or related to an institution of higher education. Proposed § 226.57(c) generally followed the statutory language. As the Board noted in the October 2009 Regulation Z Proposal, TILA Section 140(f)(2) applies not only to credit card accounts, but also other open-end consumer credit plans, such as lines of credit. The Board received comment from some industry commenters requesting that the Board limit this provision to credit card accounts only. The statute specifically includes other open-end consumer credit plans other than credit card accounts, and the Board believes Congress intended to cover all open-end consumer credit plans. Therefore, the Board is adopting § 226.57(c) as proposed.

One industry commenter requested an exception to the restrictions on offering a tangible item in exchange for introducing a wide range of financial services to a college student. The Board notes that the restriction in § 226.57(c) applies to inducements to apply for or participate in an open-end consumer credit plan only. Consequently, if a financial institution were to offer a tangible item to induce a college student to open a deposit account, for example, such item would not be prohibited because a deposit account is not an open-end credit plan. However, if a financial institution were to offer a tangible item to induce a college student to apply for or participate in a package of financial services that includes any open-end consumer credit plans, such items would be prohibited under § 226.57(c).

Proposed comment 57(c)–1 in the October 2009 Regulation Z Proposal clarified that a tangible item under § 226.57(c) includes any physical item, such as a gift card, a t-shirt, or a magazine subscription, that a card issuer or creditor offers to induce a college student to apply for or open an open-end consumer credit plan offered by such card issuer or creditor. The proposed comment also provided some examples of non-physical inducements that would not be considered tangible items, such as discounts, rewards points, or promotional credit terms.

Consumer group commenters suggested that while the Board's interpretation of "tangible" item was valid, there is an alternate definition of "tangible" item as an item that is real, as opposed to visionary or imagined. The Board believes interpreting the term "tangible" as these commenters' suggest would be inappropriate. Since it would be impossible for a creditor to offer an imagined item, defining "tangible" as something real would render the term superfluous. The Board believes that Congress meant to limit this prohibition to a certain class of items; otherwise, the statute would have prohibited the offering any kind of inducement, rather than a "tangible" one. Proposed comment 57(c)–1 is therefore adopted as proposed.

Under TILA Section 140(f)(2), offering tangible items to college students is prohibited only if the items are offered to induce the student to apply for or open an open-end consumer credit plan. As a result, the Board proposed comment 57(c)–2 to clarify that if a tangible item is offered to a college student whether or not that student applies for or opens an open-end consumer credit plan, the item is not an inducement. Consumer group commenters opposed the Board's interpretation and stated that any tangible item offered to a college student, even if it is not conditioned on the college student applying for or opening an open-end consumer credit plan, is an inducement. The Board disagrees with this interpretation. In addition, the Board believes the approach suggested by consumer group commenters could produce unintended consequences and practical complications. For example, under the interpretation suggested by commenters, even a simple candy dish in the lobby of a bank branch or at a retailer that has a retail credit card program could be prohibited because of the possibility a college student may walk into the branch or the store and take a piece of candy. Therefore, the Board is adopting comment 57(c)–2 as proposed.

TILA Section 140(f)(2)(B) requires the Board to determine what is considered near the campus of an institution of higher education. As discussed in the October 2009 Regulation Z Proposal, the Board proposed comment 57(c)–3 to provide that a location that is within 1,000 feet of the border of the campus of an institution of higher education, as defined by the institution of higher education, be considered near the campus of an institution of higher education. The Board based its proposal on the distances used in state and federal laws for other restricted activities near a school,[73] and solicited comment on other appropriate ways to determine a location that is considered near the campus of an institution of higher education.

The Board received support for its proposal from various types of commenters, but many industry commenters thought the Board's definition for what is considered near campus to be too broad. Several of these commenters suggested that the Board provide exceptions from the prohibition in § 226.57(c) for either retailer-creditors or bank branches on or near campus. Another industry commenter requested that the Board provide guidance on defining the campus of an institution of higher education. One industry commenter also suggested that the Board exempt on-line universities to avoid interpretations that a student's home might constitute a part of the "campus."

