terms.

The proposed 45 day notice period would not apply when the changes affect charges that are not required to be disclosed under § 226.6(b)(4). *See* proposed § 226.9(c)(2)(ii). Specifically, 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)(1) but is not required to be disclosed as part of the account-opening summary table under § 226.6(b)(4), the creditor may 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. For example, a fee for expedited delivery of a credit card is a charge imposed as part of the plan under § 226.6(b)(1) but is not required to be disclosed in the account-opening summary table under § 226.6(b)(4). 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 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. *See* comment 9(c)(2)(ii)–1. Creditors meet the standard to provide the notice at a relevant time if the oral or written notice of a charge is given when a consumer would likely notice it, such as when deciding whether to purchase the service that would trigger the charge. 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. *See* comment 9(c)(2)(ii)–2. The Board believes that for these charges, consumers do not need advance notice of the current amount of the charge.

As discussed in the section-by-section analysis to § 226.5(a)(1)(ii), creditors are permitted under the E–Sign Act to provide in electronic form any TILA disclosure that is required to be provided or made available to consumers in writing if the consumer affirmatively consents to receipt of electronic disclosures in a prescribed manner. 15 U.S.C. 7001 *et seq*. The Board requests comment on whether there are circumstances in which creditors should be permitted to provide cost disclosures in electronic form to consumers who have not affirmatively consented to receive electronic disclosures for the account, such as when a consumer seeks to make a payment online, and the creditor imposes a fee for the service.

Format. Section 226.9 currently contains no restrictions or requirements with regard to how change-in-terms notices are presented or formatted. The consumer testing conducted for the Board explored the usability of current change-in-terms notices. The results of this consumer testing suggest that typical change-in-terms notices are not formatted in a manner that is noticeable and easy for consumers to understand. Consumer testing also suggests that improvements can be made to these notices. A typical change-in-terms notice contains dense blocks of contractual language in a small font, and may be on an accordion-style pamphlet included with the consumer's periodic statement. Consumer testing indicated that consumers may not look at these pamphlets when they are included with periodic statements, and that some consumers have trouble navigating these notices even when their attention is explicitly drawn to the disclosures. These pamphlets generally are not designed to draw attention to the changes because they provide a disclosure of contractual provisions.

For open-end (not home-secured) plans, the Board proposes that creditors be required to provide a summary table of a limited specified number of key terms on the front of the first page of the change-in-terms notice, or segregated on a separate sheet of paper. *See* proposed § 226.9(c)(2)(iii), Sample G–20 in Appendix G. Creditors would be required to utilize the same headings as in the account-opening tables in Model Form G–17(A) and Samples G–17(B) and G–17(C) in Appendix G. If the change-in-terms notice were included with a periodic statement, a summary table would be required to appear on the front of the periodic statement, preceding the list of transactions for the period. *See* §§ 226.7(b)(14), 226.9(c)(2)(iii).

The Board believes that requiring a tabular summary of the key terms of the consumer's account would make change-in-terms notices more useful to consumers by highlighting those terms that may be of most interest to them. Based on consumer testing conducted for the Board, when a summary of key terms was included on change-in-terms notices tested, consumers tended to read the notice and appeared to understand better what key terms were being changed than when a summary was not included.

The proposal also would require that creditors provide other information in the change-in-terms notice, specifically (1) a statement that changes are being made to the account; (2) a statement indicating the consumer has the right to opt out of these changes, if applicable, and a reference to additional information describing the opt out right provided in the notice, if applicable; (3) the date the changes to terms described in the summary table will become effective; (4) if applicable, an indication that the consumer may find additional information about the summarized changes, and other changes to the account, in the notice; and (5) if the creditor is changing a rate on the account, other than a penalty rate, a statement that if a penalty rate applies to the consumer's account, the new rate described in the notice does not apply to the consumer's account until the consumer's account balances are no longer subject to the penalty rate. This information must be placed directly above the summary of key changes described above. This information is intended to give context to the summary of key changes.

With respect to the reference to a right to opt out of the changes, the Board is not requiring that creditors provide such an opt out right. State law or other applicable laws may provide consumers with a right to opt out of certain changes. If a consumer has the right to opt out of the changes in the notice, a creditor must include 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.

Reduction in credit limit. Under Regulation Z, a creditor generally may decrease a consumer's credit limit without providing any notice, except with regard to HELOCs. As a result, there could be situations where a consumer may exceed his or her credit limit without realizing it, potentially triggering late-payment fees and penalty pricing. Under new § 226.9(c)(2)(v), for open-end (not home-secured) plans, 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. Under the proposal, notice must 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. The Board and other federal banking agencies in the past have received a number of complaints from consumers who were not notified when their credit limits were decreased, and were surprised at the subsequent imposition of an over-the-credit-limit fee. The Board is not proposing that creditors may not reduce a consumer's credit limit. The Board recognizes that creditors have a legitimate interest in mitigating the risk of loss when a consumer's creditworthiness deteriorates, and that a consumer's creditworthiness can deteriorate quickly. Therefore, the Board's proposal would simply require that a creditor provide a notice that it has reduced or will be reducing a consumer's credit limit 45 days before imposing any fee or penalty rate for exceeding that new limit. This proposed amendment would apply only when the over-the-credit-limit fee is imposed solely as a result of a reduction in the credit limit; if the over-the-credit-limit fee would have been charged notwithstanding the reduction in a credit limit, no advance notice would be required. This provision is not intended to permit creditors to provide a general notice at account opening that a consumer's credit limit may change from time to time; rather, the notice should be sent with regard to a specific credit limit reduction that has occurred or will be occurring.

Rules affecting home-equity plans. The Board proposes at the present time to retain in proposed § 226.9(c)(1), without intended substantive change, the current rules regarding the circumstances, timing, and content of change-in-terms notices for HELOCs. These rules will be reviewed in the Board's upcoming review of the provisions of Regulation Z addressing closed-end and open-end (home-secured) credit.

The Board is aware that the current change-in-terms rules, which have applicability both to HELOCs and open-end (not home-secured) credit, address several types of changes in terms that are impermissible for HELOCs subject to § 226.5b. Section 226.5b imposes substantive restrictions on which terms of HELOCs may be changed, and in retaining the current change-in-terms rules for HELOCs, the Board does not intend to amend or in any way change the substantive restrictions imposed by § 226.5b. Accordingly, the Board proposes to make several deletions in proposed § 226.9(c)(1) and the related commentary with respect to HELOCs. For example, the Board proposes deleting in new comment 9(c)(1)–1 the requirement that notice ''be given if the contract allows the creditor to increase the rate at its discretion but does not include specific terms for an increase,'' because such a contractual term would be prohibited under § 226.5b.

The Board welcomes comment on whether there are any remaining references in § 226.9(c)(1) and the related commentary to changes in terms that would be impermissible for open-end (home-secured) credit pursuant to § 226.5b.

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

TILA Section 127(d), which is implemented in § 226.9(e), requires card issuers that assess an annual or other periodic fee, including a fee based on activity or inactivity, on a credit card account of the type subject to § 226.5a to provide a renewal notice before the fee is imposed. 15 U.S.C. 1637(d). The creditor must provide disclosures required for credit card applications (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 to the account. However, there is an alternative delayed notice procedure where the fee can be assessed; the fee must be reversed if the consumer terminates the account provided the consumer is given notice.

Creditors are given considerable flexibility in the placement of the disclosures required under § 226.9(e). For example, the notice can be preprinted on the periodic statement, such as on the back of the statement. *See* § 226.9(e)(3) and comment 9(e)(3)–2. However, creditors that place any of the disclosures on the back of the periodic statement must include a reference to those disclosures under § 226.9(e)(3). To aid in compliance, a model clause that may, but is not required to, be used is proposed for creditors that use the delayed notice method. *See* proposed comment 9(e)(3)–1.

Comment 9(e)–4, which addresses accuracy standards for disclosing rates on variable rate plans, would be revised, for the same reasons and consistent with the proposed accuracy standard for account-opening disclosures. *See* section-by-section analysis to § 226.6(b)(2)(ii)(G).

Other proposed changes to § 226.9(e) are minor with no intended substantive change. For example, footnote 20a, dealing with format, is deleted as unnecessary. The proposed reorganization of § 226.5a is intended, in part, to separate more clearly content and format requirements in that section.

Nonetheless, to avoid any possible confusion, comment 9(e)–2, which generally repeats footnote 20a, would be retained.

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

As discussed above with respect to § 226.9(c), in the December 2004 ANPR, the Board asked whether existing disclosure rules for increases to interest rates and other finance charges were adequate to enable consumers to make timely decisions about how to manage their accounts. Q27. Consumer advocates expressed concern that consumers are not aware when they have triggered rate increases, for example by paying late, and thus are unaware that it might be in their interest to shop for alternative financing before the rate increase takes effect. Some consumer commenters requested that the Board ban certain practices, such as ''universal default clauses,'' which permit a creditor to raise a consumer's interest rate to the penalty rate if the consumer defaults on any accounts, not just on accounts with that creditor.

The Board is not proposing at the present time to prohibit universal default clauses or similar practices. Instead, as discussed in the section-by-section analysis to § 226.5a, the Board's proposal seeks to improve the effectiveness of the disclosures given to consumers regarding the conditions in which penalty pricing will apply. In addition, the Board seeks to improve the ability of consumers to use the disclosures given to them by proposing that disclosures be provided prior to the application of penalty pricing to their accounts. To this end, with respect to open-end (not home-secured) plans, the Board's proposed rule would add § 226.9(g)(1) to require creditors to provide 45 days advance notice when a rate is increased due to a consumer's delinquency or default, or if a rate is increased as a penalty for one or more events specified in the account agreement, such as a late payment or an extension of credit that exceeds the credit limit. This notice would be required even if, as is currently the case, the creditor specifies the penalty rate and the specific events that may trigger the penalty rate in the account-opening disclosures.

Neither Regulation Z nor TILA defines what a ''default'' is, and the Board is aware that credit agreements of some creditors permit penalty pricing based on a single late payment by the consumer to that creditor. The Board is concerned that the imposition of penalty pricing can come as a costly surprise to consumers who are not aware of, or do not understand, what behavior is considered a ''default'' under their agreement. As discussed in the section-by-section analysis to § 226.5a, consumer testing conducted for the Board indicated that some consumers do not understand what factors can give rise to penalty pricing, such as the fact that one late payment may constitute a ''default.'' Moreover, when penalty pricing is imposed, it may apply to all of the balances on a consumer's account and often applies to balances for several months or longer. Penalty rates can be more than twice as much as the consumer's normal rate on purchases; for example, default rates in excess of 30 percent are not uncommon.

The Board believes that the way to address penalty pricing is through improved disclosures regarding the conditions under which penalty pricing may be imposed. In part, the Board is proposing, in connection with the disclosures given with credit card applications and solicitations and at account opening, to enhance disclosures about penalty pricing and revise terminology to address consumer confusion regarding the meaning of ''default.'' However, in light of the relatively low contractual threshold for rate increases based on consumer delinquency, default or as a penalty, the Board believes that consumers also would benefit from advance notice of these rate increases, which they otherwise may not expect. Advance notice would give consumers an opportunity to shop for alternate sources of credit, pay down account balances before the rate increase takes effect, or contact the card issuer to rectify any errors before penalty rates are imposed. To make this opportunity viable, the Board is proposing that the notice be provided at least 45 days before the increase takes effect. The Board requests comment on whether a shorter time period, such as 30 days' advance notice, would be adequate notice for consumers whose interest rates are being increased due to default or delinquency, or as a penalty.

The proposed rule would impose a de facto limitation on the implementation of contractual terms between a consumer and creditor, in that creditors would no longer be permitted to provide for the immediate application of penalty pricing upon the occurrence of certain events specified in the contract. The Board believes that this delay in implementing contract terms is appropriate in light of the potential benefit to consumers. Many consumers are likely unaware of the events that will trigger such pricing. The account-opening disclosures may be provided to the consumer too far in advance for the consumer to recall the circumstances that may cause his or her rates to increase. In addition, the consumer may not have retained a copy of the account-opening disclosures and may not be able to effectively link the information disclosed at account opening to the current repricing of his or her account.

The Board notes that this advance notice provision does not, in any manner, limit the contractual ability of creditors to establish the events that trigger penalty pricing, or to establish the rates that apply for such events. The Board also notes that use of this sort of de facto delay in implementing contract terms has precedent in Regulation Z. For example, since 1988, § 226.20(c) has provided that 25 days' advance notice must be given for certain increases in the payment for an adjustable rate mortgage, even if the circumstances of the increase are specified in advance in the contract.

Under the proposed rule, creditors would retain the ability to mitigate risk by freezing credit accounts or lowering the credit limit without providing advance notice (subject to proposed § 226.9(c)(2)(v) discussed above, which addresses over-the-credit-limit fees or penalty rates). Thus, creditors would be able to effectively mitigate risk on accounts that are delinquent or in default notwithstanding the fact that they would be required to provide a notice 45 days before increasing the rate.

The rule also would not require that 45 days' advance notice be given for certain changes made in accordance with the contract, provided that such adjustment is not due to delinquency, default or as a penalty. For example, if an employee offers an open-end plan with discounted rates to its employees, the employer would not be required to give a former employee 45 days' advance notice before increasing the rate on that individual's account from the preferential employees' rate to the standard rate, provided that the rate increase was set forth in the account agreement.

Disclosure content and format. With respect to open-end (not home-secured) plans, under the Board proposal, if a creditor is increasing the rate due to delinquency or default or as a penalty, the creditor must provide a notice with the following information: (1) A statement that the delinquency or default rate or penalty rate has been triggered, as applicable; (2) the date as of which the delinquency or default rate or penalty rate will be applied to the account, as applicable; (3) the

circumstances under which the delinquency or default rate or penalty rate, as applicable, will cease to apply to the consumer's account, or that the delinquency or default rate or penalty rate will remain in effect for a potentially indefinite time period; and (4) a statement indicating to which balances on the account the delinquency or default rate or penalty rate will be applied, as applicable. *See* proposed § 226.9(g)(3)(i). In consumer testing conducted for the Board, some participants did not appear to understand that penalty rates can apply to all of their balances, including existing balances. Some participants also did not appear to understand how long a penalty rate could be in effect. Without information about the balances to which the penalty rate applies and how long it applies, consumers might have difficultly determining whether they should shop for another card or pursue alternate sources of financing. Consumers also may consider the duration of penalty pricing when shopping for alternative sources of credit which would enhance their ability to make prudent decisions.

If the notice regarding increases in rates due to delinquency, default or penalty pricing were included on or with a periodic statement, this notice must be in a tabular format. Under the proposal, the notice also would be required to appear on the front of the periodic statement, preceding the list of transactions for the period. *See* proposed §§ 226.7(b)(14), 226.9(g)(3)(ii)(A). If the notice is not included on or with a periodic statement, the information described above must be disclosed on the front of the first page of the notice. *See* § 226.9(g)(3)(ii)(B).

Section 226.10 Prompt Crediting of Payments

Section 226.10, which implements TILA Section 164, generally requires a creditor to credit to a consumer's account a payment that conforms to the creditor's instructions (also known as a conforming payment) as of the date of receipt, except when a delay in crediting the account will not result in a finance or other charge. 15 U.S.C. 1666c; § 226.10(a). Section 226.10 also requires a creditor that accepts a non-conforming payment to credit the payment within five days of receipt. *See* § 226.10(b). The Board has interpreted § 226.10 to permit creditors to specify cut-off times indicating the time when a payment is due, provided that the requirements for making payments are reasonable, to allow most consumers to make conforming payments without difficulty. *See* comments 10(b)–1 and –2. Pursuant to § 226.10(b) and comment 10(b)–1, if a creditor imposes a cut-off time, it must be disclosed on the periodic statement; many creditors put the cut-off time on the back of statements.

The December 2004 ANPR solicited comment regarding the cut-off times used currently by most issuers for receiving payments, whether cut-off times differ based on the type of payment (e.g., check, EFT, telephone, or Internet), and whether the operating times of third party processors differ from those of creditors. Q47–Q48, Q50. The December 2004 ANPR also requested comment regarding the adequacy and clarity of current disclosures of payment due dates and cut-off times, and asked whether the Board should issue a rule requiring creditors to credit payments as of the date they are received, regardless of the time. Q49, Q51.

Disclosure of cut-off times. In response to the December 2004 ANPR, the Board received a number of comments describing issuers' current practices regarding cut-off times. The majority of industry commenters noted that they do set cut-off times that are in the early or mid-afternoon, but that cut-off times may differ based on the means by which a consumer makes his or her payment, with telephone and Internet payments often having later cut-off times than payments made by mail. These industry commenters argued that current disclosure of these cut-off times is clear. Consumer groups and consumers commented that the majority of banks now set a cut-off time on payment due dates and that these cut-off times are a problem because they could result in a due date that is one day earlier in practice than the date disclosed. Consumer groups expressed particular concern about cut-off times because they believe that issuers simultaneously may be decreasing the time period between the end of the statement period and the time when the payment is due.

Almost all industry comments opposed the Board's suggestion to require creditors to credit payments as of the date they are received, regardless of the time, noting that issuers need flexibility to work with external vendors and that creditors' internal processes and systems will to some extent dictate the timing of payment crediting. Consumer and consumer group comments proposed a rule that would require banks to consider the postmark to be the day the payment is received.

The Board is not proposing to require a minimum cut-off time. Instead, as discussed above, the Board is proposing, in what would be new § 226.7(b)(11), to require that for open-end (not home-secured) plans, creditors must disclose the earliest of their cut-off times for payments near the due date on the front page of the periodic statement, if that earliest cut-off time is before 5 p.m. on the due date. The Board believes that the disclosure-based approach may benefit consumers without imposing an unreasonable operational burden on creditors. Consumers would be able to make better decisions about when to make payments in order to avoid late-payment fees and default rates if earlier cut-off times such as 12:00 p.m. were more prominently disclosed on the periodic statement. In recognition of the fact that creditors may have different cut-off times depending on the type of payment (e.g., mail, Internet, or telephone), the Board's proposal would require that creditors disclose only the earliest cut-off time, if earlier than 5 p.m. on the due date. *See* proposed § 226.7(b)(11). HELOCs would not be affected by the disclosure rule in § 226.7(b)(11).

Receipt of electronic payments made through a creditor's Web site. The Board also proposes to add an example to comment 10(a)–2 that states that for payments made through a creditor's Web site, the date of receipt is the date as of which the consumer authorizes the creditor to debit that consumer's account electronically. Industry comments to the December 2004 ANPR stated that most credit card payments are still received by mail. Nevertheless, the Internet is an increasingly utilized resource for making credit card payments and for receiving information about accounts. Unlike payments delivered by mail, payments made via a creditor's Web site may be received almost immediately by that creditor.

The proposed comment would refer to the date on which the consumer authorizes the creditor to effect the electronic payment, not the date on which the consumer gives the instruction. The consumer may give an advance instruction to make a payment and some days may elapse before the payment is actually made; accordingly, comment 10(a)–2 would refer to the date on which the creditor is authorized to debit the consumer's account. If the consumer authorized an immediate payment, but provided the instruction after a creditor's cut-off time, the relevant date would be the following business day. For example, a consumer may go online on a Sunday evening and instruct that a payment be made; however, the creditor could not transmit the request for the debit to the

consumer's account until the next day, Monday. Under proposed comment 10(a)–2 the date on which the creditor was authorized to effect the electronic payment would be deemed to be Monday, not Sunday. Proposed comment 10(b)–1.i.B would clarify that the creditor may, as with other means of payment, specify a cut-off time for an electronic payment to be received on the due date in order to be credited on that date. The Board solicits comment regarding the incidence of, and types of, any delays that may prevent creditors or their third party processors from receiving electronic payments on the date on which the creditor is authorized to effect the payment.

The Board considered expanding this comment to cover electronic payments received by other means (e.g., if the consumer authorizes a payment to his deposit account-holding bank's Web site), because it is likely that such electronic payments made through such parties also may be received by the creditor on the same day that they are authorized. However, it could be difficult for a creditor to monitor when a consumer gives a third party an instruction to send a payment, and, in addition, the creditor has no direct control over how long it takes the third party to process that instruction. As a result, the Board's proposed clarification of comment 10(a)–2 is limited to electronic payments effected through the creditor's own Web site, over which the creditor has control.

Promotion of payment via the creditor's Web site. The Board also proposes to update the commentary to clarify that if a creditor discloses that payments can be made on that creditor's Web site, then payments made through the creditor's Web site will be considered conforming payments for purposes of § 226.10(b). Many creditors now permit consumers to make payments via their Web site. Payment on the creditor's Web site may not be specified on or with the periodic statement as conforming payments, but it may be promoted in other ways, such as in the account-opening agreement, via e-mail, in promotional material, or on the Web site itself. It would be reasonable for a consumer who receives materials from the creditor promoting payment on the creditor's Web site to believe that it would be a conforming payment and credited on the date of receipt. Therefore, the Board proposes to amend comment 10(b)–2 to clarify that if a creditor promotes that it accepts payments via its Web site (such as disclosing on the Web site itself or on the periodic statement that payments can be made via the Web site), then it is considered a conforming payment for purposes of § 226.10(b).

Third party processors. With regard to third party processors, industry commenters noted that current practice is that payments received by a third party processor are treated as if they were received directly by the creditor, and that no further clarification is necessary. Accordingly, the Board is not currently proposing any amendments to specifically address third party processors.

Section 226.11 Treatment of Credit Balances; Account Termination

11(a) Credit Balances

TILA Section 165, implemented in § 226.11, sets forth specific steps that a creditor must take to return any credit balance in excess of $1 on a credit account, including making a good faith effort to refund any credit balance remaining in the consumer's account for more than six months. 15 U.S.C. 1666d. The substance of § 226.11 would remain unchanged; however, the commentary would be revised to provide that a creditor may comply with this section by refunding any credit balance upon receipt of a consumer's oral or electronic request. *See* proposed comment 11(a)–1. In addition, the Board proposes to move the current rules in § 226.11 to a new paragraph (a), with the commentary renumbered accordingly, and to add a new paragraph (b) which implements the account termination prohibition for certain open-end accounts in Section 1306 of the Bankruptcy Act (further discussed below). *See* TILA Section 127(h); 15 U.S.C. 1637(h). The section title would be amended to reflect the new subject matter.

11(b) Account Termination

TILA Section 127(h), added by the Bankruptcy Act, prohibits an open-end creditor from terminating open-end accounts for certain reasons. Creditors cannot terminate an open-end plan before its expiration date solely because the consumer has not incurred finance charges on the account. The prohibition does not prevent a creditor from terminating an account for inactivity in three or more consecutive months. The October 2005 ANPR solicited comment on the need for additional guidance, such as when an account ''expires'' and when an account is ''inactive.'' Q106–Q108.

The Board proposes to implement TILA Section 127(h) in new § 226.11(b). The general rule is stated in § 226.11(b)(1) and mirrors the statute; the prohibition would apply to all open-end plans.

Commenters expressed differing views on how the Board might interpret ''expiration date.'' Some suggested using the expiration date on credit cards as the date the account is deemed to expire. Others noted that while cards may expire from time to time, the underlying open-end plans commonly do not have maturity or expiration dates. These commenters were concerned that if an account were deemed to ''expire'' when a credit card's expiration date occurs, new account-opening disclosures would be required for the account to continue. The Board believes that Congress did not intend such a result. Therefore, comment 11(b)(1)–1 would clarify that the underlying credit agreement, not the credit card, determines if there is a stated expiration (maturity) date. Creditors offering accounts without a stated expiration date could not terminate those accounts solely because the consumer does not incur finance charges on the account.

Under the proposal, a new § 226.11(b)(2) would be added to provide that the new rule in § 226.11(b)(1) does not prevent creditors from terminating an account under an open-end plan (with or without an expiration date) that is inactive for three consecutive months. Commenters were split on the need for guidance on an ''inactive'' account. Of those that suggested guidance, commenters generally concurred that ''activity'' includes purchases or cash advances, for example. But commenters disagreed whether an account with an outstanding balance was ''active.'' Because finance charges are likely to accrue on balances remaining after the end of a grace period if any, the Board believes the Congress was addressing situations where no finance charges were accruing due to inactivity. Therefore, proposed § 226.11(b)(2) would provide that an account is inactive if there has been no extension of credit (such as by purchase, cash advance, or balance transfer) and the account has no outstanding balance.

Section 226.12 Special Credit Card Provisions

Section 226.12 contains special rules applicable to credit cards and credit card accounts, including conditions under which a credit card may be issued, liability of cardholders for unauthorized use, and cardholder rights to assert merchant claims and defenses against the card issuer. The proposal would, among other things, provide additional guidance on the rules on unauthorized use and the rights of

cardholders to assert claims or defenses involving a merchant against the card issuer (consumer claims with merchants) and update the section to address Internet transactions.

12(a) Issuance of Credit Card

TILA Section 132, which is implemented by § 226.12(a) of Regulation Z, generally prohibits creditors from issuing credit cards except in response to a request or application. Section 132 explicitly exempts from this prohibition credit cards issued as renewals of or substitutes for previously accepted credit cards. 15 U.S.C. 1642. Existing comment 12(a)(2)–5, the ''one-for-one rule,'' interprets these statutory and regulatory provisions by providing that, in general, a creditor may not issue more than one credit card as a renewal of or substitute for an accepted credit card. The proposal would leave § 226.12(a) and the accompanying commentary generally unchanged, except that the text of footnote 21 defining the term ''accepted credit card'' would be moved to new comment 12(a)–2.

In 2003, Board staff revised the commentary to § 226.12(a) to allow card issuers to replace an accepted credit card with more than one card, subject to certain conditions, including the limitation that the consumer's total liability for unauthorized use with respect to the account could not increase with the issuance of the additional renewal or substitute card(s). See comment 12(a)(2)–6; 68 FR 16,185; April 3, 2003. Card issuers could thus, for example, issue credit cards using a new format or technology to existing accountholders, even though the new card is intended to supplement rather than replace the traditional card. In the December 2004 ANPR, the Board solicited comment as to whether it should consider revising § 226.12(a) to allow the unsolicited issuance of additional cards on an existing account outside of renewal or substitution under certain conditions, including that the additional cards be sent unactivated. Q46.

Consumer groups stated that additional credit cards should only be sent if the consumer specifically requests such cards, citing identity theft concerns if issuers were permitted to send out credit cards without any advance warning or notice. One consumer group suggested that the Board require that consumers be notified in writing or by phone before additional cards are sent. Industry commenters strongly encouraged the Board to amend the regulation to permit the unsolicited issuance of additional cards on existing accounts even when a previously accepted card is not being replaced. These industry commenters observed that the current constraints on distributing new types of credit cards potentially impeded industry innovation in providing more convenient methods for consumers to access their accounts. Industry commenters also contested the notion that sending additional cards on an unsolicited basis would increase the risk of identity theft because, in their view, providing an additional card presents no greater risk than sending the first card, which the consumer has requested, or a renewal card, which consumers often would not know when to expect. Industry commenters also noted that allowing the unsolicited issuance of credit cards outside the context of a renewal or substitution would not expose consumers to greater liability for unauthorized transactions given the contemplated condition that liability for unauthorized use on the card account may not increase with the issuance of the additional card.

At this time, the Board does not propose to amend § 226.12(a) and the one-for-one rule to allow the unsolicited issuance of credit cards outside the context of a renewal or substitution of an accepted access device. Based on current card issuer practices, the Board understands that some issuers may be unable to require separate activation procedures for access devices on the same credit card account. As a result, additional cards sent on an unsolicited basis outside the context of a renewal or substitution might be sent in activated form, which could cause considerable harm to consumers. Even if the card issuer were not permitted to impose any additional liability on the consumer for unauthorized use, consumers would nevertheless still suffer the inconvenience of refuting unwarranted claims of liability.

12(b) Liability of Cardholder for Unauthorized Use

TILA Section 133(a) limits a cardholder's liability for an unauthorized use of a credit card to no more than $50 for transactions that occur prior to notification of the card issuer that an unauthorized use has occurred or may occur as the result of loss, theft or otherwise. 15 U.S.C. 1643. Before a card issuer may impose liability for an unauthorized use of a credit card, it must satisfy certain conditions: (1) the card must be an accepted credit card; (2) the issuer must have provided adequate notice of the cardholder's maximum liability and of the means by which the issuer may be notified in the event of loss or theft of the card; and (3) the issuer must have provided a means to identify the cardholder on the account or the authorized user of the card. The statutory provisions on unauthorized use are implemented in § 226.12(b) of the regulation. The Board is proposing a number of revisions that would clarify the scope of the provision and update the regulation to reflect current business practices. The proposed revisions also would provide guidance on the relationship between the unauthorized use provision and the billing error provisions in § 226.13.

Scope. The definition of ''unauthorized use'' currently found in footnote 22 would be moved into the regulation in new § 226.12(b)(1)(i). The definition provides that unauthorized use is use of a credit card by a person who lacks ''actual, implied, or apparent authority'' to use the credit card. Comment 12(b)(1)–1 further clarifies that whether such authority exists must be determined under state or other law. Commenters were asked in the December 2004 ANPR about whether there was a need to revise any of the substantive protections for open-end credit accounts. Q43. Some commenters urged the Board to consider adopting a provision similar to the existing staff commentary under Regulation E (Electronic Fund Transfer Act) to address circumstances where a consumer has furnished an access device to a person who has exceeded the authority given. The proposal would add a new comment 12(b)(1)–3 to clarify that if a cardholder furnishes a credit card to another person and that person exceeds the authority given, the cardholder is liable for that credit transaction unless the cardholder has notified (in writing, orally, or otherwise) the creditor that use of the credit card by that person is no longer authorized. See also comment 205.2(m)–2 of the Official Staff Commentary to Regulation E, 12 CFR part 205. New comment 12(b)(1)–4 would provide, however, that an unauthorized use would include circumstances where a person has obtained a credit card, or otherwise has initiated a credit card transaction through robbery or fraud (*e.g.*, if the person holds the consumer at gunpoint). *See* also comment 205.2(m)–3 of the Official Staff Commentary to Regulation E, § 205.5. In both cases, the Board believes it is appropriate for the same standard to apply to credit cards that applies to debit cards under Regulation E. Thus, the Board is proposing to adopt

the two standards under Regulation Z for consistency.

The Board does not anticipate that the proposed comments would significantly expand the circumstances under which liability could be imposed on a cardholder for a particular transaction, in light of the existing reference in the definition of ''unauthorized use'' to ''implied or apparent authority.'' Nevertheless, the addition of this comment could help provide greater clarity for issuers when investigating unauthorized use claims. Comment is requested, however, as to whether this clarification is necessary in light of the existing definition of ''unauthorized use.'' Current § 226.12(b)(1) would be re-designated as § 226.12(b)(1)(ii).

Section 226.12(b)'s liability provisions apply only to unauthorized uses of a cardholder's *credit card*. Thus, the liability limits established in § 226.12(b) do not apply to unauthorized transactions involving the use of a check that accesses a credit card account. (*See* prior discussion of ''credit card'' under § 226.2(a)(15).) The consumer would nevertheless be able to assert the billing error protections in § 226.13 which are independent of the protections under § 226.12(b). New comment 12(b)–4 would contain this clarification.

Some commenters on the December 2004 ANPR urged the Board to adopt a time period within which consumers must make claims for unauthorized transactions made through the use of a *credit card*. These commenters asserted that over time, evidence becomes more difficult to obtain, making a creditor's investigation more difficult and that a consumer's early detection and notification would prevent additional fraud on the account. In contrast to TILA Section 161 which requires consumers to assert a billing error claim within 60 days after a periodic statement reflecting the error has been sent, TILA Section 133 does not prescribe a time frame for asserting an unauthorized use claim. 15 U.S.C. 1643. The Board believes that had Congress intended that a consumer's rights to assert an unauthorized use claim to be time-limited, it would have established a time frame for asserting the claim. Accordingly, the proposal does not contain the suggested change.

Conditions for imposing liability. Section 226.12(b)(2) requires the card issuer to satisfy three conditions before the issuer may impose any liability for an unauthorized use of a credit card. First, the credit card must be an accepted credit card. *See* footnote 21; proposed comment 12–2. Second, the card issuer must have provided ''adequate notice'' to the cardholder of his or her maximum potential liability and the means by which to notify the issuer of the loss or theft of the card. Third, the card issuer also must have provided a means to identify the cardholder on the account or the authorized user of the card. *See* § 226.12(b)(2).

Under the proposal, the guidance regarding what constitutes adequate notice currently in footnote 23 would be moved to the staff commentary. *See* new comment 12(b)(2)(ii)–2. In addition, the examples in comment 12(b)(2)(iii)–1 describing means of identifying a cardholder or user would be updated to contemplate additional biometric means of identification other than a fingerprint on a card.

Comment 12(b)(2)(iii)–3 currently states that a 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. In these circumstances, the card issuer has not satisfied one of the conditions precedent necessary to impose liability; that is, it has not provided a means to identify the cardholder of the account or the user of the card. For example, no liability may be imposed on the cardholder if a person without authority to do so orders merchandise by telephone, using a credit card number or another number that appears only on the card. The example would be updated to also apply to Internet transactions.

In many instances, a credit card will bear a separate 3- or 4-digit number, which is typically printed on the back of the card on the signature block or in some cases on the front of the card above the card number. Although the provision of the 3- or 4-digit number may suggest that the person providing the number is in possession of the card, it does not meet the requirement to provide a means to identify the cardholder or the authorized user of the card, as required by the regulation. Thus, comment 12(b)(2)(iii)–3 would clarify that a card issuer may not impose liability on the cardholder when merchandise is ordered by telephone or Internet if the person using the card without the cardholder's authority provides the credit card number by itself or with other information that appears on the card because it has not met the requirement that a means to identify the cardholder or authorized user of the card in the transaction.

The Board is also proposing revisions to Model Clause G–2, which can be used to explain the consumer's liability for unauthorized use, to improve its readability. For HELOCs subject to § 226.5b, at the creditor's option, the creditor may use Model Clause G–2 or G–2(A). For open-end (not home-secured) plans, the creditor may use G–2(A).

12(c) Right of Cardholder to Assert Claims or Defenses Against Card Issuer

Under TILA Section 170, as implemented in § 226.12(c) of the regulation, a cardholder may assert against the card issuer a claim or defense for defective goods or services purchased with a credit card. The claim or defense applies only as to unpaid balances for the goods or services, and if the merchant honoring the card fails to resolve the dispute. *See* 15 U.S.C. 1666i. The cardholder may withhold payment up to the unpaid balance of the purchase that gave rise to the dispute and any finance or other charges imposed on that amount. The right is limited to disputes exceeding $50 for purchases made in the consumer's home state or within 100 miles. *See* § 226.12(c).[18] The proposal would update the regulation to address current business practices and move guidance currently in the footnotes to the rule or the staff commentary as appropriate.

In order to assert a claim under § 226.12(c), a cardholder must have used a credit card to purchase the goods or services associated with the dispute. Comment 12(c)(1)–1 lists examples of circumstances that are excluded or included by § 226.12(c). The proposal would add Internet transactions charged to the credit card account to the list of circumstances included within the scope of § 226.12(c) (provided that certain conditions are met, including that the disputed transaction take place in the same state as the cardholder's current designated address, or within 100 miles from that address).

In technical revisions, guidance stating § 226.12(c)'s inapplicability to the transactions listed in footnote 24 has been moved to comment 12(c)–3 with corresponding changes in comment 12(c)(1)–1. The reference to ''paper-based debit cards'' in existing comment 12(c)(1)–1 would be deleted as obsolete. The Board is aware of at least one product, however, whereby a consumer can pay cash and is instantly issued an account number (along with a 3-digit card identification number and expiration date) that allows the consumer to conduct transactions with an online merchant. No physical card device is issued to the consumer.

[18] Certain merchandise disputes, such as the nondelivery of goods, may also be separatel asserted as a ''billing error'' under §226.13(a)(3). *See* comment 12(c)–1.

Comment is requested whether the reference to paper-based debit cards should be retained or expanded to include these ''virtual'' cards. Comment is also requested as to whether the references to ''check-guarantee cards'' under comments 12(c)–3 (see existing footnote 24) and 12(c)(1)–1 should continue to be retained as guidance in the commentary or whether they should also be deleted as obsolete.

Section 226.12 also requires that the disputed transaction must have occurred in the same state as the cardholder's current designated address or, if different, within 100 miles from that address. *See* § 226.12(c)(3). Thus, if applicable state law provides that a mail, telephone, or Internet transaction occurs at the cardholder's address, such transactions would be covered under § 226.12(c), even if the merchant is located more than 100 miles from the cardholder's address. The conditions for asserting merchant claims would be re-designated under § 226.12(c)(3)(i)(A) and (B) in the proposal. In addition, the Board proposes to move the guidance currently found in footnote 26 regarding the applicability of some of the limitations in § 226.12(c) to § 226.12(c)(3)(ii). Corresponding revisions to reflect the proposed changes would also be made to the staff commentary, with additional clarifying changes.

Guidance regarding how to calculate the amount of the claim or defense that may be asserted by the cardholder under § 226.12(c), currently found in footnote 25, would be moved to the commentary in proposed comment 12(c)–4.

12(d) Offsets by Card Issuer Prohibited

TILA Section 169 prohibits card issuers from taking any action to offset a cardholder's credit card indebtedness against funds of the cardholder held on deposit with the card issuer. 15 U.S.C. 1666h. The statutory provision is implemented by § 226.12(d) of the regulation. Section 226.12(d)(2) currently provides that card issuers are permitted to ''obtain or enforce a consensual security interest in the funds'' held on deposit. Comment 12(d)(2)–1 provides guidance on the security interest provision. For example, the security interest must be affirmatively agreed to by the consumer, and must be disclosed as part of the account-opening disclosures under § 226.6. In addition, the comment provides that the security interest must not be ''the functional equivalent of a right of offset.'' The comment states that the consumer ''must be aware that granting a security interest is a condition for the credit card account (or for more favorable account terms) and must specifically intend to grant a security interest in a deposit account.'' The comment gives some examples of how this requirement can be met, such as use of separate signature or initials to authorize the security interest, placement of the security agreement on a separate page, or reference to a specific amount or account number for the deposit account. The comment also states that the security interest must be ''obtainable and enforceable by creditors generally. If other creditors could not obtain a security interest in the consumer's deposit accounts to the same extent as the card issuer, the security interest is prohibited by § 226.12(d)(2).''

From time to time, questions have been raised about comment 12(d)(2)–1. For example, some card issuers have asked whether using only one of the methods to ensure the consumer's awareness and intent is sufficient, versus using more than one. Card issuers have also asked about the requirement that the security interest be obtainable and enforceable by creditors generally. The Board requests comment on whether additional guidance is needed and, if so, the specific issues that the guidance should address.

12(e) through 12(g)

Sections § 226.12(e), (f), and (g) address, respectively: the prompt notification of returns and crediting of refunds; discounts and tie-in arrangements; and guidance on the applicable regulation (Regulation Z or Regulation E) in instances involving both credit and electronic fund transfer aspects. The Board does not propose any changes to these provisions.

Section 226.13 Billing Error Resolution

TILA Section 161, as implemented in § 226.13 of the regulation, addresses error resolution procedures for billing errors, and requires a consumer to provide written notice of the error within 60 days after the first periodic statement reflecting the alleged error is sent. 15 U.S.C. 1666. The written notice triggers a creditor's duty to investigate the claim within prescribed time limits. In contrast to the consumer protections in § 226.12 of the regulation, which are limited to transactions involving the use of a credit card, the billing error procedures apply to *any* extensions of credit that are made in connection with an open-end account. Commenters on the December 2004 ANPR provided few comments addressing the billing error provisions, except to urge the Board to increase the time period for investigating errors. Q43.

The proposed revisions would clarify, among other things, that (1) the billing error provisions apply to purchases made using a third-party payment intermediary, where the purchase is funded through an extension of credit using the consumer's credit card or other open-end plan; (2) a creditor must complete its investigation within the time frames established under the regulation and may not reverse any credits made once the time frames have expired; and (3) a creditor may not deduct any portion of a disputed amount or related charges when a cardholder uses an automatic payment service offered directly by or through the creditor.

In technical revisions, the substance of footnotes 27–30 would be moved to the regulation or the commentary, as appropriate, and footnote 31 would be deleted. (*See* redesignation table below.) For the reasons set forth in the section-by-section analysis to § 226.6(b)(1), the Board would update references to ''free-ride period'' as ''grace period'' in the regulation and commentary, without any intended substantive change.

13(a) Definition of Billing Error

The definition of a billing error in § 226.13(a) would be substantively unchanged in the proposal. Under § 226.13(a)(3), the term ''billing error'' includes disputes about property or services that are not accepted by the consumer or not delivered to the consumer as agreed. *See* § 226.13(a)(3). The proposal would add a new comment 13(a)(3)–2 to clarify that § 226.13(a)(3) also applies when a consumer uses his or her credit card or other open-end account to purchase a good or service through a third-party payment intermediary, such as a person-to-person Internet payment service.

In some cases, a consumer might pay for merchandise purchased through an Internet auction site using an Internet payment service, which is in turn funded through an extension of credit from the consumer's credit card or other open-end account. As in the case of purchases made using a check that accesses a consumer's credit card account, there may not be a direct relationship between the merchant selling the merchandise and the card issuer when an Internet payment service is used. Because a consumer has billing error rights with respect to purchases made with checks that access a credit card account, the Board believes the same result should apply when the consumer makes a purchase using a third-party intermediary funded using the same credit card account. In particular, the Board believes that there

is little difference between a consumer using his or her credit card to make a payment directly to the merchant on the merchant's Internet Web site or to make a payment to the merchant through a third-party intermediary. Accordingly, comment 13(a)(3)–2 would clarify that when an extension of credit from the consumer's credit card or other open-end account is used to fund a purchase through a third-party payment intermediary, the good or service purchased is not the payment medium, but rather the good or service that is obtained using the payment service.

Proposed new comment 13(a)(3)–3 would clarify that prior notice to the merchant is not required before the consumer can assert a billing error that the good or service was not accepted or delivered as agreed. Thus, in contrast to claims or defenses asserted under TILA Section 170 and § 226.12(c) of the regulation which require that the cardholder first make a good faith attempt to obtain satisfactory resolution of a disagreement or problem with the person honoring the credit card, the consumer need not provide prior notice of the dispute to the person from whom the consumer purchased the good or service of the dispute before asserting a billing error claim directly with the creditor. 15 U.S.C. 1666i.

The text of footnote 27 prohibiting a creditor from accelerating a consumer's debt or restricting or closing the account because the consumer has exercised billing error rights, and alerting creditors to the statutory forfeiture penalty under TILA Section 161(e) (15 U.S.C. 1666) for failing to comply with any of the requirements in § 226.13 would be moved to the list of error resolution rules under § 226.13(d)(3). Current comment 13–1 referring to this general prohibition would be deleted as redundant.

13(b) Billing-Error Notice

To assert a billing error under § 226.13(b), a consumer must provide a written notice of the error to the creditor no later than 60 days after the creditor transmitted the first periodic statement that reflects the alleged error. The notice must provide sufficient information to enable the creditor to investigate the claim, including the consumer's name and account number, the type, date and amount of the error, and, to the extent possible, the consumer's reasons for his or her belief that a billing error exists.

Comment 13(b)–1 would be revised to incorporate the guidance currently in footnote 28 stating that the creditor need not comply with the requirements of § 226.13(c) through (g) if the consumer voluntarily withdraws the billing error notice. Comment 13(b)–2 would be added to incorporate the guidance currently in footnote 29 stating that the creditor may require that the written billing error notice not be made on the payment coupon or other material accompanying the periodic statement if the creditor so states in the billing rights statement on the account-opening disclosure and annual billing rights statement. In addition, comment 13(b)–2 would provide that billing error notices submitted electronically would be deemed to satisfy the requirement that billing error notices be provided in writing, provided that the creditor has stated in the billing rights statement required by §§ 226.6(c)(2) and 226.9(a) that it will accept notices submitted electronically, including how the consumer can submit billing error notices in this manner.

13(c) Time for Resolution; General Procedures

Section 226.13(c) generally requires a creditor to mail or deliver written acknowledgment to the consumer within 30 days of receiving a billing-error notice, and to complete the billing error investigation procedures within two billing cycles (but no later than 90 days) after receiving a billing-error notice. Comment 13(c)(2)–2 would be added to clarify that a creditor must complete its investigation and conclusively determine whether an error occurred within the error resolution time frames. Thus, once the error resolution time frame has expired, the creditor may not reverse any corrections it has made related to the asserted billing error, including any previously credited amounts, even if the creditor subsequently obtains evidence indicating that the billing error did not occur as asserted. The statute is clear that a creditor must complete its investigation and make appropriate corrections to the consumer's account within two complete billing cycles after the receipt of the consumer's notice of error, and does not permit the creditor to continue its investigation beyond the error resolution period. 15 U.S.C. 1666. This rule is intended to ensure finality in the error resolution process, and to ensure creditors complete their investigations in a timely manner. Of course, a creditor may reverse a prior determination, based on an investigation, that no error occurred and subsequently credit the consumer's account for the amount of the error even after the error resolution period has elapsed.

Some commenters on the December 2004 ANPR urged the Board to increase the time period for investigating errors from 90 days to 120 days to allow issuers to investigate billing error claims effectively. Q43. The 90-day time frame is statutory, and the Board does not propose to extend the maximum error resolution period. The Board further notes that the 90-day maximum time frame would apply only in cases where a creditor's billing cycle is 45 days or more. Otherwise, the creditor must complete its investigation within the time period represented by two billing cycles. Thus, for example, if a creditor's billing cycle is 30 days, it would only have 60 days to conclude its investigation of alleged billing errors.

Of course, any determination that an error has not occurred must be based upon a reasonable investigation. *See* § 226.13(f).

13(d) Rules Pending Resolution

Once a billing error is asserted by a consumer, the creditor is prohibited under § 226.13(d) from taking certain actions with respect to the dispute in order to ensure that the consumer is not otherwise discouraged from exercising his or her billing error rights. For example, the creditor may not take action to collect any disputed amounts, including related finance or other charges, or make or threaten to make an adverse report, including reporting that the amount or account is delinquent, to any person about the consumer's credit standing arising from the consumer's failure to pay the disputed amount or related finance or other charges.

Under the current rule, the card issuer is specifically prohibited from deducting any part of the disputed amount or related charges from a cardholder's deposit account that is also held by the card issuer. To reflect new payment practices, the proposal would extend the prohibition to automatic deductions from the consumer's deposit account where the consumer has enrolled in the card issuer's automatic payment plan. The Board believes that whenever an automatic payment service is offered by the card issuer, thereby giving the card issuer control over the amount to be debited, a cardholder should not be treated any differently solely because the consumer's deposit account is maintained at a different account-holding institution. Thus, for example, if the cardholder has agreed to pay a predetermined amount each month and subsequently disputes one or more transactions that appear on a statement, the card issuer must ensure that it does not debit the consumer's asset account for any part of the amount in dispute. The proposed revision would apply whether the card issuer operates the automatic payment service

itself or outsources the service to a third-party service provider, but would not apply where the consumer has enrolled in a third-party bill payment service that is not offered by the card issuer. Thus, for example, the proposed revision would not apply where the consumer uses a bill-payment service offered by his or her deposit account-holding institution to pay his debt (unless the account-holding institution is also the card issuer). Section 226.13(d)(1) and comment 13(d)(1)–4, which describes the coverage of the automatic payment plan exclusion, would be revised to reflect the proposed change. Comment is requested regarding any operational issues card issuers may encounter in implementing the systems changes necessary to comply with the proposed revision.

13(e) Procedures if Error Occurred as Asserted and 13(f) Procedures if Different Billing Error or No Billing Error Occurred

Paragraphs (e) and (f) of § 226.13 set forth procedures that a creditor must follow to resolve a billing error claim, depending on whether the billing error occurred as asserted, or if a different billing error or no billing error occurred. In particular, § 226.13(f) requires that a creditor first conduct a reasonable investigation before the creditor may deny the consumer's claim or conclude that the billing error occurred differently than as asserted by the consumer. *See* TILA Section 161(a)(3)(B)(ii); 15 U.S.C. 1666(a)(3)(B)(ii). These provisions in the regulation would be substantively unchanged in the proposal. The text of footnote 31 is deleted as unnecessary in light of the general obligation under § 226.13(f) to conduct a reasonable investigation before a creditor may deny a billing error claim.

13(g) Creditor's Rights and Duties After Resolution

Section 226.13(g) specifies the creditor's rights and duties once it has determined, after a reasonable investigation under § 226.13(f), that a consumer owes all or a portion of the disputed amount and related finance or other charges. The proposal would provide guidance to clarify the length of the time the consumer would have to repay the amount determined still to be owed without incurring additional finance charges (i.e., the grace period) that would apply under these circumstances.