The Board is adopting comment 57(c)–3 as proposed. The statute provides that creditors are subject to the restrictions on offering tangible items to college students in particular locations and makes no exceptions for creditors that may already be established in such locations. Furthermore, the Board believes that institutions of higher education would be the proper entities to determine the borders of their respective campuses. In addition, it is the Board's understanding that on-line universities do not define their campuses as inclusive of a student's home. Therefore, the Board believes it would be unnecessary to provide an exemption for such institutions.

Proposed comment 57(c)–4 clarified that offers of tangible items mailed to a college student at an address on or near the campus of an institution of higher education would be subject to the restrictions in § 226.57(c). Proposed comment 57(c)–4 clarified that offers of tangible items made on or near the campus of an institution of higher education for purposes of § 226.57(c) include offers of tangible items that are sent to those locations through the mail. Some industry commenters opposed the Board's proposed comment to include offers of tangible items that are mailed to a college student at an address on or near campus. Another industry commenter requested the Board clarify whether e-mailed offers constituted offers mailed to an address on or near campus.

Comment 57(c)–4 is adopted as proposed. As the Board discussed in the October 2009 Regulation Z Proposal, the statute does not distinguish between different methods of making offers of tangible items, but clearly delineates the locations where such offers may not be

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

made. The Board notes that the prohibition in § 226.57(c) focuses on offering a tangible item. Therefore, creditors are not prohibited by the rule from mailing applications and solicitations to college students at an address that is on or near campus. Such mailings may even advertise the possibility of a tangible item for any applicant who is not a college student, so long as the credit has reasonable procedures for determining whether an applicant is a college student, consistent with comment 57(c)–6. Moreover, the Board does not believe that comment 57(c)–4 as adopted would include mailings to an e-mail address as it encompasses only mailings to an address that is on or near campus. An e-mail address does not physically exist anywhere, and therefore, cannot be considered an address on or near campus.

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

A credit union commenter suggested that the Board's proposal was too broad, particularly for credit unions that may share a similar name to an institution of higher education. While the Board understands the difficulty in complying with § 226.57(c) for such creditors, the Board believes that the potential for confusion that a particular event or function is endorsed by the institution of higher education is too great. The Board, however, notes that comment 57(c)–6, as discussed below, provides guidance for procedures such creditors can put in place to mitigate the impact of the rule.

Proposed comment 57(c)–6 requires creditors to have reasonable procedures for determining whether an applicant is a college student. Since the prohibition in § 226.57(c) applies solely to offering a tangible item to a college student at specified locations, a card issuer or creditor would be permitted to offer any person who is not a college student a tangible item to induce such person to apply for or open an open-end consumer credit plan offered by such card issuer or creditor at such locations. Proposed comment 57(c)–6 illustrated one way in which a card issuer or creditor might meet this standard and provided that the card issuer or creditor may rely on the representations made by the applicant.

The Board did not receive significant comment on this provision, and the proposed comment is adopted in final. As the Board discussed in the October 2009 Regulation Z Proposal, § 226.57(c) would not prohibit card issuers and creditors from instituting marketing programs on or near the campus of an institution of higher education, or at an event sponsored by or related to an institution of higher education, where a tangible item will be offered to induce people to apply for or open an open-end consumer credit plan. However, those card issuers or creditors that do so must have reasonable procedures for determining whether an applicant or participant is a college student before giving the applicant or participant the tangible item.

57(d) Annual Report to the Board

The Board proposed to implement new TILA Section 127(r)(2) in § 226.57(d). Consistent with the statute, proposed § 226.57(d) required card issuers that are a party to one or more college credit card agreements to submit annual reports to the Board regarding those agreements. Section 226.57(d) is adopted with modifications as discussed below.

Proposed § 226.57(d) required creditors that were a party to one or more college credit card agreements to register with the Board before submitting their first annual report. The Board is eliminating the registration requirement from the final rule because of technical changes to the Board's submission process. Proposed § 226.57(d)(1) therefore is not included in the final rule. The Board will capture the identifying information that would have been captured from each issuer during the registration process (*e.g.,* the issuer's name, address, and identifying number (such as an RSSD ID number or tax identification number), and the name, phone number and email address of a contact person at the issuer) at the time the issuer submits its annual report to the Board. Under the final rule, there is no requirement to register with the Board prior to submitting an annual report regarding college credit card agreements. As proposed, issuers must submit their initial annual report on college credit card agreements, providing information for the 2009 calendar year, to the Board by February 22, 2010. For each subsequent calendar year, issuers must submit annual reports by the first business day on or after March 31 of the following calendar year.

Proposed § 226.57(d) required that annual reports include a copy of each college credit card agreement to which the card issuer was a party that was in effect during the period covered by the report, as well as certain related information specified in new TILA Section 127(r)(2), including the total dollar amount of payments pursuant to the agreement from the card issuer to the institution (or affiliated organization) during the period covered by the report, and how such amount is determined; the total number of credit card accounts opened pursuant to the agreement during the period; and the total number of such credit card accounts that were open at the end of the period. The final rule specifies that annual reports must include "the method or formula used to determine" the amount of payments from an issuer to an institution of higher education or affiliated organization during the reporting period, rather than "how such amount is determined" as proposed. The Board believes this more precisely describes the information intended to be captured under new TILA Section 127(r)(2).

In connection with the proposal, the Board solicited comment on whether issuers should be required to submit additional information on the terms and conditions of college credit card agreements in the annual report, such as identifying specific terms that differentiate between student and non-student accounts (for example, that provide for difference in payments based on whether an account is a student or non-student account), identifying specific terms that relate to advertising or marketing (such as provisions on mailing lists, on-line advertising, or on-campus marketing), and the terms and conditions of credit card accounts (for example, rates and fees) that may be opened in connection with the college credit card agreement. One card issuer commenter argued that such additional information should not be required, citing the additional burden on issuers. Some consumer group commenters urged the Board to collect additional information including the items identified by the Board in the proposal as well as other information such as the differences in comparative rates of default and average outstanding balances between student and non-student accounts. The Board believes

that requiring issuers to track, assemble, and submit this information would impose significant costs and administrative burdens on issuers, and the Board does not believe that requiring issuers to submit additional information is necessary to achieve the purposes of new TILA Section 127(r)(2). Thus, no additional information requirements are adopted in the final rule.

As proposed, § 226.57(d) requires that each annual report include a copy of any memorandum of understanding that "directly or indirectly relates to the college credit card agreement or that controls or directs any obligations or distribution of benefits between any such entities." Proposed comment 57(d)(3)–1 clarified what types of documents would be considered memoranda of understanding for purposes of this requirement, by providing that a memorandum of understanding includes any document that amends the college credit card agreement, or that constitutes a further agreement between the parties as to the interpretation or administration of the agreement, and by providing of examples of documents that would or would not be included. The Board received no comments regarding what types of documents should be considered memoranda of understanding, and comment 57(d)(3)–1, redesignated as comment 57(d)(2)–1, is adopted as proposed.

Additional details regarding the submission process are provided in the Consumer and College Credit Card Agreement Submission Technical Specifications Document, which is published as Attachment I to this **Federal Register** notice and which will be available on the Board's public Web site.