Before a creditor may collect any amounts owed related to a disputed charge that is determined to be proper, the creditor must promptly notify the consumer in writing when the payment is due and the portion of the disputed amount and related finance or other charges that is still owed (including any charges that may be retroactively imposed on the amount found not to be in error). *See* 15 U.S.C. 1666(a); § 226.13(g)(1). The consumer must then be given any grace period disclosed under proposed §§ 226.6(a)(1), 226.6(b)(1), 226.7(a)(8), or 226.7(b)(8), as applicable, to pay the amount due as specified in the written notice without incurring any additional finance or other charges. *See* § 226.13(g)(2). Comment 13(g)(2)–1 would be revised to clarify that if the consumer was entitled to a grace period at the time the consumer asserted the alleged billing error, then the consumer must be given a period of time equivalent to the disclosed grace period to pay the disputed amount as well as related finance or other charges. The Board believes that this interpretation is necessary to ensure that consumers are not discouraged from asserting their statutory billing rights by putting the consumer in the same position (that is, with the same grace period) if the consumer had not disputed the transaction in the first place.

13(i) Relation to Electronic Fund Transfer Act and Regulation E

Section 226.13(i) is designed to facilitate compliance when financial institutions extend credit incident to electronic fund transfers that are subject to the Board's Regulation E, for example, when the credit card account is used to advance funds to prevent a consumer's deposit account from becoming overdrawn or to maintain a specified minimum balance in the consumer's account. *See* 12 CFR part 205. The provision states that under these circumstances, the creditor should comply with the error resolution procedures of Regulation E, rather than those in Regulation Z (except that the creditor must still comply with §§ 226.13(d) and (g)). The Board is not proposing any changes to this provision as it appears in the regulation; however, a minor clarification is proposed for an existing comment.

Comment 13(i)–2 states that 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. The example in the current comment would be revised to include a specific reference to overdraft protection services that are not subject to the Board's Regulation Z when there is no agreement between the creditor and the consumer to extend credit when the consumer's account is overdrawn. *See* § 226.4(c)(3); 70 FR 29,582; May 24, 2005.

Comment is requested as to whether the Board should expand the guidance provided under § 226.13(i) to apply more generally to other circumstances when an extension of credit is incident to an electronic fund transfer, rather than limited to transactions pursuant to an agreement between a consumer and a financial institution to extend credit when the consumer's account is overdrawn or to maintain a specified balance. For example, in situations where a consumer transfers funds from an open-end credit plan, such as a home-equity line of credit, to the consumer's checking or savings account, the wrong amount may be transferred from the credit plan to the deposit account. Both Regulation E and Z could potentially apply under this circumstance leaving a potential issue as to which set of error resolution provisions the creditor/ financial institution should follow. In particular, if Regulation E is deemed to apply, the institution would have a shorter period of time in which to complete its investigation.

Section 226.14 Determination of Annual Percentage Rate

As discussed in the section-by-section analysis to § 226.7(b)(7), Regulation Z requires disclosure on periodic statements of both the effective APR and the corresponding APR. The regulation also requires disclosure of the corresponding APR in account-opening disclosures, change-in-terms notices, advertisements, and other documents. The computation methods for both the corresponding APR and the effective APR are implemented in § 226.14 of Regulation Z. Section 226.14 also provides tolerances for accuracy in APR disclosures.

As also discussed in the section-by-section analysis to § 226.7(b)(7), the Board is proposing for comment two alternative approaches regarding the computation and disclosure of the effective APR. Under the first alternative, the Board proposes to retain the requirement that the effective APR be disclosed on the periodic statement, with modifications to the rules for computing and disclosing the effective APR to reflect an approach tested with consumers. *See* proposed § 226.7(b)(7) and § 226.14(d). For HELOCs subject to § 226.5b, the Board proposes to allow a creditor to comply with the current rules applicable to the effective APR; creditors would not be required to make changes in their periodic statement

systems for such plans at this time. *See* proposed §§ 226.7(a)(7), 226.14(c). If the creditor chooses, however, the creditor may disclose an effective APR for its HELOCs according to any revised rules adopted for the effective APR.

The second alternative would be to eliminate the requirement to provide the effective APR on the periodic statement. Under the second alternative, for a HELOC subject to § 226.5b, a creditor would have the option of providing the effective APR according to current rules. The two proposed alternatives are reflected in two proposed alternative versions of § 226.14.

Under either alternative, the current provisions in § 226.14(a) and (b) dealing with tolerances for the APR and guidance on calculating the APR for certain disclosures other than the periodic statement would not be substantively revised, but minor changes would be made. Section 226.14(b) identifies the regulatory sections where a corresponding APR (the periodic rate multiplied by the number of periods in a year) must be disclosed. A reference to proposed §§ 226.7(a)(4) and 226.7(b)(4) (currently § 226.7(d)), which requires creditors to disclose corresponding APRs on periodic statements, would be added to § 226.14(b). (A reference to § 226.7(d) would be deleted from § 226.14(c) as obsolete.) With respect to technical revisions, under both alternatives, the § 226.14 regulatory and commentary text would be revised where necessary to reflect changes in terminology and to eliminate footnotes, moving their substance into the text of the regulation.

First alternative proposal. Under the first alternative, the proposed new rules for calculating the effective APR are contained in §§ 226.14(d) and 14(e), and accompanying commentary. As discussed above under § 226.7(b)(7), for multifeatured plans, the Board proposes to require that the creditor must compute and disclose an effective APR separately for each feature. For example, purchases and cash advances would be separate features; there might be two separate cash advance features, if there was a promotional APR on certain cash advances and a different APR on others. Proposed § 226.14(d) and accompanying commentary provide rules on how the effective APR should be computed for each feature. (Current § 226.14(d) would be redesignated as § 226.14(c)(5)).

In proposed § 226.14(e), the Board proposes to limit the finance charges that are included in calculating the effective APR. These charges would be: (1) Charges attributable to a periodic rate used to calculate interest; (2) charges that relate to a specific transaction; (3) charges related to required credit insurance or debt cancellation or suspension coverage; (4) minimum charges imposed if, and only 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 (such as a $1.00 minimum finance charge); and (5) charges based on the account balances, account activity or inactivity, or the amount of credit available. This exclusive list is intended to limit disclosure of an effective APR to situations in which it is more likely to be understood by consumers and be useful to consumers, as well as provide creditors with certainty as to the fees that must be included in the computation of the effective APR.

For finance charges that relate to a specific transaction, such as cash advance and balance transfers, expressing the interest and transactions fees in the effective APR may help consumers better understand the costs of these transactions. For finance charges that relate to *required* credit insurance or debt cancellation or suspension coverage (coverage for which the regulation's conditions for excluding the charge from the finance charge have not been satisfied), consumers may benefit from seeing an effective APR that combines two costs that will be imposed every month if a consumer carries a balance—interest on the balance and the required fee for insurance or debt cancellation or suspension coverage. For finance charges that are minimum charges in lieu of interest described above, a consumer that typically carries a small balance may benefit from seeing an effective APR that includes this minimum charge, so that the consumer understands that he or she is paying a higher rate for carrying that small balance than the corresponding APR suggests. For finance charges based on the account balances, account activity or inactivity, or the amount of credit available, consumers may benefit from seeing an effective APR that includes these charges, because these charges could be imposed as often as every month as a substitute for interest or in addition to interest. For example, the Board is aware of at least one credit card product where there is no interest rate applicable to the card, but each month a fixed charge is charged based on the outstanding balance on the card (for example, $6 charge per $1,000 balance). For such a price structure, which has a corresponding APR of zero, consumers may find the effective APR helpful.

Also, in proposed § 226.14(e), the Board would make clear that a finance charge related to opening the account, and a finance charge imposed not more often than annually as a condition to continuing or renewing the account, is not included in calculating the effective APR. Because these fees would be imposed infrequently (either at account opening or annually, or less frequently, to continue or renew the account), including these finance charges in the effective APR may not be helpful to consumers.

With respect to open-end (not home-secured) plans, the Board would also revise the current rule that exempts a creditor from disclosing an effective APR when the total finance charge does not exceed 50 cents for a monthly or longer billing cycle, or the pro rata share of 50 cents for a shorter cycle. *See* 15 U.S.C. 127(b)(6); current § 226.14(c)(4). The Board would exercise its exceptions authority to adjust the 50-cent threshold to $1.00 to reflect adjusted prices since the rule was implemented. Section 226.14(d)(4) would also be revised to limit the finance charges included in determining whether the threshold is exceeded to those specified in proposed § 226.14(e). *See* proposed § 226.14(d)(4).

Also under the first alternative, the Board proposes to place in § 226.14(c) the rules for calculating the effective APR for periodic statements for HELOCs subject to § 226.5b. As proposed, § 226.14(c) provides that, for HELOCs subject to § 226.5b, a creditor may comply either with (1) the current rules applicable to the effective APR, (which are contained in proposed § 226.14(c)), or (2) with the revised rules applicable to open-end (not home-secured) plans (which are contained in proposed § 226.14(d)).

Second alternative proposal. Under the second alternative, for the reasons discussed in the section-by-section analysis to § 226.7(b)(7), the Board proposes to eliminate the requirement to provide the effective APR on the periodic statement. Under this alternative, however, for a HELOC subject to § 226.5b, a creditor would have the option of disclosing an effective APR according to the current rules in Regulation Z for computing and disclosing the effective APR. No guidance would be given for disclosing the effective APR on open-end (not home-secured) plans, since the requirement to provide the effective APR on such plans would be eliminated.

Section 226.16 Advertising

TILA Section 143, implemented by the Board in § 226.16, governs advertisements of open-end credit plans. 15 U.S.C. 1663. The statute

applies to the advertisement itself, and therefore, the statutory and regulatory requirements apply to any person advertising an open-end credit plan, whether or not such person meets the definition of creditor. *See* comment 2(a)(2)–2. Under the statute, if an advertisement sets forth any of the specific terms of the plan, then the advertisement must also state: (1) Any minimum or fixed amount which could be imposed; (2) the periodic rates expressed as APRs, if periodic rates may be used to compute the finance charge; and (3) any other term the Board requires by regulation. The specific terms of an open-end plan that ''trigger'' additional disclosures, which are commonly known as ''triggering terms,'' are finance charges and other charges required to be disclosed under current §§ 226.6(a) and 226.6(b). If an advertisement states a triggering term, the regulation requires that the advertisement also state (1) any minimum, fixed, transaction, activity or similar charge that could be imposed; (2) any periodic rate that may be applied expressed as an APR; and (3) any membership or participation fee that could be imposed. *See* current § 226.16(b) and comment 16(b)–7 (as redesignated to proposed comment 16(b)–1).

The Board is proposing several changes to the advertising rules in § 226.16 in order to ensure meaningful disclosure of advertised credit terms, alleviate compliance burden for certain advertisements, and implement provisions of the Bankruptcy Act. Specifically, under § 226.16(b), the Board is proposing to make the triggering terms consistent for all open-end credit advertisements by including terms stated negatively (for example, no interest), as is currently required under TILA for advertisements of HELOCs. Presently, for advertisements for open-end (not home-secured) plans, only positive terms trigger the additional disclosure.

If an advertisement states a minimum monthly payment to finance a purchase under a plan established by a creditor or retailer, the proposal would amend § 226.16(b) to require a disclosure of the total number of payments and time period to repay. In addition, the Board is proposing in new § 226.16(g) to provide guidelines concerning use of the word ''fixed'' in connection with an APR. To ease compliance burden on advertisers, the Board is proposing in new § 226.16(f), alternative disclosures for television and radio advertisements in recognition of the time and space constraints on such media. Finally, the Board is implementing Section 1303 of the Bankruptcy Act, in part, in new § 226.16(e) and Section 1309 of the Bankruptcy Act in the commentary on clear and conspicuous in new comment 16–2. The Board's proposed revisions to § 226.16 and the accompanying commentary are described in more detail below.

Clear and conspicuous standard. Comment 16–1 provides that disclosures made under § 226.16 are subject to the clear and conspicuous standard required for all disclosures for open-end credit plans. *See* § 226.5(a)(1). To be clear and conspicuous, disclosures must be in a reasonably understandable form. *See* comment 5(a)(1)–1. Generally, there are no specific rules regarding the format of disclosures in advertisements. *See* comment 16–1.

Section 1309 of the Bankruptcy Act requires the Board to implement the ''clear and conspicuous'' term as it applies to certain disclosures required by Section 1303(a) of the Bankruptcy Act. Section 1303(a) applies to direct-mail applications and solicitations for credit cards and accompanying promotional materials. The Bankruptcy Act requires, in part, that when an introductory rate is stated, the time period in which the introductory period will end and the rate that will apply after the end of the introductory period must be stated ''in a clear and conspicuous manner'' in a prominent location closely proximate to the first listing of the introductory rate. The statute requires these disclosures to be ''reasonably understandable and designed to call attention to the nature and significance of the information in the notice.''

The Board solicited comment in the October 2005 ANPR on interpreting the standard for clear and conspicuous set forth in Section 1309 of the Bankruptcy Act. Q85. Most industry commenters stated that additional guidance on clear and conspicuous was unnecessary. Consumer group commenters suggested that the Board impose minimum font size requirements, while industry commenters universally opposed such requirements.

After considering comments, the Board is proposing in comment 16–2 that creditors clearly and conspicuously disclose when the introductory period will end and the rate that will apply after the end of the introductory period if the information is equally prominent to the first listing of the introductory rate to which it relates. Guidance on what is considered the first listing of the introductory rate is given in proposed comment 16(e)–4, as discussed below. The Board is also proposing that if these disclosures are the same type size as the first listing of the introductory rate, they will be deemed to be equally prominent. *See* proposed comment 16–2. Requiring equal prominence for this information calls attention to the nature and significance of such information by ensuring that the information is at least as significant as the introductory rate to which it relates. Furthermore, an equally prominent standard for similar information currently applies to advertisements for HELOCs. *See* current § 226.16(d)(2).

16(b) Advertisement of Terms That Require Additional Disclosures

Negative terms as triggering terms. If an advertisement states certain terms, additional information must be disclosed. *See* § 226.16(b). The goal of this triggering term approach is to provide consumers with a more complete picture of costs that may apply to the plan when certain specified charges for the plan are given. TILA Section 143 provides that stating any specific term of the plan triggers additional disclosures. 15 U.S.C. 1663. The Board, however, limited triggering terms for advertisements of open-end (not home-secured) plans to those terms that are stated as a positive number. For home-equity advertisements, under TILA Section 147(a) (15 U.S.C. 1665b(a)), triggering terms include both positive as well as negative terms. *See* also current § 226.16(d)(1) and comments 16(b)–2 and 16(d)–1. Pursuant to TILA Section 143(3), the Board proposes to apply this approach to advertisements for all open-end plans. The Board believes that negative terms such as ''no interest'' and ''no annual fee'' alone may not provide consumers with a sufficiently accurate portrayal of possible costs associated with the plan if the additional disclosures are not provided. This approach would also ensure similar treatment for all open-end plans. Current comment 16(b)–2 would be amended accordingly and moved to a revised comment 16(b)–1, which includes guidance on triggering terms in general. *See* redesignation table below.

Advertisement of minimum monthly payment. The Board has the authority under TILA Section 143(3) to require the disclosure in advertisements for open-end credit of any terms in addition to those explicitly required by the statute. 15 U.S.C. 1663(3). The Board proposes to require additional disclosures for advertisements that provide a minimum monthly payment for an open-end credit plan that would be established to finance the purchase of goods or services. If a minimum

monthly payment is advertised, the advertisement would be required to state, in equal prominence to the minimum payment, the time period required to pay the balance and the total dollar amount of payments if only minimum payments are made. Proposed § 226.16(b)(2) would clarify that this disclosure should assume that the consumer makes only the minimum payment required during each payment period.

The Board believes that advertisements that state a minimum monthly payment will provide a clearer picture of credit costs if such advertisements also state the total dollar amount of payments the consumer would make, and the amount of time needed to pay the balance if only the minimum payments are made. The Board has received comments from time to time from state attorneys general regarding creditors that sell large-ticket items and simultaneously arrange financing for the purchase of those items. *See* discussion regarding the definition of open-end credit in the section-by-section analysis to § 226.2(a)(20). The comments the Board has received indicate that some consumers agree to the financing on the basis of a certain advertised minimum payment but are later surprised to learn how long the debt will take to pay, and how much the credit will cost them over that time period. The Board believes that disclosure of the time period and total dollar amount of payments will help to improve consumer understanding about the cost of credit products for which a minimum monthly payment is advertised.

Other changes to 226.16(b). Currently, terms that are required to be disclosed under § 226.6 trigger the disclosure of additional terms. *See* § 226.16(b). Under current comment 16(b)–1, this would include terms required to be disclosed under §§ 226.6(a) and 226.6(b). As discussed in the section-by-section analysis to § 226.6, the Board is proposing new cost disclosure rules for open-end (not home-secured) plans, but is preserving existing cost disclosure rules for HELOCs pending a review of all home-secured rules. Section 226.16(b) would be conformed to reflect these revisions.

In technical revisions, § 226.16(b) has been renumbered: Triggering term requirements would be set forth in a revised § 226.16(b)(1); and the new proposed minimum monthly payment disclosures would be set forth in a revised § 226.16(b)(2). Footnote 36d (stating that disclosures given in accordance with § 226.5a do not constitute advertising terms) would be deleted as unnecessary since ''advertisements'' do not include notices required under federal law, including disclosures required under § 226.5a. *See* comment 2(a)(2)–1(ii). The Board is proposing to move the guidance in current comments 16(b)–1 and 16(b)–8 to new § 226.16(b)(1), with some revisions. Proposed comment 16(b)–1 would provide guidance on triggering terms by consolidating current comment 16(b)–2, amended as discussed above, with current comment 16(b)–7. Current comment 16(b)–6 would be eliminated as duplicative of the requirements under proposed § 226.16(e), as discussed below.

16(c) Catalogs or Other Multiple-Page Advertisements; Electronic Advertisements

Amendments to § 226.16(c) and comments 16(c)(1)–1, 16(c)(1)–2, and 16(c)(3)–1 reflect provisions contained in the 2007 Electronic Disclosure Proposal. *See* 72 FR 21,1141; April 30, 2007. The amendments provide that for an advertisement that is accessed by the consumer in electronic form, the disclosures required under § 226.16 must be provided to the consumer in electronic form on or with the advertisement.

16(d) Additional Requirements for Home-Equity Plans

No revisions are proposed for the advertising rules under § 226.16(d), consistent with the Board's plan to review rules affecting HELOCs in a separate rulemaking.

High loan-to-value disclosures. Section 1302 of the Bankruptcy Act amends TILA Section 127(a)(13) to require that credit applications for, and advertisements related to, an extension of credit secured by a dwelling that may exceed the fair market value of the dwelling include a statement that 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. 15 U.S.C. 1637(a)(13). For these applications and advertisements, the statute also requires inclusion of a statement that the consumer should consult a tax adviser for further information on the deductibility of the interest. The new disclosures would apply to advertisements for home-secured credit, whether open-end or closed-end; thus, the Board plans to address issues related to this requirement during its review of the rules relating to home-secured credit.

16(e) Introductory Rates

TILA Section 127(c)(6), as added by Section 1303(a) of the Bankruptcy Act, requires that if a credit card issuer states an introductory rate in applications, solicitations, and all accompanying promotional materials, the issuer must use the term ''introductory'' clearly and conspicuously in immediate proximity to each mention of the introductory rate. 15 U.S.C. 1637(c)(6). Credit card issuers also must disclose, in a prominent location closely proximate to the first mention of the introductory rate, other than the listing of the rate in the table required for credit card applications and solicitations, the time period when the introductory rate expires and the rate that will apply after the introductory rate expires.

TILA Section 127(c)(7), as added by Section 1304(a) of the Bankruptcy Act, applies these requirements to ''any solicitation to open a credit card account for any person under an open end consumer credit plan using the Internet or other interactive computer service.'' 15 U.S.C. 1637(c)(7). The Board proposes to implement these requirements for promotional materials accompanying such applications or solicitations in a new § 226.16(e). In addition, the Board proposes to apply these requirements more broadly, pursuant to the Board's authority under TILA Section 105(a), to issue regulations with classification, differentiations or other provisions as in the judgment of the Board are necessary to effectuate the purposes of TILA, as discussed below. 15 U.S.C. 1604(a). Sections 1303 and 1304 of the Bankruptcy Act would be implemented in § 226.5a, and are discussed in the section-by-section analysis to § 226.5a.

16(e)(1) Scope

The Bankruptcy Act amendments regarding ''introductory'' rates, the time period these rates may be in effect, and the post-introductory rate apply to direct-mail applications and solicitations, and accompanying promotional materials. 15 U.S.C. 1637(c)(1)(A). To provide meaningful disclosure of credit terms in order to avoid the uninformed use of credit, the Board is proposing to extend these requirements to applications or solicitations to open a credit card account, and all accompanying promotional materials, that are available publicly (''take-ones''). 15 U.S.C. 1601(a); 15 U.S.C. 1604(a); 15 U.S.C. 1637(c)(3)(A). Consumers who obtain publicly available applications and solicitations are in essentially the same position in terms of the shopping

process as consumers who receive direct mail applications and solicitations or applications or solicitations offered through the Internet. Therefore, the Board believes the information provided about introductory rates in these materials should be the same.

Moreover, as discussed in the section-by-section analysis to § 226.5a(a)(2), the Board is proposing to apply the Bankruptcy Act provisions relating to Internet offers to both electronic solicitations *and* applications, although the statute refers only to solicitations, in order to promote the informed use of credit. Therefore, proposed § 226.16(e)(1) would state that the introductory rate requirements in § 226.16(e) apply to all promotional materials accompanying credit card applications and solicitations offered through direct mail and electronically as well as those available publicly.

Furthermore, the Board proposes to extend some of the requirements in Section 1303 of the Bankruptcy Act regarding the presentation of introductory rates to other written advertisements for open-end credit plans that may not accompany an application or solicitation, other than advertisements of HELOCs subject to § 226.5b, in order to promote the informed use of credit. Advertisements for open-end credit plans are already required to comply with similar, though not identical, requirements to those set forth in Section 1303 of the Bankruptcy Act for ''discounted variable-rate plans.'' *See* current comment 16(b)–6. Specifically, ''discounted variable-rate plans'' are required to provide both the initial rate (with the statement of how long it will remain in effect) and the current indexed rate (with the statement that this second rate may vary). The Board's proposal would ensure that the presentation of introductory rates in all written advertisements for open-end credit is consistent with the presentation requirements for promotional materials accompanying applications and solicitations, as discussed below. The Board believes consumers will benefit from these enhancements and advertisers will benefit from the consistent application of requirements related to introductory rates for all written open-end advertisements. Since the Board plans to address issues related to HELOCs during the next phase of its review of Regulation Z, proposed § 226.16(e) would not apply to advertisements of HELOCs subject to § 226.5b. The requirements of § 226.16(e) would apply to communications that are considered advertisements, and would not include disclosures required under § 226.5a and under § 226.6.

16(e)(2) Definitions

TILA Section 127(c)(6)(D)(i), as added by Section 1303(a) of the Bankruptcy Act, defines a temporary APR as a rate of interest applicable to a credit card account for an introductory period of less than 1 year, if that rate is less than an APR that was in effect within 60 days before the date of mailing the application or solicitation. 15 U.S.C. 1637(c)(6)(D)(i). TILA Section 127(c)(6)(D)(ii) defines an ''introductory period'' as ''the maximum time period for which the temporary APR may be applicable.'' 15 U.S.C. 1637(c)(6)(D)(ii). The Board proposes to implement the definition of ''introductory period'' in § 226.16(e)(2) without change. With respect to the definition of ''temporary APR,'' the Board proposes to implement the term more broadly, as discussed below.

Since the term ''introductory rate'' is a commonly understood term that is currently used in Regulation Z, the Board proposes to use the term ''introductory rate'' in place of ''temporary APR'' for consistency and to facilitate compliance. Furthermore, for the reasons set forth below, the Board would implement the term more broadly to apply to any rate of interest applicable to an open-end plan for an introductory period if that rate is less than the advertised APR that will apply at the end of the introductory period.

The statutory definition compares the temporary APR to an APR that was in effect within 60 days before the date of mailing of the application or solicitation. Since the advertised variable rate that will apply at the end of the introductory period in direct-mail credit card applications and solicitations (and accompanying promotional materials) must have been in effect within 60 days before the date of mailing, as required under proposed § 226.5a(c)(2)(i) (and currently under § 226.5a(b)(1)(ii)), the Board's proposed definition captures the same concept in more simple language. Furthermore, because the Board is proposing to extend these requirements to publicly available applications and solicitations as well as applications and solicitations offered through the Internet, the Board's proposed definition of ''introductory rate'' would also incorporate the timing requirements for variable rates under proposed §§ 226.5a(c)(2) and 226.5a(e)(4).

The statutory definition currently applies to offers where the introductory period is less than 1 year. The Board is proposing to extend the definition of ''introductory rate'' to include offers where the introductory period is a year or more, in order to promote the informed use of credit. Creditors, however, often offer an introductory rate for a year or more, and the Board believes that consumers would benefit from the application of the requirements imposed by the Bankruptcy Act on introductory rates to these types of offers as well. In addition, the requirements for the advertisement of ''discounted variable-rate plans'' under current comment 16(b)–6 are not limited to offers where the introductory period is less than 1 year, and the Board believes that these requirements should continue to apply to such advertised offers.

The requirements for ''discounted variable-rate plans'' under current comment 16(b)–6 apply solely to variable-rate plans. In adopting the proposed definition of ''introductory rate'' at § 226.16(e)(2), the Board would cover both variable- and nonvariable-rate plans under the requirements regarding the presentation of introductory rates. Current comment 16(b)–6 would be deleted as obsolete.

16(e)(3) Stating the Term ''Introductory''

Under TILA Section 127(c)(6)(A), as added by section 1303(a) of the Bankruptcy Act, the term ''introductory'' must be used in immediate proximity to each listing of the temporary APR in the application, solicitation, or promotional materials accompanying such application or solicitation. 15 U.S.C. 1637(c)(6)(A). The Board solicited comment in the October 2005 ANPR on what type of guidance was appropriate with respect to this requirement. Q86.

Abbreviation. In the October 2005 ANPR, many commenters asked the Board to consider permitting creditors to use the term ''intro'' as an alternative to the word ''introductory.'' One commenter also asked the Board to consider permitting creditors to use terms that convey the same meaning (such as ''temporary''). Because ''intro'' is a commonly-understood abbreviation of the term ''introductory,'' the Board proposes to allow creditors to use ''intro'' as an alternative to the requirement to use the term ''introductory'' in new § 226.16(e)(3). Because the Bankruptcy Act requires the use of the term ''introductory,'' the Board does not propose to allow use of a different term.

Immediate proximity. Responses to the October 2005 ANPR suggested three general approaches to interpreting the meaning of ''immediate proximity:'' (1) Immediately preceding or following the

APR; (2) within the same sentence as the APR (or within a certain number of words); or (3) in the sentence immediately preceding or following the sentence with the APR. After considering comments, the Board is proposing to provide a safe harbor for creditors that place the word ''introductory'' or ''intro'' within the same phrase as each listing of the temporary APR. This guidance is in proposed comment 16(e)–2. The Board believes that interpreting ''immediate proximity'' to mean adjacent to the rate may be too restrictive and would effectively ban phrases such as ''introductory balance transfer rate X percent.'' Moreover, the Board has proposed a safe harbor, recognizing that there may be instances where the term ''introductory'' may arguably appear in ''immediate proximity'' of the rate, yet not necessarily be in the same phrase as the rate, such as in a graphic.

16(e)(4) Stating the Introductory Period and Post-Introductory Rate

TILA Section 127(c)(6)(A), as added by Section 1303(a) of the Bankruptcy Act, also requires that the time period in which the introductory period will end and the APR that will apply after the end of the introductory period be listed in a clear and conspicuous manner in a ''prominent location closely proximate to the first listing'' of the introductory APR (disclosures in the application and solicitation table are not covered). 15 U.S.C. 1637(c)(6)(A). The Board specifically solicited comments on this provision in the October 2005 ANPR. Q87–Q90.

Prominent location closely proximate. Industry comments received during the October 2005 ANPR generally advocated flexibility in interpreting the phrases ''prominent location'' and ''closely proximate.'' Consumer group commenters suggested very specific formatting requirements in interpreting these phrases, including minimum font size and placement requirements.

The Board believes flexible guidance is appropriate in interpreting ''prominent location closely proximate'' given the numerous ways this information may be presented. Accordingly, the Board is proposing a safe harbor in order to provide guidance on this issue. Specifically, the Board would provide a safe harbor for advertisers that place the time period in which the introductory period will end and the APR that will apply after the end of the introductory period in the same paragraph as the first listing of the introductory rate. This proposal is in proposed comment 16(e)–3. Congress's use of the term ''closely proximate'' may be distinguished from its use of the term ''immediate proximity'', and thus, the Board believes that guidance on the meaning of ''prominent location closely proximate'' should be more flexible than the guidance given for the meaning of ''immediate proximity'' in comment 16(e)–2.

Recognizing that there may be instances where the information may not appear in the same ''paragraph'' as the first listing and yet may still be considered in a prominent location closely proximate to the first listing (for example, in a graphic), the Board's guidance has been provided as a safe harbor. Consumer testing conducted for the Board suggests that placing this type of information in a footnote makes it much less likely the consumer will notice it. In light of the statutory provision providing that this information appear in a prominent location closely proximate to the listing, the Board believes that placing this information in footnotes would not be a prominent location closely proximate to the listing.

First listing. In the October 2005 ANPR, the Board solicited comments on which listing of the temporary APR should be considered the ''first listing'' other than the rate listed in the table required on or with credit card applications or solicitations. In particular, the Board requested comment on (1) which document within a multi-page mailing should be considered the one with the first listing, and (2) which listing of the introductory APR within a particular document should be considered the first listing. With respect to the first question, commenters suggested either (1) that the first listing should apply to the ''principal promotional document'' in the package, or (2) that the Board treat each separate document within a mailing as a separate solicitation such that the information would need to appear in a prominent location closely proximate to the first listing on each separate document. The ''principal promotional document'' is a concept used in connection with the placement of a prescreening opt-out notice under the Fair Credit Reporting Act (FCRA). 15 U.S.C. 1681 *et seq.* The FTC, in its regulations related to the FCRA, defines the ''principal promotional document'' as ''the document designed to be seen first by the consumer such as the cover letter.'' 16 CFR 642.2(b).

After considering comments received during the ANPR, the Board is proposing in comment 16(e)–4 to provide that for a multi-page mailing or application or solicitation package, the first listing should apply solely to the ''principal promotional document'' in the package, unless the introductory rate is not listed in the principal promotional document and appears in another document in the package. If the introductory rate does not appear in the principal promotional document but appears in another document in the package, then the requirements apply to each separate document that lists the introductory rate. Proposed comment 16(e)–4 clarifies that the term ''principal promotional document'' includes solicitation letters. The Board's consumer testing efforts suggest that consumers are likely to read the principal promotional document. Applying the requirement to each document in a mailing/package would be unnecessary if the consumer will already have seen the introductory rate in the principal promotional document. If the introductory rate does not appear in the principal promotional document, however, the Board proposes that the requirements apply to the first listing of the introductory rate in each document in the package containing the introductory rate as it is not clear which document the consumer will read first in such circumstances.

With respect to the question of which listing of the introductory rate within a particular document should be considered the first listing, many industry commenters suggested that creditors be given flexibility in determining which listing is the first listing. Some commenters suggested that the first listing be the highest listing on the page while other commenters advocated the most prominent listing. After considering comments, the Board is proposing that the first listing be the most prominent listing of the introductory rate on the front of the first page of the document. Consumer testing conducted for the Board suggests that consumers may not necessarily read documents in an application/solicitation package from top to bottom. Instead, they may tend to look first to the pieces of information that are set forth most prominently on the document. As a result, the Board believes that the first listing (i.e., the one the consumer sees first) would not necessarily be the highest one on the page, especially if such listing is in an inconspicuous format, and instead, it would be the one that is most prominent to the consumer. In terms of judging which listing is the ''most prominent,'' the Board is proposing a safe harbor for the listing with the largest type size. While type size is one measure for judging the most prominent listing, the Board recognizes that there may be

other ways to assess the most prominent listing independent of type size.

Post-introductory rate. The Board requested comment in the October 2005 ANPR regarding whether the Board should issue guidance with respect to listing the rate that will apply after the end of the introductory period. Q90. Most commenters agreed that advertisers should be permitted to list a range of rates. Consistent with the guidance given above for listing the APR in the table required for credit card applications and solicitations under § 226.5a(b)(1)(v), the Board is proposing that a range of rates may be listed as the rate that will apply after the introductory period if the specific rate for which the consumer will qualify will depend on later determinations of a consumer's creditworthiness. *See* section-by-section analysis to § 226.5a(b)(1). The Board proposes comment 16(e)–5 to be consistent with comment 5a(b)(1)–5. In addition, the Board solicits comment on whether advertisers may alternatively list only the highest rate that may apply instead of a range of rates. For example, if there are three rates that may apply (9.99 percent, 12.99 percent or 17.99 percent), instead of disclosing three rates (9.99 percent, 12.99 percent or 17.99 percent) or a range of rates (9.99 percent to 17.99 percent), card issuers should be permitted to provide only the highest rate (up to 17.99 percent).

16(e)(5) Envelope Excluded

TILA Section 127(c)(6)(B), as added by Section 1303(a) of the Bankruptcy Act, specifically excludes envelopes or other enclosures in which an application or solicitation to open a credit card account is mailed from the requirements of TILA Section 127(c)(6)(A)(ii) and (iii). 15 U.S.C. 1637(c)(6)(B). This guidance is set forth in proposed § 226.16(e)(5).

In the October 2005 ANPR, the Board solicited comment on whether there should be any difference in guidance provided to applications and solicitations provided electronically with those that are provided in paper form. Q92. In response to comments received, the Board is proposing in § 226.16(e)(5) to exclude banner advertisements and pop-up advertisements that are linked to an electronic application or solicitation. In the Board's view, these devices are similar to envelopes or other enclosures in the direct mail context.

16(f) Alternative Disclosures—Television or Radio Advertisements

For radio and television advertisements, the Board is proposing to allow alternative disclosures to the ones required by § 226.16(b) if a triggering term is stated in the advertisement. Radio and television advertisements would still be required to disclose any APR applicable to the plan, consistent with the requirements in proposed § 226.16(b)(1)(ii); however, instead of the detailed information in proposed §§ 226.16(b)(1)(i) and (iii) (minimum or fixed payments, and annual or membership fees, respectively) an advertisement would be able to provide a toll-free telephone number that the consumer may call to receive more information.

This approach is consistent with the approach taken in the advertising rules for Regulation M (*See* § 213.7(f)). Given the space and time constraints on radio and television advertisements, the additional disclosures required by proposed §§ 226.16(b)(1)(i) and (iii) may go unnoticed by consumers or be difficult for them to retain and would therefore not provide a meaningful benefit to consumers. An alternative means of disclosure may be more effective in many cases given the nature of television and radio media.

While proposed § 226.16(f) is similar to § 213.7(f) in Regulation M, it is not identical. For example, § 213.7(f)(1)(ii) permits a leasing advertisement made through television or radio to direct the consumer to a written advertisement in a publication of general circulation in a community served by the media station. The Board believes that advertisers of open-end credit plans would be unlikely to use this option and has thus not proposed it for § 226.16(f).

16(g) Misleading Terms

Creditors often refer to an APR as ''fixed'' to denote an APR that is not tied to an index. However, the Board has found through consumer testing efforts that most participants did not appear to understand the term ''fixed'' in this manner. Participants also did not appear to understand that creditors often reserve the right to increase a ''fixed'' rate upon the occurrence of certain events (such as when a consumer pays late or goes over the credit limit) or for other reasons. Thus, consumer testing suggests many consumers believe a ''fixed'' rate does not change, such as with fixed-rate mortgage loans.

Therefore, to avoid consumer confusion and the uninformed use of credit, the Board proposes to restrict the term ''fixed'' to instances where the rate will not change for any reason. 15 U.S.C. 1601(a), 1604(a). Proposed § 226.16(g) prohibits the use of the term ''fixed'' or any similar term in describing an APR unless that rate will remain in effect unconditionally until the expiration of an advertised time period. If no time period is advertised, then the term ''fixed'' or any similar term may not be used unless the rate will remain in effect unconditionally until the plan is closed. For example, a creditor could describe a rate that is subject to change as non-indexed, to indicate that the rate will not change due to changes in the market. A creditor could not, however, describe a rate as ''unchanging'' or ''permanent'' unless the standard in proposed § 226.16(g) is met. Restricting the use of the term ''fixed'' is intended to help consumers distinguish rates that do not change for any reason from rates that can change for one reason or another.

Appendix E—Rules for Card Issuers That Bill on a Transaction-by-Transaction Basis

Appendix E applies to card programs in which the card issuer and the seller are the same or related persons; no finance charge is imposed; cardholders are billed in full for each use of the card on a transaction-by-transaction basis; and no cumulative account is maintained reflecting transactions during a period of time such as a month. At the time the provisions now constituting Appendix E (originally adopted as an official Board interpretation to Regulation Z) were added to the regulation, they were intended to address card programs offered by automobile rental companies.

Appendix E specifies the provisions of Regulation Z that apply to credit card programs covered by the Appendix. For example, for the account-opening disclosures under § 226.6, the required disclosures are limited to penalty charges such as late charges, and to a disclosure of billing error rights and of any security interest. For the periodic statement disclosures under § 226.7, the required disclosures are limited to identification of transactions and an address for notifying the card issuer of billing errors. Further, since Appendix E card issuers do not issue periodic statements of account activity, Appendix E provides that these disclosures may be made on the invoice or statement sent to the consumer for each transaction. In general, the disclosures that this category of card issuers need not provide are those that are clearly inapplicable, either because the disclosures relate to finance charges, are based on a system in which periodic statements are generated, or apply to three-party credit cards (such as bank-issued credit cards).

The Board proposes to revise Appendix E by inserting material

explaining what is meant by ''related persons.'' In addition, technical changes would be made, including numbering the paragraphs within the appendix and changing cross-references to conform to the renumbering of other provisions of Regulation Z.

The Board solicits comment on whether Appendix E should be revised to specify that the disclosures required under § 226.5a apply to card programs covered by the appendix. For the most part, the credit card application and solicitation disclosures required by § 226.5a appear to be inapplicable to this category of card programs because most of those disclosures relate to finance charges or APRs. However, a few of the § 226.5a disclosures could potentially apply, such as annual or membership fees and late charges. (Appendix E does not currently require a disclosure of annual or membership fees; comment is requested, however, on whether the appendix should be revised to require such a disclosure, if a transaction-by-transaction card issuer were to impose such a fee.) If few or no such card issuers impose fees covered by § 226.5a, there may be no need to revise Appendix E to apply these requirements. In addition, the value of such a revision may depend on whether transaction-by-transaction card issuers typically make credit card applications or solicitations available to consumers in the ways specified by § 226.5a, such as by direct mail, telephone solicitation, or as take-ones. On the other hand, if Appendix E were revised to apply § 226.5a to these card issuers, they would have to comply only to the extent the requirements are applicable. Thus, no burden would be imposed on card issuers that, for example, do not impose late-payment fees or annual fees, or do not conduct direct-mail credit card solicitations or other activities that come within § 226.5a.

The Board also requests comment on whether any other provisions of Regulation Z not currently specified in Appendix E as applicable to transaction-by-transaction card issuers (such as §§ 226.5b and 226.16) should be specified as being applicable, and on whether any provisions currently specified as being applicable should be deleted.

Appendix F—Annual Percentage Rate Computations for Certain Open-End Credit Plans

Appendix F provides guidance regarding the computation of the effective APR under § 226.14(c)(3), which applies to situations where the finance charge imposed during a billing cycle includes a transaction charge, such as a balance transfer fee or a cash advance fee. As discussed in the section-by-section analysis to §§ 226.7(a)(7) and (b)(7), and § 226.14, the Board is proposing two alternative approaches for computation and disclosure of the effective APR. Depending upon the alternative and upon whether or not the plan is home-secured, the creditor (1) may use proposed § 226.14(c)(3) or § 226.14(d)(3) if the finance charge for the billing cycle includes a transaction charge, or (2) would not be required to calculate and disclose an effective APR at all. The guidance in existing Appendix F would continue to apply to either proposed § 226.14(c)(3) or proposed § 226.14(d)(3). Therefore, the Board is not proposing changes to Appendix F except to add applicable cross references and to move the substance of footnote 1 to Appendix F to the text of the appendix. A cross-reference to proposed comment 14(d)(3)–3 is added to the staff commentary to Appendix F.

Appendix G—Open-End Model Forms and Clauses; Appendix H—Closed-End Model Forms and Clauses

Appendices G and H set forth model forms, model clauses and sample forms that creditors may use to comply with the requirements of Regulation Z. Appendix G contains model forms, model clauses and sample forms applicable to open-end plans. Appendix H contains model forms, model clauses and sample forms applicable to closed-end loans. Although use of the model forms and clauses is not required, creditors using them properly will be deemed to be in compliance with the regulation with regard to those disclosures. As discussed above, the Board proposes to add or revise several model and sample forms to Appendix G. The new or revised model and samples forms are discussed above in the section-by-section analysis applicable to the regulatory provisions to which the forms relate. *See* section-by-section analysis to §§ 226.4(d)(3), 226.5a(b), 226.6(b)(4), 226.6(c)(2), 226.7(b), 226.9(a), 226.9(b), 226.9(c), 226.9(g) and 226.12(b). In addition, the Board proposes to add a new model clause and sample form relating to debt suspension coverage in Appendix H. These forms are discussed above in the section-by-section analysis of § 226.4(d)(3). In Appendix G, all the existing forms applicable to home-equity lines of credit (HELOCs) have been retained without revision. The Board anticipates considering changes to these forms when it reviews the home-equity disclosure requirements in Regulation Z.

The Board also proposes to revise or add commentary to the model and sample forms in Appendix G, as discussed below. The Board solicits comment on the proposed revisions below, as well as whether any additional commentary should be added to explain the model and sample forms contained in Appendix G.

Permissible changes to the model and sample forms. The commentary to appendices G and H currently states that creditors may make certain changes in the format and content of the model forms and clauses and may delete any disclosures that are inapplicable to a transaction or a plan without losing the act's protection from liability. *See* comment app. G and H–1. As discussed above, the Board is proposing format requirements with respect to certain disclosures applicable to open-end (not home-secured) plans, such as a tabular requirement for certain account-opening disclosures and certain change-in-terms disclosures. *See* § 226.5(a)(3). In addition, the Board is proposing revisions to certain model forms to improve their readability. *See* proposed G–2(A), G–3(A) and G–4(A). Thus, the Board would amend comment app. G and H–1 to indicate that with respect to certain model and sample forms in Appendix G, formatting changes may not be made to the model and sample forms.

In a technical revision, the Board proposes to delete comment app. G and H–1(vii) as obsolete. This comment allows a creditor to substitute appropriate references, such as ''bank,'' ''we'' or a specific name, for ''creditor'' in the account-opening disclosures, but none of the model or sample forms applicable to the account-opening disclosures uses the term ''creditor.''

Model clauses for notice of liability for unauthorized use and billing-error rights. Currently, Appendix G contains Model Clause G–2 which provides a model clause for the notice of liability for unauthorized use of a credit card. The Board is proposing revisions to Model Clause G–2 to improve its readability. This revised model clause is designated G–2(A). In addition, Appendix G currently contains Model Forms G–3 and G–4, which contain models for the long-form billing-error rights statement (for use with the account-opening disclosures and as an annual disclosure or, at the creditor's option, with each periodic statement) and the alternative billing-error rights statement (for use with each periodic statement), respectively. Like with Model Clause G–2, the Board is proposing revisions to Model Forms G–3 and G–4 to improve readability.

The revised model forms are designated Model Form G–3(A) and G–4(A). The Board is proposing to revise comments app. G and H–2 and 3 to provide that for HELOCs subject to § 226.5b, at the creditor's option, a creditor either may use the current forms (G–2, G–3, and G–4) or the revised forms (G–2(A), 3(A) and 4(A)). For open-end (not home-secured) plans, creditors may use the revised forms.

Model and sample forms applicable to disclosures for credit card applications and solicitations and account-opening disclosures. Currently, Appendix G contains several model forms related to the credit card application and solicitation disclosures required by § 226.5a. Current Model Form G–10(A) illustrates, in the tabular format, the disclosures required under § 226.5a for applications and solicitations for credit cards other than charge cards. Current Sample G–10(B) is a sample disclosure illustrating an account with a lower introductory rate and a penalty rate. Model Form G–10(A) and Sample G–10(B) would be substantially revised to reflect the proposed changes to § 226.5a, as discussed in the section-by-section analysis to § 226.5a. In addition, the Board proposes to add Sample G–10(C) to provide another example of how certain disclosures required by § 226.5a may be given. Under the proposal, current Model Form G–10(C) illustrating the tabular format disclosures for charge card applications and solicitations would be moved to G–10(D) and revised. The Board proposes to add Sample G–10(E) to provide an example of how certain disclosures in § 226.5a applicable to charge card applications and solicitations may be given. In addition, the Board proposes to add a model form and two sample forms to illustrate, in the tabular format, the disclosures required under § 226.6(b)(4) for account-opening disclosures. *See* proposed Model G–17(A) and Samples G–17(B) and G–17(C).

The Board also proposes to revise the existing commentary that provides guidance to creditors on how to use Model Forms and Samples G–10(A)–(E) and G–17(A)–(C). Currently, the commentary indicates that the disclosures required by § 226.5a may be arranged horizontally (where headings are at the top of the page) or vertically (where headings run down the page, as is shown in the Model Forms G–10(A), G–10(D) and G–17(A), and need not be highlighted aside from being included in the table. The Board proposes to delete this guidance and instead require that the table for credit card application and solicitation disclosures and account-opening disclosures be presented in the format shown in proposed Model Forms G–10(A), G–10(D) and G–17(A), where a vertical format is used. The Board would no longer allow a horizontal format because such formats would be difficult for consumers to read, given the information that is required to be disclosed in the table. In addition, the Board proposes to delete the provision that disclosures in the tables need not be highlighted aside from being included in the table, as inconsistent with the proposed requirement that creditors must include certain rates and fees in the tables in bold text. *See* §§ 226.5a(a)(2)(iv) and 226.6(b)(4)(i)(C).

In addition, Model Form G–10(A) applicable to credit card applications and solicitations currently uses the heading ''Minimum Finance Charge'' for disclosing a minimum finance charge under § 226.5a(b)(3). The Board proposes to amend Model Form G–10(A) to provide two alternative headings (''Minimum Interest Charge'' and ''Minimum Charge'') for disclosing a minimum finance charge under § 226.5a(b)(3). The same two headings are proposed for Model Form G–17(A), the model form for the account-opening table required under § 226.6(b)(4). In the consumer testing conducted for the Board, many participants did not understand the term ''finance charge'' in this context. The term ''interest'' was more familiar to many participants. Under the proposal, if a creditor imposes a minimum finance charge in lieu of interest in those months where a consumer would otherwise incur an interest charge but that interest charge is less than the minimum charge, the creditor should disclose this charge under the heading ''Minimum Interest Charge.'' Other minimum finance charges should be disclosed under the heading ''Minimum Charge.''

Also, under the proposal, Model Forms 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)(4)(iii)(A). The Board proposes to provide guidance on when a creditor should use each heading. Under the proposal, if the only fee for issuance or availability of credit disclosed under § 226.5a(b)(2) or § 226.6(b)(4)(iii)(A) is an annual fee, a creditor should use the heading ''Annual Fee'' to disclose this fee. If a creditor imposes fees for issuance or availability of credit disclosed under § 226.5a(b)(2) or § 226.6(b)(4)(iii)(A) other than, or in addition to, an annual fee, the creditor should use the heading ''Set-up and Maintenance Fees'' to disclose fees for issuance or availability of credit, including the annual fee.

The Board also would revise the commentary to provide details about proposed sample forms G–10(B), G–10(C), G–17(B) and G–17(C) for credit card application and solicitation disclosures and account-opening disclosures. For example, the commentary indicates that samples G–10(B), G–10(C), G–17(B) and G–17(C) are designed to be printed on an 8x14 inch sheet of paper. In addition, the following formatting techniques were used in presenting the information in the table to ensure that the information was readable:

1. A readable font style and font size (10-point Ariel font style, except for the purchase APR which is shown in 16-point type).
2. Sufficient spacing between lines of the text. That is, words were not compressed to appear smaller than 10-point type.
3. Adequate spacing between paragraphs when several pieces of information were included in the same row of the table, as appropriate. For example, in the samples, in the row of the tables with the heading ''APR for Balance Transfers,'' the forms disclose three components: (a) The applicable balance transfer rate, (b) a cross-reference to the balance transfer fee, and (c) a notice about payment allocation. The samples show these three components on separate lines with adequate space between each component. On the other hand, in the samples, in the disclosure of the late payment fee, the form discloses two components: (a) The late-payment fee, and (b) the cross-reference to the penalty rate. Because the disclosure of both these components is short, these components are disclosed on the same line in the table.
4. Standard spacing between words and characters.
5. Sufficient white space around the text of the information in each row, by providing sufficient margins above, below and to the sides of the text.
6. Sufficient contrast between the text and the background. Black text was used on white paper.

While the Board is not requiring issuers to use the above formatting techniques in presenting information in the table (except for the 10-point and 16-point font size), the Board encourages issuers to consider these techniques when disclosing information in the table, to ensure that the information is presented in a readable format.

Model and sample forms for periodic statements. The Board is proposing to add several model forms for periodic statements disclosures that creditors may use to comply with the requirements in proposed § 226.7(b) applicable to open-end (not home-secured) plans. As discussed above in the section-by-section analysis of § 226.7(a), for HELOCs subject to § 226.5b, at the creditor's option, a creditor either may comply with the current rules applicable to periodic statement disclosures in § 226.7(a) or comply with the new rules applicable to periodic statement disclosures in § 226.7(b). The Board proposes to added comment app. G and H–8 to provide that for HELOCs subject to § 226.5b, if a creditor chooses to comply with the new periodic statement requirements in § 226.7(b), the creditor may use Samples G–18(A)–(F) to comply with the requirements in § 226.7(b).

Appendix M1—Generic Repayment Estimates

As discussed in the section-by-section analysis to § 226.7(b)(12), Section 1301(a) of the Bankruptcy Act requires creditors, the FTC and the Board to establish and maintain toll-free telephone numbers in certain instances in order to provide consumers with an estimate of the time it will take to repay the consumer's outstanding balance, assuming the consumer makes only minimum payments on the account and the consumer does not make any more draws on the account. 15 U.S.C. § 1637(b)(11)(F). The Act requires creditors, the FTC and the Board to provide estimates that are based on tables created by the Board that estimate repayment periods for different minimum monthly payment amounts, interest rates, and outstanding balances. Instead of issuing a table, the Board proposes to issue guidance in Appendix M1 to card issuers and the FTC for how to calculate this generic repayment estimate. The Board would use the same guidance to calculate the generic repayment estimates given through its toll-free telephone number. The Board expects that this guidance would be more useful than a table, because the guidance will facilitate the use of automated systems to provide the required disclosures, although the guidance also can be used to generate a table.

Under Section 1301(a) of the Bankruptcy Act, a creditor may use a toll-free telephone number to provide the actual number of months that it will take consumers to repay their outstanding balance instead of providing an estimate based on the Board-created table. 15 U.S.C. 1637(b)(11)(I)–(K). The Board proposes new Appendix M2 to provide guidance to issuers on how to calculate the actual repayment disclosure.

Calculating generic repayment estimates. Proposed Appendix M1 provides guidance on how to calculate the generic repayment estimates. In the October 2005 ANPR, the Board noted that the Bankruptcy Act directs the Board in estimating repayment periods to allow for a significant number of different minimum payment amounts, interest rates, and outstanding balances. With respect to the toll-free telephone numbers set up by the Board and the FTC, information about the consumers' account terms must come from consumers because the information is not available to the Board or the FTC. Consumers would need convenient access to this information to request an estimated repayment period. Because consumers' outstanding account balances appear on their monthly statements, consumers are able to provide that amount when requesting an estimate of the repayment period. Issues arise, however, with respect to the minimum payment requirement and interest rate information.

Periodic statements do not disclose the fixed percentage or formula used to determine the minimum dollar amount that must be paid each month. The statements only disclose the minimum dollar amount that must be paid for the current statement period, which would vary each month as the account balance changes. Furthermore, while periodic statements must disclose all APRs applicable to the account, the statements may, but do not necessarily, indicate the portion of the account balance subject to each APR. This information is also needed to estimate the actual repayment period.

The Board sought commenters' views regarding three basic approaches for developing a system to calculate estimated repayment periods for consumers who call the toll-free telephone number. The three approaches were:

(1) Prompting consumers to provide an account balance, a minimum payment formula, and all applicable APRs in order to obtain an estimated repayment period. For information about minimum payments and APRs that is not currently disclosed on periodic statements, the Board could require additional disclosures on those statements. But the Board also could develop guidance that makes assumptions about these variables for a ''typical'' account.

(2) Prompting consumers to input information, or using assumptions based on a ''typical'' account to calculate an estimated repayment period—but also giving creditors the option to input information from their own systems regarding consumers' account terms, to provide more accurate estimates. Estimates provided by creditors that elect this option would differ somewhat from the estimates provided by other creditors, the Board, and the FTC.

(3) Prompting consumers to provide their account balance, but *requiring* creditors to input information from their own systems regarding the account's minimum payment requirement, APRs, and the portion of the balance subject to each APR. These estimates would be more accurate, but would impose additional compliance burdens, and would not necessarily reflect consumers' actual repayment periods because of the use of several other assumptions.

In response to the October 2005 ANPR, industry commenters urged the Board not to require issuers to program their systems to obtain consumers' account information from their account management systems to calculate the generic repayment estimate. These commenters indicated that such a requirement was not contemplated by the statute. Several consumer group commenters indicated that issuers should be required to use inputs from their own systems about minimum monthly payment formulas, APRs, and account balances applicable to an account in calculating the generic repayment estimate.

The Board is proposing to allow credit card issuers and the FTC to use a ''consumer input'' system to collect information from the consumer to calculate the generic repayment estimate. The Board would also use a ''consumer input'' system for its toll-free telephone number. For example, certain information is needed to calculate the generic repayment estimate, such as the outstanding balance on the account and the APR applicable to the account. The Board's proposed rule would allow issuers and the FTC to prompt the consumer to input this information so that the generic repayment estimate can be calculated. Although issuers have the ability to program their systems to obtain consumers' account information from their account management systems, the Board is not proposing that issuers be required to do so. Allowing issuers to use a ''consumer input'' system in calculating the generic repayment estimate preserves the distinction between estimates based on

the Board table and actual repayment disclosures contemplated in the statute.

In proposed Appendix M1, the Board sets forth guidance for credit card issuers and the FTC in determining the minimum payment formula, the APR, and the outstanding balance to use in calculating the generic repayment estimates. With respect to other terms that could impact the calculation of the generic repayment estimate, the Board proposes to set forth assumptions about these terms that issuers and the FTC must use.

1. *Minimum payment formula.* In the October 2005 ANPR, the Board sought comment on whether the Board should select a ''typical'' minimum payment formula that issuers and the FTC must use in calculating the generic repayment estimates. Q66. In response to the ANPR, many industry commenters acknowledged that there is no ''typical'' minimum payment formula for credit cards. Nonetheless, some industry commenters indicated that the Board should use a minimum formula of 1 percent of the outstanding balance plus the accrued finance charges for the billing period, with a minimum payment of $20. Another industry commenter indicated that the Board should require that issuers, the FTC and the Board use the minimum payment formula in the statutory examples to calculate the generic repayment estimate. As indicated above, several consumer groups indicated that issuers should be required to use the minimum payment formula(s) that is applicable to the consumer's account. These commenters indicated that the FTC and the Board should be required to use a minimum payment formula that is identified by the Board as producing the ''worst-case scenario'' repayment estimate.

As indicated in Appendix M1, the Board proposes to require credit card issuers to use the minimum payment formula that applies to most of the issuer's accounts. The Board proposes different rules for general-purpose credit cards and retail credit cards in selecting the ''most common'' minimum payment formula. The Board proposes to define retail credit cards as credit cards that are issued by a retailer for use only in transactions with the retailer or a group of retailers that are related by common ownership or control, or a credit card where a retailer arranges for a creditor to offer open-end credit under a plan that allows the consumer to use the credit only in transactions with the retailer or a group of retailers that are related by common ownership or control. General-purpose credit cards are defined as credit cards that are not retail credit cards.

When calculating the generic repayment estimate for general-purpose credit cards, card issuers must use the minimum payment formula that applies to most of its general-purpose credit card accounts. The issuer must use this ''most common'' formula to calculate the generic repayment estimate for all of its general-purpose credit card accounts, regardless of whether this formula applies to a particular account. Proposed Appendix M1 contains additional guidance to issuers of general-purpose credit cards in complying with the ''most common'' formula approach. The Board solicits comment on the need for guidance if two or more formulas could apply equally to the same number of accounts.

When calculating the generic repayment estimate for retail credit cards, credit card issuers must use the minimum payment formula that most commonly applies to its retail credit card accounts. If an issuer offers credit card accounts on behalf of more than one retailer, credit card issuers must group credit card accounts relating to each retailer separately, and determine the minimum formula that is most common to each retailer. For example, if Issuer A, the owner of Retailer A and Retailer B, issues separate cards for Retailer A and Retailer B, the proposal would require Issuer A to determine the most common formula separately for each retailer (A and B). Under the proposal, the issuer must use the ''most common'' formula for each retailer to calculate the generic repayment estimate for the retail credit card accounts related to each retailer, regardless of whether this formula applies to a particular account. Proposed Appendix M1 provides additional guidance to issuers of retail credit cards on how to comply with the ''most common'' formula approach. The Board solicits comment on whether Issuer A in the example above should be permitted to determine a single ''most common'' formula for all retailers under its common ownership or control, and if so, what the standard of affiliation should be. The Board also solicits comment on the need for guidance if two or more formulas could apply equally to the same number of accounts.

The Board believes that the ''most common'' approach described above is preferable to using a ''typical'' minimum payment formula identified by the Board for several reasons. First, as acknowledged by the industry commenters, there is no ''typical'' minimum payment formula that generally applies to credit card accounts. Informally, the Board gathered data on the minimum payment formulas used by the top 10 issuers of general-purpose credit cards. With respect to those 10 issuers, there was no minimum payment formula that most of the issuers used. Second, the minimum payment formula can have a significant impact on the calculation of the generic repayment estimate. For example, based on the minimum payment formulas used by the top 10 issuers, the repayment period for paying a $1,000 balance at a 13.99 percent APR if only minimum payments are made can range from 6 years to 12 years depending on the issuer.

In addition, it appears that at least for general-purpose credit cards, issuers typically use the same or similar minimum payment formula for their entire credit card portfolio. Thus, for those types of credit cards, the ''most common'' minimum payment formula identified by an issuer often will match the actual formula used on a consumer's account. The Board recognizes that in some cases the ''most common'' minimum payment formula will not match the actual formula used on a consumer's account, for example, where a consumer has opted out of a change in the minimum payment formula, and the consumer is paying off the balance under the old minimum payment formula. The Board also recognizes that allowing retail card issuers to use one minimum payment formula under the ''most common'' formula approach to calculate the generic repayment estimate even when multiple minimum payment formulas apply to the account yields a less accurate estimate than if the issuer were required to use all the minimum payment formulas applicable to a consumer's account. Nonetheless, short of requiring issuers to obtain the actual minimum payment formula(s) applicable to a consumer's account from the issuer's account management systems to calculate the generic repayment estimate, which does not appear to be contemplated by the statute, the Board believes that the approach of requiring issuers to identify their ''most common'' minimum payment formulas to calculate the generic repayment estimates is a preferable approach than allowing issuers to use a ''typical'' formula identified by the Board.

As discussed in the section-by-section analysis to § 226.7(b)12), the Board is required to establish and maintain, for two years, a toll-free telephone number for use by customers of depository institutions having assets of $250 million or less to obtain generic repayment estimates. The Board

proposes to use the following minimum payment formula to calculate the generic repayment estimates: either 2 percent of the outstanding balance, or $20, whichever is greater. This is the same minimum payment formula used to calculate the repayment estimate for the statutory example related to the $1,000 balance. The Board proposes to use the same formula as in the statutory example because the Board is not aware of any ''typical'' minimum payment formula that applies to general-purpose credit cards issued by smaller depository institutions. For the same reasons, the Board proposes that the FTC use the 5 percent minimum payment formula used in the $300 example in the statute to calculate the generic repayment estimates given through the FTC's toll-free telephone number.

2. *Annual percentage rates.* In the October 2005 ANPR, the Board noted that the statute's hypothetical repayment examples assume that a single APR applies to a single account balance. But credit card accounts can have multiple APRs. The APR may differ for purchases, cash advances, and balance transfers. A card issuer may have a promotional APR that applies to the initial balance transfer and a separate APR for other balance transfers. Although all the APRs for accounts are disclosed on periodic statements, calculating the repayment period requires information about what percentage or amount of the total ending balance is subject to each APR, and what payment allocation method is used. 15 U.S.C. 1637(b)(5); current § 226.7(d). Currently, the total ending balance is required to be disclosed, but not the portion of the cycle's ending balance that is subject to each APR. 15 U.S.C. 1637(b)(8); current § 226.7(i). (Some creditors may voluntarily disclose such information on periodic statements.) For example, assuming a $1,000 outstanding balance on an account with a 12 percent APR for purchases and a 19.5 percent APR on cash advances, the consumer will know from his or her periodic statement the amount of the total outstanding balance ($1,000), but may not know the percentage or amount of the ending balance is subject to the 12 percent rate and what amount of the ending balance is subject to the 19.5 percent rate. Creditors know the portion of the cycle's ending balance that is subject to each APR, and could develop automated systems that incorporate this information as part of their calculation. But again, the toll-free telephone systems developed by the Board and FTC would have to depend solely on data provided by the consumer.

If multiple APRs apply to the outstanding balance, using the lowest APR to calculate the repayment period would estimate repayment periods that are shorter for some consumers, depending on the components of the balance, while using the highest APR would estimate repayment periods that are longer for some consumers. How much the repayment periods are underestimated or overestimated in each of these cases would depend on which rate applies to the outstanding balance. Using an average of the multiple rates may either overestimate or underestimate the repayment period depending on which rate applies to the outstanding balance. It is unclear whether detailed transaction data about how consumers use their credit card accounts would support a finding that there is a ''typical'' approach that would provide the best estimate of the repayment periods in most cases.

In the October 2005 ANPR, the Board solicited comment on whether it would be appropriate for accounts that have multiple APRs to calculate an estimated repayment period using a single APR, and if so, which APR for the account should be used. Q71. Most industry commenters suggested that the Board use a single APR. They pointed out that it would be impractical to use multiple APRs for the generic repayment estimate. Consumers would need to understand and input multiple APRs and balances that apply to the accounts (as well as any expiration dates and APRs that apply after any promotional APRs expire). The complexity and effort required to accommodate multiple APRs would be unduly burdensome for consumers, which could discourage consumers from using such an approach, and for creditors. In terms of which APR on the account to use to calculate the generic repayment estimate, some industry commenters indicated that the purchase APR should be used because this is the rate that most typically applies to the majority of the balances on consumers' accounts. Other industry commenters indicated that the highest APR on the account should be used to calculate the generic repayment estimates because this would provide consumers with the ''worst-case scenario.'' Several consumer groups indicated that the Board should require issuers to use all the APRs applicable to a consumer's account in calculating the generic repayment estimates.

The Board proposes to require that the generic repayment estimate be calculated using a single APR, even for accounts that have multiple APRs. As indicated above, the Board does not believe that the statute contemplates that issuers be required to use their account management systems to disclose an estimate based on all of the APRs applicable to a consumer's account and the actual balances to which those rates apply. The Board also agrees with several industry commenters that the complexity and effort required to accommodate multiple APRs using a ''consumer-input'' system would be unduly burdensome. In selecting the single APR to be used in calculating the generic repayment estimates, the Board proposes to require that credit card issuers, and the FTC use the highest APR on which the consumer has outstanding balances. As proposed, an issuer and the FTC may use an automated system to prompt the consumer to enter in the highest APR on which the consumer has an outstanding balance, and calculate the generic repayment estimate based on the consumer's response. The Board would follow the same approach in calculating the generic repayment estimates for its toll-free telephone number. The Board recognizes that using the highest APR on which a consumer has an outstanding balance will overestimate the repayment period when the consumer has outstanding balances at lower APRs as well. Nonetheless, allowing issuers to use the purchase APR on the account to calculate the repayment period would underestimate the repayment period, if a consumer also has balances subject to higher APRs, such as cash advance balances. The Board believes that an overestimate of the repayment period is a better approach for purposes of this disclosure than an underestimate of the repayment period because it gives consumers the worst-case estimate of how long it may take to pay off their balance.

3. *Outstanding balance.* As discussed above, because consumers' outstanding account balances appear on their monthly statements, consumers can provide that amount when requesting an estimate of the repayment period. The Board proposes that when calculating the generic repayment estimate, credit card issuers and the FTC must use the outstanding balance on a consumer's account as of the closing date of the last billing cycle to calculate the generic repayment estimates. As proposed, an issuer and the FTC may use an automated system to prompt the consumer to enter in the outstanding balance included on the last periodic statement received, and calculate the generic repayment estimate based on the consumer's response. The Board would

follow the same approach in calculating the generic repayment estimates for its toll-free telephone number.

Other terms. In the October 2005 ANPR, the Board noted that Section 1301(a) of the Bankruptcy Act appears to contemplate that the generic repayment estimate should be calculated based on three variables: The minimum payment formula, the APR, and the outstanding balance. Nonetheless, a number of other assumptions can also affect the calculation of a repayment period. For example, the hypothetical examples that must be disclosed on periodic statements incorporate the following assumptions, in addition to the statutory assumptions that only minimum monthly payments are made each month, and no additional extensions of credit are obtained: (1) The balance computation method used is the previous-balance method and finance charges are based on the beginning balance for the cycle; (2) no grace period applies to any portion of the balance; and (3) when the account balance becomes less than the required minimum payment, the receipt of the final amount in full completely pays off the account. In other words, there is no residual finance charge that accrues in the month when the final bill is paid in full.

In the October 2005 ANPR, the Board requested comment on whether the Board should incorporate the above three assumptions into the calculation of the generic repayment estimates. Q67. Most industry commenters generally favored using the above three assumptions in the calculation of the generic repayment estimates. One consumer group commenter indicated that the Board should use ''worst-case scenario'' assumptions in calculating the generic repayment estimates.

1. *Balance computation method.* Instead of using the previous-balance method used in the statutory example, the Board proposes to use the average daily balance method for purposes of calculating the generic repayment estimate. The average daily balance method is more commonly used by issuers to compute the balance on credit card accounts. Nonetheless, requiring use of the average daily balance method makes other assumptions necessary, including the length of the billing cycle, and when payments are made. The Board proposes to assume that all months are the same length. In addition, in the absence of data on when consumers typically make their payments each month, the Board proposes to assume that payments are credited on the last day of the month.

2. *Grace period.* The Board proposes to assume that no grace period exists. The required disclosures about the effect of making minimum payments are based on the assumption that the consumer will be ''revolving'' or carrying a balance. Thus, it seems reasonable to assume that the account is already in a revolving condition at the time the consumer calls to obtain the estimate, and that no grace period applies. This assumption about the grace period is also consistent with the Board's proposal to exempt issuers from providing the minimum payment disclosures to consumers that have paid their balances in full for two consecutive months.

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

Disclosing the generic repayment estimates to consumers. The Board proposes in Appendix M1 to provide guidance regarding how the generic repayment estimate must be disclosed to consumers. As discussed in more detail below, credit card issuers and the FTC would be required to provide certain required disclosures to consumers in responding to a request through a toll-free telephone number for generic repayment estimates. In addition, issuers and the FTC would be permitted to provide certain other information to consumers, so long as that permitted information is disclosed after the required information. The Board would follow the same approach in disclosing the generic repayment estimates through its toll-free telephone number.

1. *Required disclosures.* In the October 2005 ANPR, the Board requested comment on what key assumptions, if any, should be disclosed to consumers in connection with the estimated repayment period. Q76. Some commenters indicated that a number of assumptions should be disclosed to consumers, such as that the estimated repayment period is based on the assumption there will be no new transactions, no late payments, no changes in the APRs and the minimum payment formula, and that only minimum payments are made. Other commenters indicated that the Board should only require a more general statement that the repayment period provided is only an estimate and the actual repayment period would differ based on a number of factors related to the consumers' behavior and the particular terms of their account.

As the rule is proposed, credit card issuers and the FTC would be required to provide the following information when responding to a request for generic repayment estimates through a toll-free telephone number: (1) The generic repayment estimate; (2) the beginning balance on which the generic repayment estimate is calculated; (3) the APR on which the generic repayment estimate is calculated; (4) the assumptions that only minimum payments are made and no other amounts are added to the balance; and (5) the fact that the repayment period is an estimate, and the actual time it may take to pay off the balance if only making minimum payment will differ based on the consumer's account terms and future account activity. The Board proposes to include a model form in Appendix M1 that credit card issuers and the FTC may use to comply with the above disclosure requirements. The Board is proposing to require a brief statement that the repayment period is an estimate rather than include a list of assumptions used to calculate the estimate, because the Board believes the brief statement is more helpful to consumers. The many assumptions that are necessary to calculate a repayment period are complex and unlikely to be meaningful or useful to most consumers. Nonetheless, the Board proposes to allow issuers and the FTC to disclose through the toll-free telephone number the assumptions used to calculate the generic repayment estimates, so long as this information is disclosed after the required information described above. The Board would follow the same approach in disclosing the generic repayment estimates through its toll-free telephone number.

2. *Negative amortization.* Negative amortization can occur if the required minimum payment is 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 amortization. But some creditors may use a minimum payment formula that allows negative amortization (such as by requiring a payment of 2 percent of the

outstanding balance, regardless of the finance charges or fees incurred). If negative amortization occurs when calculating the repayment estimate, issuers and the FTC would be required to disclose to the consumer that based on the assumptions used to calculate the repayment estimate, the consumer will not pay off the balance by making only the minimum payment. As proposed, Appendix M1 contains a model form that issuers and the FTC may use to disclose to the consumer that negative amortization is occurring. The Board would follow the same approach in disclosing through its toll-free telephone number that negative amortization is occurring.

If creditors use a minimum payment formula that allows for negative amortization, the Board believes that consumers should be told that negative amortization is occurring. The Board recognizes that in some cases because of the assumptions used to calculate the generic repayment estimate, the estimate may indicate that negative amortization is occurring, when in fact, if the estimate was based on the consumer's actual account terms, negative amortization would not occur. The Board strongly encourages issuers to use the actual repayment disclosure provided in proposed Appendix M2 in these instances to avoid giving inaccurate information to consumers.

3. *Permitted disclosures.* As the rule is proposed, credit card issuers and the FTC may provide the following information when responding to a request for the generic repayment estimate through a toll-free telephone number, so long as this permitted information is given after the required disclosures: (1) A description of the assumptions used to calculate the generic repayment estimate; (2) an estimate of the length of time it would take to repay the outstanding balance if an additional amount was paid each month in addition to the minimum payment amount, allowing the consumer to select the additional amount; (3) an estimate of the length of time it would take to repay the outstanding balance if the consumer made a fixed payment amount each month, allowing the consumer to select the amount of the fixed payment; (4) the monthly payment amount that would be required to pay off the outstanding balance within a specific number of months, allowing the consumer to select the payoff period, (5) a reference to Web sites that contains minimum payment calculators; and (6) the total interest that a consumer may pay if he or she makes minimum payments for the length of time disclosed in the generic repayment estimate. The Board would follow the same approach in disclosing permitted information through its toll-free telephone number.

In consumer testing conducted for the Board, several participants reviewed a disclosure that provided an estimate of the time it would take to pay off a $1,000 balance at a 17 percent APR, if the consumer paid $10 more than the minimum payment each month. Most participants that reviewed this disclosure found it to be useful. Thus, the Board is proposing to allow credit card issuers and the FTC, via the toll-free telephone number, to provide this type of disclosure to consumers, as well as other relevant repayment information. The Board believes that consumers may find this information helpful in making decisions about how much to pay each month.

In addition, in the October 2005 ANPR, the Board solicited comment on whether any creditors currently offer web-based calculation tools that permit consumers to obtain estimates of repayment periods. Several industry commenters indicated that they do offer such web-based calculation tools. In addition, other industry commenters indicated that such tools are available on the Internet from a variety of sources. For example, these Web sites may provide calculators that provide the monthly payment amount that would be required to pay off a particular balance within a specific number of months indicated by the consumer, and the total interest that would be paid during that period. Because these types of Web sites might be useful to consumers to obtain additional information about repayment periods, the Board proposes to allow issuers, and the FTC to provide Internet addresses for these Web sites as part of responding to a request for the generic repayment estimate through a toll-free telephone number.

Appendix M2—Actual Repayment Disclosures

As indicated above, Section 1301(a) of the Bankruptcy Act allows creditors to forego using the toll-free telephone number to provide a generic repayment estimate if the creditor instead provides through the toll-free telephone number the ''actual number of months'' to repay the consumer's account. In the October 2005 ANPR, the Board requested comment on whether the Board should provide guidance on the how to calculate the actual repayment disclosures. Q77. Commenters generally favored the Board providing such guidance because without this guidance, issuers would be less likely to provide the actual repayment disclosures. The Board proposes to provide in Appendix M2 guidance to credit card issuers on how to calculate the actual repayment disclosure to encourage issuers to provide these estimates.

Calculating the actual repayment disclosures. As a general matter, the Board is proposing that credit card issuers calculate the actual repayment disclosure for a consumer based on the minimum payment formula(s), the APRs and the outstanding balance currently applicable to a consumer's account. For other terms that may impact the calculation of the actual repayment disclosure, the Board proposes to allow issuers to make certain assumption about these terms.

1. *Minimum payment formulas.* Generally, when calculating actual repayment disclosures, the Board proposes that credit card issuers generally must use the minimum payment formula(s) that apply to a cardholder's account. The Board proposes to allow issuers to disregard promotional terms that may be currently applicable to a consumer account when calculating the actual repayment disclosure. Specifically, if any promotional terms related to payments currently apply to a cardholder's account, such as a ''deferred payment plan'' where a consumer is not required to make payments on the account for a certain period of time, credit card issuers may assume the promotional terms do not apply, and use the minimum payment formula(s) that would currently apply without regard to the promotional terms. Allowing issuers to disregard promotional terms on accounts eases compliance burden on issuers, without a significant impact on the accuracy of the repayment estimates for consumers.

In addition, in response to the October 2005 ANPR, one commenter indicated that the issuers should not be required in calculating the actual repayment disclosure to develop different estimating methodologies for minimum payment formulas that apply to atypical customers. The commenter indicated that this might occur, for example, where customers have opted out of a newer version of a creditor's minimum payment formula, customers have received test versions of newer minimum payment formulas, or customers have received a relatively unique product with relatively unique versions of the creditor's basic minimum payment formula. The commenter indicated that requiring creditors to develop special estimating methodologies for such small groups of customers would impose significant systems development costs, operational

complexities, and similar burdens on creditors in excess of benefits to those customers.

The Board solicits additional comment on why an exception from the general requirement that the actual repayment estimate should be based on the minimum payment formula(s) applicable to a consumer's account is needed for atypical customers. Are the accounts for these atypical customers contained on separate periodic statements systems from other customers? If not, would not the issuer need to make changes only to one periodic statement system to obtain the minimum payment formula(s) applicable to a consumer's account, even if the minimum payment formulas applicable to the consumer's account were atypical?

2. *Annual percentage rates.* Generally, when calculating actual repayment disclosures, the Board proposes that credit card issuers must use each of the APRs that currently apply to a consumer's account, based on the portion of the balance to which that rate applies. For the reason discussed above, the Board proposes to allow issuers to disregard promotional APRs that may currently apply to a consumer's account. Specifically, if any promotional terms related to APRs currently apply to a cardholder's account, such as introductory rates or deferred interest plans, credit card issuers may assume the promotional terms do not apply, and use the APRs that currently would apply without regard to the promotional terms.

3. *Outstanding balance.* When calculating the actual repayment disclosures, the Board proposes that credit card issuers must use the outstanding balance on a consumer's account as of the closing date of the last billing cycle. Issuers would not be required to take into account any transactions consumers may have made since the last billing cycle. This rule makes it easier for issuers to place the estimate on the periodic statement, because the outstanding balance used to calculate the actual repayment disclosure would be the same as the outstanding balance shown on the periodic statement.

4. *Other terms.* As discussed above, as a general matter, the Board is proposing that issuers calculate the actual repayment disclosures for a consumer based on the minimum payment formula(s), the APRs and the outstanding balance currently applicable to a consumer's account. For other terms that may impact the calculation of the actual repayment disclosures, the Board proposes to allow issuers to make certain assumptions about these terms. For example, the Board would allow issuers to make the same assumptions about balance computation method, grace period, and residual interest as are allowed for the generic repayment estimates. In addition, the Board proposes to allow issuers to assume that payments are allocated to lower APR balances before higher APR balances when multiple APRs apply to an account. This assumption is consistent with typical industry practice regarding how issuers allocate payments. Allowing issuers to make these assumptions eases compliance burden for issuers, without a significant impact on the accuracy of the actual repayment disclosures.

Disclosing the actual repayment disclosures to consumers through the toll-free telephone number or on the periodic statement. The Board proposes in Appendix M2 to provide guidance regarding how the actual repayment disclosure must be disclosed to consumers if a toll-free telephone number is used or if the actual repayment disclosure is placed on the periodic statement. The Board proposes similar rules with respect to disclosing the actual repayment disclosures as are being proposed with respect to the generic repayment estimate. Specifically, the Board proposes to require credit card issuers to disclose certain information when providing the actual repayment disclosure, and permits the issuers to disclose other related information, so long as that permitted information is disclosed after the required information. *See* proposed Appendix M2.

Appendix M3—Sample Calculations of Generic Repayment Estimates and Actual Repayment Disclosures

Proposed Appendix M3 provides samples calculations for the generic repayment estimate and the actual repayment disclosures discussed in appendices M1 and M2. Specifically, proposed Appendix M3 contains an example of how to calculate the generic repayment estimate using the guidance in Appendix M1 where the APR is 17 percent, the outstanding balance is $1,000, and the minimum payment formula is 2 percent of the outstanding balance or $20, whichever is greater. In addition, proposed Appendix M3 also provides an example of how to calculate the actual repayment disclosure using the guidance in Appendix M2 where three APRs apply, the total outstanding balance is $1,000, and the minimum payment formula is 2 percent of the outstanding balance or $20, whichever is greater. The sample calculations in Appendix M3 are written in SAS code.

VII. Initial Regulatory Flexibility Act Analysis

In accordance with Section 3(a) of the Regulatory Flexibility Act (5 U.S.C. 601–612) (RFA), the Board is publishing an initial regulatory flexibility analysis for the proposed amendment to Regulation Z.

Based on its analysis and for the reasons stated below, the Board believes that this proposed rule will have a significant economic impact on a substantial number of small entities. A final regulatory flexibility analysis will be conducted after consideration of comments received during the public comment period. The Board requests public comment in the following areas.

1. *Reasons, statement of objectives and legal basis for the proposed rule.* The purpose of the Truth in Lending Act is to promote the informed use of consumer credit by providing for disclosures about its terms and cost. In this regard, the goal of the proposed amendments to Regulation Z is to improve the effectiveness of the disclosures that creditors provide to consumers at application and throughout the life of an open-end account. Accordingly, the Board is proposing changes to format, timing, and content requirements for the five main types of disclosures governed by Regulation Z: (1) credit and charge card application and solicitation disclosures; (2) account-opening disclosures; (3) periodic statement disclosures; (4) change-in-terms notices; and (5) advertising provisions.

The following sections of the Supplementary Information above describe in detail the reasons, objectives, and legal basis for each component of the proposed rule:

- A high-level summary of the major changes being proposed is in II. Summary of Major Proposed Changes, and a more detailed discussion is in V. Discussion of Major Proposed Revisions and VI. Section-by-section Analysis.
- The Board's major sources of rulemaking authority pursuant to TILA are summarized in IV. The Board's Rulemaking Authority. More detailed information regarding the source of rulemaking authority for each individual proposed change, as well as the rulemaking authority for certain changes mandated by the Bankruptcy Act, are discussed in VI. Section-by-section Analysis.

2. *Description of small entities to which the proposed rule would apply.* The total number of small entities likely to be affected by the proposal is

unknown, because the open-end credit provisions of TILA and Regulation Z have broad applicability to individuals and businesses that extend even small amounts of consumer credit. See § 226.1(c)(1).[19] Based on December 2006 call report data, there are approximately 13,000 depository institutions in the United States that have assets of $165 million or less and thus are considered small entities for purposes of the Regulatory Flexibility Act. Of them, there were 2,293 banks, 3,603 insured credit unions, and 33 other thrift institutions with credit card assets (or securitizations), and total assets less than $165 million. The number of small non-depository institutions that are subject to Regulation Z's open-end credit provisions cannot be determined from information in call reports, but recent congressional testimony by an industry trade group indicated that 200 retailers, 40 oil companies, and 40 third-party private label credit card issuers of various sizes also issue credit cards.[20] There is no comprehensive listing of small consumer finance companies that may be affected by the proposed rules or of small merchants that offer their own credit plans for the purchase of goods or services. Furthermore, it is unknown how many of these small entities offer open-end credit plans as opposed to closed-end credit products, which would not be affected by the proposed rule.

The effect of the proposed revisions to Regulation Z on small entities also is unknown. Small entities would be required to, among other things, conform their open-end credit disclosures, including those in solicitations, account opening materials, periodic statements, and change-in-terms notices, and advertisements to the revised rules. The precise costs to small entities of updating their systems are difficult to predict. These costs will depend on a number of factors that are unknown to the Board, including, among other things, the specifications of the current systems used by such entities to prepare and provide disclosures and administer open-end accounts, the complexity of the terms of the open-end credit products that they offer, and the range of such product offerings. Nevertheless, the Board believes that these costs will have a significant economic effect on small entities. The Board seeks information and comment on the effects of the proposed rules on small entities.

3. *Projected reporting, recordkeeping and other compliance requirements of the proposed rule.* The compliance requirements of the proposed rules are described in VI. Section-by-section Analysis. The Board seeks information and comment on any costs, compliance requirements, or changes in operating procedures arising from the application of the proposed rule to small institutions.

4. *Other federal rules.* As noted in the section-by-section analysis for § 226.13(i), there is a potential conflict between Regulation Z and Regulation E with respect to error resolution procedures when a transaction involves both an extension of credit and an electronic fund transfer. The Board has not identified any other federal rules that duplicate, overlap, or conflict with the proposed revisions to Regulation Z. The Board seeks comment regarding any statutes or regulations, including state or local statutes or regulations, that would duplicate, overlap, or conflict with the proposed rule.

5. *Significant alternatives to the proposed revisions.* As previously noted, the proposed rule implements the Board's mandate to prescribe regulations that carry out the purposes of TILA. In addition, the Board is directed to implement certain provisions of the Bankruptcy Act that require new disclosures on periodic statements, on credit card applications and solicitations, and in advertisements. The Board seeks with this proposed rule to balance the benefits to consumers arising out of more effective TILA disclosures against the additional burdens on creditors and other entities subject to TILA. To that end, and as discussed in VI. Section-by-section Analysis, consumer testing was conducted for the Board in order to assess the effectiveness of the proposed revisions to Regulation Z. In this manner, the Board has sought to avoid imposing additional regulatory requirements without evidence that these proposed revisions may be beneficial to consumer understanding regarding open-end credit products.

The Board welcomes comments on any significant alternatives, consistent with TILA and the Bankruptcy Act, that would minimize the impact of the proposed 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 proposed rule under the authority delegated to the Board by the Office of Management and Budget (OMB). The collection of information that is required by this proposed rule is found in 12 CFR part 226. The Federal Reserve may not conduct or sponsor, and an organization is not required to respond to, this information collection unless the information collection displays a currently valid OMB control number. The OMB control number is 7100–0199.

This information collection is required to provide benefits for consumers and is mandatory (15 U.S.C. 1601 *et seq.*). The respondents/recordkeepers are creditors and other entities subject to Regulation Z, including for-profit financial institutions and small businesses.

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

[19] Regulation Z generally applies to ''each individual or business that offers or extends credit when four conditions are met: (i) The credit is offered or extended to consumers; (ii) the offering or extension of credit is done regularly, (iii) the credit is subject to a finance charge or is payable by a written agreement in more than four installments, and (iv) the credit is primarily for personal, family, or household purposes.'' Section 226.1(c)(1).

[20] Testimony of Edward L. Yingling for the American Bankers' Association before the Subcommittee on Financial Institutions and Consumer Credit, Financial Services Committee, United States House of Representatives, April 26, 2007, fn. 1, p 3.

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 creditors. The current total annual burden to comply with the provisions of Regulation Z is estimated to be 552,398 hours for the 1,172 Federal Reserve-regulated institutions that are deemed to be respondents for the purposes of the PRA. 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.

The proposed rule would impose a one-time increase in the total annual burden under Regulation Z for all respondents regulated by the Federal Reserve by 73,240 hours, from 552,398 to 625,638 hours. The total one-time burden increase, as well as the estimates of the one-time burden increase associated with each major section of the proposed rule as set forth below, represent averages for all respondents regulated by the Federal Reserve. The Federal Reserve expects that the amount of time required to implement each of the proposed changes for a given institution may vary based on the size and complexity of the respondent. (Furthermore, this one-time burden estimate does not include the burden addressing electronic disclosures as announced in a separate proposed rulemaking (Docket No. R–1284)). In addition, the Federal Reserve estimates that, on a continuing basis, the proposed revisions to the rules governing change-in-terms notices would increase the frequency with which such notices are required, and that this change would increase the total annual burden on a continuing basis from 552,398 to 607,759 hours.

As discussed in the preamble, the Federal Reserve proposes changes to format, timing, and content requirements for the five main types of open-end credit disclosures governed by Regulation Z: (1) Application and solicitation disclosures; (2) account-opening disclosures; (3) periodic statement disclosures; (4) change-in-terms notices; and (5) advertising provisions.

The proposed revisions to the application and solicitation disclosures are intended to make the content of those disclosures more meaningful and easier for consumers to use. The Federal Reserve estimates that 279 respondents regulated by the Federal Reserve would take, on average, 8 hours (one business day) to reprogram and update their systems to comply with the proposed disclosure requirements in § 226.5a and estimates the annual one-time burden to be 2,232 hours.

The proposed revisions to the account-opening disclosures are intended to make the information in those disclosures more conspicuous and easier for consumers to read. The Federal Reserve estimates that 1,172 respondents regulated by the Federal Reserve would take, on average, 8 hours (one business day) to reprogram and update their systems to comply with the proposed disclosure requirements in § 226.6 and estimates the annual one-time burden to be 9,376 hours.

The proposed revisions to the periodic statement disclosures are intended to make the information in those disclosures more understandable, primarily through changes to the format requirements, such as by grouping fees, interest charges, and transactions together. The Federal Reserve estimates that 1,172 respondents regulated by the Federal Reserve would take, on average, 40 hours (one week) to reprogram and update their systems to comply with the proposed disclosure requirements in § 226.7 and estimates the annual one-time burden to be 42,880 hours.

The proposed revisions to the change-in-terms notices would expand the circumstances under which consumers receive written notice of changes in the terms (e.g., an increase in the interest rate) applicable to their accounts, and increase the amount of time these notices must be sent before the change becomes effective. The Federal Reserve estimates that 1,172 respondents regulated by the Federal Reserve will take, on average, 8 hours (one business day) to reprogram and update their systems to comply with the proposed disclosure requirements in § 226.9(c) and estimates the annual one-time burden to be 9,376 hours; In addition, the Federal Reserve estimates that, on a continuing basis, the proposed revisions to the change-in-terms notices would increase the estimated annual frequency for from 2,500 to 3,750. The estimated annual burden for change-in-terms notices would increase from 36,907 to 55,361 hours.

The proposed changes to the advertising provisions would revise the rules governing advertising of open-end credit to help improve consumer understanding of the credit terms offered. The Federal Reserve estimates that 1,172 respondents regulated by the Federal Reserve would take, on average, 8 hours (one business day) to reprogram and update their systems to comply with the proposed disclosure requirements in § 226.16 and estimates the annual one-time burden to be 9,376 hours.

Additionally, the Federal Reserve proposes to revise the definition of open-end credit in § 226.2(a)(20) to ensure that the appropriate (i.e., open-end or closed-end) disclosures are provided in connection with multifeatured plans. The Federal Reserve also proposes to extend the applicability of the rules in § 226.4 for debt cancellation products to debt suspension products. The Federal Reserve estimates the burden to comply with the § 226.2(a)(20) provisions for open-end credit would be minimal. The burden associated with reprogramming and updating a respondent's systems to comply with the proposed debt suspension disclosure requirements in § 226.4, is included in the one-time burden estimates for application and solicitation and periodic statement disclosures mentioned above.

The other federal financial agencies are responsible for estimating and reporting to OMB the total paperwork burden for the institutions for which they have administrative enforcement authority. They may, but are not required to, use the Federal Reserve's burden estimates. Using the Federal Reserve's method, the total current estimated annual burden for all financial institutions subject to Regulation Z, including Federal Reserve-supervised institutions, would be approximately 12,324,037 hours. The proposed rule would impose a one-time increase in the estimated annual burden for all institutions subject to Regulation Z by 1,389,600 hours to 13,713,637 hours. On a continuing basis, the proposed revisions to the change-in-terms notices would increase the estimated annual frequency, thus increasing the total annual burden on a continuing basis from 12,324,037 to 13,516,584 hours. The above estimates represent an average across all respondents and reflect variations between institutions based on their size, complexity, and practices. All covered institutions, including card issuers, retailers, and depository institutions (of which there are approximately 19,300) potentially are affected by this collection of information, and thus are respondents for purposes of the PRA.

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the Federal Reserve's functions; including whether the information has practical utility; (2) the accuracy of the Federal Reserve's estimate of the burden of the proposed information collection, including the cost of compliance; (3) ways to enhance the quality, utility, and

clarity of the information to be collected; and (4) ways to minimize the burden of information collection on respondents, including through the use of automated collection techniques or other forms of information technology. Comments on the collection of information should be sent to Michelle Shore, Federal Reserve Board Clearance Officer, Division of Research and Statistics, Mail Stop 151–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 (7100–0200), Washington, DC 20503.

IX. Redesignation Table

In reviewing the rules affecting open-end credit, The Board has proposed organizational revisions that are designed to make the regulation easier to use. The following table indicates the proposed redesignations.

Current	Redesignation
Footnote 3	§ 226.2(a)(17)(v).
Footnote 4	Comment 3–1.
Comment 3(a)–2	Comment 3(a)–3.
Comment 3(a)–3	Comment 3(a)–4.
Comment 3(a)–4	Comment 3(a)–5.
Comment 3(a)–5	Comment 3(a)–6.
Comment 3(a)–6	Comment 3(a)–8.
Comment 3(a)–7	Comment 3(a)–9.
Comment 3(a)–8	Comment 3(a)–10.
Footnote 5	§ 226.4(d)(2).
Footnote 6	§ 226.4(d)(2)(i).
Footnote 7	§ 226.5(a)(1)(ii)(A).
Footnote 8	§ 226.5(a)(1)(ii)(B).
§ 226.5(a)(2)	§ 226.5(a)(2)(ii).
Footnote 9	§ 226.5(a)(2)(ii).
§ 226.5(a)(3)	§ 226.5(a)(3)(i).
§ 226.5(a)(4)	§ 226.5(a)(3)(ii).
§ 226.5(a)(5)	§ 226.5(a)(1)(iii).
Comment 5(a)(1)–1	Comments 5(a)(1)–1 and 5(a)(1)–2.
Comment 5(a)(1)–2	Comment 5(a)(1)–4.
Footnote 10	§ 226.5(b)(2)(iii).
Comment 5(b)(1)–1	§ 226.5(b)(1)(iv)–(v); Comment 5(b)(1)(i)–1.
§ 226.5a(a)(2)(i) (prominent location)	§ 226.5a(a)(2)(vi).
§ 226.5a(a)(2)(iii)	§ 226.5(a)(2)(iii).
§ 226.5a(a)(2)(iv)	§ 226.5(a)(2)(i).
§ 226.5a(a)(3)	§ 226.5a(a)(5).
§ 226.5a(a)(4)	§ 226.5a(a)(3).
§ 226.5a(a)(5)	§ 226.5a(a)(4).
§ 226.5a(b)(1)(ii)); Comment 5a(c)–1	§ 226.5a(c)(2)(i); § 226.5a(e)(4).
§ 226.5a(b)(1)(iii)	§ 226.5a(c)(2)(ii).
§ 226.5a(e)(3)	§ 226.5a(e)(2).
§ 226.5a(e)(4)	§ 226.5a(e)(3).
Comment 5a(a)(2)–2	Comment 5a(a)(2)–1.
Comment 5a(a)(2)–3	Comment 5a(a)(2)–2.
Comment 5a(a)(2)–4	§ 226.5a(a)(2)(ii).
Comment 5a(a)(2)–7	Comment 5a(a)(2)–4.
Comments 5a(a)(3)–1; –3	§ 226.5a(a)(5).
Comment 5a(a)(3)–2	§ 226.5a(a)(5); Comment 5a(a)(5)–1.
Comment 5a(a)(5)–1	Comment 5a(a)(4)–1.
Comment 5a(b)(1)–2	Comment 5a(b)(1)–1.
Comment 5a(b)(1)–3	§ 226.5a(d)(3).
Comment 5a(b)(1)–4	§ 226.5a(b)(1)(i); Comment 5a(b)(1)–2.
Comment 5a(b)(1)–5	§ 226.5a(b)(1)(ii).
Comment 5a(b)(1)–6	§ 226.5a(b)(1)(iii).
Comment 5a(b)(1)–7	§ 226.5a(b)(1)(iv); Comment 5a(b)(1)–4.
Comment 5a(c)–2	Comment 5(a)(c)–1.
Comment 5a(e)(3)–1	Comment 5a(e)(2)–1.
Comment 5a(e)(4)–1	Comment 5a(e)(3)–1.
Comment 5a(e)(4)–2	Comment 5a(e)(3)–2.
Comment 5a(e)(4)–3	Comment 5a(e)(3)–3.
§ 226.6(a)(1)	§ 226.6(a)(1)(i).
§ 226.6(a)(2)	§ 226.6(a)(1)(ii).
Footnote 11	§ 226.6(a)(1)(ii); § 226.6(b)(2)(i)(B).
Footnote 12	§ 226.6(a)(1)(ii); § 226.6(b)(2)(ii).
§ 226.6(a)(3)	§ 226.6(a)(1)(iii).
§ 226.6(a)(4)	§ 226.6(a)(1)(iv).
Footnote 13	Comments 6(a)(1)(iv)–1 and 6(b)(1)–3.
§ 226.6(b)	§ 226.6(a)(2).
§ 226.6(c)	§ 226.6(c)(1).
§ 226.6(d)	§ 226.6(c)(2).
§ 226.6(e)(1)	§ 226.6(a)(3)(i).
§ 226.6(e)(2)	§ 226.6(a)(3)(ii).
§ 226.6(e)(3)	§ 226.6(a)(3)(iii).

Current	Redesignation
§ 226.6(e)(4)	§ 226.6(a)(3)(iv).
§ 226.6(e)(5)	§ 226.6(a)(3)(v).
§ 226.6(e)(6)	§ 226.6(a)(3)(vi).
§ 226.6(e)(7)	§ 226.6(a)(3)(vii).
Comment 6(a)(1)–1	Comments 6(a)(1)(i)–1 and 6(b)(1)–1.
Comment 6(a)(1)–2	Comments 6(a)(1)(i)–2 and 6(b)(1)–2.
Comment 6(a)(2)–1	Comments 6(a)(1)(ii)–1 and 6(b)(2)(i)(B)–1.
Comment 6(a)(2)–2	Comments 6(a)(1)(ii)–2 and 6(b)(2)(ii)–1.
Comment 6(a)(2)–3	Comment 6(a)(1)(ii)–3.
Comment 6(a)(2)–4	Comment 6(a)(1)(ii)–4.
Comment 6(a)(2)–5	Comment 6(a)(1)(ii)–5.
Comment 6(a)(2)–6	Comments 6(a)(1)(ii)–6 and 6(b)(2)(ii)–2.
Comment 6(a)(2)–7	Comments 6(a)(1)(ii)–7 and 6(b)(2)(ii)–3.
Comment 6(a)(2)–8	Comments 6(a)(1)(ii)–8 and 6(b)(2)(ii)–4.
Comment 6(a)(2)–9	Comment 6(a)(1)(ii)–9.
Comment 6(a)(2)–10	Comments 6(a)(1)(ii)–10 and 6(b)(2)(ii)–5.
Comment 6(a)(2)–11	Comment 6(a)(1)(ii)–11.
Comment 6(a)(3)–1	Comment 6(a)(1)(iii)–1.
Comment 6(a)(3)–2	Comment 6(a)(1)(iii)–2.
Comment 6(a)(4)–1	Comment 6(a)(1)(iv)–1.
Comment 6(b)–1	Comment 6(a)(2)–1.
Comment 6(b)–2	Comment 6(a)(2)–2.
Comment 6(c)–1	Comment 6(c)(1)–1.
Comment 6(c)–2	Comment 6(c)(1)–2.
Comment 6(c)–3	Comment 6(c)(1)–3.
Comment 6(c)–4	Comment 6(c)(1)–4.
Comment 6(c)–5	Comment 6(c)(1)–5.
Comment 6(d)	Comment 6(c)(2).
Comment 6(e)–1	Comment 6(a)(3)–1.
Comment 6(e)–2	Comment 6(a)(3)–2.
Comment 6(e)–3	Comment 6(a)(3)–3.
Comment 6(e)–4	Comment 6(a)(3)–4.
§ 226.7(a)	§ 226.7(a)(1); § 226.7(b)(1).
§ 226.7(b)	§ 226.7(a)(2); § 226.7(b)(2).
§ 226.7(c)	§ 226.7(a)(3); § 226.7(b)(3).
§ 226.7(d)	§ 226.7(a)(4); § 226.7(b)(4).
Footnote 15	§ 226.7(a)(4); § 226.7(b)(4).
§ 226.7(e)	§ 226.7(a)(5); § 226.7(b)(5).
§ 226.7(f)	§ 226.7(a)(6)(i).
§ 226.7(g)	§ 226.7(a)(7); § 226.7(b)(7).
§ 226.7(h)	§ 226.7(a)(6)(ii).
§ 226.7(i)	§ 226.7(a)(10); § 226.7(b)(10).
§ 226.7(j)	§ 226.7(a)(8); § 226.7(b)(8).
§ 226.7(k)	§ 226.7(a)(9); § 226.7(b)(9).
Comment 7–3	Comment 7(b)–1.
Comment 7(a)–1	Comments 7(a)(1)–1 and 7(b)(1)–1.
Comment 7(a)–2	Comments 7(a)(1)–2 and 7(b)(1)–2.
Comment 7(a)–3	Comments 7(a)(1)–3 and 7(b)(1)–3.
Comment 7(b)–1	Comments 7(a)(2)–1 and 7(b)(2)–1.
Comment 7(b)–2	Comments 7(a)(2)–2 and 7(b)(2)–2.
Comment 7(c)–1	Comments 7(a)(3)–1 and 7(b)(3)–1.
Comment 7(c)–2	Comment 7(a)(3)–2.
Comment 7(c)–3	Comments 7(a)(3)–3 and 7(b)(3)–2.
Comment 7(c)–4	Comments 7(a)(3)–4 and 7(b)(3)–3.
Comment 7(d)–1	Comments 7(a)(4)–1 and 7(b)(4)–1.
Comment 7(d)–2	Comments 7(a)(4)–2 and 7(b)(4)–2.
Comment 7(d)–3	Comments 7(a)(4)–3 and 7(b)(4)–3.
Comment 7(d)–4	Comment 7(a)(4)–4.
Comment 7(d)–5	Comments 7(a)(4)–5 and 7(b)(4)–4.
Comment 7(d)–6	Comments 7(a)(4)–6 and 7(b)(4)–5.
Comment 7(d)–7	Comment 7(b)(4)–6.
Comment 7(e)–1	Comment 7(a)(5)–1.
Comment 7(e)–2	Comments 7(a)(5)–2 and 7(b)(5)–1.
Comment 7(e)–3	Comments 7(a)(5)–3 and 7(b)(5)–2.
Comment 7(e)–4	Comments 7(a)(5)–4 and 7(b)(5)–3.
Comment 7(e)–5	Comments 7(a)(5)–5 and 7(b)(5)–4.
Comment 7(e)–6	Comment 7(a)(5)–6.
Comment 7(e)–7	Comments 7(a)(5)–7 and 7(b)(5)–5.
Comment 7(e)–8	Comments 7(a)(5)–8 and 7(b)(5)–6.
Comment 7(e)–9	Comments 7(a)(5)–9 and 7(b)(5)–7.
Comment 7(e)–10	Comment 7(b)(5)–8.
Comments 7(f)–1	Comment 7(a)(6)(i)–1.
Comment 7(f)–2	Comment 7(a)(6)(i)–2.
Comment 7(f)–3	Comment 7(a)(6)(i)–3.

Current	Redesignation
Comment 7(f)–4	Comment 7(a)(6)(i)–4.
Comment 7(f)–5	Comment 7(a)(6)(i)–5.
Comment 7(f)–6	Comment 7(a)(6)(i)–6.
Comment 7(f)–7	Comment 7(a)(6)(i)–7.
Comment 7(f)–8	Comment 7(a)(6)(i)–8.
Comment 7(g)–1	Comments 7(a)(7)–1 and 7(b)(7)–1.
Comment 7(g)–2	Comments 7(a)(7)–2 and 7(b)(7)–2.
Comment 7(h)–1	Comment 7(a)(6)(ii)–1.
Comment 7(h)–2	Comment 7(a)(6)(ii)–2.
Comment 7(h)–3	Comment 7(a)(6)(ii)–3.
Comment 7(h)–4	Comment 7(a)(6)(ii)–4.
Comment 7(i)–1	Comments 7(a)(10)–1 and 7(b)(10)–1.
Comment 7(i)–2	Comments 7(a)(10)–2 and 7(b)(10)–2.
Comment 7(i)–3	Comments 7(a)(10)–3 and 7(b)(10)–3.
Comment 7(j)–1	Comments 7(a)(8)–1 and 7(b)(8)–1.
Comment 7(j)–2	Comment 7(b)(8)–2.
Comment 7(k)–1	Comments 7(a)(9)–1 and 7(b)(9)–1.
Comment 7(k)–2	Comments 7(a)(9)–2 and 7(b)(9)–2.
Comment 8–2	Comment 8(a)–1.
Comment 8–3	Comment 8(b)–1.
Comment 8–5	Comment 8(a)–5.
Comment 8(a)–1	Comment 8(a)–4.i.
Comment 8(a)–2	Comment 8(a)–4.ii.
Comment 8(a)–4	Comment 8(a)–2.
Comment 8(a)(2)–1	Comment 8(a)–6.
Comment 8(a)(2)–2	Comment 8(a)–6.
Comment 8(a)(2)–5	Comment 8(a)–3.
Comment 8(a)(3)–1	Comment 8(a)–7.
Comment 8(a)(3)–2	Comment 8(a)–8.
Comment 8(a)(3)–3	Comment 8(a)–8.
Comment 8(a)(3)–4	Comment 8(a)–3.
Comment 8(b)–1	Comment 8(b)–3.
Comment 8(b)–3	Comment 8(b)–2.
Footnote 16	§ 226.8(c)(1).
Footnote 17	§ 226.8(c)(2).
Footnote 19	§ 226.8(a)(1)(ii).
§ 226.9(c)	§ 226.9(c)(1) and 226.9(c)(2).
§ 226.9(c)(1)	§ 226.9(c)(1)(i) and § 226.9(c)(2)(i).
§ 226.9(c)(2)	§ 226.9(c)(1)(ii) and § 226.9(c)(2)(iv).
§ 226.9(c)(3)	§ 226.9(c)(1)(iii).
Comment 9(c)–1	Comments 9(c)(1)–1 and 9(c)(2)–1.
Comment 9(c)–2	Comment 9(c)(1)–2 and 9(c)(2)–2.
Comment 9(c)–3	Comment 9(c)(1)–3 and 9(c)(2)–3.
Comment 9(c)(1)–1	Comment 9(c)(1)(i)–1 and 9(c)(2)(i)–1.
Comment 9(c)(1)–2	Comment 9(c)(1)(i)–2 and 9(c)(2)(i)–2.
Comment 9(c)(1)–3	Comment 9(c)(1)(i)–3 and 9(c)(2)(i)–3.
Comment 9(c)(1)–4	Comment 9(c)(1)(i)–4 and 9(c)(2)(i)–4.
Comment 9(c)(1)–5	Comment 9(c)(1)(i)–5 and 9(c)(2)(i)–5.
Comment 9(c)(1)–6	Comment 9(c)(1)(i)–6.
Comment 9(c)(2)–1	Comment 9(c)(1)(ii)–1 and 9(c)(2)(iv)–1.
Comment 9(c)(2)–2	Comment 9(c)(1)(ii)–2 and 9(c)(2)(iv)–2.
Comment 9(c)(3)–1	Comment 9(c)(1)(iii)–1.
Comment 9(c)(3)–2	Comment 9(c)(1)(iii)–2.
§ 226.11	§ 226.11(a).
§ 226.11(a)	§ 226.11 (a)(1).
§ 226.11(b)	§ 226.11(a)(2).
§ 226.11(c)	§ 226.11(a)(3).
Comment 11–1	Comment 11(a)–1.
Comment 11–2	Comment 11(a)–2.
Comment 11(b)–1	Comment 11(a)(2)–1.
Comment 11(c)–1	Comment 11(a)(3)–1.
Comment 11(c)–2	Comment 11(a)(3)–2.
§ 226.12(b)(1)	§ 226.12(b)(1)(ii).
§ 226.12(c)(3)	§ 226.12(c)(3)(i).
§ 226.12(c)(3)(i)	§ 226.12(c)(3)(i)(A).
§ 226.12(c)(3)(ii)	§ 226.12(c)(3)(i)(B).
Footnote 21	Comment 12–2.
Footnote 22	§ 226.12(b)(1)(i).
Footnote 23	Comment 12(b)(2)(ii)–2.
Footnote 24	Comment 12(c)–3.
Footnote 25	Comment 12(c)–4.
Footnote 26	§ 226.12(c)(3)(ii).
Comment 12(c)(3)(i)–1	Comment 12(c)(3)(i)(A)–1.
Comment 12(c)(3)(ii)–1	Comment 12(c)(3)(i)(B)–1.

Current	Redesignation
Comment 12(c)(3)(ii)–2	Comment 12(c)(3)(ii)–1.
Footnote 27	§ 226.13(d)(3).
Footnote 28	Comment 13(b)–1.
Footnote 29	Comment 13(b)–2.
Footnote 30	§ 226.13(d)(4).
Comment 13–2	Comment 13–1.
Comment 13(a)–1	Comment 13(a)(1)–1.
Footnote 31a	§ 226.14(a).
Footnote 32	§ 226.14(c)(2).
Footnote 33	§ 226.14(c)(2).
§ 226.14(d)(1)	§ 226.14(c)(5)(i).
§ 226.14(d)(2)	§ 226.14(c)(5)(ii).
Comment 14(c)–2	Comment 14(c)(1)–1.
Comment 14(c)–3	Comment 14(c)(2)–1.
Comment 14(c)–4	Comment 14(c)(2)–2.
Comment 14(c)–5	Comment 14(c)(3)–1.
Comment 14(c)–6	Comment 14(c)(3)–2.
Comment 14(c)–7	Comment 14(c)–2.
Comment 14(c)–8	Comment 14(c)–3.
Comment 14(c)–9	Comment 14(c)–4.
Comment 14(c)–10	Comment 14(c)–5.
Comment 14(d)–1	Comment 14(c)–6.
Comment 14(d)–2	Comment 14(c)–6.
§ 226.16(b)(1)	§ 226.16(b)(1)(i).
§ 226.16(b)(2)	§ 226.16(b)(1)(ii).
§ 226.16(b)(3)	§ 226.16(b)(1)(iii).
Comment 16–2	Comment 16–3.
Comment 16(b)–1	§ 226.16(b)(1).
Comment 16(b)–2	Comment 16(b)–1.
Comment 16(b)–3	Comment 16(b)–2.
Comment 16(b)–4	Comment 16(b)–3.
Comment 16(b)–6	§ 226.16(e).
Comment 16(b)–7	Comment 16(b)–1.
Comment 16(b)–8	§ 226.16(b)(1).
Comment 16(b)–9	Comment 16(b)–4.

Text of Proposed Revisions

Certain conventions have been used to highlight the proposed revisions. New language is shown inside arrows while language that would be deleted is set off with brackets.

List of Subjects in 12 CFR Part 226

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

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

PART 226—TRUTH IN LENDING (REGULATION Z)

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

Authority: 12 U.S.C. 3806; 15 U.S.C. 1604 and 1637(c)(5).

2. Section 226.1 is amended by republishing paragraphs (a), (b), (c), and (e), revising paragraph (d), and removing and reserving footnote 1 to read as follows:

Subpart A—General

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

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

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

(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 the 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

[1] ►[Reserved]◄ [The meaning of "regularly" is explained in the definition of "creditor" in § 226.2(a).]

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.

(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◄ [initial] 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 percentage rate calculations, rescission requirements, and advertising.

(4) Subpart D contains rules on oral disclosures, ►disclosures in languages other than English◄ [Spanish-language disclosure in Puerto Rico], 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 ►certain◄ mortgage transactions.

(6) Several appendices contain information such as the procedures for determinations about state laws, state exemptions and issuance of staff interpretations, special rules for certain kinds of credit plans, a list of enforcement agencies, and the rules for computing annual percentage rates in closed-end credit transactions and total-annual-loan-cost rates for reverse mortgage transactions.

(e) *Enforcement and liability.* Section 108 of the act contains the administrative enforcement provisions. Sections 112, 113, 130, 131, and 134 contain provisions relating to liability for failure to comply with the requirements of the act and the regulation. Section 1204(c) of title XII of the Competitive Equality Banking Act of 1987, Pub. L. No. 100–86, 101 Stat. 552, incorporates by reference administrative enforcement and civil liability provisions of sections 108 and 130 of the act.

3. Section 226.2 is amended by revising paragraph (a), republishing paragraph (b) and removing and reserving footnote 3 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 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 § 226.31, the term means all calendar days except Sundays and the legal public holidays specified in 5 U.S.C. 6103(a), such as New Year's Day, the Birthday of Martin Luther King, Jr., Washington's Birthday, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans Day, Thanksgiving Day, and Christmas Day.

(7) *Card issuer* means a person that issues a credit card or that person's agent with respect to the card.

(8) *Cardholder* means a natural person to whom a credit card is issued for consumer credit purposes, or a natural person who has agreed with the card issuer to pay consumer credit obligations arising from the issuance of credit card to another natural person. For purposes of § 226.12(a) and (b), the term includes any person to whom a credit card is issued for any purpose, including business, commercial or agricultural use, or a person who has agreed with the card issuer to pay obligations arising from the issuance of such a credit card to another person.

(9) *Cash price* means the price at which a creditor, in the ordinary course of business, offers to sell for cash property or service that is the subject of the transaction. At the creditor's option, the term may include the price 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 the 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 credit transaction.

(14) *Credit* means the right to defer payment of debt or to incur debt and defer its payment.

(15) *Credit card* means any card, plate, [coupon book,] 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.

(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:

[2] [Reserved].

(i) A person (A) who regularly extends consumer credit[3] that is subject to a finance charge or is payable by written agreement in more than four installments (not including a down payment), and (B) to whom the obligation is initially payable, either on the face of the note or contract, or by agreement when there is no note or contract.

(ii) For purposes of §§ 226.4(c)(8) (Discounts), 226.9(d) (finance charge imposed at time of transaction), and 226.12(e) (prompt notification of returns and crediting of refunds), a person that honors a credit card.

(iii) For purposes of subpart B, any card issuer that extends either open-end credit or credit that is not subject to a finance charge and is not payable by written agreement in more than four installments.

(iv) For purposes of subpart B (except for the credit and charge card disclosures contained in §§ 226.5a and 226.9(e) and (f), the finance charge disclosures contained in ►§§ 226.6(a)(1) and (b)(1) and §§ 226.7(a)(4) through (7) and (b)(4) through (7)◄ [§ 226.6(a) and § 226.7(d) through (g)] 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 the dwelling) in the preceding calendar year. If a person did not meet these numerical standards in the preceding calendar year, the numerical standards shall be applied to the current calendar year. A person regularly extends consumer credit if, in any 12-month period, the person originates more than one credit extension that is subject to the requirements of § 226.32 or one or more such credit extensions through a mortgage broker.◄

(18) *Downpayment* means an amount, including the value of property used as a trade-in, paid to a seller to reduce the cash price of goods or services purchased in a credit sale transaction. A deferred portion of a downpayment may be treated as part of the downpayment if it is payable not later than the due date of the second otherwise regularly scheduled payment and is not subject to a finance charge.

(19) *Dwelling* means a residential structure that contains one to four units, whether or not that structure is attached to real property. The term includes an individual condominium unit, cooperative unit, mobile home, and trailer, if it is used as a residence.

(20) *Open-end credit* means consumer credit extended by a creditor under a plan in which:

(i) The creditor reasonably contemplates repeated transactions;

(ii) The creditor may impose a finance charge from time to time on an outstanding unpaid balance; and

(iii) The amount of credit that may be extended to the consumer during the term of the plan (up to any limit set by the creditor) is generally made available to the extent that any outstanding balance is repaid.

(21) *Periodic rate* means a rate of finance charge that is or may be imposed by a creditor on a balance for a day, week, month, or other subdivision of a year.

(22) *Person* means a natural person or an organization, including a corporation, partnership, proprietorship, association, cooperative, estate, trust, or government unit.

(23) *Prepaid finance charge* means any finance charge paid separately in cash or by check before or at consummation of a transaction, or withheld from the proceeds of the credit at any time.

(24) *Residential mortgage transaction* means a transaction in which a mortgage, deed of trust, purchase money security interest arising under an installment sales contract, or equivalent consensual security interest is created or retained in the consumer's principal dwelling to finance the acquisition or initial construction of that dwelling.

(25) *Security interest* means an interest in property that secures performance of a consumer credit obligation and that is recognized by state or federal law. It does not include incidental interests such as interests in proceeds, accessions, additions, fixtures, insurance proceeds (whether or not the creditor is a loss payee or beneficiary), premium rebates, or interests in after-acquired property. For purposes of disclosures under § 226.6 and § 226.18, the term does not include an interest that arises solely by operation of law. However, for purposes of the right of rescission under § 226.15 and § 226.23, the term does include interests that arise solely by operation of law.

(26) *State* means any state, the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession of the United States.

(b) *Rules of construction.* For purposes of this regulation, the following rules of construction apply:

(1) Where appropriate, the singular form of a word includes the plural form and plural includes singular.

(2) Where the words *obligation* and *transaction* are used in the regulation, they refer to a consumer credit obligation or transaction, depending upon the context. Where the work *credit* is used in the regulation, it means *consumer credit* unless the context clearly indicates otherwise.

(3) Unless defined in this regulation, the words used have the meanings given to them by state law or contact.

(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 amended by republishing paragraphs (a), (b), (c), (d), (e), and (f), adding a new paragraph (g), and removing and reserving footnote 4 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 not secured by real property, or by personal property used or expected to be used as the principal dwelling of the consumer, 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.

(c) *Public utility credit.* An extension of credit that involves public utility services provided through pipe, wire,

[3] ►[Reserved]◄ [A person regularly extends consumer credit only if it extended credit (other than credit subject to the requirements of section 226.32) more than 25 times (or more than 5 times for transactions secured by the 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 section 226.32 or one or more such credit extensions through a mortgage broker.]

[4] ►[Reserved]◄ [The provisions in Section 226.12(a) and (b) governing the issuance of credit cards and the 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.]

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 or a tax-sheltered annuity under Section 403(b) of the Internal Revenue Code (26 U.S.C. 401(a); 26 U.S.C. 403(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 amended by republishing paragraphs (a), (c), (e), and (f), revising paragraphs (b) and (d), and removing and reserving footnotes 5 and 6 to read as follows:

§ 226.4 Finance charge.

(a) *Definition.* The finance charge is the cost of consumer credit as a dollar amount. It includes any charge payable directly or indirectly by the consumer and imposed directly or indirectly by the creditor as an incident to or a condition of the extension of credit. It does not include any charge of a type payable in a comparable cash transaction.

(1) *Charges by third parties.* The finance charge includes fees and amounts charged by someone other than the creditor, unless otherwise excluded under this section, if the creditor:

(i) Requires the use of a third party as a condition of or an incident to the extension of credit, even if the consumer can choose the third party; or

(ii) Retains a portion of the third-party charge, to the extent of the portion retained.

(2) *Special rule; closing agent charges.* Fees charged by a third party that conducts the loan closing (such as a settlement agent, attorney, or escrow or title company) are finance charges only if the creditor—

(i) Requires the particular services for which the consumer is charged;

(ii) Requires the imposition of the charge; or

(iii) Retains a portion of the third-party charge, to the extent of the portion retained.

(3) *Special rule; mortgage broker fees.* Fees charged by a mortgage broker (including fees paid by the consumer directly to the broker or to the creditor for delivery to the broker) are finance charges even if the creditor does not require the consumer to use a mortgage broker and even if the creditor does not retain any portion of the charge.

(b) *Examples of finance charges.* The finance charge includes the following types of charges, except for charges specifically excluded by paragraphs (c) through (e) of this section:

(1) Interest, time price differential, and any amount payable under an add-on or discount system of additional charges.

(2) Service, transaction, activity, and carrying charges, including any charge imposed on a checking or other transaction account to the extent that the charge exceeds the charge for a similar account without a credit feature.

(3) Points, loan fees, assumption fees, finder's fees, and similar charges.

(4) Appraisal, investigation, and credit report fees.

(5) Premiums or other charges for any guarantee or insurance protecting the creditor against the consumer's default or other credit loss.

(6) Charges imposed on a creditor by another person for purchasing or accepting a consumer's obligation, if the consumer is required to pay the charges in cash, as an addition to the obligation, or as a deduction from the proceeds of the obligation.

(7) Premiums or other charges for credit life, accident, health, or loss-of-income insurance, written in connection with a credit transaction.

(8) Premiums or other charges for insurance against loss of or damage to property, or against liability arising out of the ownership or use of property, written in connection with a credit transaction.

(9) Discounts for the purpose of inducing payment by a means other than the use of credit.

(10) *Debt cancellation* ►*and debt suspension*◄ *fees.* Charges or premiums paid for debt cancellation ►or debt suspension◄ coverage written in connection with a credit transaction, whether or not the [debt cancellation] 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.* [(i)]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◄ [of the type specified in paragraph (d)(3)(ii) of this section] may be excluded from the finance charge, whether or not the coverage is insurance, if the following conditions are met:

►(i)◄ [(A)] The debt cancellation ►or debt suspension◄ agreement or coverage is not required by the creditor, and this fact is disclosed in writing;

►(ii)◄ [(B)] The fee or premium for the initial term of coverage is disclosed ►in writing◄. If the term of coverage is less than the term of the credit transaction, the term of coverage also shall be disclosed. The fee or premium may be disclosed on a unit-cost basis only in open-end credit transactions, closed-end credit transactions by mail or telephone under § 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)◄ [(C)] 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.

[(ii) Paragraph (d)(3)(i) of this section applies to fees paid for debt cancellation coverage that provides for cancellation of all or part of the debtor s liability for amounts exceeding the value of the collateral securing the obligation, or in the event of the loss of life, health, or income or in case of accident.]

►(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 reasonable procedures to provide the disclosures to the consumer orally and maintain evidence that the consumer, after being provided the disclosures, affirmatively elected to purchase the insurance or coverage; and

(ii) Mail the disclosures under paragraphs (d)(1)(i) and (ii) or (d)(3)(i) through (iii) of this section, as applicable, within three business days after the telephone purchase.◄

(e) *Certain security interest charges.* If itemized and disclosed, the following charges may be excluded from the finance charge:

(1) Taxes and fees prescribed by law that actually are or will be paid to public officials for determining the existence of or for perfecting, releasing, or satisfying a security interest.

(2) The premium for insurance in lieu of perfecting a security interest to the extent that the premium does not exceed the fees described in paragraph (e)(1) of this section that otherwise would be payable.

(3) *Taxes on security instruments.* Any tax levied on security instruments or on documents evidencing indebtedness if the payment of such taxes is a requirement for recording the instrument securing the evidence of indebtedness.

(f) *Prohibited offsets.* Interest, dividends, or other income received or to be received by the consumer on deposits or investments shall not be deducted in computing the finance charge.

6. Section 226.5 is amended by revising paragraphs (a) and (b), republishing paragraphs (c), (d), and (e), and removing and reserving footnotes 7 through 10 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)(1) of charges that are imposed as part of the plan and may be provided at any time before the consumer agrees to pay or becomes obligated to pay for the charge, pursuant to the timing requirements of paragraph (b)(1)(ii) of this section and related disclosures under § 226.9(c)(2)(ii)(B) of charges; and disclosures under § 226.9(d) when a finance charge is imposed at the time of the transaction.

(B) The following disclosures need not be in a retainable form: disclosures for credit and charge card applications and solicitations under § 226.5a; home equity disclosures under § 226.5b(d); the

[5] ►[Reserved]◄ [This includes single interest insurance if the insurer waives all right of subrogation against the consumer.]

[6] ►[Reserved]◄ [A creditor may reserve the right to refuse to accept, for reasonable cause, an insurer offered by the consumer.]

[7] ►[Reserved]◄ [The disclosure required by § 226.9(d) when a finance charge is imposed at the time of a transaction need not be written.]

[8] ►[Reserved]◄ [The disclosures required under § 226.5a for credit and charge card applications and solicitations, the home equity disclosures required under § 226.5b(d), the alternative summary billing-rights statement provided for in § 226.9(a)(2), the credit and charge card renewal disclosures required under § 226.9(e), and the disclosures made under § 226.10(b) about payment requirements need not be in a form that the consumer can keep.]

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) 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 credit and charge card applications and solicitations under § 226.5a; for account-opening disclosures in a tabular format under § 226.6(b)(4); for periodic statements disclosures under § 226.7(b)(4) and § 226.7(b)(7); for disclosures in a tabular format accompanying checks that access a credit card account under § 226.9(b)(3); for information in change-in-terms notices in a tabular format under § 226.9(c)(2)(iii)(B); for information when rates are increased due to delinquency, default or penalty pricing under § 226.9(g)(3)(ii); for credit and charge card renewal disclosures under § 226.9(e); 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 *grace period* and *penalty APR* shall be used, as applicable. 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)(4).

(iv) Certain disclosures provided on periodic statement must be provided in a tabular format in accordance with the requirements of § 226.7(b)(7).

(v) Certain disclosures provided on periodic statements must be grouped together in accordance with the requirements of § 226.7(b)(6) and § 226.7(b)(13).

(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)(iii)(B).

(viii) Certain disclosures provided when a rate is increased due to delinquency, default or as a rate must be provided in a tabular format in accordance with the requirements of § 226.9(g)(3)(ii).◄

[(2) 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.

(3) Certain disclosures required under § 226.5a for credit and charge card applications and solicitations must be provided in a tabular format or in a prominent location in accordance with the requirements of that section.

(4) For rules governing the form of disclosures for home equity plans, see § 226.5b(a).

(5) *Electronic communication.* For rules governing the electronic delivery of disclosures, including the definition of electronic communication, see § 226.36.]

(b) *Time of disclosures.*

(1) [*Initial*] ►*Account-opening disclosures.*

► (i) *General rule.*◄ The creditor shall furnish ►account-opening disclosures◄ [the initial disclosure statement] 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)(4) may be provided at any relevant time before the consumer agrees to pay or becomes obligated to pay for the charge. 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,

(B) The merchant 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 receiving 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 creditor may collect, or obtain the consumer's agreement to pay, a membership fee before providing account-opening disclosures if the consumer may reject the plan after receiving the disclosures. 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 the fee.

(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.◄

(2) *Periodic statements.*

(i) The creditor shall mail or deliver a periodic statement as required by § 226.7 for each billing cycle at the end of which an account has a debit or credit balance of more than $1 or on which a finance charge has been imposed. A periodic statement need not be sent for an account if the creditor deems it uncollectible, or if delinquency

[9] ►[Reserved]◄ [The terms need not be more conspicuous when used under § 226.5a generally for credit and charge card applications and solicitations, under § 226.7(d) on periodic statements, under § 226.9(e) in credit and charge card renewal disclosures, and under § 226.16 in advertisements. (But see special rule for annual percentage rate for purchases, § 226.5a(b)(1).)]

collection proceedings have been instituted, or if furnishing the statement would violate federal law.

(ii) The creditor shall mail or deliver the periodic statement at least 14 days prior to any date or the end of any time period required to be disclosed under ►§ 226.7(a)(8) or § 226.7(b)(8), as applicable,◄ [§ 226.7(j) in order] for the consumer to avoid an additional finance or other charge.[10] A creditor that fails to meet this requirement shall not collect any finance or other charge imposed as a result of such failure.

►(iii) The timing requirement under this paragraph (b)(2) does not apply if the creditor is unable to meet the requirement because of an act of God, war, civil disorder, natural disaster, or strike.◄

(3) *Credit and charge card application and solicitation disclosures.* The card issuer shall furnish the disclosures for credit and charge card applications and solicitations in accordance with the timing requirements of § 226.5a.

(4) *Home equity plans.* Disclosures for home equity plans shall be made in accordance with the timing requirements of § 226.5b(b).

(c) *Basis of disclosures and use of estimates.* Disclosures shall reflect the terms of the legal obligation between the parties. If any information necessary for accurate disclosure is unknown to the creditor, it shall make the disclosure based on the best information reasonably available and shall state clearly that the disclosure is an estimate.

(d) *Multiple creditors; multiple consumers.* If the credit plan involves more than one creditor, only one set of disclosures shall be given, and the creditors shall agree among themselves which creditor must comply with the requirements that this regulation imposes on any or all of them. If there is more than one consumer, the disclosures may be made to any consumer who is primarily liable on the account. If the right of rescission under § 226.15 is applicable, however, the disclosures required by § 226.6 and § 226.15(b) shall be made to each consumer having the right to rescind.

(e) *Effect of subsequent events.* If a disclosure becomes inaccurate because of an event that occurs after the creditor mails or delivers the disclosures, the resulting inaccuracy is not a violation of this regulation, although new disclosures may be required under § 226.9(c).

[10] ►[Reserved]◄ [This timing requirement does not apply if the creditor is unable to meet the requirement because of an act of God, war, civil disorder, natural disaster, or strike.]

7. Section 226.5a is amended by revising paragraphs (a), (b), (c), (d), (e), (f), and republishing paragraph (g) to read as follows:

§ 226.5a Credit and charge card applications and solicitations.

(a) *General rules.* The card issuer shall provide the disclosures required under this section on or with a solicitation or an application to open a credit or charge card account.

(1) *Definition of solicitation.* For purposes of this section, the term *solicitation* means an offer by the card issuer to open a credit or charge card account that does not require the consumer to complete an application. ►A ''firm offer of credit'' as defined in section 603(l) of the Fair Credit Reporting Act (15 U.S.C. 1681a(l)) for a credit or charge card is a solicitation for purposes of this section.◄

(2) *Form of disclosures* ►; *tabular format.*◄

(i) The disclosures in paragraphs (b)(1) through ►(5) and (b)(7) through (17)◄ [(7)] of this section ►made pursuant to paragraph (c), (d)(2), (e)(1) or (f) of this section generally◄ shall be [provided in a prominent location on or with an application or a solicitation, or other applicable document , and] 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.

►(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 paragraph (b)(6) of this section must be placed directly beneath the table.

(iv) When a tabular format is required, any APR required to be disclosed pursuant to paragraph (b)(1) of this section, any discounted initial rate permitted to be disclosed pursuant to paragraph (b)(1)(ii) of this section, and any fee or percentage amounts required to be disclosed pursuant to paragraphs (b)(2), (4), (8) through (12) or (14) of this section must be disclosed in bold text, except for any maximum limits on fee amounts disclosed in the table. Other APRs or fee amounts disclosed in the table shall not be in bold text.

(v) For an application or a solicitation that is accessed by the consumer in electronic form, the disclosures required under this section must 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.◄

[(ii) The disclosures in paragraphs (b)(8) through (11) of this section shall be provided either in the table containing the disclosures in paragraphs (b)(1) through (7), or clearly and conspicuously elsewhere on or with the application or solicitation.

(iii) The disclosure required under paragraph (b)(5) of this section shall contain the term *grace period.*

(iv) The terminology in the disclosures under paragraph (b) of this section shall be consistent with that to be used in the disclosures under §§ 226.6 and 226.7.

(3) *Exceptions.* This section does not apply to home equity plans accessible by a credit or charge card that are of the type subject to the requirements of § 226.5b; overdraft lines of credit tied to asset accounts accessed by check-guarantee cards or by debit cards; or lines of credit accessed by check-guarantee cards or by debit cards that can be used only at automated teller machines.]

►(3)◄ [(4)] *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)◄ [(5)] *Certain fees that vary by state.* If the amount of any fee referred to in paragraphs (b)(8) through ► (12) ◄ [(11)] of this section varies from state to state, the card issuer may disclose the range of the fees instead of the amount for each state, if the disclosure includes a statement that the amount of the fee varies from state to state.

►(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), [or (e)] ►(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 (16)◄ [(11)] 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 [18-point] ►16-point◄ type, except for the following: ►oral disclosures of the annual percentage rate for purchases,◄ a temporary initial rate that is lower than the rate that will apply after the temporary rate expires, and a penalty rate that ►may◄ [will] 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,◄ [If the account has 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.◄

►(ii) *Discounted initial rate.* If the initial rate is temporary and is lower than the rate that will apply after the temporary rate expires, pursuant to paragraph (b)(1) of this section the card issuer must disclose the rate that would otherwise apply to the account. Where the rate is not tied to an index or formula, the card issuer must disclose the rate that will apply after the introductory rate expires. In a variable-rate account, the card issuer must disclose a rate based on the applicable index or formula in accordance with the accuracy requirements set forth in paragraphs (c), (d), or (e) of this section, as applicable. The issuer may disclose in the table the discounted initial rate along with the rate that would otherwise apply to the account if the card issuer also discloses the time period during which the discounted initial rate will remain in effect, and uses the term ''introductory'' or ''intro'' in immediate proximity to the listing of the discounted initial rate.

(iii) *Premium initial rate.* If the initial rate is temporary and is higher than the rate that will apply after the temporary rate expires, pursuant to paragraph (b)(1) of this section the card issuer must disclose the premium initial rate. The issuer may disclose in the table the rate that will apply after the premium initial rate expires if the issuer also discloses the time period during which the premium initial rate will remain in effect. The premium initial rate must be in at least 16-point type unless the issuer also discloses in the table the rate that will apply after the premium initial rate expires. In that case, the rate that will apply after the premium initial rate expires must be in at least 16-point type.

(iv) *Penalty 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, pursuant to paragraph (b)(1) of this section the card issuer must disclose the increased rate that would apply, a description of the types of balances to which the increased rate will 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. Issuers must briefly disclose the circumstances under which any discounted initial rate may be revoked, and the rate that will apply after the revocation. The issuer need not disclose an increased rate that would be imposed if credit privileges are permanently terminated.

(v) *Rates depend on consumer's creditworthiness.* If a rate cannot be determined at the time disclosures are given because the rate depends 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.

(vi) *Transaction with both rate and fee.* If both a rate and a fee would apply to a balance transfer or cash advance transaction, the card issuer must disclose that a fee also applies when disclosing the rate, and provide a cross-reference to the fee.◄

[(ii) When variable rate disclosures are provided under paragraph (c) of this section, an annual percentage rate disclosure is accurate if the rate was in effect within 60 days before mailing the disclosures. When variable rate disclosures are provided under paragraph (e) of this section, an annual percentage rate disclosure is accurate if the rate was in effect within 30 days before printing the disclosures. Disclosures provided by electronic communication are subject to paragraph (b)(1)(iii) of this section.

(iii) When variable rate disclosures are provided by electronic communication, an annual percentage rate disclosure is accurate if the rate was in effect within 30 days before mailing the disclosures to a consumer's e-mail address. If disclosures are made available at another location such as the card issuer s Internet Web site, the annual percentage rate must be one in effect within the last 30 days.]

(2) *Fees for issuance or availability.* ►(i)◄ Any annual or other periodic fee [expressed as an annualized amount, or any other 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) *Minimum finance charge.* Any minimum or fixed finance charge that could be imposed during a billing cycle ►and a brief description of the charge◄.

(4) *Transaction charges.* ►(i) Except as provided in paragraph (b)(4)(ii) of this section, any◄ [Any] transaction charge imposed ►by the card issuer◄ for the use of the card for purchases.

►(ii) A card issuer shall not disclose in the table required by paragraph (a)(2)(i) of this section a fee imposed by the issuer for transactions in a foreign currency or that take place in a foreign country.◄

(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.

(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. ►A card issuer must provide this information directly below the table, if a tabular format is required.◄ [The explanation of the method may appear outside the table if the table contains a reference to the explanation.] 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) *Cross-reference to penalty rate.* If a card issuer may impose a penalty rate as described in paragraph (b)(1)(iv) of this section for any of the circumstances for which a fee must be disclosed in paragraph (b)(9), (b)(10) or (b)(12), the card issuer must disclose the fact that the penalty rate also may apply, and a cross-reference to the penalty rate.

(14) *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.

(15) *Payment allocation.* If a card issuer offers a discounted initial rate on a balance transfer or cash advance that is lower than the rate on purchases, the issuer offers a grace period on purchases, and the issuer may allocate a payment to the lower rate balance first, then the issuer must state the following: the initial discounted rate applies to balances transfers or cash advances (as applicable) and not to purchases; payments will be allocated to the balance transfer or cash advance balance (as applicable) before being allocated to any purchase balance during the time the discounted initial rate is in effect; and the consumer will be charged interest on all purchases until the entire account balance is paid off, including the transferred balance or cash advance balance (as applicable). This paragraph (b)(15) applies only if the initial discounted rate applies to balance transfers or cash advances that consumers can request as part of accepting the offer.

(16) *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 when the account is opened and charged to the account equal 25 percent or more of the minimum credit limit offered with 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 25 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 25 percent threshold test is met, the issuer in providing the disclosure must disclose the amount of available credit excluding those optional fees, and the available credit including those optional fees.

(17) *Reference to Web site for additional information.* 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 by electronic communication] ►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 Internet 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) 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 does not impose a fee described in paragraph (b)(2) of this section or does not impose such a fee unless the consumer uses the card, and 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:

(i) The applicable information in paragraph (b) of this section; and

(ii) The fact that the consumer need not accept the card or pay any fee disclosed unless the consumer uses the card.

►(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) [or (3)] 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) *Inclusion of certain initial disclosures.* The card issuer may disclose on or with the application or solicitation the following:

(i) The disclosures required under § 226.6 (a) through (c); and

(ii) A statement that the consumer should contact the card issuer for any change in the required information, and a toll-free telephone number or a mailing address for that purpose.]

[(3)] ►(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.

[(4)] ►(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—General.* 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.◄

[(f) *Special charge card rule—card issuer and person extending credit not the same person.* If a cardholder may by use of a charge card access an open-end credit plan that is not maintained by the charge card issuer, the card issuer need not provide the disclosures in paragraphs (c), (d) or (e) of this section for the open-end credit plan if the card issuer states on or with an application or a solicitation the following:

(1) The card issuer will make an independent decision whether to issue the card;

(2) The charge card may arrive before the decision is made about extending credit under the open-end credit plan; and

(3) Approval for the charge card does not constitute approval for the open-end credit plan.]

(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)(i) *Two-cycle average daily balance (including new purchases).* This balance is the sum of the average daily balances for two billing cycles. The first balance is for the current billing cycle, and 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. The second balance is for the preceding billing cycle.

(ii) *Two-cycle average daily balance (excluding new purchases).* This balance is the sum of the average daily balances for two billing cycles. The first balance is for the current billing cycle, and 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. The second balance is for the preceding billing cycle.

(3) *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.

(4) *Previous balance.* This balance is the outstanding balance at the beginning of the billing cycle.

8. Section 226.6 is amended by revising the heading, revising the introductory paragraph, revising paragraphs (a), (b), and (c), removing paragraphs (d) and (e), and removing and reserving footnotes 11 through 13 to read as follows:

§ 226.6 ►Account-opening disclosures◄ [Initial disclosure statement].

►Creditors shall disclose the items in this section, to the extent applicable.◄ [The creditor shall disclose to the consumer, in terminology consistent with that to be used on the periodic statement, each of 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.

(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)◄ [(1)] 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)◄ [(2)] 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

[11] ►[Reserved]◄ [A creditor is not required to adjust the range of balances disclosure to reflect the balance below which only a minimum charge applies.]

[12] ►[Reserved]◄ [If a creditor is offering a variable-rate plan, the creditor shall also disclose, (1) the circumstances under which the rate(s) may increase; (2) any limitations on the increase; and (3) the effect(s) of an increase.]

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)◄ [(3)] An explanation of the method used to determine the balance on which the finance charge may be computed.

► (iv) ◄[(4)] 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)◄ [(b)] *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 226.5b(d)(12)(ii).

(vii) The variable-rate disclosures described in § 226.5b(d)(12)(viii), (x), (xi), and (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.◄

►(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) *Charges imposed as part of open-end (not home-secured) plans.* The circumstances under which a charge may be imposed as part of the plan, 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.

(i) 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.

(ii) Charges that are not imposed as part of the plan include:

(A) Charges imposed on a cardholder by an institution other than a creditor 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.◄

►(2) *Rules relating to rates for open-end (not home-secured) plans.* If a finance charge disclosed under paragraph (b)(1) of this section is computed by using a periodic rate:

(i) For each periodic rate that may be used to calculate interest:

(A) The rate, expressed as a periodic rate and a corresponding annual percentage rate.

(B) 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) The type of transaction to which the rate applies, if different rates apply to different types of transactions.

(D) An explanation of the method used to determine the balance to which the rate is applied.

(ii) For interest rate changes that are specifically set forth in the account agreement and are tied to increases in an index or formula (variable-rate accounts):

(A) The fact that the annual percentage rate may increase.

(B) How the rate is determined, including the margin.

(C) The circumstances under which the rate may increase.

(D) The frequency with which the rate may increase.

(E) Any limitation on the amount the rate may change.

(F) The effect(s) of an increase.

(G) A rate is accurate if it is a rate as of a specified date within the last 30 days before the disclosures are provided.

(iii) 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)(2)(i) of this section.

(B) How long the initial rate will remain in effect or 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) Whether the new rate will apply to balances outstanding at the time of the change.◄

►(3) *Voluntary credit insurance, debt cancellation or debt suspension.* See §§ 226.4(d)(1)(i) and (ii) and (d)(3)(i) through (iii) for disclosures required if optional credit insurance or debt cancellation or debt suspension coverage identified in § 226.4(b)(7) or § 226.4(b)(10) is offered before the consumer opens the plan.◄

►(4) *Tabular format requirements for open-end (not home-secured) plans.*

(i) *Tabular format.* The disclosures in paragraph (b)(4)(ii) through (b)(4)(viii) of this section shall be in the form of a

[13] ►[Reserved]◄ [If no finance charge is imposed when the outstanding balance is less than a certain amount, no disclosure is required of that fact or of the balance below which no finance charge will be imposed.]

table with the headings, content, and format substantially similar to any of the applicable tables found in G–17 in appendix G.

(A) The table described in paragraph (b)(4)(i) of this section shall contain only the information required or permitted by this section. Other information may be presented with the account agreement or account-opening disclosure statement, provided such information appears outside the required table.

(B) Disclosures required by paragraphs (b)(4)(ix) and b(4)(x) of this section must be placed directly below the table.

(C) When a tabular format is required, any annual percentage rate required to be disclosed pursuant to paragraph (b)(4)(ii) of this section and any fee amounts required to be disclosed pursuant to paragraph (b)(4)(iii) must be disclosed in bold text, except for any maximum limits on fee amounts disclosed in the table. Other annual percentage rates or fee amounts disclosed in the table shall not be in bold text.

(ii) *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 temporary initial rate that is lower than the rate that will apply after the temporary rate expires, and a penalty rate that may apply upon the occurrence of one or more specific events.

(A) *Variable-rate information.* If a rate disclosed under paragraph (b)(4)(ii) 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.

(B) *Temporary initial rates.* If an initial rate is temporary, the initial rate, the circumstances under which that rate expires, and the rate that will apply after the temporary rate will expire shall be disclosed.

(C) *Increased penalty rates.* If a rate may increase upon the occurrence of 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)(4)(ii) of this section the increased penalty rate that may apply, a description of the types of balances to which the increased rate will 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 a temporary initial rate is lower than the rate that will apply after the temporary rate expires, creditors must briefly disclose the circumstances under which any initial discounted rates may be revoked, and the rate that will apply after the initial discounted rate is revoked. The creditor need not disclose an increased rate that would be imposed if credit privileges are permanently terminated.

(D) *Rate and fee both apply to the same transaction.* If a rate and fee both apply to a balance transfer or cash advance transaction, the creditor must disclose that a fee also applies when disclosing the rate, and provide a cross reference to the fee.

(iii) *Fees.*

(A) *Fees for issuance or availability of credit.* 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; and any non-periodic fee that relates to opening the plan. A creditor must disclose the amount of the periodic fee, how frequently it will be imposed, and the annualized amount of the fee. A creditor disclosing a non-periodic fee must disclose that the fee is a one-time fee.

(B) *Transaction charges.* Any transaction charge imposed on purchases, for cash advances or to transfer balances, including fees imposed by the creditor for using automated teller machines or for transactions in a foreign currency or that take place in a foreign country.

(C) *Penalty fees.* Any fee imposed for a late payment, exceeding a credit limit, or for a returned payment. If a creditor may impose a penalty rate as described in paragraph (b)(4)(ii) of this section for any of the circumstances where a fee must be disclosed in this paragraph, the creditor must also disclose that the penalty rate also may apply and a cross reference to the fee.

(D) *Minimum finance charge.* Any minimum or fixed finance charge that could be imposed during a billing cycle and a brief description of the charge.

(iv) *Grace period.* An explanation of whether or not any time period exists within which any credit that has been extended may be repaid without incurring a finance charge.

(v) *Required insurance, debt cancellation or debt suspension coverage.* 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 a cross-reference to any additional information provided about the insurance or coverage, as applicable.

(vi) *Payment allocation.* If a creditor offers an initial discounted rate on a balance transfer or cash advance that is lower than the rate on purchases where the creditor offers a grace period on purchases, and the creditor allocates payments to the lower rate balance first, the creditor must provide a statement that payments will be allocated to the lower rate balance first during the time the lower rate is in effect, and during that time the consumer will incur interest on the higher rate balance until the lower rate balance is paid off completely.

(vii) *Available credit.* If a creditor requires fees for the issuance or availability of an open-end plan described in paragraph (b)(4)(iii)(A) of this section, or a security deposit, and the total amount of those required fees or security deposit that will be imposed when the account is opened and charged to the account equal 25 percent or more of the minimum credit limit offered with the card, a creditor must disclose the amount of the available credit that a consumer will have 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 25 percent threshold test is met, the creditor must only consider fees for issuance or availability of credit, or a security deposit, that is 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 25 percent threshold test is met, the creditor in providing the disclosure must disclose the amount of available credit excluding those optional fees, and the available credit including those optional fees.

(viii) *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 card accounts.

(ix) *Balance computation method.* The name of the balance computation

method listed in § 226.5a(g) 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, along with a statement that an explanation of the method required by paragraph (b)(2)(i)(D) of this section is provided with the account-opening disclosures. In determining which balance computation method to disclose, the card issuer shall assume that credit extended for purchases will not be repaid within any grace period.

(x) *Billing error rights reference.* A statement that information about consumers' right to dispute transactions is included in the account-opening disclosures.◄

► (c) *Rules of general applicability.*

(1) *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.

(2) *Statement of billing rights.* For plans other than home equity plans subject to the requirements of § 226.5b, 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. Creditors offering home equity plans subject to the requirements of § 226.5b may use Model Form G–3 or G–3A, at their option.◄

[(c) *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.]

[(d) *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 appendix G.]

[(e) *Home equity plan information.* The following disclosures described in § 226.5b(d), as applicable:

(1) 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.

(2) The payment information described in § 226.5b(d)(5)(i) and (ii) for both the draw period and any repayment period.

(3) A statement that negative amortization may occur as described in § 226.5b(d)(9).

(4) A statement of any transaction requirements as described in § 226.5b(d)(10).

(5) A statement regarding the tax implications as described in § 226.5b(d)(11).

(6) 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 226.5b (d)(12)(ii).

(7) The variable-rate disclosures described in § 226.5b(d)(12)(viii), (x), (xi), and (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.]

9. Section 226.7 is amended by republishing the introductory text, revising paragraphs (a) and (b), removing paragraphs (c), (d), (e), (f), (g), (h), (i), (j), and (k), and removing and reserving footnotes 14 and 15 to read as follows:

§ 226.7 Periodic statement.

The creditor shall furnish the consumer with a periodic statement that discloses the following items, to the extent applicable:

►(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 to comply with paragraph (b)(6) of this section must also comply with paragraph (b)(7) of this section.◄

►(1)◄ [(a)] *Previous balance.* The account balance outstanding at the beginning of the billing cycle.

►(2)◄ [(b)] *Identification of transactions.* An identification of each credit transaction in accordance with § 226.8.

►(3)◄ [(c)] *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)◄ [(d)] *Periodic rates.* 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.◄

►(5)◄ [(e)] *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)◄ [(f)] *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)◄ [(g)] *Annual percentage rate.*

ALTERNATIVE 1—PARAGRAPH (a)(7).

(i) When a finance charge is imposed during the billing cycle, the annual percentage rate(s) determined under § 226.14 using the term *annual percentage rate.*

(ii) Creditors may comply with paragraph (a)(7)(i) of this section or with paragraph (b)(7) of this section, at their option. If a creditor chooses to comply with paragraph (b)(7) of this section with respect to its home equity plans, the creditor must also comply with paragraph (b)(6) of this section.

ALTERNATIVE 2—PARAGRAPH (a)(7).

At a creditor's option, when a finance charge is imposed during the billing cycle, the annual percentage rate(s) determined under § 226.14 using the term *annual percentage rate.*

►(8)◄ [(j)] ►*Grace*◄ *[Free-ride] period.* The date by which or the time period within 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

[14] ►[Reserved]◄ [See footnotes 11 and 13.]

[15] ►[Reserved◄.] [If a variable-rate plan is involved, the creditor shall disclose the fact that the periodic rate(s) may vary.]

disclosure, impose no finance charge if payment is received after the time period s expiration.

►(9)◄ [(k)] *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)◄ [(i)] *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, grouped by type of transaction in a form substantially similar to that shown in Sample G–18(A) in appendix G.

(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. Credits must be grouped together, and grouped with transactions identified under paragraph (b)(2) of this section, in a form substantially similar to that shown in Sample G–18(A) in appendix G.

(4) *Periodic rates.* (i) Except as provided in paragraph (b)(4)(ii) of this section, each periodic rate that may be used to compute the interest charge expressed as an annual percentage rate and using the term, *Annual Percentage Rate,* along with the range of balances to which it is applicable. If no interest charge is imposed when the outstanding balance is less than a certain amount, the creditor is not required to disclose that fact, or the balance below which no interest charge will be imposed. The types of transactions to which the periodic rates apply shall also be disclosed. For variable-rate plans, the fact that the annual percentage rate may vary.

(ii) *Exception.* An annual percentage rate that differs from the rate that would otherwise apply and is offered only for a specific and limited time 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, 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 finance 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)(1), grouped together, in proximity to transactions identified under paragraph (b)(2) of this section, substantially similar to Sample G–18(A) in appendix G.

(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 interest charge, using the term *Total Interest Charge*, 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.

(iii) *Fees.* Charges imposed as part of the plan other than interest must be grouped together under the heading *Fees*, identified consistent with the feature or type, and itemized. A total of charges, using the term *Fees*, must be disclosed for the statement period and calendar year to date. Fees identified in § 226.14(e) that relate to a specific transaction must be labeled using the term *Transaction fee*, and fees identified in § 226.14(e) that do not relate to a specific transaction must be labeled using the term *Fixed fee*, using a format substantially similar to Sample G–18(A) in appendix G.

ALTERNATIVE 1 ONLY—PARAGRAPH (b)(6)(iv).

(iv) In addition to the disclosures of interest and fees required under paragraphs (b)(6)(ii) and (b)(6)(iii) of this section, the creditor must also disclose, unless paragraph (b)(7)(ii) of this section applies, charges identified under this paragraph for the statement period, grouped together in a tabular format with the Fee-Inclusive APR information identified under paragraph (b)(7)(i) of this section, in a format substantially similar to Sample G–18(A) in appendix G.

(A) Finance charges attributable to interest, using the term *interest charges*, must be totaled by type of transaction and identified as relating to balances for that type of transaction.

(B) Charges imposed as part of the plan other than interest that are identified in § 226.14(e), using the term *Transaction and Fixed Fees*, must be grouped together. For multifeatured plans, charges that relate to a specific purchase transaction and charges that do not relate to a specific transaction must be totaled and identified as relating to purchase balances; charges that relate to a specific type of transaction other than purchases must be totaled and identified as relating to balances for that type of transaction. For single-featured plans, charges described in paragraph (b)(7)(iv) of this section must be grouped together and totaled.

ALTERNATIVE 1—PARAGRAPH (b)(7).

(7) *Effective annual percentage rate.* (i) Except as provided in paragraph (b)(7)(ii) of this section, when a finance charge identified in § 226.14(e) is imposed during the billing cycle, the effective annual percentage rate(s) determined for each type of transaction under § 226.14, using the term *Fee-Inclusive APR* and disclosed for each type of transaction; a description of the Fee-Inclusive APR; and a format substantially similar to Sample G–18(B) in appendix G.

(ii) When a finance charge identified in § 226.14(e) is imposed during the billing cycle and the finance charge is determined solely by applying one or more periodic rates used to calculate interest, by multiplying each periodic rate by the number of periods in a year, disclosed for each type of transaction.

ALTERNATIVE 2—PARAGRAPH (b)(7).

(7) [Reserved.]

(8) *Grace period.* The date by which or the time period within 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:

(A) The due date for a payment, if a late payment fee or penalty rate may be imposed.

(B) A cut-off time, if the creditor imposes a cut-off time before 5 p.m. for payment to be received. If the cut-off time differs depending on the method of payment, the creditor must state the earliest time if before 5 p.m. without specifying the payment method to which it applies.

(C) The amount of the fee and any increased periodic rate(s) (expressed as an annual percentage rate(s)) that may be imposed as a result of a late payment. If a range of fees may be assessed, the creditor must state the highest fee. If the rate may be increased for more than one feature or balance, the creditor must state the highest rate that could apply.

(ii) *Exemptions.* The requirements of paragraph (b)(11) of this section do not apply to periodic statements provided for charge cards accounts.

(12) *Minimum payment.* (i) *General disclosure requirements.* Except as provided in paragraphs (b)(12)(ii) and (b)(12)(iii) of this section, a card issuer shall disclose on each periodic statement, in accordance with the format requirements of paragraph (b)(13) of this section:

(A) *Minimum payment not exceeding 4%.* Except as provided in paragraph (b)(12)(i)(C) or (D) of this section, if the required minimum periodic payment does not exceed 4% of the balance upon which finance charges accrue, the following statement with a bolded heading: ''**Notice About Minimum Payments:** 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 had a balance of $1,000 at an interest rate of 17% and always paid only the minimum required, it would take over 7 years to repay this balance. For an estimate of the time it would take to repay your actual balance making only minimum payments, call: [toll-free telephone number]'' A card issuer must disclose a toll-free telephone number established and maintained pursuant to paragraph (b)(12)(iv)(A)(*1*) of this section to provide generic repayment estimates discussed in appendix M1. Alternatively, for a two-year period after the date that card issuers must begin complying with the minimum payment disclosure requirement in paragraph (b)(12) of this section, small depository institution issuers (as defined in paragraph (b)(12)(v) of this section) may provide the toll-free telephone number operated by or on behalf of the Federal Reserve Board.

(B) *Minimum payment exceeding 4%.* (*1*) Except as provided in paragraphs (b)(12)(i)(B)(*2*), (b)(12)(i)(C) or (b)(12)(i)(D) of this section, if the required minimum periodic payment exceeds 4% of the balance upon which finance charges accrue, the following statement with a bolded heading: ''**Notice About Minimum Payments:** 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 had a balance of $300 at an interest rate of 17% and always paid only the minimum required, it would take about 2 years to repay this balance. For an estimate of the time it would take to repay your actual balance making only minimum payments, call: [toll-free telephone number]'' A card issuer must disclose a toll-free telephone number established and maintained pursuant to paragraph (b)(12)(iv)(A)(*1*) of this section to provide generic repayment estimates discussed in appendix M1. Alternatively, for a two-year period after the date that card issuers must begin complying with the minimum payment disclosure requirement in paragraph (b)(12) of this section, small depository institution issuers (as defined in paragraph (b)(12)(v) of this section) may provide the toll-free telephone number operated by or on behalf of the Federal Reserve Board.

(*2*) At a card issuer's option, an issuer subject to this paragraph is not required to comply with this paragraph if the issuer complies with paragraph (b)(12)(i)(A) of this section.

(C) *FTC-regulated credit card issuers.* Except as provided in paragraph (b)(12)(i)(D) of this section, if the Federal Trade Commission has authority under the Truth in Lending Act to enforce the act and this regulation as to a card issuer, the following statement with a bolded heading: ''**Notice About Minimum Payments:** 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 had a balance of $300 at an interest rate of 17% and always paid only the minimum required, it would take about 2 years to repay this balance. For an estimate of the time it would take to repay your actual balance making only minimum payments, call the Federal Trade Commission at this toll-free telephone number:_____.'' The card issuer must disclose the toll-free telephone number established by or on behalf of the Federal Trade Commission pursuant to paragraph (b)(12)(iv)(B) of this section.

(D) *Alternative rate.* Card issuers that provide the statements under paragraphs (b)(12)(i)(A) through (b)(12)(i)(C) of this section may, at their option, substitute an example that uses an annual percentage rate that is greater than 17 percent.

(ii) *Estimate of actual repayment period.* A card issuer is not required to comply with paragraphs (b)(12)(i)(A) through (b)(12)(i)(D) of this section if the issuer, at its option:

(A) Establishes and maintains a toll-free telephone number for the purpose of providing consumers with the actual repayment disclosure described in appendix M2; and discloses the following statement on each periodic statement: ''**Notice About Minimum Payments:** 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 more information, call this toll-free number:_____.'' A card issuer must disclose a toll-free telephone number established and maintained pursuant to paragraph (b)(12)(iv)(A)(*3*) of this section to provide the actual repayment disclosures described in appendix M2; or

(B) Provides on the periodic statement a disclosure of the actual repayment information as described in appendix M2, substantially similar to Sample G–18(D) in appendix G.

(iii) *Exemptions.* Paragraph (b)(12) of this section does not apply to:

(A) Home equity plans subject to the requirements of § 226.5b;

(B) Overdraft lines of credit tied to asset accounts accessed by check-guarantee cards or by debit cards;

(C) Lines of credit accessed by check-guarantee cards or by debit cards that can be used only at automated teller machines;

(D) Charge card accounts that require payment of outstanding balances in full at the end of each billing cycle;

(E) Credit card accounts where a fixed repayment period for the account is disclosed in the account agreement and the required minimum payments will amortize the outstanding balance within the fixed repayment period;

(F) A billing cycle where a consumer has paid the entire balance in full for that billing cycle and the previous billing cycle, or had a zero outstanding balance or credit balance in those two billing cycles; and

(G) A billing cycle where the entire outstanding balance is subject to a fixed repayment period specified in the account agreement and the required minimum payments applicable to that feature will amortize the outstanding balance within the fixed repayment period.

(iv) *Toll-free telephone numbers.* (A) *Issuer-operated toll-free telephone number.*

(*1*) Subject to paragraph (b)(12)(iv)(A)(*2*) of this section, if a card issuer provides the disclosures in paragraphs (b)(12)(i)(A) or (b)(12)(i)(B) of this section, the issuer must establish and maintain a toll-free telephone number for the purpose of providing its customers with generic repayment estimates, as described in appendix M1.

(*2*) For a two-year period after the date that card issuers must begin complying with the minimum payment disclosure requirement in paragraph (b)(12) of this section, small depository institution issuers (as defined in paragraph (b)(12)(v) of this section) that provide the disclosures in paragraphs (b)(12)(i)(A) or (b)(12)(i)(B) of this section are not required to establish and maintain a toll-free telephone number for purposes of providing their customers with generic repayment estimates, as described in appendix M1. Instead, small depository institutions may disclose the toll-free telephone number operated by or on behalf of the Federal Reserve Board.

(*3*) If a card issuer provides the disclosure in paragraph (b)(12)(ii)(A) of this section, the issuer must establish and maintain a toll-free telephone number for the purpose of providing its customers with actual repayment disclosures, as described in appendix M2.

(B) *FTC-operated toll-free telephone number.* The Federal Trade Commission is required by Section 1637(b)(11)(G) of the Truth in Lending Act (15 U.S.C. 1637(b)(11)(G)) to establish and maintain a toll-free telephone number for use by customers of creditors that are subject to the Federal Trade Commission's authority to enforce the act and this regulation.

(C) *Additional information.* In responding to a request for generic repayment estimates or actual repayment disclosures, as described in appendices M1 and M2 respectively, through a toll-free telephone number, neither card issuers nor the FTC may provide any information other than the repayment information required or permitted by appendix M1 or M2, as applicable.

(v) *Definitions. Small depository institution issuers* are card issuers that are depository institutions (as defined by section 3 of the Federal Deposit Insurance Act), including Federal credit unions or State credit unions (as defined in section 101 of the Federal Credit Union Act), with total assets not exceeding $250 million, as of December 31 of the year prior to the year in which institutions must begin complying with the requirements in § 226.7(b)(12).

(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 cut-off time, the amount of the 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 minimum payment disclosure required by paragraph (b)(12) of this section shall be disclosed closely proximate to the minimum payment due. The due date, cut-off time, fee and annual percentage rate, ending balance, minimum payment due, and minimum payment disclosure shall be grouped together, substantially similar to Samples G–18(E) or G–18(F) in appendix G.

(14) *Change-in-terms and increased penalty rate summary for open-end (not home-secured) plans.* Creditors that provide a change-in-term 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)(iii)(A) or § 226.9(g)(3)(i) on the periodic statement in accordance with the format requirements in § 226.9(c)(2)(iii)(B), and § 226.9(g)(3)(ii). This information shall precede the transactions disclosed pursuant to paragraph (b)(2) of this section. See Forms G–18(G) and G–18(H) in appendix G.◄

[(c) *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.]

[(d) *Periodic rates.* Each periodic rate that may be used to compute the finance charge, the range of balances to which it is applicable, and the corresponding annual percentage rate. If different periodic rates apply to different types of transactions, the types of transactions to which the periodic rates apply shall also be disclosed.]

[(e) *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.]

[(f) *Amount of finance charge.* 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 rate, the amount of the finance charge attributable to each rate need not be separately itemized and identified.]

[(g) *Annual percentage rate.* When a finance charge is imposed during the billing cycle, the annual percentage rate(s) determined under § 226.14, using the term *annual percentage rate.*]

[(h) *Other charges.* The amounts, itemized and identified by type, of any charges other than finance charges debited to the account during the billing cycle.]

[(i) *Closing date of billing cycle; new balance.* The closing date of the billing cycle and the account balance outstanding on that date.]

[(j) *Free-ride period.* The date by which or the time period within 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 payment is received after time period's expiration.]

[(k) *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. Section 226.8 is amended by revising the heading, revising paragraphs (a) and (b), adding a new paragraph (c), and removing and reserving footnotes 16 through 20 to read as follows:

§ 226.8 [Identification of] ►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]

[16] ►[Reserved]◄ [Failure to disclose the information required by this section shall not be deemed a failure to comply with the regulation if (1) the creditor maintains procedures reasonably adapted to obtain and provide the information; and (2) the creditor treats an inquiry for clarification or documentation as a notice of a billing error, including correcting the account in accordance with § 226.13(e). This applies to transactions that take place outside a state, as defined in § 226.2(a), whether or not the creditor maintains procedures reasonably adapted to obtain the required information].

(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 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.◄

[(a) *Sale credit.* For each credit transaction involving the sale of property or services, the following rules shall apply:

(1) *Copy of credit document provided.* When an actual copy of the receipt or other credit document is provided with the first periodic statement reflecting the transaction, the transaction is sufficiently identified if the amount of the transaction and either the date of the transaction or the date of debiting the transaction to the consumer's account are disclosed on the copy or on the periodic statement.

(2) *Copy of credit document not provided—creditor and seller same or related person(s).* When the creditor and the seller are the same person or related persons, and an actual copy of the receipt or other credit document is not provided with the periodic statement, the creditor shall disclose the amount and date of the transaction, and a brief identification of the property or services purchased.

(3) *Copy of credit document not provided—creditor and seller not same or related person(s).* When the creditor and seller are not the same person or related persons, and an actual copy of the receipt or other credit document is not provided with the periodic statement, the creditor shall disclose the amount and date of the transaction; the seller's name; and the city, and state or foreign country where the transaction took place.]

(b) *Nonsale credit.* [A nonsale credit transaction is sufficiently identified if the first periodic statement reflecting the transaction discloses] ►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), whether or not the creditor maintains procedures reasonably adapted to obtain the required information.

(2) As an alternative to the brief identification for sale or nonsale credit, the creditor may disclose a number or symbol that also appears on the receipt or other credit document given to the consumer, if the number or symbol reasonably identifies that transaction with that creditor.◄

11. Section 226.9 is amended by revising paragraphs (a), (b), (c), and (e), republishing paragraph (d) and (f), adding a new paragraph (g), and removing and reserving footnote 20a 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(c)(2)◄ [§ 226.6(d)] 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 [that in appendix G] ►Model Forms G–4 and G–4(A) in appendix G, as applicable◄.

(b) *Disclosures for supplemental credit ►access◄ devices and additional features.*

(1) If a creditor, within 30 days after mailing or delivering the [initial] ►account-opening◄ disclosures under [§ 226.6(a)] ►§§ 226.6(a)(1) or 226.6(b)(1), 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◄ [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◄ [Whenever] a credit feature is added or a credit ►access◄ device is mailed or delivered, and the finance charge terms for the feature or device differ from disclosures previously given, the disclosures required by [§ 226.6(a)]

[17] ►[Reserved]◄ [As an alternative to the brief identification, 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, and if the creditor treats an inquiry for clarification or documentation as a notice of a billing error, including correcting the account in accordance with § 226.13(e).]

[18] ►[Reserved]◄ [An identification of property or services may be replaced by the seller's name and location of the transaction when: (1) The creditor and the seller are the same person; (2) the creditor's open-end plan has fewer than 15,000 accounts; (3) the creditor provides the consumer with point-of-sale documentation for that transaction; and (4) the creditor treats an inquiry for clarification or documentation as a notice of a billing error, including correcting the account in accordance with § 226.13(e).]

[19] ►[Reserved]◄ [The creditor may omit the address or provide any suitable designation that helps the consumer to identify the transaction when the transaction (1) took place at a location that is not fixed; (2) took place in the consumer's home; or (3) was a mail or telephone order.]

[20] ►[Reserved]◄ [See footnote 17].

►§§ 226.6(a)(1) or 226.6(b)(1), 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)(1) are given, or are provided within 30 days of the account-opening disclosures and the finance charge terms for the checks differ from disclosures previously given, 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:

(A) If an initial rate that applies to the checks is temporary and is lower than the rate that will apply after the temporary rate expires, the discounted initial rate and the time period during which the discounted initial rate will remain in effect. A creditor must use the term ''introductory'' or ''intro'' in immediate proximity to the listing of the discounted initial rate.

(B) The type of rate that will apply to the checks (such as whether the purchase or cash advance rate applies) and the applicable annual percentage rate. If a discounted initial rate applies, a creditor must disclose the type of rate that will apply after the discounted initial rate expires, and the annual percentage rate that will apply after the discounted initial rate expires. In a variable-rate account, a creditor must disclose an annual percentage rate based on the applicable index or formula in accordance with the accuracy requirements set forth in paragraph (b)(3)(ii) of this section.

(C) Any transaction fees applicable to the checks disclosed under § 226.6(b)(1); 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. If no grace period is given, the issuer must state that no grace period applies and interest will be charged immediately.

(ii) *Accuracy.* The disclosures in paragraph (b)(3)(i) of this section must be accurate as of the time the disclosures are given. A variable annual percentage rate is accurate if it was in effect within 30 days of when the disclosures are given.◄

(c) *Change in terms.*—(1) [*Written notice required.*] ►*Rules affecting home equity plans.* (i) *Written notice required.* For home equity plans subject to the requirements of § 226.5b, whenever◄ [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[, or if a periodic rate or other finance charge is increased because of the consumer's delinquency or default]; the notice shall be given, however, before the effective date of the change.

►(ii)◄ [(2)] *Notice not required.* ►For home equity plans subject to the requirements of § 226.5b, a creditor is not required to provide◄ [No] notice under this section [is required] when the change involves [late payment charges, charges for documentary evidence, or over-the-limit charges;] a reduction of any component of a finance or other charge[; suspension of future credit privileges or termination of an account or plan;] or when the change results from an agreement involving a court proceeding[, or from the consumer's default or delinquency (other than an increase in the periodic rate or other finance charge)].

►(iii)◄ [(3)] ►*Notice to restrict credit*◄ *[Notice for home equity plans].* ►For home equity plans subject to the requirements of § 226.5b, if the◄ [If a] creditor prohibits additional extensions of credit or reduces the credit limit [applicable to a home equity plan] pursuant to § 226.5b(f)(3)(i) or § 226.5b(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.* For plans other than home equity plans subject to the requirements of § 226.5b, except as provided in paragraphs (c)(2)(ii) and (c)(2)(iv) of this section, when a term required to be disclosed under §§ 226.6(b)(1), 226.6(b)(2) or 226.6(c)(1) is changed or the required minimum periodic payment is increased, a creditor must provide a written notice of the change at least 45 days prior to the effective date of the change to each consumer who may be affected. The 45-day timing requirement does not apply if the consumer has agreed to a particular change; the notice shall be given, however, before the effective date of the change. Increases in the rate applicable to a consumer's account due to delinquency, default or as a penalty described in paragraph (g) of this section that are not due to a change in the contractual terms of the consumer's account must be disclosed pursuant to paragraph 9(g) of this section instead of paragraph (c)(2) of this section.

(ii) *Charges not covered by § 226.6(b)(4).* Except as provided in paragraph (c)(2)(iv) 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)(1) that is not required to be disclosed under § 226.6(b)(4), a creditor may either, at its option:

(A) Comply with the requirements of paragraphs (c)(2)(i) of this section, or

(B) Provide notice of the amount of the charge at a relevant time before the consumer agrees to or becomes obligated to pay the charge. The notice may be provided orally or in writing.

(iii) *Disclosure requirements.*

(A) *Changes to terms described in account-opening table.* If a creditor changes a term required to be disclosed pursuant under § 226.6(b)(4), the creditor must provide the following information on the notice provided pursuant to paragraph (c)(2)(i) of this section:

(*1*) A summary of the changes made to terms described in § 226.6(b)(4);

(*2*) A statement that changes are being made to the account;

(*3*) 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; and

(*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.

(B) *Format requirements.* (*1*) *Tabular format.* The summary of changes described in paragraph (c)(2)(iii)(A)(*1*)

of this section must be in a tabular format, with headings and format substantially similar to any of the account-opening tables found in G–17 in appendix G. The table must disclose the changed term and information relevant to the change, if that relevant information is required by § 226.6(b)(4). The new terms shall be described in the same level of detail as required when disclosing the terms under § 226.6(b)(4).

(*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)(iii)(A)(*1*) of this section must be disclosed on the statement beginning on the front of the first page of the periodic statement directly above the grouping of transactions, credits, fees and interest required to be disclosed by §§ 226.7(b)(2), 226.7(b)(3), and 226.7(b)(6), but may continue on the front of the second page if necessary, so long as there is a reference on the first page indicating the information continues on the following page. The summary of changes described in paragraph (c)(1)(iii)(A)(1) of this section must immediately follow the information described in paragraph (c)(1)(iii)(A)(2) through (6) of this section, substantially similar to the format shown in Sample G–20 in appendix G.

(*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)(iii)(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)(iii)(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)(iii)(A)(*1*) of this section must immediately follow the information described in paragraph (c)(1)(iii)(A)(*2*) through (*6*) of this section, substantially similar to the format shown in Sample G–20 in appendix G.

(iv) *Notice not required.* For open-end plans not subject to the requirements of § 226.5b, a creditor is not required to provide notice under this section 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)(v) of this section) or termination of an account or plan; or when the change results from an agreement involving a court proceeding.

(v) *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.* Except as provided in paragraph (e)(2) of this section, 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, shall mail or deliver written notice of the renewal to the cardholder. 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 the renewal fee is initially charged to the account. The notice shall contain the following information:

(i) The disclosures contained in § 226.5a(b)(1) through (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.

(2) *Delayed notice.* ►Alternatively,◄ the disclosures required by paragraph (e)(1) of this section may be provided later than the time in paragraph (e)(1) of this section, but no later than the mailing or the delivery of the periodic statement on which the renewal fee is initially charged to the account, if the card issuer also discloses at that time that►:◄ [—]

(i) The cardholder has 30 days from the time the periodic statement is mailed or delivered to avoid paying the fee or to have the fee recredited if the cardholder terminates credit availability under the account; and

(ii) The cardholder may use the card during the interim period without having to pay the fee.

(3) *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 the cardholder written notice of the change not less than 30 days before the change in providers 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.

[20a] ►[Reserved]◄ [These disclosures need not be provided in tabular format or in a prominent location.]

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, 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.* 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:

(A) A statement that the consumer's actions have triggered the delinquency or default rate or penalty rate, as applicable;

(B) The date on which the delinquency or default rate or penalty rate will apply;

(C) The circumstances under which the delinquency or default rate or penalty rate, as applicable, will cease to apply to the consumer's account, or that the delinquency or default rate or penalty rate will remain in effect for a potentially indefinite time period; and

(D) A statement indicating to which balances the delinquency or default rate or penalty rate will be applied, as applicable.

(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 the first page of the periodic statement directly above the grouping of transactions, credits, fees and interest required to be disclosed by §§ 226.7(b)(2), 226.7(b)(3), and 226.7(b)(6), or above the notice described in paragraph (c)(2)(iii)(A) 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)(iii)(A) of this section.◄

12. Section 226.10 is amended by republishing paragraphs (a) and (c), and revising paragraph (b) to read as follows:

§ 226.10 Prompt crediting of 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.* 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. ►(See § 226.7(b)(11) for disclosure requirements for certain cut-off times for plans other than home equity plans subject to the requirements of § 226.5b.)◄

(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.

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)◄[(a)] Credit the amount of the credit balance to the consumer's account;

►(2)◄[(b)] Refund any part of the remaining credit balance within seven business days from receipt of a written request from the consumer;

►(3)◄[(c)] 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) Creditors 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 consecutive months. An account is inactive if no credit has been extended (such as by purchase, cash advance or balance transfer) and if the account has no outstanding balance.◄

14. Section 226.12 is amended by republishing paragraphs (a), (d), (e), (f), and (g), revising paragraphs (b) and (c), and removing and reserving footnotes 21 through 26 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]

[21] ►[Reserved]◄ [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

(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 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 (2) of this section apply only if:

[(i)] ►(A)◄ The cardholder has made a good faith attempt to resolve the dispute with the person honoring the credit card; and

[(ii)] ►(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

this paragraph becomes an accepted credit card when received by the cardholder.]

[22] ►[Reserved]◄ [''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.]

[23] ►[Reserved]◄ [''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.]

[24] ►[Reserved]◄ [This paragraph 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].

[25] ►[Reserved]◄ [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: (1) Late charges in the order of entry to the account; then to (2) finance charges in the order of entry to the account; and then to (3) 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.]

[26] ►[Reserved]◄ [The limitations stated in paragraph (c)(3)(i)(A) of this section shall not apply when the person honoring the credit card: (1) Is the same person as the card issuer; (2) is controlled by the card issuer directly or indirectly; (3) is under the direct or indirect control of a third person that also directly or indirectly controls the card issuer; (4) controls the card issuer directly or indirectly; (5) is a franchised dealer in the card issuer's products or services; or (6) has obtained the order for the disputed transaction through a mail solicitation made or participated in by the card issuer.]

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 seven 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 three business days from receipt of a credit statement, credit the consumer's account with the amount of the refund.

(3) If a creditor other than a card issuer routinely gives cash refunds to consumers paying in cash, the creditor shall also give credit or cash refunds to consumers using credit cards, unless it discloses at the time the transaction is consummated that credit or cash refunds for returns are not given. This section does not require refunds for returns nor does it prohibit refunds in kind.

(f) *Discounts; tie-in arrangements.* No card issuer may, by contract or otherwise:

(1) Prohibit any person who honors a credit card from offering a discount to a consumer to induce the consumer to pay by cash, check, or similar means rather than by use of a credit card or its underlying account for the purchase of property or services; or

(2) Require any person who honors the card issuer's credit card to open or maintain any account or obtain any other service not essential to the operation of the credit card plan from the card issuer or any other person, as a condition of participation in a credit card plan. If maintenance of an account for clearing purposes is determined to be essential to the operation of the credit card plan, it may be required only if no service charges or minimum balance requirements are imposed.

(g) *Relation to Electronic Fund Transfer Act and Regulation E.* For guidance on whether Regulation Z (12 CFR part 226) or Regulation E (12 CFR part 205) applies in instances involving both credit and electronic fund transfer aspects, refer to Regulation E, 12 CFR 205.12(a) regarding issuance and liability for unauthorized use. On matters other than issuance and liability, this section applies to the credit aspects of combined credit/electronic fund transfer transactions, as applicable.

15. Section 226.13 is amended by revising paragraphs (a), (b), (d), and (g), republishing paragraphs (c), (e), (f), (h), and (i), and removing and reserving footnotes 27 through 31 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◄ [226.7(b)] 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,◄ [§ 226.7(k)] 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 [maintains a deposit account with the card issuer and] ►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

[27] ►[Reserved]◄ [A creditor shall not accelerate any part of the consumer's indebtedness or restrict or close a consumer's account solely because the consumer has exercised in good faith rights provided by this section. A creditor may be subject to the forfeiture penalty under section 161(e) of the Act for failure to comply with any of the requirements of this section.]

[28] ►[Reserved]◄ [The creditor need not comply with the requirements of paragraphs (c) through (g) of this section if the consumer concludes that no billing error occurred and voluntarily withdraws the billing error notice].

[29] ►[Reserved]◄ [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(d) and 226.9(a)].

[30] ►[Reserved]◄ [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.]

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 would be subject to the forfeiture penalty under section 161(e) of the Act for failure to comply with any of the requirements of this section.

(4) *Permitted creditor actions.* A creditor is not prohibited from taking action to collect any undisputed portion of the item or bill; from deducting any disputed amount and related finance or other charges from the consumer's credit limit on the account; or from reflecting a disputed amount and related finance or other charges on a periodic statement, provided that the creditor indicates on or with the periodic statement that payment of any disputed amount and related finance or other charges is not required pending the creditor's compliance with this section.◄

(e) *Procedures if billing error occurred as asserted.* If a creditor determines that a billing error occurred as asserted, it shall within the time limits in paragraph (c)(2) of this section:

(1) Correct the billing error and credit the consumer's account with any disputed amount and related finance or other charges, as applicable; and

(2) Mail or deliver a correction notice to the consumer.

(f) *Procedures if different billing error or no billing error occurred.* If, after conducting a reasonable investigation,[31] a creditor determines that no billing error occurred or that a different billing error occurred from that asserted, the creditor shall within the time limits in paragraph (c)(2) of this section:

(1) Mail or deliver to the consumer an explanation that sets forth the reasons for the creditor's belief that the billing error alleged by the consumer is incorrect in whole or in part;

(2) Furnish copies of documentary evidence of the consumer's indebtedness, if the consumer so requests; and

(3) If a different billing error occurred, correct the billing error and credit the consumer's account with any disputed amount and related finance or other charges, as applicable.

(g) *Creditor's rights and duties after resolution.* If a creditor, after complying with all of the requirements of this section, determines that a consumer owes all or part of the disputed amount and related finance or other charges, the creditor:

(1) Shall promptly notify the consumer in writing of the time when payment is due and the portion of the disputed amount and related finance or other charges that the consumer still owes;

(2) Shall allow any time period disclosed under §§ 226.6(a)(1) ►or 226.6(b)(1), as applicable◄, and ►226.7(a)(8) or (b)(8), as applicable◄ [226.7(j)], 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 226.6(b)(1), as applicable◄, and ►226.7(a)(8) or (b)(8), as applicable◄ [226.7(j)] 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 amended by revising paragraphs (a), (b), (c), and (d), adding a new paragraph (e), and by removing and reserving footnotes 31a through 35 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 ⅛ 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*◄ *[for §§ 226.5a and 226.5b disclosures, for initial disclosures, and for advertising purposes].* 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,◄ [and] 226.16 ►, and 226.26◄ shall be computed by multiplying each periodic rate by the number of periods in a year.

(c) ►*Effective*◄ *annual percentage rate* ►*for home equity plans*◄ *[for periodic statements].* [The annual percentage rate(s) to be disclosed for purposes of § 226.7(d) shall be

[31] ►[Reserved]◄ [If a consumer submits a billing error notice alleging either the nondelivery of property or services under paragraph (a)(3) of this section or that information appearing on a periodic statement is incorrect because a person honoring the consumer's credit card has made an incorrect report to the card issuer, 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 or that the information was correct].

[31a] ►[Reserved]◄ [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.]

computed by multiplying each periodic rate by the number of periods in a year and, for purposes of § 226.7(g), shall be determined as follows:]

ALTERNATIVE 1—PARAGRAPH (c) INTRODUCTORY TEXT.

►For home equity plans subject to the requirements of § 226.5b, a creditor may, at its option, disclose an effective annual percentage rate(s) pursuant to § 226.7(b)(7) and compute the annual percentage rate in accordance with paragraph (d) of this section. Alternatively, the creditor may disclose an effective annual percentage rate pursuant to § 226.7(a)(7) and compute the rate as follows:

ALTERNATIVE 2—PARAGRAPH (c) INTRODUCTORY TEXT.

A creditor need not disclose an effective annual percentage rate. For home equity plans subject to the requirements of § 226.5b, 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 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 (3) of this section.

►(5)◄ [(d)] *Calculations where daily periodic rate applied.* If the provisions of paragraph (c)(1)(ii) or (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:

►(i)◄ [(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

►(ii)◄ [(2)] By dividing the total finance charge by the sum of the daily balances and multiplying the quotient by 365.

ALTERNATIVE 1 ONLY.—PARAGRAPHS (d) AND (e).

(d) *Effective annual percentage rates for open-end (not home-secured) plans.* For plans not subject to the requirements of § 226.5b, the effective annual percentage rate shall be disclosed pursuant to § 226.7(b)(7) and computed as follows:

(1) *Solely periodic rates imposed.* If the finance charge identified in paragraph (e) of this section is determined solely by applying one or more periodic rates used to calculate interest, by multiplying each periodic rate by the number of periods in a year.

(2) *Minimum or fixed charge, but not transaction charge, imposed.* If the finance charge identified in paragraph (e) of this section imposed during the billing cycle is or includes a minimum charge or other charge not attributable to a periodic rate used to calculate interest, and does not include a charge that relates to any specific transaction during the billing cycle, as follows:

(i) *Multifeatured plans.* For multifeatured plans, by feature, as follows:

(A) *Purchases.* Except as provided in paragraph (d)(4) of this section, for purchase transactions, by totaling the minimum charges and other charges identified in paragraph (e) of this section that are not attributable to periodic rates used to calculate interest and not related to a specific transaction, and any finance charge identified in paragraph (e) of this section attributable to periodic rates used to calculate interest on purchase balances, dividing that total by the amount of the balance to which such charges are applicable, and multiplying the quotient (expressed as a percentage) by the number of billing cycles in a year. If there is no balance to which such charges are applicable, an annual percentage rate cannot be determined under this paragraph (d)(2)(i)(A) and shall be disclosed as 0.00%. If a portion of the finance charge described in this paragraph (d)(2)(i)(A) is determined by the application of one or more daily periodic rates, the annual percentage rate may be determined, at the creditor's option, by dividing the total of the finance charges determined above by the average of the daily purchase balances and multiplying the quotient by the number of billing cycles in a year; or by dividing the total finance charge by the sum of the daily purchase balances, and multiplying the quotient by 365.

[32] ►[Reserved]◄ [If there is no balance to which the finance charge is applicable, an annual percentage rate cannot be determined under this section.]

[33] ►[Reserved]◄ [Where the finance charge imposed during the billing cycle is or includes a loan fee, points, or similar charge that relates to the opening of the account, the amount of such charge shall not be included in the calculation of the annual percentage rate.]

[34] ►[Reserved]◄ [See appendix F regarding determination of the denominator of the fraction under this paragraph.]

[35] ►[Reserved]◄ [See footnote 33.]

(B) *Other features.* For other features, by multiplying each applicable periodic rate by the number of periods in a year. If there is no balance on a feature to which a periodic interest rate is applicable, the annual percentage rate for that feature shall be disclosed as 0.00%.

(ii) *Single-featured plans.* Subject to paragraph (d)(4) of this section, for single-featured plans, the annual percentage rate shall be determined by dividing the total finance charge identified in paragraph (e) of this section by the amount of the balance(s) to which such charge is applicable, and multiplying the quotient (expressed as a percentage) by the number of billing cycles in a year. If there is no balance to which such charges are applicable, an annual percentage rate cannot be determined under this paragraph and shall be disclosed as 0.00%. If a portion of the finance charge described in this paragraph is determined by the application of one or more daily periodic rates, the annual percentage rate may be determined, at the creditor's option, by dividing the total finance charge by the average of the daily purchase balances and multiplying the quotient by the number of billing cycles in a year; or by dividing the total finance charge by the sum of the daily purchase balances, and multiplying the quotient by 365.

(3) *Transaction charge imposed.* If any finance charge imposed during the billing cycle is identified in paragraph (e) of this section and is or includes a charge relating to a specific transaction during the billing cycle, as follows:

(i) *Multifeatured plans.* For multifeatured plans, by feature, as follows:

(A) *Purchases.* Except as provided in paragraph (d)(4) of this section, for purchase transactions, by totaling the minimum charges and other charges identified in § 226.14(e) that are not attributable to periodic rates used to calculate interest and not related to a specific transaction, any finance charges identified in paragraph (e) of this section attributable to periodic rates used to calculate interest applicable to purchase transactions, and any charges identified in paragraph (e) of this section relating to a specific purchase transaction, dividing that total by the total of all balances and other amounts to which such charges are applicable without duplication, and multiplying the quotient (expressed as a percentage) by the number of billing cycles in a year, 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 on purchase transactions by the number of periods in a year. *See* appendix F regarding determination of the denominator of the fraction under this paragraph (e)(3)(i)(A).

(B) *Other features.* Except as provided in paragraph (d)(4) of this section, for other types of transactions, by totaling any finance charge identified in paragraph (e) of this section attributable to periodic rates used to calculate interest for the type of transaction, and any charges identified in paragraph (e) of this section relating to a specific transaction of that type, dividing that total by the total of all balance(s) and other amounts to which such charges are applicable without duplication, and multiplying the quotient (expressed as a percentage) by the number of billing cycles in a year, 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 on that type of transaction by the number of periods in a year. *See* appendix F regarding determination of the denominator of the fraction under this paragraph (e)(3)(i)(B).

(ii) *Single-featured plans.* Subject to paragraph (d)(4) of this section, for single-featured plans, the annual percentage rate shall be determined by dividing the total finance charge identified in paragraph (e) of this section by the total of all balance(s) and other amounts to which such charges are applicable without duplication, and multiplying the quotient (expressed as a percentage) by the number of billing cycles in a year, 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. *See* appendix F regarding determination of the denominator of the fraction under this paragraph (e)(3)(ii).

(4) If the finance charge identified in paragraph (e) of this section imposed during the billing cycle is or includes a minimum charge or other charge not attributable to periodic rates used to calculate interest and the total finance charge identified in paragraph (e) of this section imposed during the billing cycle does not exceed $1.00 for a monthly or longer billing cycle, or the pro rata part of $1.00 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 (d)(2) and (3) of this section.

(e) *Finance charges to be included in the calculation of the effective annual percentage rate under § 226.14(d).* (1) Subject to paragraph (e)(2) of this section, for purposes of the calculations in paragraph (d) of this section, only the following finance charges shall be included:

(i) Charges attributable to a periodic rate used to calculate interest;

(ii) Charges that relate to a specific transaction;

(iii) Charges related to required credit insurance or debt cancellation or debt suspension coverage;

(iv) Minimum charges imposed if, and only if, a charge would otherwise have been determined by applying a periodic rate used to calculate interest to a balance except for the fact that such charge is smaller than the minimum; and

(v) Charges based on the account balance, account activity or inactivity, or the amount of credit available;

(2) Notwithstanding paragraph (e)(1) of this section, the following finance charges shall not be included for purposes of the calculations in paragraph (d) of this section:

(i) A charge related to opening the account; or

(ii) A charge related to continuing or renewing the account and imposed not more often than annually.◄

17. Section 226.16 is amended by republishing paragraph (a), revising paragraphs (b), (c), and (d), adding new paragraphs (e), (f), and (g), and removing and reserving footnote 36d and footnote 36e 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)(1) 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 226.6(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 paragraph (b)(1) of this section◄ [required to be disclosed under § 226.6] is set forth in an advertisement, the advertisement shall also clearly and conspicuously set forth the following:[36d]

[36d] ►[Reserved]◄ [The disclosures given in accordance with § 226.5a do not constitute

Continued

►(i)◄ [(1)] Any minimum, fixed, transaction, activity or similar charge ►that is a finance charge under § 226.4◄ that could be imposed.

►(ii)◄ [(2)] 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)◄ [(3)] Any membership or participation fee that could be imposed.

►(2) If an advertisement for credit to finance the purchase of specific goods or services states a minimum monthly payment, the advertisement shall also state the total of payments and the time period to repay the obligation, assuming that the consumer makes only the minimum payment required for each periodic statement. The disclosure of the total of payments and the time period to repay the obligation must be equally prominent to the statement of the minimum monthly payment.◄

(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)◄ [using electronic communication], 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)◄ [using electronic communication] 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.

►(3) For an advertisement that is accessed by the consumer in electronic form, the disclosures required under this section must be provided to the consumer in electronic form on or with the advertisement.◄

(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)(6)◄ [§ 226.6(a) or (b)] 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 the period of time such rate will be in effect, and, with equal prominence to the initial rate, 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 about any minimum periodic payment, the advertisement also shall state, if applicable, that a balloon payment may result.[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 must repay the entire outstanding balance at such time.◄

(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.

(5) *Misleading terms.* An advertisement may not refer to a home equity plan as ''free money'' or contain a similarly misleading term.

►(e) *Introductory Rates.*

(1) *Scope.* The requirements of this paragraph apply to any written or electronic 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.* The term *introductory rate* means any rate of interest applicable to a credit card account for an introductory period if that rate is less than the advertised annual percentage rate that will be in effect at the end of the introductory period. An ''introductory period'' means the maximum time period for which the introductory 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.

(4) *Stating the introductory period and post-introductory rate.* If any annual percentage rate that may be applied to the account is an introductory rate, the following must be stated in a clear and conspicuous manner in a prominent location closely proximate to the first listing of the introductory rate:

(i) When the introductory rate will end; and

(ii) The annual percentage rate that will apply after the end of the introductory period. If such rate is variable, the annual percentage rate must comply with the accuracy standards in §§ 226.5a(c)(2), 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 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 (e)(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.◄

►(f) *Alternative disclosures—television or radio advertisements.* An advertisement made through television or radio stating any of the terms requiring additional disclosures under paragraph (b)(1) of this section may alternatively comply with paragraph (b)(1) of this section by stating the information required by paragraph (b)(1)(ii) of this section, and listing a toll-free telephone number along with a reference that such number may be used by consumers to obtain the additional cost information.◄

►(g) *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.◄

advertising terms for purposes of the requirements of this section.]

[36e] ►[Reserved]◄ [See footnote 10b.]

18. In Part 226, Appendix E 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 [(1)] the card issuer and the seller are the same or related persons; [(2)] no finance charge is imposed; [(3)] 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 [(4)] 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(c)(2)*◄ *[226.6(d)], and, as applicable,* ►*§§ 226.6(1)(i)(B) and 226.6(c)(1)*◄ *[section 226.6(b) and (c)]*. The disclosure required by ►§ 226.6(b)(1)(i)(B)◄ [section 226.6(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.◄

►2.◄ *Section* ►*226.7(a)(2) or § 226.7(b)(2), as applicable; § 226.7(a)(9) or § 226.7(b)(9), as applicable*◄ *[226.7(b) and 226.7(k)]*. Creditors may comply by placing the required disclosures on the invoice or statement sent to the consumer for each transaction.

►3.◄ *Section 226.9(a).* Creditors may comply by mailing or delivering the statement required by ►§ 226.6(c)(2)◄ [section 226.6(d)] (see appendix G–3) 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(c)(2)◄ [section 226.6(d)] or an alternative billing error rights statement substantially similar to that in appendix G–4, with each invoice sent to a consumer.

►4.◄ *Section 226.9(c).* ►A tabular format is not required.◄

►5.◄ *Section 226.10.*

►6.◄ *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.

►7.◄ *Section 226.12 including* ►§◄ *[section] 226.12(c) and (d), as applicable.* Section 226.12(e) is inapplicable.

►8.◄ *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.

►9.◄ Section 226.15, as applicable.

19. In Part 226, Appendix F is revised to read as follows:

Appendix F to Part 226—Annual Percentage Rate Computations for Certain Open-End Credit Plans

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 [32] 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 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.

20. In Part 226, Appendix G is amended by:

A. Revising the table of contents at the beginning of the appendix;

B. Revising Forms G–1, G–2, G–10(A), G–10(B), G–11, and G–13(A) and (B);

C. Revising the headings of Forms G–3, G–4, and G–10(C);

D. Adding new Forms G–2(A), G–3(A), G–4(A), G–10(D) and (E), G–16(A) and (B), G–17(A) through (C), G–18(A)

[32] ►[Reserved]◄ [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.'']

through (H), G–19, G–20, and G–21 in numerical order; and

E. Removing and removing and reserving Form G–12.

Appendix G to Part 226—Open–End Model Forms and Clauses

G–1 Balance Computation Methods Model Clauses (§§ 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)◄ [Model Form (Charge 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◄ [Charge Card Model Clause (When Access to Plan Offered by Another) (§ 226.5a(f))]
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)(4))◄
►G–17(B) Account-opening Sample (§ 226.6(b)(4))◄
►G–17(C) Account-opening Sample (§ 226.6(b)(4))◄
►G–18(A) Transactions; Interest Charges; Fees Sample (§ 226.7(b))◄
►G–18(B) Fee-inclusive APR Sample (§ 226.7(b))◄
►G–18(C) Late Payment Fee Sample (§ 226.7(b))◄
►G–18(D) Actual Repayment Period Sample Disclosure on Periodic Statement (§ 226.7(b))◄
►G–18(E) New Balance, Due Date, Late Payment and Minimum Payment Sample (Credit cards) (§ 226.7(b))◄
►G–18(F) New Balance, Due Date, and Late Payment Sample (Open-end Plans (Non-credit-card Accounts)) (§ 226.7(b))◄
►G–18(G) Periodic Statement Form◄
►G–18(H) Periodic Statement Form◄
►G–19 Checks Accessing a Credit Card Account Sample (§ 226.9(b)(3))◄
►G–20 Change-in-Terms Sample (§ 226.9(c)(2))◄
►G–21 Penalty Rate Increase Sample (§ 226.9(g)(3))◄

G–1—Balance Computation Methods Model Clauses

(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).

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. In any case, your liability will not exceed [insert $50 or any lesser amount under agreement with the cardholder].

►G–2A—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 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 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]

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.* 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.
- 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 use your credit card to make a purchase and you are dissatisfied with the goods or services that you receive, 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 have tried in good faith to correct the problem with the merchant.

4. You must not yet have fully paid for the purchase.

If you are dissatisfied with a purchase that conforms to the four criteria above, contact us in writing at:

[Creditor Name]
[Creditor 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. 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]

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.* 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.
- 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.

Your Rights If You Are Dissatisfied With Your Credit Card Purchases

If you use your credit card to make a purchase and you are dissatisfied with the goods or services that you receive, 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 have tried in good faith to correct the problem with the merchant.

4. You must not yet have fully paid for the purchase.

If you are dissatisfied with a purchase that conforms to the four criteria above, contact us in writing at:

[Creditor Name]
[Creditor 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] [Description that rate varies and how it is determined, if applicable]
APR for Balance Transfers	[Balance transfer rate] [Description that rate varies and how it is determined, if applicable] [Statement about balance transfer fee and cross reference, if applicable] [Payment allocation notice, if applicable]
APR for Cash Advances	[Cash advance rate] [Description that rate varies and how it is determined, if applicable] [Statement about cash advance fee and cross reference, if applicable] [Payment allocation notice, if applicable]
Penalty APR and When it Applies	[Penalty rate] [Description of events that may result in the penalty rate] [Description of how long penalty rate may apply]
[Minimum Interest Charge]/[Minimum Charge]	[Description of minimum interest charge or minimum charge]
Grace Period on Purchases	[Description of grace period for purchases or statement that no grace period applies]
Website for Additional Information	[Reference to Board's website]

Fees	
[Annual Fee]/[Set-up and Maintenance Fees]	[Notice of available credit, if applicable] [Description of fees for availability or issuance of credit, such as an annual fee, if applicable]
Transaction Fees	
• Balance Transfer	[Description of balance transfer fee]
• Cash Advance	[Description of cash advance fee]
Penalty Fees	
• Late Payment	[Description of late payment fee] [Cross reference to penalty rate, if applicable]
• Over-the-Credit Limit	[Description of over-the-credit limit fee] [Cross reference to penalty rate, if applicable]
• Returned Payment	[Description of returned payment fee] [Cross reference to penalty rate, if applicable]
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]

Balance Computation Method: [Description of balance computation method]

G-10(B) Applications and Solicitations Sample (Credit Cards)

Interest Rates and Interest Charges	
Annual Percentage Rate (APR) for Purchases	**8.99%** to **19.99%** when you open your account, based on your creditworthiness. After that, your APR will vary with the market based on the Prime Rate.
APR for Balance Transfers	**0.00%** (Intro. APR through your December 2007 billing cycle) **15.99%** (APR after December 2007) Balance transfer fees will also apply (see Fees section below). **Notice Regarding Interest Charges**: Your introductory APR applies only to balance transfers, not to purchases. During the introductory period we will apply your payments to transferred balances before we apply them to any purchases you make. You will be charged interest on all purchases until your entire balance has been paid off completely, including transferred balances.
APR for Cash Advances	**21.99%** This APR will vary with the market based on the Prime Rate. Cash advance fees will also apply (see Fees section below).
Penalty APR and When it Applies	**28.99%** This APR may be applied to the entire balance on your account if you: 1) Make a late payment twice in a six-month period; 2) Go over your credit limit twice in a six-month period; 3) Make a payment that is returned; or 4) Do any of the above on another account that you have with us. **How Long Will the Penalty APR Apply?:** If your APRs are increased for any of these reasons, the Penalty APR will apply until you make six consecutive minimum payments when due and do not exceed your credit limit during that time period.
Minimum Interest Charge	If you are charged interest, the charge will be no less than $1.00.
Grace Period on Purchases	If you pay your entire balance in full each month, you have at least 25 days after the close of each period to pay your balance on purchases without being charged interest.
Website for Additional Information	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.frb.gov/location.

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.
Penalty Fees	
• Late Payment	**$29** if balance is less than or equal to $1,000; **$35** if balance is more than $1,000 (Your APRs may also increase; see Penalty APR section above.)
• Over-the-Credit Limit	**$29** (Your APRs may also increase; see Penalty APR section above.)
• Returned Payment	**$35** (Your APRs may also increase; see Penalty APR section above.)
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 Sample (Credit Cards)

Interest Rates and Interest Charges	
Annual Percentage Rate (APR) for Purchases	**8.99%, 12.99%, or 19.99%** when you open your account, based on your creditworthiness. After that, your APR will vary with the market based on the Prime Rate.
APR for Balance Transfers	**0.00%** (Intro. APR through your December 2007 billing cycle) **15.99%** (APR after December 2007) Balance transfer fees will also apply (see Fees section below). **Notice Regarding Interest Charges**: Your introductory APR applies only to balance transfers, not to purchases. During the introductory period we will apply your payments to transferred balances before we apply them to any purchases you make. You will be charged interest on all purchases until your entire balance has been paid off completely, including transferred balances.
APR for Cash Advances	**21.99%** This APR will vary with the market based on the Prime Rate. Cash advance fees will also apply (see Fees section below).
Penalty APR and When it Applies	**28.99%** This APR may be applied to the entire balance on your account if you: 1) Make a late payment; 2) Go over your credit limit; 3) Make a payment that is returned; or 4) Do any of the above on another account that you have with us. **How Long Will the Penalty APR Apply?:** If your APRs are increased for any of these reasons, we may keep them at this higher level indefinitely.
Minimum Interest Charge	If you are charged interest, the charge will be no less than $0.50.
Grace Period on Purchases	If you pay your entire balance in full each month, you have at least 25 days after the close of each period to pay your balance on purchases without being charged interest.
Website for Additional Information	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.frb.gov/location.

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 $68 (or $53 if you choose to have an additional card).
• Annual Fee	**$60**
• Account Set-up Fee	**$30** (one-time fee)
• Program Fee	**$85** (one-time fee)
• Participation Fee	**$84** annually ($7 per month)
• Additional Card Fee	**$15** annually (if applicable)
• Account Maintenance Fee on Closed Accounts	**$60** annually ($5 per month on closed accounts with an outstanding balance of $30 or more)
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	**$29** if balance is less than or equal to $1,000; **$35** if balance is more than $1,000 (Your APRs may also increase; see Penalty APR section above.)
• Over-the-Credit Limit	**$29** (Your APRs may also increase; see Penalty APR section above.)
• Returned Payment	**$35** (Your APRs may also increase; see Penalty APR section above.)

How We Will Calculate Your Balance: We use a method called "average daily balance (including new purchases)."

G-10(D) Applications and Solicitations Model Form (Charge Cards)

Payment Information
[A statement that charges incurred through use of the charge card are due when the periodic statement is received]

Fees	
[Annual Fee]/[Set-up and Maintenance Fees]	[Notice of available credit, if applicable] [Description of fees for availability or issuance of credit, such as an annual fee, if applicable]
Transaction Fees • Balance Transfer • Cash Advance	 [Description of balance transfer fee] [Description of cash advance fee]
Penalty Fees • Late Payment • Over-the-Credit Limit • Returned Payment	 [Description of late payment fee] [Description of over-the-credit limit fee] [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 • Cash Advance	 Either **$5** or **3%** of the amount of each transfer, whichever is greater (maximum fee: $100). Either **$5** or **3%** of the amount of each cash advance, whichever is greater.
Penalty Fees • Late Payment • Over-the-Credit Limit • Returned Payment	 **$31** if balance is less than or equal to $1,000; **$35** if balance is more than $1,000 **$30** **$30**

G–11—Applications and Solicitations Made Available to the General Public Model Clauses

(a) Disclosure of Required Credit Information

The information about the costs of the card described in this [application]/[solicitation] is accurate as of (*month/year*). This information may have changed after that date. To find out what may have changed, [call us at (*telephone number*)] [write to us at (*address*)].

[(b) Disclosure With Account Opening Statement

To find out about changes in the information in this [application]/[solicitation], [call us at (*telephone number*)] [write to us at (*address*)].

►(b)◄ [(c)] 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] ◄ [—Charge Card Model Clause (When Access to Plan Offered by Another)

This charge card may allow you to access credit offered by another creditor. Our decision about issuing you a charge card will be independent of the other creditor's decision about allowing you access to a line of credit. Therefore, approval by us to issue you a card does not constitute approval by the other creditor to grant you credit privileges. If we issue you a charge card, you may receive it before the other creditor decides whether or not to grant you credit privileges.]

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] [Description that rate varies and how it is determined, if applicable]
APR for Balance Transfers	[Balance transfer rate] [Description that rate varies and how it is determined, if applicable] [Statement about balance transfer fee and cross reference, if applicable] [Payment allocation notice, if applicable]
APR for Cash Advances	[Cash advance rate] [Description that rate varies and how it is determined, if applicable] [Statement about cash advance fee and cross reference, if applicable] [Payment allocation notice, if applicable]
Penalty APR and When it Applies	[Penalty rate] [Description of events that may result in the penalty rate] [Description of how long penalty rate may apply]
[Minimum Interest Charge]/[Minimum Charge]	[Description of minimum interest charge or minimum charge]
Grace Period	[Description of grace period for purchases, cash advances, balance transfers or any other credit extended or statement that no grace period applies]
Website for Additional Information	[Reference to Board's website]

Fees	
[Annual Fee]/[Set-up and Maintenance Fees]	[Notice of available credit, if applicable] [Description of fees for availability or issuance of credit, such as an annual fee, if applicable]
Transaction Fees	
• Balance Transfer	[Description of balance transfer fee]
• Cash Advance	[Description of cash advance fee]
• Foreign Transaction	[Description of foreign transaction fee]
Penalty Fees	
• Late Payment	[Description of late payment fee] [Cross reference to penalty rate, if applicable]
• Over-the-Credit Limit	[Description of over-the-credit limit fee] [Cross reference to penalty rate, if applicable]
• Returned Payment	[Description of returned payment fee] [Cross reference to penalty rate, if applicable]
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]

Balance Computation Method: [Description of balance computation method] [Reference to account agreement for more details]

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%** This APR will vary with the market based on the Prime Rate.
APR for Balance Transfers	**0.00%** (Intro. APR through your December 2007 billing cycle) **15.99%** (APR after December 2007) Balance transfer fees will also apply (see Fees section below). **Notice Regarding Interest Charges**: Your introductory APR applies only to balance transfers, not to purchases. During the introductory period we will apply your payments to transferred balances before we apply them to any purchases you make. You will be charged interest on all purchases until your entire balance has been paid off completely, including transferred balances.
APR for Cash Advances	**21.99%** This APR will vary with the market based on the Prime Rate. Cash advance fees will also apply (see Fees section below).
Penalty APR and When it Applies	**28.99%** This APR may be applied to the entire balance on your account if you: 1) Make a late payment twice in a six-month period; 2) Go over your credit limit twice in a six-month period; 3) Make a payment that is returned; or 4) Do any of the above on another account that you have with us. **How Long Will the Penalty APR Apply?:** If your APRs are increased for any of these reasons, the Penalty APR will apply until you make six consecutive minimum payments when due and do not exceed your credit limit during that time period.
Minimum Interest Charge	If you are charged interest, the charge will be no less than $1.00.
Grace Period	If you pay your entire balance in full each month, you have at least 25 days after the close of each period to pay your balance on purchases without being charged interest. There is no grace period for cash advances and balance transfers.
Website for Additional Information	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.frb.gov/location.

Fees	
Annual Fee	**None**
Transaction Fees	
• Balance Transfer	Either **$5** or **3%** of the amount of each transfer, whichever is greater (maximum fee: $100).
• Cash Advance	Either **$5** or **3%** of the amount of each cash advance, whichever is greater.
• Foreign Transaction	**2%** of each transaction in U.S. dollars
Penalty Fees	
• Late Payment	**$29** if balance is less than or equal to $1,000; **$35** if balance is more than $1,000 (Your APRs may also increase; see Penalty APR section above.)
• Over-the-Credit Limit	**$29** (Your APRs may also increase; see Penalty APR section above.)
• Returned Payment	**$35** (Your APRs may also increase; see Penalty APR section above.)
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%** This APR will vary with the market based on the Prime Rate.
APR for Balance Transfers	**0.00%** (Intro. APR through your December 2007 billing cycle) **15.99%** (APR after December 2007) Balance transfer fees will also apply (see Fees section below). **Notice Regarding Interest Charges**: Your introductory APR applies only to balance transfers, not to purchases. During the introductory period we will apply your payments to transferred balances before we apply them to any purchases you make. You will be charged interest on all purchases until your entire balance has been paid off completely, including transferred balances.
APR for Cash Advances	**21.99%** This APR will vary with the market based on the Prime Rate. Cash advance fees will also apply (see Fees section below).
Penalty APR and When it Applies	**28.99%** This APR may be applied to the entire balance on your account if you: 1) Make a late payment; 2) Go over your credit limit; 3) Make a payment that is returned; or 4) Do any of the above on another account that you have with us. **How Long Will the Penalty APR Apply?:** If your APRs are increased for any of these reasons, we may keep them at this higher level indefinitely.
Minimum Interest Charge	If you are charged interest, the charge will be no less than $0.50.
Grace Period	If you pay your entire balance in full each month, you have at least 25 days after the close of each period to pay your balance on purchases without being charged interest. There is no grace period for cash advances or balance transfers.
Website for Additional Information	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.frb.gov/location.

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 $68 (or $53 if you choose to have an additional card).
• Annual Fee	**$60**
• Account Set-up Fee	**$30** (one-time fee)
• Program Fee	**$85** (one-time fee)
• Participation Fee	**$84** annually ($7 per month)
• Additional Card Fee	**$15** annually (if applicable)
• Account Maintenance Fee on Closed Accounts	**$60** annually ($5 per month on closed accounts with an outstanding balance of $30 or more)
Transaction Fees	
• Balance Transfer	Either **$5** or **3%** of the amount of each transfer, whichever is greater (maximum fee: $100).
• Cash Advance	Either **$5** or **3%** of the amount of each cash advance, whichever is greater.
• Foreign Transaction	**2%** of each transaction in U.S. dollars.
Penalty Fees	
• Late Payment	**$29** if balance is less than or equal to $1,000; **$35** if balance is more than $1,000 (Your APRs may also increase; see Penalty APR section above.)
• Over-the-Credit Limit	**$29** (Your APRs may also increase; see Penalty APR section above.)
• Returned Payment	**$35** (Your APRs may also increase; see Penalty APR section above.)

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
			Payments and Other Credits	
854338203FS8OO0Z5	2/25	2/25	Pymt Thank You	$450.00–
045148714518979874	3/4	3/5	Store #13	$13.45–
			Purchases	
5884186PS0388W6YM	2/22	2/23	Store #1	$2.05
0544400060ZLV72VL	2/24	2/25	Store #2	$12.11
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
2564894185189LKDFID	2/27	2/28	Store #10	$32.87
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	3/4	Store #14	$2.35
8456152156181SDSA	3/5	3/6	Store #15	$25.00
31289105205648AWD	3/11	3/12	Store #16	$7.34
04518478415615ASD	3/11	3/16	Store #17	$10.56
0547810544898718AF	3/15	3/17	Store #18	$24.50
056489413216848OP	3/16	3/17	Store #19	$8.76
054894561564ASDW	3/17	3/18	Store #20	$14.23
5648974891AD98156	3/19	3/20	Store #21	$23.76
			Cash Advances	
1542202074TWWZV48	2/26	2/26	Cash Advance	$121.50
14547847586KDDL564	2/28	2/28	Cash Advance	$196.50
			Balance Transfers	
4545754784KOHUIOS	2/27	3/1	Balance Transfer	$785.00
			Fees	
9525156489SFD4545Q	2/23	2/23	Late Fee	$35.00
56415615647OJSNDS	2/26	2/26	Cash Advance Fee *Transaction Fee*	$5.00
84151564SADS8745H	2/27	2/27	Balance Transfer Fee *Transaction Fee*	$23.55
256489156189451516L	2/28	2/28	Cash Advance Fee *Transaction 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**

2007 Totals Year-to-Date	
Total fees charged in 2007	$90.14
Total interest charged in 2007	$18.27

G-18(B) Periodic Statement Fee-Inclusive APR Sample

Fee-Inclusive APR

The **Fee-Inclusive APRs** in this table are the APRs that you paid this period when transaction or fixed fees are taken into account as well as interest.

Type of Balance	Interest Charges	Transaction or Fixed Fees	Fee-Inclusive APR
Purchases	$6.31	$0.00	14.99%
Cash Advances	$4.58	$10.90	58.42%
Balance Transfers	$0.00	$23.55	36.00%

►G–18(C) Late Payment Fee Sample

Late Payment Warning: If we do not receive your minimum payment by the date listed above, you may have to pay a $35 late fee and your APRs may be increased up to the Penalty APR of 28.99%.◄

►G–18(D) Actual Repayment Period Sample Disclosure on Periodic Statement

(a) When Negative Amortization Does Not Occur.

Notice about Minimum Payments: If you make only the minimum payment each month, it will take you about 13 months to repay the balance shown on this statement.

(b) When Negative Amortization Occurs.

Notice about Minimum Payments: You will never repay the outstanding balance shown on this statement if you only pay the minimum payment.◄

BILLING CODE 6210–01–P

G-18(E) Periodic Statement New Balance, Due Date, Late Payment and Minimum Payment Sample (Credit Cards)

Payment Information

New Balance	$1,784.53
Minimum Payment Due	$48.00
Payment Due Date	4/20/07 (before 2:00 pm)

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%.

Notice about Minimum Payments: 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 had a balance of $1,000 at an interest rate of 17% and always paid only the minimum required, it would take over 7 years to repay this balance. For an estimate of the time it would take to repay your actual balance making only minimum payments, call 1-800-XXX-XXXX.

G-18(F) Periodic Statement New Balance, Due Date and Late Payment Sample (Open-End Plans (Non-credit-card Accounts))

Payment Information

New Balance	$1,784.53
Minimum Payment Due	$48.00
Payment Due Date	4/20/07 (before 2:00 pm)

Late Payment Warning: If we do not receive your minimum payment by the date listed above, you may have to pay a $35 late fee and your APRs may be increased up to the Penalty APR of 28.99%.

G-18(G) Periodic Statement Form

XXX Bank Credit Card Account Statement
Account Number XXXX XXXX XXXX XXXX
February 21, 2007 to March 22, 2007

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	3/22/2007
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	$48.00
Payment Due Date	4/20/07 (before 2:00 pm)

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%.

Notice about Minimum Payments: 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 had a balance of $1,000 at an interest rate of 17% and always paid only the minimum required, it would take over 7 years to repay this balance. For an estimate of the time it would take to repay your actual balance making only minimum payments, call 1-800-XXX-XXXX.

Please send billing inquiries and correspondence to:
PO Box XXXX, Anytown, Anystate XXXXX

Important Changes to Your Account Terms

The following is a summary of changes that are being made to your account terms. You have the right to opt out of these changes. For more detailed information, please refer to the booklet enclosed with this statement. The effective date of these changes is 5/10/07. Note: The change to your APR for purchases described below wil not go into effect at this time if you are already being charged a higher Penalty APR on purchases. This change will go into effect when the Penalty APR no longer applies.

Revised Terms, as of 5/10/07	
APR for Purchases	16.99%
Late Payment Fee	$32 if your balance is less than or equal to $1,000; $39 if your balance is more than $1,000

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	$450.00–
045148714518979874	3/4	3/5	Store #13	$13.45–
			Purchases	
5884186PS0388W6YM	2/22	2/23	Store #1	$2.05
0544400060ZLV72VL	2/24	2/25	Store #2	$12.11
55541860705RDYD0X	2/24	2/25	Store #3	$4.63
554328608008W90M0	2/24	2/25	Store #4	$114.95
054830709LYMRPT4L	2/24	2/25	Store #5	$7.35
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
2564894185189LKDFID	2/27	2/28	Store #10	$32.87

(transactions continued on next page)

NOTICE: SEE REVERSE SIDE FOR IMPORTANT INFORMATION

Please detach this portion and return with your payment to insure proper credit. Retain upper portion for your records.

Account Number:	**XXXX XXXX XXXX XXXX**
New Balance	**$1,784.53**
Minimum Payment Due	**$48.00**
Payment Due Date	**4/20/07 (before 2:00 pm)**

AMOUNT ENCLOSED: $

Please indicate address change and additional cardholder requests on the reverse side.

XXX Bank
P.O. Box XXXX
Anytown, Anystate XXXXX

XXX Bank Credit Card Account Statement
Account Number XXXX XXXX XXXX XXXX
February 21, 2007 to March 22, 2007

Transactions (cont.)

Reference Number	Trans Date	Post Date	Description of Transaction or Credit	Amount
			Purchases (cont.)	
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
8456152156181SDSA	3/5	3/12	Store #15	$25.00
31289105205648AWD	3/11	3/12	Store #16	$7.34
04518478415615ASD	3/11	3/16	Store #17	$10.56
0547810544898718AF	3/15	3/17	Store #18	$24.50
056489413216848OP	3/16	3/17	Store #19	$8.76
054894561564ASDW	3/17	3/18	Store #20	$14.23
5648974891AD98156	3/19	3/20	Store #21	$23.76
			Cash Advances	
1542202074TWWZV48	2/26	2/26	Cash Advance	$121.50
14547847586KDDL564	2/28	2/28	Cash Advance	$196.50
			Balance Transfers	
4545754784KOHUIOS	2/27	3/1	Balance Transfer	$785.00
			Fees	
9525156489SFD4545Q	2/23	2/23	Late Fee	$35.00
56415615647OJSNDS	2/26	2/26	Cash Advance Fee *Transaction Fee*	$5.00
84151564SADS8745H	2/27	2/27	Balance Transfer Fee *Transaction Fee*	$23.55
256489156189451516L	2/28	2/28	Cash Advance Fee *Transaction 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**

2007 Totals Year-to-Date	
Total fees charged in 2007	$90.14
Total interest charged in 2007	$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

Fee-Inclusive APR

The **Fee-Inclusive APRs** in this table are the APRs that you paid this period when transaction or fixed fees are taken into account as well as interest.

Type of Balance	Interest Charges	Transaction or Fixed Fees	Fee-Inclusive APR
Purchases	$6.31	$0.00	14.99%
Cash Advances	$4.58	$10.90	58.42%
Balance Transfers	$0.00	$23.55	36.00%

G-18(H) Periodic Statement Form

XXX Bank Credit Card Account Statement
Account Number XXXX XXXX XXXX XXXX
February 21, 2007 to March 22, 2007

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	3/22/2007
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	4/20/07 (before 2:00 pm)

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%.

Notice about Minimum Payments: If you make only the minimum payment each month, it will take you about 13 months to repay the balance shown on this statement.

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%. Effective 5/10/07, we will apply the penalty rate to all balances on this account. We may keep your APRs at this level indefinitely.

Transactions

Reference Number	Trans Date	Post Date	Description of Transaction or Credit	Amount
			Payments and Other Credits	
854338203FS8OO0Z5	2/25	2/25	Pymt Thank You	$50.00–
			Purchases	
5884186PS0388W6YM	2/22	2/23	Store #1	$2.05
0544400060ZLV72VL	2/24	2/25	Store #2	$2.11
55541860705RDYD0X	2/24	2/25	Store #3	$4.63
554328608008W90M0	2/24	2/25	Store #4	$4.95
054830709LYMRPT4L	2/24	2/25	Store #5	$7.35
564891561545KOSHD	2/25	2/26	Store #6	$4.35
841517877845AKOJIO	2/25	2/26	Store #7	$2.35
895848561561894KOH	2/26	2/27	Store #8	$7.68
1871556189456SAMKL	2/26	2/27	Store #9	$4.76
2564894185189LKDFID	2/27	2/28	Store #10	$2.87
55542818705RASD0X	3/1	3/2	Store #11	$3.76
178105417841045784	3/2	3/6	Store #12	$2.35
8456152156181SDSA	3/5	3/12	Store #13	$2.92

(transactions continued on next page)

NOTICE: SEE REVERSE SIDE FOR IMPORTANT INFORMATION

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	**$119.65**
Minimum Payment Due	**$10.00**
Payment Due Date	**4/20/07 (before 2:00 pm)**

AMOUNT ENCLOSED: $

Please indicate address change and additional cardholder requests on the reverse side.

XXX Bank
P.O. Box XXXX
Anytown, Anystate XXXXX

XXX Bank Credit Card Account Statement
Account Number XXXX XXXX XXXX XXXX
February 21, 2007 to March 22, 2007

Transactions (cont.)

Reference Number	Trans Date	Post Date	Description of Transaction or Credit	Amount
			Fees	
9525156489SFD4545Q	2/23	2/23	Late Fee	$35.00
56415615647OJSNDS	3/22	3/22	Minimum Charge *Fixed Fee*	$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**

2007 Totals Year-to-Date	
Total fees charged in 2007	$90.14
Total interest charged in 2007	$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

Fee-Inclusive APR

The **Fee-Inclusive APRs** in this table are the APRs that you paid this period when transaction or fixed fees are taken into account as well as interest.

Type of Balance	Interest Charges	Transaction or Fixed Fees	Fee-Inclusive APR
Purchases	$0.00	$2.00	21.09%
Cash Advances	$0.00	$0.00	0.00%
Balance Transfers	$0.00	$0.00	0.00%

G-19 Checks Accessing a Credit Card Sample

Interest and Fee Information	
APR for Check Transactions	1.7% (Intro. APR through your November 2007 billing cycle) After November 2007, you will be charged the APR for Cash Advances, currently 21.99%.
Fee	Either $5 or 3% of the amount of each transfer, whichever is greater.
Grace Period	There is no grace period for transactions you make with these checks; we will begin charging interest on the transaction date.

G-20 Change-in-Terms Sample

Important Changes to Your Account Terms

The following is a summary of changes that are being made to your account terms. You have the right to opt out of these changes. For more detailed information, please refer to the booklet enclosed with this statement. The effective date of these changes is 5/10/07. Note: The change to your APR for purchases described below wil not go into effect at this time if you are already being charged a higher Penalty APR on purchases. This change will go into effect when the Penalty APR no longer applies.

Revised Terms, as of 5/10/07	
APR for Purchases	16.99%
Late Payment Fee	$32 if your balance is less than or equal to $1,000; $39 if your balance is more than $1,000

G-21 Penalty Rate Increase Sample

Notice of Changes to Your Interest Rates

You have triggered the Penalty APR of 28.99%. Effective 5/10/07, we will apply the penalty rate to all balances on this account. We may keep your APRs at this level indefinitely.

21. Under Part 226, Appendix H 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 [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 _____◄

H–17(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 _____◄

22. Under Part 226, a new Appendix M1, Appendix M2, and Appendix M3 are added to read as follows:

►Appendix M1 to Part 226—Generic Repayment Estimates

(a) *Calculating generic repayment estimates.*

(1) *Definitions.* (i) Retail credit card means a credit card that is issued by a retailer that can be used only in transactions with the retailer or a group of retailers that are related by common ownership or control, or a credit card where a retailer arranges for a creditor to offer open-end credit under a plan that allows the consumer to use the credit only in transactions with the retailer or a group of retailers that are related by common ownership or control.

(ii) ''General-purpose credit card'' means a credit card other than a retail credit card.

(2) *Minimum payment formula.*

(i) *Issuer-operated toll-free telephone number.*

(A) *General-purpose credit cards.* When calculating the generic repayment estimate for general-purpose credit cards, card issuers must use the minimum payment formula that applies to most of its general-purpose credit card accounts. The issuer must use this ''most common'' formula to calculate the generic repayment estimate for all of its general-purpose credit card accounts, regardless of whether this formula applies to a particular account. To calculate which minimum payment formula is most common, card issuers must choose a day in the last six months, consider all general-purpose card accounts held by the issuer on that day, and determine which formula applies to the most accounts. If more than one minimum payment formula applies to an account, the card issuer must use the formula applicable to the general-revolving feature to determine which formula is most common. Card issuers must re-evaluate which minimum payment formula is most common every 12 months. For example, assume a card issuer is required to comply with the requirements in § 226.7(b)(12) and this appendix by July 5 of

a particular year. The issuer may choose any day between January 5 and July 4 of that year to use in deciding the minimum payment formula that is most common. For the following and each subsequent year, the issuer must again choose a day between January 5 and July 4 to use in deciding the minimum payment formula that is most common, but the day that is chosen need not be the same day chosen the previous year.

(B) *Retail credit cards.* When calculating the generic repayment estimate for retail credit cards, card issuers must use the minimum payment formula that applies to most of their retail credit card accounts. If an issuer offers credit card accounts on behalf of more than one retailer, the card issuer must group credit card accounts for each retailer separately, and determine the minimum payment formula that is most common to each retailer. The issuer must use the ''most common'' formula for each retailer, regardless of whether this formula applies to a particular account for that retailer. To calculate which minimum payment formula is most common, card issuers must choose a day in the last six months, consider all retail card accounts for each retailer held by the issuer on that day, and determine which formula applies to the most accounts for that retailer. If more than one minimum payment formula applies to an account, the card issuer must use the formula applicable to the general revolving feature to determine which formula is most common for each retailer. Card issuers must re-evaluate which minimum payment formula is most common for retail credit card accounts with respect to each retailer every 12 months. For example, assume a card issuer is required to comply with the requirements in § 226.7(b)(12) and this appendix by July 5 of a particular year. The issuer may choose any day between January 5 and July 4 of that year to use in deciding the minimum payment formula that is most common. For the following year, the issuer must again choose a day between January 5 and July 4 to use in deciding the minimum payment formula that is most common, but the day that is chosen need not be the same day the previous year.

(ii) *FTC-operated toll-free telephone number.* When calculating the generic repayment estimate, the FTC must use the following minimum payment formula: 5 percent of the outstanding balance, or $15, whichever is greater.

(3) *Annual percentage rate.* When calculating the generic repayment estimate, credit card issuers and the FTC must use the highest annual percentage rate on which the consumer has outstanding balances. An issuer and the FTC may use an automated system to prompt the consumer to enter the highest annual percentage rate on which the consumer has an outstanding balance, and calculate the generic repayment estimate based on the consumer's response.

(4) *Beginning balance.* When calculating the generic repayment estimate, credit card issuers and the FTC must use as the beginning balance the outstanding balance on a consumer's account as of the closing date of the last billing cycle. An issuer and the FTC may use an automated system to prompt the consumer to enter the outstanding balance included on the last periodic statement received by the consumer, and calculate the generic repayment estimate based on the consumer's response.

(5) *Assumptions.* When calculating the generic repayment estimate, credit card issuers and the FTC must make the following assumptions. Card issuers and the FTC must make these assumptions regardless of whether they match the actual terms of the consumer's account.

(i) Only minimum monthly payments are made each month.

(ii) No additional extensions of credit are obtained.

(iii) There is no grace period.

(iv) The final payment pays the account in full (i.e., there is no residual interest after the final month in a series of payments).

(v) The average daily balance method is used to calculate the balance.

(vi) All months are the same length (i.e., 30.41667 days long). Leap year is ignored.

(vii) Payments are credited on the last day of the month.

(b) *Disclosing the generic repayment estimate to consumers.*

(1) *Required disclosures.* Except as provided in paragraph (b)(3) of this section, when responding to a request for generic repayment estimates through a toll-free telephone number, credit card issuers and the FTC must make the following disclosures:

(i) The generic repayment estimate. If the generic repayment estimate calculated above is less than 2 years, credit card issuers and the FTC must disclose the estimate in months. Otherwise, the estimate must be disclosed in years. The estimate must be rounded down to the nearest whole year if the estimate contains a fractional year less than 0.5, and rounded up to the nearest whole year if the estimate contains a fractional year equal to or greater than 0.5.

(ii) The beginning balance on which the generic repayment estimate is calculated.

(iii) The APR on which the generic repayment estimate is calculated.

(iv) The assumption that only minimum payments are made and no other amounts are added to the balance.

(v) The fact that the repayment period is an estimate, and the actual time it may take to pay off the balance by only making minimum payments will differ based on the consumer's account terms and future account activity.

(2) *Model form.* Credit card issuers and the FTC may use the following disclosure to meet the requirements set forth in paragraph (b)(1) of this section:

It will take approximately __ [months/years] to pay off a ____ balance at ____% APR, assuming that you only make minimum payments and no other amounts are added to the balance. This repayment period is only an estimate. The actual time it may take you to pay off this balance by only making minimum payments will differ based on your account terms and future account activity.

(3) *Negative amortization.* If negative amortization occurs when calculating the repayment estimate, credit card issuers and the FTC must disclose to the consumer that based on the assumptions used to calculate the repayment estimate, the consumer will not pay off the balance by paying only the minimum payment. Card issuers and the FTC may use the following disclosure to meet the requirements set forth in this paragraph: ''Based on the assumptions that we used to calculate the time to repay your balance, you will never repay the balance if you only make the minimum payment.''

(4) *Permissible disclosures.* Credit card issuers and the FTC may provide the following information when responding to a request for the generic repayment estimate through a toll-free telephone number, so long as the following information is provided after the disclosures in paragraph (b)(1) of this section are given:

(i) A description of the assumptions used to calculate the generic repayment estimate as described in paragraph (a)(5) of this section.

(ii) The length of time it would take to repay the beginning balance described in paragraph (b)(1)(ii) of this section if an additional amount was paid each month in addition to the minimum payment amount, allowing the consumer to select the additional amount. In calculating this estimate, card issuers and the FTC must use the same terms described in paragraph (a) of this section, except they also must assume the additional amount was paid each month in addition to the minimum payment amount.

(iii) The length of time it would take to repay the beginning balance described in paragraph (b)(1)(ii) of this section if the consumer made a fixed payment amount each month, allowing the consumer to select the amount of the fixed payment. In calculating this estimate, card issuers and the FTC must use the same terms described in paragraph (a) of this section, except they also must assume the consumer made a fixed payment amount each month.

(iv) The monthly payment amount that would be required to pay off the outstanding balance within a specific number of months, allowing the consumer to select the payoff period. In calculating the monthly payment amount, card issuers and the FTC must use the same terms described in paragraph (a) of this section, as appropriate.

(v) Reference to web-based calculation tools that permit consumers to obtain additional estimates of repayment periods.

(vi) The total interest that a consumer may pay if the consumer makes minimum payments for the length of time disclosed in the generic repayment estimate.

Appendix M2 to Part 226—Actual Repayment Disclosures

(a) *Calculating actual repayment disclosures.*

(1) *Definitions.* (i) ''Retail credit card'' means a credit card that is issued by a retailer that can be used only in transactions with the retailer or a group of retailers that are related by common ownership or control, or a credit card where a retailer arranges for a creditor to offer open-end credit under a plan that allows the consumer to use the credit only in transactions with the retailer or a group of retailers.

(ii) ''General purpose credit card'' means a credit card other than a retail credit card.

(iii) ''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) *Minimum payment formulas.* When calculating actual repayment disclosures, credit card issuers must use the minimum payment formula(s) that apply to a cardholder's account. If any promotional terms related to payments currently apply to a cardholder's account, such as a ''deferred payment plan,'' credit card issuers may assume no promotional terms apply to the account.

(3) *Annual percentage rate.* When calculating annual repayment estimates, a credit card issuer must use the annual percentage rates that apply to a cardholder's account, based on the portion of the balance to which the rate applies. If any promotional terms related to annual percentage rates currently apply to a cardholder's account, such as introductory rates or deferred interest plans, credit card issuers may assume no promotional terms apply to the account.

(4) *Beginning balance.* When calculating the actual repayment disclosure, credit card issuers must use as the beginning balance the outstanding balance on a consumer's account as of the closing date of the last billing cycle.

(5) *Assumptions.* When calculating the actual repayment disclosure, credit card issuers may make the following assumptions regardless of whether they are the same as the actual terms of the consumer's account.

(i) Only minimum monthly payments are made each month.

(ii) No additional extensions of credit are obtained, including new purchases, transactions, fees, rebates, charges or other activity.

(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.

(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 (i.e., 30.41667 days long). Leap year is ignored.

(viii) Payments are credited on the last day of the month.

(ix) Payments are allocated to lower APR balances before higher APR balances.

(b) *Disclosing the actual repayment disclosure to consumers through a toll-free telephone number.*

(1) *Required disclosures.* Except as provided in paragraph (b)(3) of this section, when responding to a request for actual repayment disclosures through a toll-free telephone number, credit card issuers must make the following disclosures:

(i) The actual repayment disclosure. If the actual repayment disclosure is less than 2 years, credit card issuers must disclose the estimate in months. Otherwise, the estimate must be disclosed in years. The estimate must be rounded down to the nearest whole year if the estimate contains a fractional year less than 0.5, and rounded up to the nearest whole year if the estimate contains a fractional year equal or greater than 0.5.

(ii) The outstanding balance on which the actual repayment disclosure is calculated.

(iii) The assumption that only minimum payments are made.

(iv) The fact that the repayment period is an estimate, and is based on several assumptions about the consumer's account terms and future activity.

(2) *Model form.* Credit card issuers may use the following disclosure to meet the requirements set forth in paragraph (b)(1) of this section:

Your outstanding balance as of the last billing statement was $_____. If you make only the minimum payment each month it would take you about _____ [months/years] to repay this outstanding balance. This repayment period is only an estimate and is based on several assumptions about your account terms and future activity on the account.

(3) *Negative amortization.* If negative amortization occurs when calculating the repayment estimate, credit card issuers must disclose to the consumer that based on the current terms applicable to the consumer's account, the consumer will not pay off the balance by paying only the minimum payment. Card issuers may use the following disclosure to meet the requirements set forth in this paragraph: ''Your outstanding balance as of the last billing statement was $_____. You will never repay the balance if you only make the minimum payment.''

(4) *Permissible disclosures.* Credit card issuers may provide the following information when responding to a request for the actual repayment disclosure through a toll-free telephone number, so long as the following information is provided after the disclosures in paragraph (b)(1) of this section are given:

(i) A description of the assumptions used to calculate the actual repayment disclosure as described in paragraph (a)(5) of this section.

(ii) The length of time it would take to repay the beginning balance described in paragraph (b)(1)(ii) of this section if an additional amount was paid each month in addition to the minimum payment amount, allowing the consumer to select the additional amount. In calculating this estimate, credit card issuers must use the same terms described in paragraph (a) of this section used to calculate the actual repayment disclosure, except they also must assume the additional amount was paid each month in addition to the minimum payment amount.

(iii) The length of time it would take to repay the beginning balance described in paragraph (b)(1)(ii) of this section if the consumer made a fixed payment amount each month, allowing the consumer to select the amount of the fixed payment. In calculating this estimate, card issuers must use the same terms described in paragraph (a) of this section to calculate the actual repayment disclosure, except they also must assume the consumer made a fixed payment amount each month.

(iv) The monthly payment amount that would be required to pay off the outstanding balance within a specific number of months, allowing the consumer to select the payoff period. In calculating the monthly payment amount, card issuers must use the same terms described in paragraph (a) of this section, as appropriate.

(v) Reference to web-based calculation tools that permit consumers to obtain additional estimates of repayment periods.

(vi) The total interest that a consumer may pay if the consumer makes minimum payments for the length of time disclosed in the actual repayment disclosure.

(c) *Disclosing the actual repayment disclosures on periodic statements.*

(1) *Required disclosures.* Except as provided in paragraph (c)(3) of this section, when providing the actual repayment disclosure on the periodic statement, credit card issuers must make the following disclosures:

(i) The actual repayment disclosure. If the actual repayment disclosure is less than 2 years, credit card issuers must disclose the estimate in months. Otherwise, the estimate must be disclosed in years. The estimate must be rounded down to the nearest whole year if the estimate contains a fractional year less than 0.5, and rounded up to the nearest whole year if the estimate contains a fractional year equal to or greater than 0.5.

(ii) The fact that the repayment period is based on the current outstanding balance shown on the account.

(iii) The assumption that only minimum payments are made.

(2) *Model form.* Credit card issuers may use the disclosure in appendix G–18(D) to meet the requirements set forth in paragraph (c)(1) of this section.

(3) *Negative amortization.* If negative amortization occurs when calculating the actual repayment disclosure, credit card issuers must disclose to the consumer that based on the current terms applicable to the consumer's account, the consumer will not pay off the balance by making only the minimum payment. Card issuers may use the disclosure in appendix G–18(D) to meet the requirements set forth in this paragraph.

(4) *Permissible disclosures.* Card issuers may provide the following information on the periodic statement, so long as the following information is provided after the disclosures in paragraph (c)(1) are given:

(i) The fact that the repayment period is an estimate, and is based on several assumptions about the consumer's account terms and future activity.

(ii) A reference to another location on the statement where the consumer may find additional information about the repayment estimate.

(iii) A description of the assumptions used to calculate the actual repayment disclosure as described in paragraph (a)(5) of this section.

(iv) The length of time it would take to repay the outstanding balance shown on the statement if an additional amount was paid each month in addition to the minimum payment amount. Card issuers may choose the additional amount. In calculating this estimate, card issuers must use the same terms described in paragraph (a) of this section used to calculate the actual repayment period, except they also must assume the additional amount was paid each

month in addition to the minimum payment amount.

(v) The length of time it would take to repay the outstanding balance shown on the statement if the consumer made a fixed payment amount each month. Card issuers may choose the amount of the fixed payment. In calculating this estimate, card issuers must use the same terms described in (a) of this section used to calculate the actual repayment disclosure, except they also must assume the consumer made a fixed payment amount each month.

(vi) The monthly payment amount that would be required to pay off the outstanding balance within a specific number of months. Card issuers may choose the specific number of months used in the calculation. In calculating the monthly payment amount, card issuers must use the same terms described in paragraph (a) of this section, as appropriate.

(vii) Reference to web-based calculation tools that permit consumers to obtain additional estimates of repayment periods.

(viii) The total interest that a consumer may pay if the consumer makes minimum payments for the length of time disclosed in the actual repayment disclosure.

Appendix M3 to Part 226—Sample Calculations of Generic Repayment Estimates and Actual Repayment Disclosures

(a) *Generic repayment estimates.* The following is an example of how to calculate the generic repayment estimates using the guidance in appendix M1 where the APR is 17 percent, the outstanding balance is $1,000, 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;
RATE1=0.17; *APR;
TBAL=1000; *OUTSTANDING BALANCE;
*INITIALIZE COUNTER OF MONTHS,
    PERIODIC RATE AND FINANCE
    CHARGES;
MONTHS=0;
PERRATE1=0;
FC1=0;
*ABSOLUTE MINIMUM PAYMENT RULE
    USED;
MINPMT=20;
*CALCULATE PERIODIC RATE;
PERRATE1=((1+(RATE1/
    365))**30.41667)-1; *ADB METHOD;
*CALCULATE MONTHS TO PAYOFF;
DO WHILE (TBAL GT 0);
  MONTHS=MONTHS+1;
  PMT=0.02*TBAL; *TWO PERCENT MIN
    PAYMENT RULE;
  FC1=TBAL*PERRATE1; *CALCULATE
    FINANCE CHARGE;
  TBAL=TBAL+FC1; *ADD FINANCE
    CHARGE TO BALANCE;
  IF PMT LT MINPMT THEN
    PMT=MINPMT;
  TBAL = TBAL-PMT;
END;
*RESULTS;
PROC PRINT DATA=ONE;
VAR MONTHS;
PROC PRINT DATA=ONE;
VAR PMT FC1 TBAL PERRATE1;
```

(b) *Actual Repayment Disclosures.* The following is an example of how to calculate the actual repayment disclosures using the guidance in M2 where three APRs apply, 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;
*INITIALIZE NUMBERS OF APRS,
    PERIODIC RATES, BALANCES, AND
    PERIODIC FINANCE CHARGES;
ARRAY RATE(3);
ARRAY PERRATE(3);
ARRAY BAL(3);
ARRAY FC(3);
*INITIALIZE APRS AND BALANCES,
    PLACING RATES FROM LOWEST TO
    HIGHEST;
RATE1=0.019; *APR #1;
RATE2=0.17; *APR #2;
RATE3=0.21; *APR #3;
BAL1=500; *BALANCE ASSOCIATED WITH
    APR #1;
BAL2=250; *BALANCE ASSOCIATED WITH
    APR #2;
BAL3=250; *BALANCE ASSOCIATED WITH
    APR #3;
*INITIALIZE TOTAL BALANCE AND
    COUNTER OF MONTHS;
TBAL=0;
MONTHS=0;
*ABSOLUTE MINIMUM PAYMENT RULE
    USED;
MINPMT=20;
*CALCULATE PERIODIC RATES AND
    INITIAL TOTAL BALANCE;
DO I=1 TO 3;
PERRATE(I)=((1+(RATE(I)/
    365))**30.41667)-1; *ADB METHOD;
TBAL=TBAL+BAL(I);
END;
*CALCULATE MONTHS TO PAYOFF FOR
    LOWEST RATE BALANCE;
DO WHILE (BAL(1) GT 0);
  MONTHS=MONTHS+1;
  PMT=0.02*TBAL; *TWO PERCENT MIN
    PMT RULE;
  DO I=1 TO 3; FC(I)=BAL(I)*PERRATE(I);
    *CALCULATE FINANCE CHARGES;
  END;
  DO I=1 TO 3; BAL(I)=BAL(I)+FC(I);
    TBAL=TBAL+FC(I); *ADD FINANCE
    CHARGES TO BALANCES;
  END;
  IF PMT LT MINPMT THEN
    PMT=MINPMT;
  BAL(1)=BAL(1)-PMT; *APPLYING
    PAYMENT TO LOWEST APR
    BALANCE;
  TBAL=TBAL-PMT;
END;
*CALCULATE MONTHS TO PAYOFF FOR
    NEXT LOWEST RATE BALANCE, IF
    ANY, CARRYING OVER NUMBER
    FROM LOWER RATE BALANCE;
BAL(2)=BAL(2)+BAL(1);
DO WHILE (BAL(2) GT 0);
  MONTHS=MONTHS+1;
  PMT=0.02*TBAL; *TWO PERCENT MIN
    PMT RULE;
  DO I=2 TO 3; FC(I)=BAL(I)*PERRATE(I);
    *CALCULATE FINANCE CHARGES;
  END;
  DO I=2 TO 3; BAL(I)=BAL(I)+FC(I);
    TBAL=TBAL+FC(I); *ADD FINANCE
    CHARGES TO BALANCES;
  END;
  IF PMT LT MINPMT THEN
    PMT=MINPMT;
  BAL(2)=BAL(2)-PMT; *APPLYING
    PAYMENT TO SECOND LOWEST APR
    BALANCE;
  TBAL=TBAL-PMT;
END;
*CALCULATE MONTHS TO PAYOFF FOR
    NEXT LOWEST RATE BALANCE, IF
    ANY, CARRYING OVER NUMBER
    FROM LOWER RATE BALANCES;
BAL(3)=BAL(3)+BAL(2);
DO WHILE (BAL(3) GT 0);
  MONTHS=MONTHS+1;
  PMT=0.02*TBAL; *TWO PERCENT MIN
    PMT RULE;
  FC(3)=BAL(3)*PERRATE(3);
    *CALCULATE FINANCE CHARGE;
  BAL(3)=BAL(3)+FC(3); *ADD FINANCE
    CHARGES TO BALANCE;
  TBAL=TBAL+FC(3);
  IF PMT LT MINPMT THEN
    PMT=MINPMT;
  BAL(3)=BAL(3)-PMT; *APPLYING
    PAYMENT TO REMAINING BALANCE;
  TBAL=TBAL-PMT;
END;
*RESULTS;
PROC PRINT DATA=ONE;
VAR MONTHS;
PROC PRINT DATA=ONE;
VAR PMT FC1 BAL1 FC2 BAL2 FC3 BAL3
    TBAL;
```

23. In Supplement I to Part 226:

A. Revise the Introduction.

B. Revise subpart A.

C. In Subpart B, revise sections 226.5 through 226.14 and 226.16.

D. Revise Appendix F, and Appendixes G and H.

E. Amend Appendix G by revising paragraphs 1. through 3. and 5. through 6., republishing paragraph 7., and adding paragraph 8.

F. 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, Appendix E and Appendix F.

Supplement I to Part 226—Official Staff Interpretations

Introduction

1. *Official status.* This commentary is the vehicle by which the staff of the Division of Consumer and Community Affairs of the Federal Reserve Board issues official staff interpretations of Regulation Z. Good faith compliance with this commentary affords protection from liability under 130(f) of the Truth in Lending Act. Section 130(f) (15 U.S.C. 1640) protects creditors from civil liability for any act done or omitted in good faith in conformity with any interpretation issued by a duly

authorized official or employee of the Federal Reserve System.

2. *Procedure for requesting interpretations.* Under appendix C of the regulation, anyone may request an official staff interpretation. Interpretations that are adopted will be incorporated in this commentary following publication in the **Federal Register**. No official staff interpretations are expected to be issued other than by means of this commentary.

[3. *Status of previous interpretations.* All statements and opinions issued by the Federal Reserve Board and its staff interpreting previous Regulation Z remain effective until October 1, 1982 only insofar as they interpret that regulation. When compliance with revised Regulation Z becomes mandatory on October 1, 1982, the Board and staff interpretations of the previous regulation will be entirely superseded by the revised regulation and this commentary except with regard to liability under the previous regulation.]

►3.◄ [4.] *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 and regulation, reference to the regulation should be construed to refer to revised Regulation Z, unless the context indicates that a reference to previous Regulation Z is also intended.

(c)] 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. [5]. *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◄ [I–7]. Comments to the appendixes may be cited, for example, as comment app. A–1.

[6. *Cross-references.* The following cross-references to related material appear at the end of each section of the commentary: (a) ''Statute''—those sections of the Truth in Lending Act on which the regulatory provision is based (and any other relevant statutes); (b) ''Other sections''—other provisions in the regulation necessary to understand that section; (c) ''Previous regulation''—parallel provisions in previous Regulation Z; and (d) ''1981 changes''—a brief description of the major changes made by the 1981 revisions to Regulation Z. Where appropriate, a fifth category (''Other regulations'') provides cross-references to other regulations.

7. *Transition rules.* (a) Though compliance with the revised regulation is not mandatory until April 1, 1982, creditors may begin complying as of April 1, 1981. During the intervening year, a creditor may convert its entire operation to the new requirements at one time, or it may convert to the new requirements in stages. In general, however, a creditor may not mix the regulatory requirements when making disclosures for a particular closed-end transaction or open-end account; all the disclosures for a single closed-end transaction (or open-end account) must be made in accordance with the previous regulation, or all the disclosures must be made in accordance with the revised regulation. As an exception to the general rule, the revised rescission rules and the revised advertising rules may be followed even if the disclosures are based on the previous regulation. For purposes of this regulation, the creditor is not required to take any particular action beyond the requirements of the revised regulation to indicate its conversion to the revised regulation.

(b) The revised regulation may be relied on to determine if any disclosures are required for a particular transaction or to determine if a person is a ''creditor'' subject to Truth in Lending requirements, whether or not other operations have been converted to the revised regulation. For example, layaway plans are not subject to the revised regulation, nor are oral agreements to lend money if there is no finance charge. These provisions may be relied on even if the creditor is making other disclosures under the previous regulation. The new rules governing whether or not disclosures must be made for refinancings and assumptions are also available to a creditor that has not yet converted its operations to the revised regulation.

(c) In addition to the above rules, applicable to both open-end and closed-end credit, the following guidelines are relevant to open-end credit:

- The creditor need not remake initial disclosures that were made under the previous regulation, even if the revised periodic statements contain terminology that is inconsistent with those initial disclosures.
- A creditor may add inserts to its old open-end forms in order to convert them to the revised rules until such time as the old forms are used up.
- No change-in-terms notice is required for changes resulting from the conversion to the revised regulation.
- The previous billing rights statements are substantially similar to the revised billing rights statements and may continue to be used, except that, if the creditor has an automatic debit program, it must use the revised automatic debit provision.
- For those creditors wishing to use the annual billing rights statement, the creditor may count from the date on which it sent its last statement under the previous regulation in determining when to give the first statement under the new regulation. For example, if the creditor sent a semiannual statement in June 1981 and converts to the new regulation in October 1981, the creditor must give the billing rights statement sometime in 1982, and it must not be fewer than 6 nor more than 18 months after the June statement.
- Section 226.11 of the revised regulation affects only credit balances that are created on or after the date the creditor converts the account to the revised regulation.]

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 issued by a bank (whether U.S.- or foreign-based) located in the consumer's state, 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.◀ [Thus, a U.S. resident's use in Europe of a credit card issued by a bank in the consumer's home town is covered by the regulation. The regulation does not apply to a foreign branch of a U.S. bank when the foreign branch extends credit to a U.S. citizen residing or visiting abroad or to a foreign national abroad.]

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◄ [On-line messages], 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)(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 or to a◄ transitional billing cycle that can occur ►if◄ [when] 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[the commentary to § 226.9(c)].)

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. *Rescission rule.* A more precise rule for what is a business day (all calendar days except Sundays and the federal legal holidays listed in 5 U.S.C. 6103(a)) applies when the right of rescission or mortgages subject to § 226.32 are involved. (See also comment 31(c)(1)–1.) 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). The observed holiday (in the example, July 3) is a business day for purposes of rescission or the delivery of disclosures for certain high-cost mortgages covered by § 226.32.

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 appendixes 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)◄ [footnote 3 to § 226.2(a)(17)].

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)◄ [footnote 3] 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◄ [1982].

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◄ [1983], it is a creditor for purposes of the regulation for the last extension of credit in ►2007◄ [1983] and for all extensions of consumer credit in ►2008◄ [1984]. On the other hand, if a business begins in ►2007◄ [1983] and extends consumer credit 20 times, it is not a creditor for purposes of the regulation in ►2007◄ [1983]. If it extends consumer credit 75 times in ►2008◄ [1984], 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◄ [1985].

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◄ [1983] 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◄ [1983] 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◄ [1983] 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.

[8. *Loans from employee savings plans.* Some employee savings plans permit participants to borrow money up to a certain percentage of their account balances, and use a trust to administer the receipt and disbursement of funds. Unless each participant's account is an individual plan and trust, the creditor should apply the numerical tests to the plan as a whole rather than to the individual account, even if the loan amount is determined by reference to the balance in the individual account and the repayments are credited to the individual account. The person to whom the obligation is originally made payable (whether the plan, the trust, or the trustee) is the creditor for purposes of the act and 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. ►The consumer has a single account with the creditor, although there may be separate sub-accounts maintained under that single account. Advances and payments may be allocated to different sub-accounts for the purpose of prescribing different terms (such as different periodic rates or other payment options) for those advances. Repayments of an advance for any sub-account must generally replenish the credit line for that sub-account so that a consumer may continue to borrow and take advances under the plan to the extent that he or she repays outstanding balances without having to obtain separate approval for each subsequent advance. For example, a credit card account may permit cash advances and purchase transactions with different periodic rates and payment terms. Repayments allocated to the cash advance sub-accounts must generally replenish the consumer's cash advance credit line and repayment allocated to the purchase transaction sub-account must generally replenish the consumer's purchase transaction credit line, so that the consumer may continue to take advances under each sub-account to the extent that its outstanding balance is repaid.◄ [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, multi-featured 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: i. It] ►For example, it◄ would be more reasonable for a ►bank or depository institution◄ [thrift institution chartered for the benefit of its members] to contemplate repeated transactions with a [member] ►customer◄ than for a seller of aluminum siding to make the same assumption about its customers.

[ii. It would be more reasonable for a financial institution to make advances from a line of credit for the purchase of an automobile than for an automobile dealer to sell a car under an open-end plan.]

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, [such as certain *china club* 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.◄. 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.

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 economy,] 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. *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, 1 ½ percent 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 ⅛ 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 226.4(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 ►seven◄ [six] 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 226.19—special timing rules.

v. Section 226.20(b)—disclosure requirements for assumptions.

vi. Section 226.23(f)—exemption from the right of rescission.

►vii. Section 226.32(a)—exemption from rules for certain mortgages.◄

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) or § 226.19(a) (assumability policies and early disclosures for residential mortgage transactions). 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 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.

►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, other than as provided in §§ 226.12(a) and 226.12(b), the provisions of the regulation do not apply, even if extensions of credit for consumer purposes are 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 or a business-purpose open-end credit plan.

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 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 or a consumer-purpose open-end credit plan, 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.◄

[2]►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.

[3] ►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)–[4] ►5◄, however, for rules relating to owner-occupied rental property.

[4] ►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◄ [2].

[5] ►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.◄

[6] ►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.

[7] ►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.

[8] ►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 the Guaranteed Student Loan program (administered by the Federal government, State, and private non-profit agencies), the Auxiliary Loans to Assist Students (also known as PLUS) program, and the National Direct Student Loan program.

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:

i. 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.

ii. 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, 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. Similarly, any charge imposed on a credit cardholder by a card issuer for making a purchase outside the United States or in a foreign currency is a finance charge regardless of whether the card issuer imposes a charge on its debit cardholders for such transactions.◄ [*Treatment of fees for use of automated teller machines.* Any charge imposed on a 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 not a finance charge to the extent that it does not exceed the charge imposed by the card issuer on its cardholders for using the ATM to withdraw cash from a consumer asset account, such as a checking or savings account. (See the commentary to § 226.6(b).)]

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; or

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 (8).

1. *Pre-existing insurance policy.* The insurance discussed in § 226.4(b)(7) and (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.* 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◄ [plan in open-end credit transactions] is not ''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). ►Credit insurance sold before or after an open-end (not home-secured) plan is opened is considered ''written in connection with a credit transaction.''◄

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 (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.◄ [Discounts offered to induce consumers to pay for property or services by cash, check, or other means not involving the use of either an open-end credit plan or a credit card (whether open-end or closed-end credit is extended on the card) may be excluded from the finance charge under section 167(b) of the Act (as amended by Pub. L. 97–25, July 27, 1981).] 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◄ [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◄ [Section] 171(c) of the act, [excludes section 167(b)] 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 payment on the date(s) otherwise required by the credit agreement, when a specified even occurs. The term ''debt suspension'' does not include loan payment deferral arrangements in which the triggering event is the borrower's unilateral election to defer repayment (''skip payments''), or the bank's unilateral decision to allow a deferral of payment.◄

►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 mentioned 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◄ [14(c)–7] 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 non-creditor 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 ►or 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(c) ►(1)◄ or § 226.18(m). See the commentary to § 226.4(b)(7) and (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◄ [required] 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 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(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.◄

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 (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 (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.

[Paragraph] 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)(4), highlighted disclosure on checks that access a credit card under § 226.9(b)(3); highlighted change-in-terms disclosures under § 226.9(c)(2)(iii)(B), and highlighted disclosures when a rate is increased due to delinquency, default or for a penalty under § 226.9(g)(3)(ii) must also be readily noticeable to the consumer.◄ [Except where otherwise provided, the 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. (But see comment 5a(a)(2)–1 and –2 for special rules concerning § 226.5a disclosures for credit card applications and solicitations.) The standard does not prohibit:

• Pluralizing required terminology (''finance charge'' and ''annual percentage rate'')

• Adding to the required disclosures such items as contractual provisions, explanations of contract terms, state disclosures, and translations

• Sending promotional material with the required disclosures

• Using commonly accepted or readily understandable abbreviations (such as ''mo.'' for ''month'' or ''Tx.'' for ''Texas'') in making any required disclosures

• 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.]

►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)(4), 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)(iii)(B), 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)(4).)◄

►4.◄ [2.] *Integrated document.* The creditor may make both the ►account-opening◄ [initial] 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

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)(2) ►*— Terminology*◄.

1. *When disclosures must be more conspicuous.* 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)◄ [footnote 9]. 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)(2)] ►§ 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)◄ [§ 226.7(f)], 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)(3) and (4)] ►§ 226.6(a)(1)(iii) and (iv)◄, they may be equally conspicuous as the disclosures required under §§ [226.6(a)(2) and 226.7(g)] ►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, 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.* 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) [Initial] ►*Account-opening*◄ *disclosures.*

►*5(b)(1)(i) General rule.*◄

1. *Disclosure before the first transaction.* ►When disclosures must be furnished ''before the first transaction,'' the disclosures must be delivered before the consumer becomes obligated on the plan.◄ [The rule that the initial disclosure statement must be furnished ''before the first transaction'' requires delivery of the initial disclosure statement before the consumer becomes obligated on the plan.] For example, the [initial] ►account-opening◄ disclosures must be given before 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 paragraph 5(b)(1)(iii) below);◄ receives the first advance ►;◄ [,] or pays any fees or charges under the plan other than an application fee or refundable membership fee [(see below)]. The prohibition on the payment of fees other than application or refundable membership fees before initial disclosures are provided does not apply to home equity plans subject to § 226.5b. See the commentary to § 226.5b(h) regarding the collection of fees for home equity plans covered by § 226.5b.

[If the consumer pays a membership fee before receiving the Truth in Lending account-opening disclosures, or the consumer agrees to the imposition of a membership fee at the time of application and the Truth in Lending disclosure statement is not given at that time, disclosures are timely as long as the consumer, after receiving the disclosures, can reject the plan. The creditor must refund the membership fee if it has been paid, or clear the account if it has been debited to the consumer's account.

If the consumer receives a cash advance check at the same time the Truth in Lending 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).

Account-opening disclosures need not be given before the imposition of an application fee under § 226.4(c)(1).]

i. If, after receiving the disclosures, the consumer uses the account, pays a fee, or negotiates a cash advance check, the creditor may consider the account not rejected for purposes of this section. ►If the only ''use'' of the account is the creditor's assessment of fees (such as start-up fees), the consumer is not considered to have accepted the account until the consumer is provided with a billing statement and makes a payment.◄

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 [initial] ►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 [initial] ►account-opening◄ disclosures are required. No new [initial] ►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, [initial] ►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 reviewing the disclosures, to contact the creditor before the balance is transferred and decline the transfer.◄ [comply with

§ 226.6 before the balance transfer occurs.] ►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 card issuer 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 card issuer and withdraw the request.◄ Card issuers that are subject to the requirements of § 226.5a may establish procedures that comply with both sections in a single disclosure statement.

►*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)(4)(ii). Creditors meet the standard to provide disclosures at a relevant time if the oral or written disclosure of such a charge is given when a consumer would likely notice it, such as when deciding whether to purchase the service that would trigger the charge. 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.◄

►*5(b)(1)(iii) Telephone purchases.*

1. *Return policies.* Creditors that choose to provide disclosures in accordance with the timing requirements of this paragraph must maintain a return policy that provides for the return of merchandise purchased at the time the plan was established without 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. Creditors, policies regarding the return of merchandise need not provide a right to return goods if the consumer consumes or damages the goods.◄

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*◄ *[credit] 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. ◄[) and]► In addition, creditors must◄ continue to follow all of the other open-end credit requirements and procedures in subpart B.

►3. *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. *14-day rule.* The 14-day rule for mailing or delivering periodic statements does not apply if charges (for example, transaction or activity charges) are imposed regardless of the timing of a periodic statement. The 14-day rule does apply, for example:

i. If current debits retroactively become subject to finance charges when the balance is not paid in full by a specified date.

ii. If charges other than finance charges will accrue when the consumer does not make timely payments (for example, late payment charges or charges for exceeding a credit limit).

[2. *Computer malfunction.* Footnote 10 does not extend to the failure to provide a periodic statement because of computer malfunction.]

►*Paragraph 5(b)(2)(iii).*◄

►1.◄ [2.] *Computer malfunction.* The exceptions identified in paragraph 5(b)(2)(iii) of this section do not extend to the failure to provide a periodic statement because of computer malfunction.

►2.◄ [3.]. *Calling for periodic statements.* When the consumer initiates a request, the creditor may permit, but may not require, consumers to pick up their periodic statements. If the consumer wishes to pick up the statement and the plan has a free-ride period, the statement must be made available in accordance with the 14-day rule. [If the consumer wishes to receive the statement by electronic communication, the creditor must comply with the consumer-consent requirements in section 226.36(b).]

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.

[4. *Deferred-payment transactions.* See comment 7–3(iv).]

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 [preapproved] solicitations initiated by a card issuer to open a credit or charge card account. (See [the commentary to] § 226.5a(a) ►(5)◄ [(3)] 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), § 226.5a(d)(2), § 226.5a(e)(1) or § 226.5a(f), a card issuer may provide the account-opening summary table described in § 226.6(b)(4) 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.◄ [*Combining disclosures.* The initial disclosures required by § 226.6 do not substitute for the disclosures required by § 226.5a; however, a card issuer may establish procedures so that a single disclosure statement meets the requirements of both sections. For example, if a card issuer in complying with § 226.5a(e)(2) provides all the applicable disclosures required under § 226.6, in a form that the consumer may keep and in accordance with the other format and timing requirements for that section, the issuer satisfies the initial disclosure requirements under § 226.6 as well as the disclosure requirements of § 226.5a(e)(2). Or if, in complying with § 226.5a(c) or § 226.5a(d)(2), a card issuer provides an integrated document that the consumer may keep, and provides the § 226.5a disclosures (in a tabular format) along with the additional disclosures required under § 226.6 (presented outside of the table), the card issuer satisfies the requirements of both §§ 226.5a and 226.6.]

►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. *Clear and conspicuous standard.* For purposes of § 226.5a disclosures, *clear and conspicuous* means in a reasonably understandable form and readily noticeable to the consumer. As to type size, disclosures in 12-point type are deemed to be readily noticeable for purposes of § 226.5a. Disclosures printed in less than 12-point type do not automatically violate the standard; however, disclosures in less than 8-point type would likely be too small to satisfy the standard. Disclosures that are transmitted by electronic communication are judged for purposes of the clear and conspicuous standard based on the form in which they are provided even though they may be viewed by the consumer in a different form.]

[2. *Prominent location.* i. *Generally.* Certain of the required disclosures provided on or with an application or solicitation must be prominently located.] ►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. [Disclosures required by § 226.5a(b) that are placed outside the table must begin on the same page as the table but need not end on the same page.]

ii. *Electronic disclosures.* [Electronic disclosures are deemed to be prominently located if:] ►If the table is provided electronically, the table must be provided in close proximity to the application or solicitation. Electronic disclosures are deemed to be closely proximate to an application or solicitation if:

(A) They automatically appear on the screen when the application or reply form appears;

(B) They are located on the same Web ''page'' as the application or reply form without necessarily appearing 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; or

(C) ◄[A.] They are posted on a Web site and the application or solicitation reply form is linked to the disclosures in a manner that prevents the consumer from by-passing the disclosures before submitting the application or reply form ►.◄[; or]

[B. They are located on the same page as an application or solicitation reply form, that 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.]

►2.◄ [3.] *Multiple accounts or varying terms.* 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. Similarly, if rates or other terms vary from state to state, card issuers may list the states and the various disclosures in a single table or in separate tables.

►3. *Information permitted in the table.* See the commentary to § 226.5a(b), (d)(2)(ii) and (e)(1) for guidance on additional information permitted in the table.

4. *Deletion of inapplicable disclosures.* Generally, disclosures need only be given as applicable. Card issuers may, therefore, omit inapplicable headings and their corresponding boxes in the table. For example, if no transaction fee is imposed for purchases, the disclosure form may contain the heading *Transaction fee for purchases* and a disclosure showing *none*, or the heading and disclosure may be deleted from the table. 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.* See Samples G–10(B) and G–10(C) for guidance on providing the disclosures described in § 226.5a(a)(2)(vi) 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 on the table.

6. *Form of disclosures.* If a consumer accesses an application or solicitation in electronic form, the required disclosures must be provided to the consumer in electronic form on or with the application or solicitation; providing the disclosures at a different time or place, or in paper form, would not comply. Conversely, if a consumer is provided with a paper application or solicitation, the required disclosures must be provided in paper form on or with the application or solicitation. For example, if a consumer receives an application or solicitation in the mail, the creditor would *not* satisfy its obligation to provide § 226.5a disclosures at that time by including a reference in the application or solicitation to the Web site where the disclosures are located.

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 G–10; but see § 226.5(a)(2) for terminology requirements applicable to § 226.5a disclosures.

8. *Form of electronic disclosures provided on or with electronic applications or solicitations.* Card issuers must provide the disclosures required by this section on or with a blank application or reply form that is made available to the consumer in electronic form, such as on a card issuer's Internet Web site. Card issuers have flexibility in satisfying this requirement. For example, the disclosures could automatically appear on the screen when the application or reply form appears. Alternatively, the disclosures could be located on the same Web ''page'' as the application or reply form without necessarily appearing 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. Or, 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. Whatever method is used, a card issuer need not confirm that the consumer has read the disclosures. For disclosures required to be provided in tabular form, card issuers must satisfy the requirements with respect to electronic disclosures set forth in comment 5a(a)(2)–1(ii).◄

[4. *Additional information.* The table containing the disclosures required by § 226.5a should contain only the information required or permitted by this section. (See the commentary to § 226.5a(b) for guidance on information permitted in the table.) Other credit information may be presented on or with an application or solicitation, provided such information appears outside the required table.

5. *Location of certain disclosures.* A card issuer has the option of disclosing any of the fees in § 226.5a(b)(8) through (10) in the required table or outside the table.

6. *Terminology.* In general, § 226.5a(a)(2)(iv) requires that the terminology used for the disclosures specified in § 226.5a(b) be consistent with that used in the disclosures under §§ 226.6 and 226.7. This standard requires that the § 226.5a(b) disclosures be close in meaning to those under §§ 226.6 and 226.7; however, the terminology used need not be identical. In addition, § 226.5a(a)(2)(i) 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. A special rule applies to the grace period disclosure, however: the term *grace period* must be used, either in the heading or in the text of the disclosure.

7. *Deletion of inapplicable disclosures.* Generally, disclosures need only be given as applicable. Card issuers may, therefore, delete inapplicable headings and their corresponding boxes in the table. For example, if no transaction fee is imposed for purchases, the disclosure form may contain the heading *Transaction fee for purchases* and a box showing *none*, or the heading and box may be deleted from the table. There is an exception for the grace period disclosure, however: even if no grace period exists, that fact must be stated.

8. *Timing of disclosures for electronic applications or solicitations.* In all cases, a consumer must be able to access the disclosures at the time the blank application or reply form is made available by electronic communication, such as on a card issuer's Internet Web site. Card issuers have flexibility in satisfying this requirement. For

example, if a link is not used, the application or reply form must clearly and conspicuously refer to the fact that rate, fee, and other cost information either precedes or follows the application or reply form. Alternatively, card issuers may provide a link to 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. Or the disclosures could automatically appear on the screen when the application or reply form appears. A card issuer need not confirm that the consumer has read the disclosures.]

[5a(a)(3) Exceptions.

1. *Coverage.* Certain exceptions to the coverage of § 226.5a are stated in § 226.5a(a)(3); in addition, the requirements of § 226.5a do not apply to the following:

- Lines of credit accessed solely by account numbers
- Addition of a credit or charge card to an existing open-end plan

2. *Consumer initiated requests not covered.* 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).

3. *General purpose applications.* The requirements of this section do not apply to general purpose applications unless the application, or material accompanying it, indicates that it can be used to open a credit or charge card account.]

►*[5a(a)(5)]* ►*5a(a)(4)*◄ *Certain 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 fee imposed in each state, 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 paragraphs (c), (d)(2), (e)(1) and (f) of this section. The tabular format does not apply to oral disclosures given pursuant to paragraph (d)(1) of this section. See § 226.5a(a)(2).

2. *Accuracy.* Rules concerning accuracy of the disclosures required by § 226.5a(b), including variable rate disclosures, are stated in § 226.5a(c), (d), and (e), as applicable.◄

5a(b)(1) Annual Percentage Rate.

[1. *Periodic rate.* The periodic rate, expressed as such, may be disclosed in the table in addition to the required disclosure of the corresponding annual percentage rate.]

[2.] ►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(a)(2) 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 shall 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. 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.* If the term ''introductory'' is in the same phrase as the discounted initial annual percentage rate, it will be deemed to be in immediate proximity of the listing. For example, an issuer that uses the phrase ''introductory balance transfer rate X percent'' has used the word ''introductory'' within the same phrase as the rate. See Samples G–10(B) and G–10(C) for guidance on how to disclose clearly and conspicuously the expiration date of the discounted initial rate and the rate that will apply after the discounted initial rate expires, if an initial discounted rate is disclosed in the table.◄

[7.] ►4.◄ *Increased penalty rates.* ►This paragraph applies if any rate, including a discounted initial rate, could be increased because of 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 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 if 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.'' See Samples G–10(B) and G–10(C) 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) for additional guidance on the level of detail in 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) if the issuer uses the format shown in Samples G–10(B) and G–10(C) to disclose this information.◄ [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 card issuer must disclose in the table 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 also disclose in the table the index and the margin as well as the specific event or events that may result in the increased rate, such as ''applies to accounts 60 days late.'' If the penalty rate cannot be determined at the time disclosures are given, the issuer must provide an explanation of the specific event or events that may result in imposing an increased rate. In describing the specific event or events that may result in an increased rate, issuers need not be as detailed as for the disclosures required under § 226.6(a)(2). For issuers using a tabular format, the specific event or events must be placed outside the table and an asterisk or other means shall be used to direct the consumer to the additional information. At its option, the issuer may include in the explanation of the penalty rate the period for which the increased rate will remain in effect, such as ''until you make three timely payments.'' The issuer need not disclose an increased rate that is imposed when credit privileges are permanently terminated.]

►5. *Rate depends on consumer's creditworthiness.* 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). See Samples G–10(B) and G–10(C) for guidance on how to disclose a range of rates.

6. *Cross-reference between rates and fees.* If a rate and fee both apply to a balance transfer or cash advance transaction, the card issuer must disclose that a fee also applies when disclosing the rate, and a cross-reference to the fee. See Sample G–10(B) and G–10(C) for guidance on how to provide these disclosures.◄

[3. *Variable-rate accounts—rates in effect.* For variable-rate disclosures in direct mail applications and solicitations subject to § 226.5a(c), and in applications and solicitations made available to the general public subject to § 226.5a(e), the rules concerning accuracy of the annual percentage rate are stated in § 226.5a(b)(1)(ii). For variable-rate disclosures in telephone applications and solicitations subject to § 226.5a(d), the card issuer must provide an annual percentage rate currently applicable when oral disclosures are provided under § 226.5a(d)(1). For the alternate disclosures under § 226.5a(d)(2), the card issuer must provide the annual percentage rate in effect at the time the disclosures are mailed or delivered. A rate in effect also includes the rate as of a specified date (which rate is then updated from time to time, for example, each calendar month) or an estimated rate provided in accordance with § 226.5(c).

4. *Variable-rate accounts—other disclosures.* In describing how the applicable rate will be determined, the card issuer must identify the index or formula and disclose any margin or spread added to the index or formula in setting the rate. The card issuer may disclose the margin or spread as a range of the highest and lowest margins that may be applicable to the account. A disclosure of any applicable limitations on rate increases or decreases may also be included in the table.

5. *Introductory rates—discounted rates.* If the initial rate is temporary and is lower than the rate that will apply after the temporary rate expires, the card issuer must disclose the annual percentage rate that would otherwise apply to the account. In a fixed-rate account, 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 index or formula applicable to the account in accordance with the rules in § 226.5a(b)(1)(ii) and comment 5a(b)(1)–3. An initial discounted rate may be provided in the table along with the rate required to be disclosed if the card issuer also discloses the time period during which the introductory rate will remain in effect.

6. *Introductory rates—premium rates.* If the initial rate is temporary and is higher than the permanently applicable rate, the card issuer must disclose the initial rate in the table. The initial rate must be in at least 18-point type unless the issuer also discloses in the table the permanently applicable rate. The issuer may disclose in the table the permanently applicable rate that would otherwise apply if the issuer also discloses the time period during which the initial rate will remain in effect. In that case, the permanently applicable rate must be in at least 18-point type.]

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 [need] ►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) [should] ►shall◄ not be disclosed in the table if the basic account may be opened without paying such fees.

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. The following are examples of fees that [should] ►shall◄ not be disclosed in the table:

i. Fees for reissuing a lost or stolen card.

ii. Statement reproduction fees.

[• Application fees described in § 226.4(c)(1)]

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 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(B) for guidance on how to meet these requirements.◄ [*Fees stated as annual amount.* Fees imposed periodically must be stated as an annual total. For example, if a fee is imposed quarterly, the disclosures would state the total amount of the fees for one year. (See, however, the commentary to § 226.9(e) with regard to disclosure of such fees in renewal notices.)]

►*5a(b)(3) Minimum Finance 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.◄

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, [would] ►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).

5a(b)(5) Grace Period.

1. *How disclosure is made.* ►The card issuer must state any conditions on the applicability of the grace period. An issuer that conditions the grace period on the consumer paying his or her balance in full by the due date each month, or on the consumer paying the previous balance in full by the due date the prior month will be deemed to meet these requirements by providing the following disclosure: ''If you pay your entire balance in full each month, you have [at least] ____ days after the close of each period to pay your balance on purchases without being charged interest.''◄ [The card issuer may, but need not, refer to the beginning or ending point of any grace period and briefly state any conditions on the applicability of the grace period. For example, the grace period disclosure might read ''30 days'' or ''30 days from the date of the periodic statement (provided you have paid your previous balance in full by the due date).'']

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 [only] disclose ►below the table◄ only the name of the method [in the table]. 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(a)(3)] ►§ 226.6(b)(2)(i)(D)◄. (See the commentary to § 226.5a(g) for guidance on particular methods.)

2. *Determining the method.* In determining the appropriate balance computation method for purchases for disclosure purposes, 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 or cover two billing cycles 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 or covers two billing cycles, respectively. 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.◄ [*Applicability.* The card issuer must disclose only those fees it imposes for a cash advance that are finance charges under § 226.4. For example, a charge for a cash advance at an automated teller machine (ATM) would be disclosed under § 226.5a(b)(8) if no similar charge is imposed for ATM transactions not involving an extension of credit. (See comment 4(a)–5 for a description of such a fee.)]

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) Cross References from Fees to Penalty Rates.*

1. *Content.* See Samples G–10(B) and G–10(C) for guidance on how to provide the disclosure in § 226.5a(b)(13).◄

►*5a(b)(14) Required Insurance or Debt Cancellation or Suspension Plans.*

1. *Content.* See Sample G–10(B) for guidance on how to comply with the requirements in § 226.5a(b)(14).◄

►*5a(b)(15) Payment Allocation.*

1. *Examples.* i. The following are examples of situations where these disclosures would apply (assuming there is a grace period that applies to purchases, and consumers may transfer balances as part of accepting the offer):

A. A card issuer offers a discounted initial rate on balance transfers that is lower than the rate that applies for purchases.

B. A card issuer offers the same discounted initial rate on balance transfers and purchases for a specified period of time, but the discounted initial rate on balance transfers (and not the discounted initial rate for purchases) may be extended until the balance transfer is paid off in certain circumstances (e.g., if the consumer makes two purchases each billing cycle).

ii. The following is an example of a situation where these disclosures do not apply (assuming there is a grace period that applies to purchases): A card issuer offers a discounted initial rate on balance transfers that is lower than the rate that applies for purchases, but this discounted initial rate does not apply to balance transfers that can be initiated with the offer and only applies to subsequent balance transfers.

2. *Content.* See Samples G–10(B) or G–10(C) for guidance on how to meet the requirements set forth in § 226.5a(b)(15).◄

►*5a(b)(16) Available Credit.*

1. *Calculating available credit.* If the 25 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 when the account is opened and charged to the account, such as one-time issuance and set-up fees that will be imposed when the card is opened. 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.

2. *Content.* See Sample G–10(B) for guidance on how to provide the disclosure required by § 226.5a(b)(16) clearly and conspicuously.◄

►*5a(b)(17) Reference to Web Site for Additional Information.*

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 cards.◄

5a(c) Direct Mail ►and Electronic◄ Applications and Solicitations.

[1. *Accuracy.* In general, disclosures in direct mail applications and solicitations must be accurate as of the time of mailing. (An accurate variable annual percentage rate is one in effect within 60 days before mailing.)]

[2.] ►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 (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 (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. *Form of disclosures.* The disclosure specified in § 226.5a(d)(2)(ii) may appear either in or outside the table containing the required credit disclosures.◄

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. *Cross-selling.* If a card issuer invites a consumer to apply for a credit or charge card (for example, where the issuer engages in cross-selling), an application provided to the consumer at the consumer's request is not considered an application made available to the general public and therefore is not subject to § 226.5a(e). For example, the following are not covered:

i. 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.

ii. 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.]

►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 (iii) may appear either in or outside the table containing the required credit disclosures.

[5a(e)(2) Inclusion of Certain Initial Disclosures.

1. *Accuracy of disclosures.* The disclosures required by § 226.5a(e)(2) generally must be current as of the time they are made available to the public. Disclosures are considered to be made available at the time they are placed in public locations (in the case of *take-ones*) or mailed to consumers (in the case of publications).

2. *Accuracy—exception.* If a card issuer discloses all the information required by § 226.5a(e)(1)(ii) on the application or solicitation, the disclosures under § 226.5a(e)(2) need only be current as of the date of printing. (A current variable annual percentage rate would be one in effect within 30 days before printing.)]

[5a(e)(3)] ►*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)(4)] ►*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) [or (2)] 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)◄ [(3)] 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◄ [may] provide the information listed in either § 226.5a(e)(1) [or (2)]. 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 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.◄

[5a(f) Special Charge Card Rule—Card Issuer and Person Extending Credit Not the Same Person.

1. *Duties of charge card issuer.* Although the charge card issuer is not required to disclose information about the underlying open-end credit plan if the card issuer meets the conditions set forth in § 226.5a(f), the card issuer must disclose the information relating to the charge card plan itself.

2. *Duties of creditor maintaining open-end plan.* Section 226.5a does not impose disclosure requirements on the creditor that maintains the underlying open-end credit plan. This is the case even though the creditor offering the open-end credit plan may be considered an agent of the charge card issuer. (See comment 2(a)(7)–1.)

3. *Form of disclosures.* The disclosures required by § 226.5a(f) may appear either in or outside the table containing the required credit disclosures in circumstances where a tabular format is required.]

5a(g) Balance Computation Methods Defined

1. *Daily balance method.* Card issuers using the daily balance method may disclose it using the name *average daily balance (including new purchases)* or *average daily balance (excluding new purchases),* as appropriate. Alternatively, such card issuers may explain the method. (See comment 7(e)–5 for a discussion of the daily balance method.)

2. *Two-cycle average daily balance methods.* The *two-cycle average daily balance* methods described in § 226.5a(g)(2)(i) and (ii) include those methods in which the average daily balances for two billing cycles may be added together to compute the finance charge. Such methods also include those in which a periodic rate is applied separately to the balance in each cycle, and the resulting finance charges are added together. The method is a *two-cycle average daily balance* even if the finance charge is based on both the current and prior cycle balances only under certain circumstances, such as when purchases during a prior cycle were carried over into the current cycle and no finance charge was assessed during the prior cycle. Furthermore, the method is a *two-cycle average daily balance method* if the balances for both the current and prior cycles are average daily balances, even if those balances are figured differently. For example, the name *two-cycle average daily balance (excluding new purchases)* should be used to describe a method in which the finance charge for the current cycle, figured on an average daily balance excluding new purchases, will be added to the finance charge for the prior cycle, figured on an average daily balance of only new purchases during that prior cycle.

Section 226.6—►Account-opening Disclosures◄ [Initial Disclosure Statement]

[1. *Consistent terminology.* Language on the initial account-opening and periodic disclosure statements must be close enough in meaning to enable the consumer to relate the two sets of disclosures; however, the language need not be identical. For example, in making the disclosure under § 226.6(a)(3), the creditor may refer to the ''outstanding balance at the end of the billing cycle,'' while the disclosure for § 226.7(i) refers to the ''ending balance'' or ''new balance.''

2. *Separate initial disclosures permitted.* In a certain open-end credit program involving more than one creditor—a card issuer of travel-and-entertainment cards and a financial institution—the consumer has the option to pay the card issuer directly or to transfer to the financial institution all or part of the amount owing. In this case, the creditors may send separate initial disclosure statements.]

6(a) ►Rules affecting home equity plans◄ [Finance charge].

►*6(a)(1) Finance charge.*◄

Paragraph ►6(a)(1)(i).◄

1. *When finance charges accrue.* [Creditors may provide a general explanation about finance charges beginning to run and need not disclose a specific date. For example, a disclosure] ►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 [would describe when finance charges begin to run].

2. *[Free-ride] ►Grace◄ periods.* In disclosing whether or not a ►grace◄ [free-ride] 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 free-ride 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◄ [free-ride] period exists in the interim.

Paragraph ►6(a)(1)(ii)◄ [6(a)(2)].

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)◄ [while balances above $500 are subject to a 1% periodic rate)]. [Of course] ►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 [(and thus be excused from the requirement of giving a change-in-terms notice when rate increases occur as disclosed)] 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 certificate of deposits◄ [six-month money market certificates].

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. [In contrast, the 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) would not be considered a variable-rate plan for Truth in Lending disclosure purposes. (See the rule in § 226.5b(f)(1) applicable to home equity plans, however, which prohibits rate-reservation clauses.) Moreover, an] ►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. [(With regard to such employee preferential-rate plans, however, see comment 9(c)–1, which provides that if the specific change that would occur is disclosed on the initial disclosure statement, no notice of a change in terms need be given when the term later changes as disclosed.)]

3. *Variable-rate plan—rate(s) in effect.* In disclosing the rate(s) in effect at the time of the ►account-opening◄ [initial] disclosures (as is required by § ►226.6(a)(1)(ii)◄ [§ 226.6(a)(2)]), 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◄ [initial] disclosures, the disclosures under ►§ 226.6(a)(1)(ii)◄ [footnote 12] 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◄ [6(a)(2)–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 [initial] ►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 [it] ►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 footnote 12 to] ►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◄ [6(a)(2)–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)◄ [6(a)(3)].

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 in◄ appendix G–1[for model clauses].)

2. *Allocation of payments.* ►Creditors may, but need not, explain how payments and other credits are allocated to outstanding balances.◄ [Disclosure about the allocation of payments and other credits is not required.] 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)◄ [6(a)(4)].

1. *Finance charges.* In addition to disclosing the periodic rate(s) under [§ 226.6(a)(2),] ►§ 226.6(a)(1)(ii), creditors must disclose◄ [disclosure is required of] 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)◄ [6(b)] Other charges.

1. *General; examples of other charges.* Under ►§ 226.6(a)(2)◄ [§ 226.6(b)], 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. Automated teller machine (ATM) charges described in comment 4(a)–4 that are not finance charges.]

►vi.◄ [vii.] 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(b)–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)◄ [6(e)] 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), (x), (xi), and (xii) need not be provided with the disclosures under § 226 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 § 226.5b(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) and 226.5b(d)(12)(viii), (x), (xi) and (xii) must be given to any consumer who chooses one of the other two options. If the § 226.5b(d)(5)(iii) and 226.5b(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)◄ [§ 226.6(e)], state the corresponding annual percentage rate and provide the variable-rate information required in ►§ 226.6(a)(1)(ii)◄ [footnote 12] for the

repayment phase. To the extent the corresponding annual percentage rate, the information in ►§ 226.6(a)(1)(ii)◄ [footnote 12], 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(b) Rules affecting open-end (not home-secured) plans*◄ *[Other charges].*

►*6(b)(1) 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. For example, a statement that ''interest 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 ''interest will be imposed on any new purchases only if the new balance from the previous statement was not paid in full within 25 days after the close of the billing cycle'' indicates that a grace period exists in the interim.

►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)(1)(i).

1. *Failure to use the plan as agreed.* Late payment fees, over-the-credit-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.

iv. *Timing or method of billing or payment.* Fees to pay by telephone or via the Internet, and fees to receive paper statements.

Paragraph 6(b)(1)(ii).

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)(2) Rules relating to rates for open-end (not home-secured) plans.*

Paragraph 6(b)(2)(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)(2)(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 in appendix G.) *See* § 226.6(b)(4) regarding balance computation descriptions in the account-opening summary.

2. *Allocation of payments.* Except as required by § 226.6(b)(4)(vi), 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(b)(2)(ii).

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 certificate of deposits.

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 use an initial rate that is not calculated using the index or formula for later rate adjustments, the account-opening 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)(2)(ii).

Paragraph 6(b)(2)(iii).

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 must identify the expiration date and the fact that the initial rate will end at that time.

ii. Changes based on specified contract terms. If the account agreement provides that the creditor may change the initial rate upon the occurrence of specified event or events, the creditor must identify the events or events. Examples include the consumer not making the required minimum payment when due, or the termination of an employee preferred rate when the employment relationship is terminated.

2. *Rate that will apply after initial rate changes.*

i. *Increased margins.* If the initial rate is based on an index and the rate may increase due to a change in the margin applied to the index, the creditor must disclose the increased margin. If more than one margin could apply, the creditor may disclose the highest margin.

ii. *Risk-based pricing.* In some plans, the amount of the rate change depends on how the creditor weighs the occurrence of events specified in the account agreement that authorize the creditor to change rates, as well as other factors. Creditors must state the increased rate that may apply. At the creditor's option, the creditor may state the possible rates as a range, or by stating 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.

iii. *Terminating credit privileges.* Creditors need not disclose an increased rate that is imposed if credit privileges are permanently terminated.

3. *Effect of rate change on balances.* Creditors must disclose whether the rate change will affect outstanding balances, by type.

6(b)(4) Tabular format requirements 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 disclose any initial discounted rate that is offered and the time period during which the rate will remain in effect.

ii. Creditors must use the accuracy standard for annual percentage rates in § 226.6(b)(ii)(G).

iii. Creditors must disclose the specific rate for each feature that applies to the account if, at the time of application or solicitation, the creditor disclosed a number of specific rates or range of rates that might apply after the creditor has later determined the consumer's creditworthiness.

iv. Creditors must disclose fees imposed for transactions in a foreign currency or that take place in a foreign country.

v. Creditors must explain whether or not a grace period exists for all features on the account.

vi. Creditors must, in addition to naming the balance computation method used, state that an explanation of the balance computation method is provided in the account-opening disclosures.

vii. Creditors must state that consumers' billing rights are provided in the account-opening disclosures.

viii. The applicable forms providing safe harbors for account-opening tables are under appendix G–17.

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)(4)(i) 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; but see § 226.5(a)(2) for special rules that apply to the penalty rate disclosure required by § 226.6(b)(4)(ii)(C), the grace period disclosure required by § 226.6(b)(4)(iv), and to the disclosure of required insurance products or debt cancellation or suspension products pursuant to § 226.6(b)(4)(v).

6(b)(4)(ii) Annual percentage rates.

1. *Rates.* The only rates that shall be disclosed in the account-opening table are annual percentage rates determined under § 226.14(b). Periodic rates shall not be disclosed in the table. The index and margin values shall not be disclosed in the table.◄

►*6(c) Rules of general applicability.*◄

6(c) ►*(1)*◄ *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.◄ [Disclosure is not required about the type of security interest, or about the creditor's rights with respect to that collateral. In other words, the creditor need not expand on the term *security interest*. Also, since no specified terminology is required, the creditor may designate its interests by using, for example, *pledge*, *lien*, or *mortgage* (instead of *security interest*)].

2. *Identification of property.* ►Creditors sufficiently identify collateral by type◄ [Identification of the collateral by type is satisfied] 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.◄[The fact that collateral for

preexisting credit extensions with the institution is being used to secure the present obligation constitutes a security interest and must be disclosed. (Such security interests may be known as ''spreader'' or ''dragnet'' clauses, or as ''cross-collateralization'' clauses.) A specific identification of that collateral is unnecessary, but a reminder of the interest arising from the prior indebtedness is required. This may be accomplished by using language such as ''collateral securing other loans with us may also secure this loan.''] 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◄ [initial] 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(c) ►(1)◄ –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.◄ [In certain situations, the consumer's obligation may be secured by collateral belonging to a third party. For example, an open-end credit plan may be secured by an interest in property owned by the consumer's parents. In such cases, the security interest is taken in connection with the plan and must be disclosed, even though the property encumbered is owned by someone other than the consumer.]

[6(d)] ►*6(c)(2)*◄ *Statement of billing rights.*

See the commentary to appendix G–3►*, G–3(A), G–4,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◄ [some special rules] for multifeatured plans.

[2. *Separate periodic statements permitted.* In a certain open-end credit program involving more than one creditor—a card issuer of travel-and-entertainment cards and a financial institution—the consumer has the option to pay the card issuer directly or to transfer to the financial institution all or part of the amount owing. In this case, the creditors may send separate periodic statements that reflect the separate obligations owed to each.]

[3. *Deferred payment transactions.* Creditors offer a variety of payment plans for purchases that permit consumers to avoid finance charges if the purchase balance is paid in full by a certain date. The following provides guidance for one type of deferred-payment plan where, for example, no finance charge is imposed on a $500 purchase made in January if the $500 balance is paid by March 31.

i. *Periodic rates.* Under § 226.7(d), creditors must disclose each periodic rate that may be used to compute the finance charge. Under some plans with a deferred-payment feature, if the deferred-payment balance is not paid by the payment-due date, finance charges attributable to periodic rates applicable to the billing cycles between the date of purchase and the payment-due date (January through March in this example) may be imposed. Periodic rates that may apply to the deferred-payment balance ($500 in this example) if the balance is not paid in full by the payment-due date must appear on periodic statements for the billing cycles between the date of purchase and the payment-due date. However, if the consumer does not pay the deferred-payment balance by the due date, the creditor is not required to identify, on the periodic statement disclosing the finance charge for the deferred-payment balance, periodic rates that have been disclosed in previous billing cycles between the date of purchase and the payment due date.

ii. *Balances subject to periodic rates.* Under § 226.7(e), creditors must disclose the balances subject to periodic rates during a billing cycle. The deferred-payment balance ($500 in this example) is not subject to a periodic rate for billing cycles between the date of purchase and the payment-due date. Periodic statements sent for those billing cycles should not include the deferred-payment balance in the balance disclosed under § 226.7(e). At the creditor's option, this amount may be disclosed on periodic statements provided it is identified by a term other than the term used to identify the balance disclosed under § 226.7(e) (such as ''deferred-payment balance''). During any billing cycle in which a periodic-rate finance charge on the deferred-payment balance is debited to the account, the balance disclosed under § 226.7(e) should include the deferred-payment balance for that billing cycle.

iii. *Amount of finance charge.* Under § 226.7(f), creditors must disclose finance charges imposed during a billing cycle. For some deferred-payment purchases, the creditor may impose a finance charge from the date of purchase if the deferred-payment balance ($500 in this example) is not paid in full by the due date, but otherwise will not impose finance charges for billing cycles between the date of purchase and the payment-due date. Periodic statements for billing cycles preceding the payment-due date should not include in the finance charge disclosed under § 226.7(f) the amounts a consumer may owe if the deferred-payment balance is not paid in full by the payment-due date. In this example, the February periodic statement should not identify as finance charges interest attributable to the $500 January purchase. At the creditor's option, this amount may be disclosed on periodic statements provided it is identified by a term other than ''finance charge'' (such as ''contingent finance charge'' or ''deferred finance charge''). The finance charge on a deferred-payment balance should be reflected on the periodic statement under § 226.7(f) for the billing cycle in which the finance charge is debited to the account.

iv. *Free-ride period.* Assuming monthly billing cycles ending at month-end and a free-ride period ending on the 25th of the following month, here are four examples illustrating how a creditor may comply with the requirement to disclose the free-ride period applicable to a deferred-payment balance ($500 in this example) and with the 14-day rule for mailing or delivering periodic statements before imposing finance charges (see § 226.5):

A. The creditor could include the $500 purchase on the periodic statement reflecting account activity for February and sent on March 1 and identify March 31 as the payment-due date for the $500 purchase. (The creditor could also identify March 31 as the payment-due date for any other amounts that would normally be due on March 25.)

B. The creditor could include the $500 purchase on the periodic statement reflecting activity for March and sent on April 1 and identify April 25 as the payment-due date for the $500 purchase, permitting the consumer to

avoid finance charges if the $500 is paid in full by April 25.

C. The creditor could include the $500 purchase and its due date on each periodic statement sent during the deferred-payment period (January, February, and March in this example).

D. If the due date for the deferred-payment balance is March 7 (instead of March 31), the creditor could include the $500 purchase and its due date on the periodic statement reflecting activity for January and sent on February 1, the most recent statement sent at least 14 days prior to the due date.]

7(a) ►*Rules affecting home equity plans*◄ *[Previous balance].*

►*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)*◄ *[7(b)] Identification of transactions.*

1. *Multifeatured plans.* In identifying transactions under ►§ 226.7(a)(2)◄ [§ 226.7(b)] 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)*◄ *[7(c)] 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.

3. *Totals.* ►A total of amounts credited during the billing cycle is not required.◄ [Where the creditor lists the credits made to the account during the billing cycle, the creditor need not disclose total figures for the amounts credited.]

►*7(a)(4)*◄ *[7(d)] Periodic rates.*

1. *Disclosure of periodic rates—whether or not actually applied.* 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 ([either because it is changing terms or] because of a variable-rate plan), the rates required to be disclosed under ►§ 226.7(a)(4)◄ [§ 226.7(d)] 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)◄ [§ 226.7(d)] 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 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 .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; .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 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 actual annual percentage rate (historical rate) required to be disclosed (►§ 226.7(a)(7)◄ [§ 226.7(g)]), the creditor need disclose only one annual percentage rate, but must use the phrase ''annual percentage rate.''

6. See comment ►6(a)(1)(ii)–1◄ [6(a)(2)–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. *Deferred-payment transactions.* See comment 7–3.i.]

►*7(a)(5)*◄ *[7(e)] Balance on which finance charge computed.*

1. *Limitation to periodic rates.* Section ►§ 226.7(a)(5)◄ [§ 226.7(e)] 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◄ [7(e)–5].)

3. *Monthly rate on average daily balance.* ►Creditors may apply a monthly periodic rate to an average daily balance.◄ [If a creditor computes a finance charge on the average daily balance by application of a monthly periodic rate or rates, the balance is adequately disclosed if the statement gives the amount of the average daily balance on which the finance charge was computed and also states how the balance is determined.]

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*◄ [*free-ride*] 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◄ [7(e)–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)◄ [6(a)(3)].

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)◄ [§ 226.7(c)]) 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◄ [7(e)–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).

[10. *Deferred payment transactions.* See comment 7–3.ii.]

►*7(a)(6) Amount of finance charge and other charges.*◄ [*7(f) Amount of finance charge.*]

►*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◄ [6(a)(4)–] 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)◄ [footnote 33] in the regulation.)

[9. *Deferred-payment transactions.* See comment 7–3.iii.]

►*Paragraph 7(a)(6)(ii).*◄ [*7(h) Other charges.*]

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)◄ [§ 226.6(b)], 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◄ [6(b)–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[, ATM fees that are not finance 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◄ [ATM fees of $1 may be listed separately or as $3].

►*7(a)(7)*◄ *[7(g)] Annual percentage rate.*

1. *Rate same as corresponding annual percentage rate.* See comment ►7(a)(4)–5◄ [7(d)–5].

2. *Multifeatured plans.* In a multifeatured plan, the [actual] ►effective◄ annual percentage rate ►determined under § 226.14(c)◄ that reflects the finance charge imposed during the cycle may be separately stated for each feature or may be described as a composite for the whole plan. ►Where more than one rate applies for each feature, creditors may describe the annual percentage rate as a composite for each feature.◄

ALTERNATIVE 2—PARAGRAPH 7(a)(7)3.

►3. *Plans not subject to the requirements of § 226.5b.* For home equity plans not subject to the requirements of § 226.5b, creditors are not required to disclose an effective APR.◄

►*7(a)(8)*◄ *[7(j)] Grace [free-ride] period.*◄

1. ►*Terminology*◄ *[Wording].* 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◄ [initial] disclosure statement. For example, ''To avoid additional finance charges, pay the new balance before _____'' would suffice.

[2. *Deferred-payment transactions.* See comment 7–3.iv.]

►*7(a)(9)*◄ *[7(k)] Address for notice of billing errors.*

1. ►*Terminology*◄ *[Wording].* The periodic statement l[must contain the address for consumers to use in asserting billing errors under § 226.13. Since all disclosures must be ''clear'', the statement] should indicate the general purpose for the address ►for billing-error inquiries◄, although ►a detailed◄ [no elaborate] 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.◄ [One way to ensure that the address is clear and conspicuous is to include a precautionary instruction that telephoning will not preserve the consumer's billing-error rights. Both of the billing rights statements in appendix G contain such a precautionary instruction, so that a creditor could, by including either of these statements with each periodic statement, ensure that the required address is provided in a clear and conspicuous manner.]

►*7(a)(10)*◄ *[7(i)] Closing date of billing cycle; new balance.*

1. *Credit balances.* See comment ►7(a)(1)–1◄ [7(a)–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.*

1. *Deferred payment transactions.* Creditors offer a variety of payment plans for purchases that permit consumers to avoid interest charges if the purchase balance is paid in full by a certain date. The following provides guidance for one type of deferred-payment plan where, for example, no interest charge is imposed on a $500 purchase made in January if the $500 balance is paid by March 31.

i. *Annual percentage rates.* Under § 226.7(b)(4), creditors must disclose each annual percentage rate that may be used to compute the interest charge. Under some plans with a deferred-payment feature, if the deferred-payment balance is not paid by the payment-due date, interest charges applicable to the billing cycles between the date of purchase and the payment-due date (January through March in this example) may be imposed. Annual percentage rates that may apply to the deferred-payment balance ($500 in this example) if the balance is not paid in full by the payment-due date must appear on periodic statements for the billing cycles between the date of purchase and the payment-due date. However, if the consumer does not pay the deferred-payment balance by the due date, the creditor is not required to identify, on the periodic statement disclosing the interest charge for the deferred-payment balance, annual percentage rates that have been disclosed in previous billing cycles between the date of purchase and the payment due date.

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-payment balance ($500 in this example) is not subject to interest for billing cycles between the date of purchase and the payment-due date. Periodic statements sent for those billing cycles should not include the deferred-payment balance in the balance disclosed under § 226.7(b)(5). At the creditor's option, this amount may be disclosed on periodic statements provided it is identified by a term other than the term used to identify the balance disclosed under § 226.7(b)(5) (such as ''deferred-payment balance''). During any billing cycle in which a interest charge on the deferred-payment balance is debited to the account, the balance disclosed under § 226.7(b)(5) should include the deferred-payment 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-payment purchases, the creditor may impose interest from the date of purchase if the deferred-payment balance ($500 in this example) is not paid in full by the due date, but otherwise will not impose interest for billing cycles between the date of purchase and the payment-due date. Periodic statements for billing cycles preceding the payment-due date should not include in the interest charge disclosed under § 226.7(b)(6)(ii) the amounts a consumer may owe if the deferred-payment balance is not paid in full by the payment-due date. In this example, the February periodic statement should not identify as interest charges interest attributable to the $500 January purchase. At the creditor's option, this amount may be disclosed on periodic statements provided it is identified by a term other than ''interest charge'' (such as ''contingent interest charge'' or ''deferred interest charge''). The interest charge on a deferred-payment 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. *Grace period.* Assuming monthly billing cycles ending at month-end and a grace period ending on the 25th of the following month, here are four examples illustrating how a creditor may comply with the requirement to disclose the grace period applicable to a deferred-payment balance ($500 in this example) and with the 14-day rule for mailing or delivering periodic statements before imposing finance charges (see § 226.5):

A. The creditor could include the $500 purchase on the periodic statement reflecting account activity for February and sent on March 1 and identify March 31 as the payment-due date for the $500 purchase. (The creditor could also identify March 31 as the payment-due date for any other amounts that would normally be due on March 25.)

B. The creditor could include the $500 purchase on the periodic statement reflecting activity for March and sent on April 1 and identify April 25 as the payment-due date for the $500 purchase, permitting the consumer to avoid finance charges if the $500 is paid in full by April 25.

C. The creditor could include the $500 purchase and its due date on each periodic statement sent during the deferred-payment period (January, February, and March in this example).

D. If the due date for the deferred-payment balance is March 7 (instead of March 31), the creditor could include the $500 purchase and its due date on the periodic statement reflecting activity for January and sent on February 1, the most recent statement sent at least 14 days prior to the due date.◄

►*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 must arrange transactions by feature (such as disclosing sale transactions separately from cash advance 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).)

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 interest rate for each, even if the consumer only makes purchases on the account during the billing cycle.

ii. If the interest rate varies (such as when it is tied to a particular index), the creditor must disclose each interest 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 interest 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 interest 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 .1% per month on the same outstanding balance), creditors must disclose the interest periodic rate, expressed as an 18% annual percentage rate and the range of balances to which it is applicable. Costs attributable to the credit life insurance component must be disclosed as a fee under § 226.7(b)(6)(iii).

ALTERNATIVE 1—PARAGRAPH 7(b)(4)4.

4. *Rate same as effective annual percentage rate.* When the effective annual percentage rate disclosed under § 226.7(b)(7) is computed solely by application of periodic rates, the effective annual percentage rate is the same as the corresponding annual percentage rate. In that case, only one annual percentage rate needs to be disclosed, labeled as ''annual percentage rate.''

ALTERNATIVE 2—PARAGRAPH 7(b)(4)4.

4. [Reserved.]

5. *Ranges of balances.* See comment 6(b)(2)(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.

6. *Deferred-payment transactions.* See comment 7–2.i.

7. *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.◄

► *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, comment 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 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.

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 finance 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 payment transactions.* See comment 7(b)–1.◄

►*7(b)(6) Charges imposed.*

1. *Examples of charges.* See commentary to § 226.6(b)(1).

2. *Fees.* Costs attributable to periodic rates other than interest charges shall be disclosed as a fee. For example, if a consumer is required to obtain 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.* Some creditors'' statement periods do not coincide with the calendar month. In such cases, the 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, 2008, through January 9, 2009, may disclose the year-to-date total for fees imposed from January 10, 2008, through January 9, 2009. Alternatively, the institution could provide a statement for the cycle ending January 9, 2009, showing the year-to-date total for fees imposed January 1, 2008, through December 31, 2008.

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.

ALTERNATIVE 1—PARAGRAPH 7(b)(6)5.

5. *Purchase transactions.* If there are several features relating to purchase transactions (such as a standard purchase feature and a promotional purchase feature), any minimum, fixed or other charges identified in § 226.14(e) that is not due to the application of periodic rates used to calculate interest and not related to a specific transaction must be grouped together with any other charges relating to standard purchase balances for purchases of § 226.7(b)(6)(iv)(B).

► *7(b)(7) Effective annual percentage rate.*

ALTERNATIVE 1—PARAGRAPH. 7(b)(7).

1. *Rate same as corresponding annual percentage rate when § 226.14(d)(1) is applicable.* See comment 7(b)(4)–4.

2. *Itemized by type of transaction.* In a multifeatured plan, the effective annual percentage rate determined under § 226.14(d) must be separately stated for each type of transaction, for example, purchases, balance transfers, and cash advances.

ALTERNATIVE 2—PARAGRAPH 7(b)(7).

1. *Plans not subject to the requirements of § 226.5b.* For plans not subject to the requirements of § 226.5b, creditors are not required to disclose an effective annual percentage rate.◄

►*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-payment transactions.* See comment 7(b)–1. ◄

►*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 creditor may assess a late-payment fee if a payment is not received by a certain date, creditors sometimes have an informal policy that delays the assessment of the late-payment fee for payments received a brief period of time after the date upon which a creditor has the contractual right to impose the fee. Creditors 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 paragraph 7(b)(11) of this section.◄

►*7(b)(12) Minimum payment.*

7(b)(12)(iii) Exemptions.

1. *Exemption for credit card accounts with a fixed repayment period.* The exemption in § 226.7(b)(12)(iii)(E) applies only if the account agreement specifies a fixed repayment period, such as providing that the minimum payment will pay off the entire balance on the account in one year. This exemption would apply, for example, to accounts where the account has been closed due to delinquency and the required monthly payment has been reduced or the balance decreased to accommodate a fixed payment for a fixed period of time designed to pay off the outstanding balance. This exemption would not apply where a feature of a credit card may have a fixed repayment period, but the account as a whole does not. For example, assume a retail credit card has several features. One feature is a general revolving feature, where the 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 minimum payment that will pay off the purchase within a fixed period of time, such as one year. This exemption would not apply because the retail card account as a whole does not have a fixed repayment period. Nonetheless, these types of retail cards may qualify for the exemption in § 226.7(b)(12)(iii)(G).

2. *Exemption for certain credit card accounts with fixed repayment period feature.* The exemption applies if the entire outstanding balance for a particular billing cycle falls within a feature with a fixed repayment period that is specified in the account agreement, such as providing that the minimum payment will pay off the entire balance on that feature in one year. For example, assume a retail card card has several features. One feature is a general revolving feature, where the 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 minimum payment that will pay off the purchase within a fixed period of time, such as one year. This exemption applies if the entire outstanding balance for a particular billing cycle falls with the feature with the fixed repayment period. In that case, the issuer would not need to provide the minimum payment disclosures for that billing cycle. If the consumer used a general revolving feature during a billing period, this exemption would not apply.

7(b)(12)(iv) Toll-free telephone numbers.

1. *Third parties.* At their option, card issuers and the Federal Trade Commission (FTC) may use a third-party to establish and maintain a toll-free telephone number for use by the issuer or the FTC to provide the generic repayment estimates or actual repayment disclosures, as applicable.

2. *Automated response systems or devices.* At their option, card issuers and the FTC 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 generic repayment estimates or actual repayment disclosures described in appendix M1 or M2, as applicable, by inputting information using a touch-tone telephone or similar device. However, consumers whose telephones are not equipped to use such automated device must be provided the opportunity to be connected to an individual from whom the information may be obtained.

3. *Advertising or marketing information.* If a consumer requests the generic repayment estimate or the actual repayment disclosure, as applicable, the card issuer may not provide advertisements or marketing materials to the consumer prior to providing the information required or permitted by appendix M1 or M2, as applicable.◄

Section 226.8—[Identification of Transactions] ►*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. ''Sale credit'' includes:

i. Premiums for voluntary credit life insurance whether sold by the card issuer or another person.

ii. The purchase of funds-transfer services (such as telegrams) from an intermediary or an expedited payment service from a creditor.

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)(2)(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.◄

[1. *Application of identification rules.* Section 226.8 deals with the requirement (imposed by § 226.7(b)) for identification of each credit transaction made during the billing cycle. The rules for identifying transactions on periodic statements vary, depending on whether:

- The transaction involves sale credit (purchases) or nonsale credit (cash advances, for example).
- An actual copy of the credit document reflecting the transaction accompanies the statement (this is the distinction between so-called *country club* and *descriptive* billing).
- The creditor and seller are the same or related persons.

2. *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 8–3 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. *Sale credit* even includes:

- Premiums for voluntary credit life insurance whether sold by the card issuer or another person.
- The purchase of funds-transfer services (such as telegrams) from an intermediary.

3. *Nonsale credit.* The term *nonsale credit* refers to any form of loan credit including, for example:

- Cash advances.
- Overdraft checking.
- The use of a *supplemental credit device* in the form of a check or draft or the use of the overdraft feature of debit card, even if such use is in connection with a purchase of goods or services.
- Miscellaneous debits to remedy mispostings, returned checks, and similar entries.

4. *Actual copy.* An actual copy does not include a recreated document. It includes, for example, a duplicate, carbon, or photographic copy, but does not include a so-called ''facsimile draft'' in which the required information is typed, printed, or otherwise recreated. If a facsimile draft is used, the creditor must follow the rules that apply when a copy of the credit document is not furnished.

5. *Same or related persons.* For purposes of identifying transactions, the term *same or related persons* refers to, for example:

- Franchised or licensed sellers of a creditor's product or service.
- 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.
- 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. *Transactions resulting from promotional material.* In describing transactions with third-party sellers resulting from promotional material mailed by the creditor, creditors may use the rules either for ''related'' or for ''nonrelated'' sellers and creditors.

7. *Credit insurance offered through the creditor.* When credit insurance that is not part of the finance charge (for example, voluntary credit life insurance) is offered to the consumer through the creditor but is actually provided by another company, the creditor has the option of identifying the premiums in one of two ways on the periodic statement. The creditor may describe the premiums using either the

rule in § 226.8(a)(2) for *related* sellers and creditors, or the rule in § 226.8(a)(3) for *nonrelated* sellers and creditors. This means, therefore, that the creditor may identify the insurance either by providing, under § 226.8(a)(2), a brief identification of the services provided (for example, *credit life insurance*), or by disclosing, under § 226.8(a)(3), the name and address of the company providing the insurance (for example, ABC Insurance Company, New York, New York). In either event, the creditor would, of course, also provide the amount and the date of the transaction.

8. *Transactions involving creditors and sellers with corporate connections.* In a credit card plan established for use primarily with sellers that have no corporate connection with the creditor, the creditor may describe all transactions under the plan by using the rules in § 226.8(a)(3)—creditor and seller not same or related persons—including transactions involving a seller that has a corporate connection with the creditor. In other credit card plans, the creditor may describe transactions involving a seller that has a corporate connection with the creditor, such as subsidiary-parent, using the rules in § 226.8(a)(3) where it is unlikely that the consumer would know of the corporate connection between the creditor and the seller—for example, where the names of the creditor and the seller are not similar, and the periodic statement is issued in the name of the creditor only.

8(a) Sale credit.

1. *Date—disclosure of only one date.* If only the required date is disclosed for a 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.

2. *Date—disclosure of month and day only.* The month and day are sufficient disclosure of the date on which the transaction took place, unless the posting of the transaction is delayed so long that the year is needed for a clear disclosure to the consumer.

3. *When transaction takes place.* 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. 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. For mail, 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.

4. *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.

8(a)(1) Copy of credit document provided.

1. *Format.* The information required by § 226.8(a)(1) may appear either on the copy of the credit document reflecting the transaction or on the periodic statement.

8(a)(2) Copy of credit document not provided—creditor and seller same or related person(s).

1. *Property identification—sufficiency of description.* The ''brief identification'' provision in § 226.8(a)(2) 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:

- 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.
- 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, sporting goods.*

2. *Property identification—number or symbol.* The ''brief identification'' may be made by disclosing on the periodic statement a number or symbol that is related to an identification list printed elsewhere on the statement.

3. *Property identification—additional document.* In making the ''brief identification'' required by § 226.8(a)(2), the creditor may identify the property by describing the transaction on a document accompanying the periodic statement (for example, on a facsimile draft). (See also footnote 17.)

4. *Small creditors.* Under footnote 18, which provides a further identification alternative to a creditor with fewer than 15,000 accounts, the creditor need count only its own accounts and not others serviced by the same data processor or other shared-service provider.

5. *Date of transaction—foreign transactions.* In a foreign transaction, the debiting date may be considered the transaction date.

8(a)(3) Copy of credit document not provided—creditor and seller not same or related person(s).

1. *Seller's name.* 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:

- A more complete spelling of the name that was alphabetically abbreviated on the receipt or other credit document.
- 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.

2. *Location of transaction.* The disclosure of the location where the transaction took place generally requires an indication of both the city, and the state or foreign country. If the seller has multiple stores or branches within that city, the creditor need not identify the specific branch at which the sale occurred.

3. *No fixed location.* 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.
- May provide some other identifying designation, such as *aboard plane, ABC Airways Flight, customer's home, telephone order,* or *mail order.*

4. *Date of transaction—foreign transactions.* See comment 8(a)(2)–5.]

[8(b) Nonsale credit. 1. *Date of transaction.* If only one of the required dates is disclosed for a transaction, the creditor need not identify it. If the creditor discloses more than one date (for example, transaction date and debiting date), the creditor must identify each.

2. *Amount of transaction.* If credit is extended under an overdraft checking

account plan or by means of a debit card with an overdraft feature, 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.

3. *Amount—disclosure on cumulative basis.* If credit is extended under an overdraft checking account plan or by means of a debit card with an overdraft feature, 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/credit card.

4. *Identification of transaction type.* The creditor may identify a 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 [appendix G–3] ►Model Form G–3 and G–3(A) in appendix G◄.

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 [appendix G–4] ►Model Forms G–4 and G–4(A) in appendix G◄.

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)(1)*

1. *Same finance charge terms.* If the new means of accessing the account is subject to the same finance charge terms as those previously disclosed, the creditor:

• Need only provide a reminder that the new device or feature is covered by the earlier disclosures. (For example, in mailing special checks that directly access the credit line, the creditor might give a disclosure such as ''Use this as you would your XYZ card to obtain a cash advance from our bank'') or

• May remake the section 226.6(a) finance charge disclosures.]

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◄ [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 [initial] ►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.

►*Paragraph 9(b)(3)*

1. *Discounted initial rate.* If the term ''introductory'' or ''intro'' is in the same phrase as the discounted initial annual percentage rate, it will be deemed to be in immediate proximity of the listing of the discounted rate.◄

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. [In contrast, notice must be given if the contract allows the creditor to increase the rate at its discretion but does not include specific terms for an increase (for example, when an increase may occur under the creditor's contract reservation right to increase the periodic rate).] 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)◄ [§ 226.9(c)(2)] applies; for example, the creditor must give advance notice if the creditor initially disclosed a 25-day ►grace◄ [free-ride] 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 § 226.5►b◄(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 minimim 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)(2)] ►*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*◄ *[9(c)(3) Notice for Home Equity Plans]*

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)◄ [§ 226.9(c)(3)] 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, 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. 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 law. These issues include:

i. The types of changes a creditor may make.

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 described in § 226.9(c)(2)(i), unless an exception under § 226.9(c)(2)(ii) or (c)(2)(iv) 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)(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 midcycle changes when there is clearly no retroactive effect, such as the imposition of a transaction fee. Any change in the balance computation method, in contrast, would need to be disclosed at least 45 days prior to the billing cycle in which the change is to be implemented.

3. *Timing—advance notice not required.* Advance notice of 45 days is not necessary—that is, a notice of change in terms is required, but it may be mailed or delivered as late as the effective date of the change if the consumer agrees to the particular change. This provision is intended for use in the unusual instance when a consumer substitutes collateral or when the creditor can advance additional credit only if a change relatively unique to that consumer is made, such as the consumer's providing additional security or paying an increased minimum payment amount. Therefore, the following are not ''agreements'' between the consumer and the creditor for purposes of § 226.9(c)(2)►(i)◄: The consumer's general acceptance of the creditor's contract reservation of the right to change terms; the consumer's use of the account (which might imply acceptance of its terms under State law); 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.* Except if § 226.9(c)(2)(iii) 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 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 being changed.

5. *Security interest change—form of notice.* A copy of the security agreement that describes the collateral securing the consumer's account may be used as the notice, when the term change is the addition of a security interest or the addition or substitution of collateral.

9(c)(2)(ii) Charges not covered by § 226.6(b)(4).

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)(1) but is not required to be disclosed as part of the account-opening summary table under § 226.6(b)(4), the creditor may either, at its option (1) 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 (2) provide notice orally or in writing of the amount of the charge to an affected consumer any time before the consumer agrees to or becomes obligated to pay the charge. For example, a fee for expedited delivery of a credit card is a charge imposed as part of the plan under § 226.6(b)(1) but is not required to be disclosed in the account-opening summary table under § 226.6(b)(4). 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 of the amount of the charge to an affected consumer any time before the consumer agrees to or becomes obligated to pay the charge.

2. *Relevant time.* Creditors meet the standard to provide the notice under § 226.9(c)(2)(ii)(B) at a relevant time if the oral or written notice of a charge is given when a consumer would likely notice it, such as when deciding whether to purchase the service that would trigger the charge. 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.

9(c)(2)(iii) Disclosure Requirements

9(c)(2)(iii)(A) Changes to Terms in § 226.6(b)(4).

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)(iii), 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 how the rate is determined, as explained in § 226.6(b)(4). For example, if a creditor is changing from using a prime rate in calculating a variable rate to using the LIBOR, 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 [insert 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)(4) 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)(iii) with a notice described in § 226.9(g)(3).* If a creditor is required to provide a notice described in § 226.9(c)(2)(iii) and a notice described in § 226.9(g)(3) to a consumer, the

creditor may combine the two notices. This would occur if a consumer's actions trigger penalty pricing, and other terms are changing on the consumer's account at the same time.

8. *Content.* Model Clause G–20 contains an example of how to comply with the requirements in § 226.9(c)(2)(iii) when the following terms are being changed: (1) A variable rate is being changed to a non-variable rate of 16.99%; and (2) the late payment fee is being increased to $32 if the consumer's balance is less than or equal to $1,000 and $39 if the consumer's balance is more than $1,000.

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)(iii)(A)(1).

10. *Terminology.* See § 226.5(a)(2) for terminology requirements applicable to disclosures required under § 226.9(c)(2)(iii)(A)(1).◄

►*9(c)(2)(iv) 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)(v).

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.* 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 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 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 interest charges for January may serve as the change-in-terms notice.◄

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)◄ [(3)] 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, 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◄ [(and then update the rate from time to time, for example, each calendar month) or use an estimated rate under § 226.5(c)].

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. 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. When notice is given under § 226.9(e)(2), a cardholder has 30 days from mailing or delivery to decide to terminate an account.

8. *Timing of notices.* A renewal notice is deemed to be provided when mailed or delivered. Similarly, notice of termination is deemed to be given when mailed or delivered.

9. *Prompt reversal of renewal fee upon termination.* In a situation where a cardholder has provided timely notice of termination and a renewal fee has been billed to a cardholder's account,

the card issuer must reverse or otherwise withdraw the fee promptly. Once a cardholder has terminated an account, no additional action by the cardholder may be required.

9(e)(3) 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, the words *grace period* 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 [, even though the use of those terms would not otherwise be required for periodic statements under § 226.7]. 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◄ [they] relate to one another. ►An example of a sufficient reference for creditors using the delayed notice method is: ''Your annual fee of [$ amount] is billed on this statement. Please see [other side/inserts] for important information about the terms that apply to the renewal of your account and how to close your account to avoid paying the annual fee.''◄ 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, using the advance-notice option under § 226.9(e)(1), 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 providers. 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 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 providers, 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.)

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 providers 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. *Applicability.* Section 226.9(g) requires a creditor to provide written notice to a consumer when (1) a rate is increased due to the consumer's delinquency or default, or (2) 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. This notice must be provided after the occurrence of the event that triggered the imposition of the rate increase and at least 45 days prior to the effective date of the increase. For example, assume a credit card account agreement indicates that the annual percentage rates on the account may increase to 28 percent if the consumer pays late once, and assume that the consumer pays late one month. If the creditor will increase the rates on the account because of this late payment, the creditor must provide the consumer written notice of the increase at least 45 days before the increase becomes effective.

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)(iii).* If a creditor is required to provide a notice described in § 226.9(c)(2)(iii) and a notice described in § 226.9(g)(3) to a consumer, the creditor may combine the two notices. This would occur when a consumer has triggered penalty pricing, and other terms are changing on the consumer's account at the same time.

4. *Content.* Model Clause G–21 contains an example of how to comply with the requirements in § 226.9(g)(3)(i) when the rate on a consumer's account is being increased to a penalty rate as described in § 226.9(g)(1)(ii).

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).◄

Section 226.10—Prompt Crediting of 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 section 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 any 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 requirements.* i. The creditor may specify requirements for making payments, such as:

A. Requiring that payments be accompanied by the account number or the payment stub.

B. Setting a cut-off time for payment to be received, or set a different time for payments by mail►, payments by electronic means,◄ and payments made in person.

C. Specifying that only checks or money orders should be sent by mail.

D. Specifying that payment is to be made in U.S. dollars.

E. Specifying one particular address for receiving payments, such as a post office box.

ii. The creditor may be prohibited, however, from specifying payment for preauthorized electronic fund transfer. (See section 913 of the Electronic Fund Transfer Act.)

2. *Payment requirements—limitations.* Requirements for making payments must be reasonable; it should not be difficult for most consumers to make conforming payments. For example, it would not be reasonable to require that all payments be made in person between 10 a.m. and 11 a.m., since this would require consumers to take time off from their jobs to deliver payments. ►If a creditor promotes electronic payment via its Web site (such as by disclosing on the Web site itself that payments may be made via the Web site), any payments made via the creditor's Web site would generally be conforming payments for purposes of § 226.10(b).◄

3. *Acceptance of nonconforming payments.* If the creditor accepts a nonconforming payment (for example, payment at a branch office, when it had specified that payment be sent to headquarters), 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.

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(b)) 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 phrase *any part of the credit balance remaining in the account* in § 226.11(b) and (c) means 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)◄ [11(b)].

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)◄ [11(c)].

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 uses the account and does not incur a finance charge, even if credit cards or other access devices associated with the account expire after a stated period.◄

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 this paragraph 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◄ [overdraft privileges on] 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. However, the new card must be honored by at least one of the persons that honored the original card.

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; 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. Requesting a written, signed statement from the cardholder or authorized user.

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 paragraph (b)(1) of this section 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.* [Footnote 22] ►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 co-worker) 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 a transaction initiated by a person who 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 [below] ►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, 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)◄ [or other number only (which may be widely available)], 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)(1)–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 then 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.* This paragraph 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: (1) Late charges in the order of entry to the account; then to (2) finance charges in the order of entry to the account; and then to (3) 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◄ [footnote 24]. 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 [lines] ►plans◄ (see ►comment 12(c)–3◄ [footnote 24]). 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)[(ii)] ►*(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.◄ [2.] *Merchant honoring card.* The exceptions (stated in ►§ 226.13(c)(3)(ii)◄ [footnote 26]) to the amount and geographic limitations ►in § 226.13(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 initial 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 could include, for example:

A. Separate signature or initials on the agreement indicating that a security interest is being given

B. Placement of the security agreement on a separate page, or otherwise separating the security interest provisions from other contract and disclosure provisions

C. Reference to a specific amount of deposited funds or to a specific deposit account number

ii. The security interest must be obtainable and enforceable by creditors generally. If other creditors could not obtain a security interest in the consumer's deposit accounts to the same extent as the card issuer, the security interest is prohibited by § 226.12(d)(2).

2. *Security interest—after-acquired property.* As used in § 226.12(d), the term ''security interest'' does not exclude (as it does for other Regulation Z purposes) interests in after-acquired property. Thus, a consensual security interest in deposit-account funds, including funds deposited after the granting of the security interest would constitute a permissible exception to the prohibition on offsets.

3. *Court order.* If the card issuer obtains a judgment against the cardholder, and if State and other applicable law and the terms of the judgment do not so prohibit, the card issuer may offset the indebtedness against the cardholder's deposit account.

Paragraph 12(d)(3).

1. *Automatic payment plans—scope of exception.* With regard to automatic debit plans under § 226.12(d)(3), the following rules apply:

i. The cardholder's authorization must be in writing and signed or initialed by the cardholder.

ii. The authorizing language need not appear directly above or next to the cardholder's signature or initials, provided it appears on the same document and that it clearly spells out the terms of the automatic debit plan.

iii. If the cardholder has the option to accept or reject the automatic debit feature (such option may be required under section 913 of the Electronic Fund Transfer Act), the fact that the option exists should be clearly indicated.

2. *Automatic payment plans—additional exceptions.* The following practices are not prohibited by § 226.12(d)(1):

i. Automatically deducting charges for participation in a program of banking services (one aspect of which may be a credit card plan).

ii. Debiting the cardholder's deposit account on the cardholder's specific request rather than on an automatic periodic basis (for example, a cardholder might check a box on the credit card bill stub, requesting the issuer to debit the cardholder's account to pay that bill).

12(e) Prompt notification of returns and crediting of refunds.

Paragraph 12(e)(1).

1. *Normal channels.* The term normal channels refers to any network or interchange system used for the processing of the original charge slips (or equivalent information concerning the transaction).

Paragraph 12(e)(2).

1. *Crediting account.* The card issuer need not actually post the refund to the consumer's account within three business days after receiving the credit statement, provided that it credits the

account as of a date within that time period.

Section 226.13—Billing-Error Resolution

[1. *General prohibitions.* Footnote 27 prohibits a creditor from responding to a consumer's billing error allegation by accelerating the debt or closing the account, and reflects protections authorized by section 161(d) of the Truth in Lending Act and section 701 of the Equal Credit Opportunity Act. The footnote also alerts creditors that 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.)]

►1.◄ [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 comments 12(b)(1)–1, –2.◄

Paragraph 13(a)(3).

1. *Coverage.* Section 226.13(a)(3) covers disputes about goods or services that are ''not accepted'' or ''not delivered * * * as agreed''; for example:

i. 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.

ii. Delivery of property or services different from that agreed upon.

iii. Delivery of the wrong quantity.

iv. Late delivery.

v. Delivery to the wrong location.

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) 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. 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.

3. *Notice to merchant not required.* A consumer is not required to first notify the merchant or other payee from whom they have purchased goods or services in order to provide a billing-error notice to the creditor under paragraph (a)(3) of this section 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[:

i. If]► 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 paragraphs (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 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(d) 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. ►See also § 226.12(e).◄

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)(1)–4, 12(b)(4)–3, and 12(c)–1.◄

Paragraph 13(c)(2).

1. *Time for resolution.* The phrase two complete billing cycles means 2 actual billing cycles occurring after receipt of the billing error notice, not a measure of time equal to 2 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 2 full billing cycles to resolve the error.

►2. *Finality of error resolution procedure.* A creditor must complete its investigation and conclusively determine whether an error occurred within the time period set forth in paragraph (c)(2) of this section. Thus, for example, once the two-billing cycle period for completing an investigation of an alleged billing error has expired, a creditor may not reverse any amounts previously credited related to that alleged billing error, even if the creditor subsequently obtains evidence indicating that the billing error did not occur as asserted by the consumer.◄

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 ►paragraph (d)(4) of this section◄ [footnote 30], 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 ►paragraph (d)(4) of this section◄ [footnote 30] 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◄ [free-ride] 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◄ [free-ride] period, the consumer would not lose the ►grace period◄ [free-ride] 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◄ [intra-institutional] 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[:

[• Inter-institutional payment plans that permit a cardholder to pay automatically any credit card indebtedness from an asset account not held by the card issuer receiving payment.

• I]► i◄ntra-institutional automatic payment plans offered by financial institutions that are not credit card issuers.

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 3-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).)

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) and 226.7(j) to pay any disputed amounts due without incurring additional finance or other charges. However, the◄ [The] creditor need not allow a ►grace◄ [free-ride] period disclosed under §§ 226.6(a)(1) and 226.7(j) to pay the amount due under § 226.13(g)(1) if no error occurred and the consumer was not entitled to a ►grace◄ [free-ride] 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.◄

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◄ [free-ride] 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► ,◄ [:

•C]►c◄ redit inadvertently extended incident to an electronic fund transfer►, such as under an overdraft protection plan 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 ⅛ 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, and 226.26.

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 ⅛ of the 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◄ [Footnote 31a] 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 self, 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◄ [for §§ 226.5a and 226.5b disclosures, for initial disclosures and for advertising purposes].

1. *Corresponding annual percentage rate computation.* For purposes of §§ 226.5a, 226.5b, 226.6►, 226.7(d), 226.9, 226.15,◄ [and] 226.16, and ►226.26,◄ 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. [This computation also is used to determine any annual percentage rate for oral disclosures under § 226.26(a).]

14(c) ►Effective◄ annual percentage rate ►for home equity plans◄ [for periodic statements].

1. *General rule.* [Section 226.14(c) requires disclosure of the corresponding annual percentage rate for each periodic rate (under § 226.7(d)). It is figured by multiplying each periodic rate by the number of periods per year. This disclosure is like that provided on the initial account-opening disclosure statement.] The periodic statement [also] must reflect (under § 226.7(g)) the annualized equivalent of the rate actually applied during a particular cycle [(the historical rate)]; 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)] ►(5)◄ state the computation rules for the ►effective◄ [historical] rate.

►2.◄ [7.] *Charges related to opening, renewing, or continuing an account.* [Footnote 33 is applicable to § 226.14(c)(2) and (c)(3).] ►Section 226.14(c)(2) and 226.14(c)(3) excludes 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.) [Inclusion of these charges in the annual percentage rate calculation results in significant distortions of the annual percentage rate and delivery of a possibly misleading disclosure to consumers. The] ►This◄ rule [in footnote 33] 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.◄ [8.] *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% 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.◄ [9.] *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. [This option is consistent with the provision in footnote 11 to §§ 226.6 and 226.7 permitting the creditor to disregard the effect of minimum charges in disclosing the ranges of balances to which periodic rates apply.]

►5.◄ [10.] *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)–10.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 accord 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.

►6. *Calculations where daily periodic rate applied.* Section 226.14(c)(5) 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(c)(5) provides two alternative ways to calculate the annual percentage rate—either of which satisfies the requirement in § 226.7(b)(i). 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.◄

►*14(c)(1) Solely periodic rates imposed.*◄

►1.◄ [2.] *Periodic rates.* Section 226.14(c)(1) applies if the only finance charge imposed is due to the application of a periodic rate to a balance. The creditor may compute the annual percentage rate either:

i. By multiplying each periodic rate by the number of periods in the year; or

ii. By the ''quotient'' method. This method refers to a composite annual percentage rate when different periodic rates apply to different balances. For example, a particular plan may involve a periodic rate of 1½% on balances up to $500, and 1% 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% on $300, or as 15.75% 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.◄ [3.] ►*Certain charges*◄ *[Charges] not based on periodic rates.* Section 226.14(c)(2) [applies] ►requires 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% (1/40 × 12).

►2.◄ [4.] *No balance.* [Footnote 32 to § 226.14(c)(2) would apply not only] ►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.◄ [5.] *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% 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.

►2.◄ [6.] *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 in calculating the annual percentage rate, especially ►the provision in the introductory section of ◄[footnote 1 to] 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.''

ALTERNATIVE 1—PARAGRAPH 14(d).

14(d) ►*Effective annual percentage rate for open-end (not home-secured) plans* ◄*[Calculations where daily periodic rate applied].*

►1. *General rule.* The periodic statement must reflect under § 226.7(b)(7) the annualized equivalent of the rate actually applied during a particular cycle (the effective rate); this rate may differ from the corresponding annual percentage rate because of the inclusion of minimum, fixed, or transaction charges. Sections 226.14 (d)(1) through (d)(5) state the computation rules for the effective rate.

2. *Classification of charges.* If the finance charge includes a charge not attributable to a periodic rate used to calculate interest, 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% of the amount of each transaction), then the method in § 226.14(d)(3) must be used. If a fixed or minimum charge is applied, that is, one not related to any specific transaction, then the formula in § 226.14(d)(2) is appropriate.

3. *Calculated by feature.* For multifeatured plans, the effective annual percentage rate(s) calculated pursuant to § 226.14(d) must be separately calculated by feature.

4. *Prior-cycle adjustments.* i. The annual percentage rate reflects the finance charges identified in § 226.14(e) imposed during the billing cycle. However, such 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 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(d)–3.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.◄

[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) does not work when a daily rate is being applied to a series of daily balances, § 226.14(d) gives the creditor 2 alternative ways to figure the annual percentage rate—either of which satisfies the requirement in § 226.7(g).

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)–6 for guidance on an appropriate calculation method.]

►*14(d)(1) Solely periodic rates imposed.*

1. *Periodic rates.* Section 226.14(d)(1) applies if the only finance charge identified in § 226.14(e) imposed in a billing cycle is attributable solely to one or more periodic rates used to calculate interest. The creditor must compute the effective annual percentage rate(s) by multiplying each periodic rate by the number of periods in the year.◄

►*14(d)(2) Minimum or fixed charge, but not transaction charge, imposed.*

1. *Purchase features.* If there are several features relating to purchase transactions (such as a standard purchase feature and a promotional purchase feature), the minimum charges or other charges identified in § 226.14(e) that are not attributable to periodic rates used to calculate interest and not related to a specific transaction must be included in the calculation of the effective annual percentage rate for the standard purchase feature. The effective annual percentage rate for the promotional purchase feature, for example, must be calculated under § 226.14(d)(2)(i)(B).

2. *No balance.* If there is no purchase balance to which the finance charge is applicable, an annual percentage rate cannot be determined under § 226.14(d)(2)(i) or (ii). This could occur not only when minimum charges are imposed on an account with no balance, but also to a plan in which a periodic rate is applied to balances 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.

3. *Calculations where daily periodic rate applied.* Section 226.14(d)(2)(i) and § 226.14(d)(2)(ii) address use of a daily periodic rate(s) to determine some or all of the finance charge identified in § 226.14(e) and use of the quotient method to determine the annual percentage rate. Since the quotient formula does not work when a daily rate is being applied to a series of daily balances, § 226.14(d)(2)(i) and § 226.14(d)(2)(ii) give the creditor two alternative ways to compute the annual percentage rate—either of which satisfies the requirement in § 226.7(b)(7). If the finance charge results from a charge relating to a specific transaction and the application of a daily periodic rate, see comment 14(d)(3)–3 for guidance on an appropriate calculation method.◄

►*14(d)(3) Transaction charge imposed.*

1. *Purchase features.* If there are several features relating to purchase transactions (such as a standard purchase feature and a promotional purchase feature), any minimum charges or other charges identified in § 226.14(e) that are not attributable to periodic rates used to calculate interest and not related to a specific transaction must be included in the calculation of the effective annual percentage rate for the standard purchase feature. Charges that relate to a specific transaction must be included in the calculation of the effective annual percentage rate for that type of transaction. For example, if a charge is applicable to a specific promotional purchase transaction, that charge must be included in calculating the effective annual percentage rate for the promotional purchase feature.

2. *Duplication.* 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. For further explanation and examples of how to determine the components of this formula, see appendix F.

3. *Daily rate with specific transaction charge.* Section 226.14(d)(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 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.''◄

►*Paragraph 14(d)(4)*

1. *Small finance charges.* Section 226.14(d)(4) gives the creditor an alternative to § 226.14(d)(2) and (d)(3) if the sum of charges identified in paragraph (d)(2) or (d)(3) does not exceed $1.00 for a monthly or longer billing cycle, or the pro rata part of $1.00 for a billing cycle shorter than monthly. In that case, the creditor may determine the annual percentage rate by multiplying each applicable periodic rate by the number of periods in a year.◄

►*Finance charges to be included in the calculation of the effective annual percentage rate under § 226.14(d).*

Paragraph 14(e)(1)

1. *Transaction charges.* i. For purposes of § 226.14, transaction charges include, for example:

i. A loan fee of $10 imposed on a particular advance.

ii. A charge of 3% of the amount of each transaction.

Paragraph 14(e)(2).

1. *Charges imposed as a condition to opening an account.* Section 226.14(e)(2) provides that the finance charges that trigger the requirement to calculate an effective annual percentage rate under § 226.14(d)(2) or (3) do not include a charge related to opening the account. This rule applies even if loan fees, points, or similar charges are billed on a subsequent periodic statement or withheld from the proceeds of the first advance on the account.

2. *Annual charges.* Section 226.14(e)(2) provides that the finance charges that trigger the requirement to calculate an effective annual percentage rate under § 226.14(d)(2) or (3) do not include a charge related to continuing or renewing the account, unless the charge is imposed more often than annually. For example, a fee imposed annually 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.)◄

* * * * *

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 an introductory rate under § 226.16(e)◄. ►Other than the terms described in § 226.16(e),◄ 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—introductory rates.* For purposes of § 226.16(e), a clear and conspicuous disclosure means the required information in §§ 226.16(e)(4)(i) and (ii) must be equally prominent to the introductory rate to which it applies. If the information in §§ 226.16(e)(4)(i) and (ii) is the same type size as the introductory rate to which it applies, the disclosures would be deemed to be equally prominent.◄

►3.◄ [2]. *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.

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.

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.◄

[*Terms requiring additional disclosures.* In § 226.16(b) the phrase ''the terms required to be disclosed under § 226.6'' refers to the terms in § 226.6(a) and § 226.6(b).]

[2. *Use of positive terms.* An advertisement must state a credit term as a positive number in order to trigger additional disclosures. For example, ''no annual membership fee'' would not trigger the additional disclosures required by § 226.16(b). (See, however, the rules in § 226.16(d) relating to advertisements for home equity plans.)]

►2.◄ [3.] *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.◄ [4.] *Membership fees.* A membership fee is not a triggering term nor need it be disclosed under § 226.16(b)(3) if it is required for participation in the plan whether or not an open-end credit feature is attached. (See comment ►6(a)(2)–2 and § 226.6(b)(1)(ii)(B)◄ [6(b)–1]).

►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)(2), the creditor may use an insert showing the current rate; ►or◄ may give the rate as of a specified recent date[; or may disclose an estimated rate under § 226.5(c)]. The additional requirement in § 226.16(b) ►(1)(ii)◄ [(2)] 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 [footnote 12 to § 226.6(a)(2)]►§ 226.6(a)(1)(ii) or § 226.6(b)(2) ◄.

[6. *Discounted variable-rate plans—disclosure of the annual percentage rates.* The advertised annual percentage rates for discounted variable-rate plans must, in accordance with comment 6(a)(2)–10, include both the initial rate (with the statement of how long it will remain in effect) and the current indexed rate (with the statement that this second rate may vary). The options listed in comment 16(b)–5 may be used in disclosing the current indexed rate.]

[7. *Triggering terms.* The following are examples of terms that trigger additional disclosures:

- ''Small monthly service charge on the remaining balance,'' which describes how the amount of a finance charge will be determined.
- ''12 percent Annual Percentage Rate'' or ''A $15 annual membership fee buys you $2,000 in credit,'' which describe required disclosures using positive numbers.]

[8. *Minimum, fixed, transaction, activity, or similar charge.* The charges to be disclosed under § 226.16(b)(1) are those that are considered finance charges under § 226.4.]

[9. *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 finance charge until May'' or any other statement regarding when 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.]

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◄ [communication].* If an ►electronic advertisement (such as an advertisement appearing on an Internet Web site)◄ [advertisement using electronic communication] 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.

►*Paragraph 16(c)(3).*

1. *Form of disclosures.* If a consumer accesses an advertisement in electronic form, the required disclosures must be provided to the consumer in electronic form on or with the advertisement; providing the disclosures at a different time or place, or in paper form, would not comply. Conversely, if a consumer views a paper advertisement, the required disclosures must be provided in paper form on or with the advertisement. For example, if a consumer receives an advertisement in the mail, the creditor would not satisfy its obligation to provide § 226.16 disclosures at that time by including a reference in the advertisement to the Web site where the disclosures are located.◄

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 (8).)

3. *Statements of tax deductibility.* An advertisement referring to deductiblity for tax purposes is not misleading if it includes a statement such as ''consult a tax advisor regarding the deductibility of interest.''

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. *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) and (3).

6. *Inapplicability of closed-end rules.* Advertisements for home equity plans are governed solely by the requirements in § 226.16, 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.

7. *Balloon payment.* In some programs, a balloon payment will occur if only the minimum payments under the plan are made. If an advertisement for such a program contains any statement about a minimum periodic payment, the advertisement must also state that a balloon payment will result (not merely that a balloon payment ''may'' result). (See comment 5b(d)(5)(ii)–3 for guidance on items not required to be stated in the advertisement, and on situations in which the balloon payment requirement does not apply.)

►*16(e) Introductory rates.*

1. *Use of term ''introductory''.* Advertisers may use the term ''intro'' in place of the term ''introductory.''

2. *Immediate proximity.* 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.* Information required to be disclosed in §§ 226.16(e)(4)(i) and (ii) that is in the same paragraph as the first listing of the introductory 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(e)(4), the first listing of the introductory 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 introductory 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 introductory rate. If the listing of the introductory rate with the largest type size on the front side of the first page of the principal promotional document (or each document listing the introductory rate if the introductory 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.

5. *Post-introductory rate depends on consumer's creditworthiness.* For purposes of disclosing the rate that may apply after the end of the temporary 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(f) Alternative disclosures television or radio advertisements.*

1. *Toll-free number, local or collect calls.* In complying with the disclosure requirements of § 226.16(f)(1), an advertisement must provide a toll-free telephone number. Alternatively, an advertiser may provide any telephone number that allows a consumer to reverse the phone charges when calling for information.

2. *Multi-purpose number.* When an advertised toll-free 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 dialing 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.

3. *Statement accompanying toll free number.* Language must accompany a telephone and television number indicating that disclosures are available by calling the toll-free number, such as ''call 1–800–000–0000 for details about credit costs and terms.''◀

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Appendix F—Annual Percentage Rate Computations for Certain Open-End Credit Plans

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 ► comments 14(c)–6 and 14(d)(3)–3 ◀[comment 14(c)–6] for guidance on an appropriate calculation method.

►Appendices◀ [Appendixes] 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)–(C), G–18(A)–(F), G–19, G–20, and G–21.◀ [(But see appendix G comment 5 for special rules concerning certain disclosures required under § 226.5a for credit and charge card applications and solicitations.)] 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. 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. Substituting appropriate references, such as ''bank,'' ''we,'' or a specific name, for ''creditor'' in the initial open-end disclosures.]

►vii◀ [viii.] 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. *Model G–1.* The model disclosures in G–1 (different balance computation methods) may be used in both the ►account-opening ◀[initial] 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◀. 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. In addition, if unpaid 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 section 226.7► (a)(5) and 226.7(b)(5) ◀[(e)].)

2. *Models G–2► and G–2(A)◀.* ►These models contain◀ [This model contains] 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 may use G–2(A).◀

3. *Models G–3,* ►*G–3(A),*◀ [*and] 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◀ [initial] 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 plans not subject to the requirements of § 226.5b, creditors may 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.

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), sample*►*s*◄ *G–10(B) and [model] G–10(C)*►*, model G–10(D), sample G–10(E), model G–17(A), and samples G–17(B) and 17(C)*◄. i. Model G–10(A) and sample►s◄ G–10(B) ►and G–10(C)◄ illustrate, in the tabular format, [all of] the disclosures required under § 226.5a for applications and solicitations for credit cards other than charge cards. [Model G–10(B) is a sample disclosure illustrating an account with a lower introductory rate and penalty rate.] Model G–10 ►(D)◄ [(C)] ►and sample G–10(E)◄ illustrate[s] the tabular format disclosure for charge card applications and solicitations and reflects [all of] the disclosures in the table. ►Model G–17(A) and samples G–17(B) and G–17(C) illustrate, in the tabular format, the disclosures required under § 226.6(b)(4) for account-opening disclosures.◄

ii. Except as otherwise permitted, disclosures must be substantially similar in sequence and format to model forms G 10(A)►, G–10(D) ◄and ►G–17(A)◄. [The disclosures may, however, be arranged vertically or horizontally and need not be highlighted aside from being included in the table.] While proper use of the model forms will be deemed in compliance with the regulation, card issuers are permitted to use headings [and disclosures] other than those in the forms (with an exception relating to the use of ''grace period'' ►''penalty APR'', and in relation to required insurance, or debt cancellation or suspension coverage, the term ''required'' and the name of the product◄) if they are clear and concise and are substantially similar to the headings [and disclosures] contained in model forms.

►iii. Models G–10(A) and G–17(A) contain two alternative headings (''Minimum Interest Charge'' and ''Minimum Charge'') for disclosing a minimum finance charge under § 226.5a(b)(3) and § 226.6(b)(4)(iii)(D). If a creditor imposes a minimum finance charge in lieu of interest in those months where a consumer would otherwise incur an interest charge but that interest charge is less than the minimum charge, the creditor should disclose this charge under the heading ''Minimum Interest Charge.'' Other minimum finance charges should be disclosed under the heading ''Minimum Charge.''

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)(4)(iii)(A). If the only fee for issuance or availability of credit disclosed under § 226.5a(b)(2) or § 226.6(b)(4)(iii)(A) is an annual fee, a creditor should use the heading ''Annual Fee'' to disclose this fee. If a creditor imposes fees for issuance or availability of credit disclosed under § 226.5a(b)(2) or § 226.6(b)(4)(iii)(A) other than, or in addition to, an annual fee, the creditor should use the heading ''Set-up and Maintenance Fees'' 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)(4) disclosures, samples G–10(B), G–10(C), G–17(B) and G–17(C) are designed to be printed on an 8 x 14 sheet of paper. 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 Ariel 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 three components: The applicable balance transfer rate, a cross reference to the balance transfer fee, and a notice about payment allocation. The samples show these three components on separate lines with adequate space between each component. On the other hand, in the samples, in the disclosure of the late payment fee, the 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; and

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.◄

6. *Model[s] G–11 [and G–12].* 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. [Model G–12 is a model clause for the disclosure required under § 226.5a(f) when a charge card accesses an open-end plan offered by another creditor.]

7. *Models G–13(A) and G–13(B).* These model forms illustrate the disclosures required under § 226.9(f) when the card issuer changes the entity providing insurance on a credit card account. Model G–13(A) contains the items set forth in § 226.9(f)(3) as examples of significant terms of coverage that may be affected by the change in insurance provider. The card issuer may either list all of these potential changes in coverage and place a check mark by the applicable changes, or list only the actual changes in coverage. Under either approach, the card issuer must either explain the changes or refer to an accompanying copy of the policy or group certificate for details of the new terms of coverage. Model G–13(A) also illustrates the permissible combination of the two notices required by § 226.9(f)—the notice required for a planned change in provider and the notice required once a change has occurred. This form may be modified for use in providing only the disclosures required before the change if the card issuer chooses to send two separate notices. Thus, for example, the references to the attached policy or certificate would not be required in a separate notice prior to a change in the insurance provider since the policy or certificate need not be provided at that time. Model G–13(B) illustrates the disclosures required under § 226.9(f)(2) when the insurance provider is changed.

►8. *Samples G–18(A)–(F).* 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)–(F) to comply with these requirements, as applicable.◄

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By order of the Board of Governors of the Federal Reserve System.

Dated: May 23, 2007.

Jennifer J. Johnson,

Secretary of the Board.

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