Section 226.58 Internet Posting of Credit Card Agreements

Section 204 of the Credit Card Act adds new TILA Section 122(d) to require creditors to post agreements for open-end consumer credit card plans on the creditors' Web sites and to submit those agreements to the Board for posting on a publicly-available Web site established and maintained by the Board. 15 U.S.C. 1632(d). The Board proposed to implement these provisions in proposed § 226.58 with additional guidance included in proposed Appendix N. As discussed below, proposed § 226.58 is adopted with modifications. Proposed Appendix N has been eliminated from the final rule, but the provisions of proposed Appendix N, with certain modifications, have been incorporated into § 226.58.

The final rule requires that card issuers post on their Web sites, so as to be available to the public generally, the credit card agreements they offer to the public. Issuers must also submit these agreements to the Board quarterly for posting on the Board's public Web site. However, under the final rule, as proposed, issuers are not required to post on their publicly available Web sites, or to submit to the Board, credit card agreements that are no longer offered to the public, even if the issuer still has credit card accounts open under such agreements.

In addition, the final rule requires that issuers post on their Web sites, or otherwise make available upon request by the cardholder, all of their agreements for open credit card accounts, whether or not such agreements are currently offered to the public. Thus, any cardholder will be able to access a copy of his or her own credit card agreement. Agreements posted (or otherwise made available) under this provision in the final rule may contain personally identifiable information relating to the cardholder, provided that the issuer takes appropriate measures to make the agreement accessible only to the cardholder or other authorized persons. In contrast, the agreements that are currently offered to the public and that must be posted on the issuer's Web site (and submitted to the Board) may not contain personally identifiable information.

The final rule also contains, as proposed, a de minimis exception from the requirement to post on issuers' publicly available Web sites, and submit to the Board for posting on the Board's public Web site, agreements currently offered to the public. The de minimis exception applies to issuers with fewer than 10,000 open credit card accounts. The final rule also contains exceptions for private label plans offered on behalf of a single merchant or a group of affiliated merchants and for plans that are offered in order to test a new credit card product, provided that in each case the plan involves no more than 10,000 credit card accounts. However, none of these exceptions applies to the requirement that issuers make available by some means upon request all of their credit card agreements for their open credit card accounts, whether or not currently offered to the public.

58(a) Applicability

The Board proposed to make § 226.58 applicable to any card issuer that issues credit cards under a credit card account under an open-end (not home-secured) consumer credit plan, as defined in proposed § 226.2(a)(15). The Board received no comments on proposed § 226.58(a) and therefore is adopting this section as proposed. Thus, consistent with the approach the Board is implementing with respect to other sections of the Credit Card Act, home-equity lines of credit accessible by credit cards and overdraft lines of credit accessed by debit cards are not covered by § 226.58.

58(b) Definitions

58(b)(1) Agreement

Proposed § 226.58(b)(1) defined "agreement" or "credit card agreement" as a written document or documents evidencing the terms of the legal obligation or the prospective legal obligation between a card issuer and a consumer for a credit card account under an open-end (not home-secured) consumer credit plan. Proposed § 226.58(b)(1) further provided that an agreement includes the information listed under the defined term "pricing information."

Commenters generally were supportive of the Board's proposed definition of agreement, and the Board is adopting § 226.58(b)(1) as proposed. One card issuer commenter stated that creditors should not be required to provide pricing information as part of agreements submitted to the Board. The Board disagrees. The Board continues to believe that, to enable consumers to shop for credit cards and compare information about various credit card plans in an effective manner, it is necessary that the credit card agreements posted on the Board's Web site include rates, fees, and other pricing information.

The Board proposed two comments clarifying the definition of agreement under § 226.58(b)(1). Proposed comment 58(b)(1)–1 clarified that an agreement is deemed to include the information listed under the defined term "pricing information," even if the issuer does not otherwise include this information in the document evidencing the terms of the obligation. Comment 58(b)(1)–1 is adopted as proposed.

Proposed comment 58(b)(1)–2 clarified that an agreement would not include documents sent to the consumer along with the credit card or credit card agreement such as a cover letter, a validation sticker on the card, other information about card security, offers for credit insurance or other optional products, advertisements, and disclosures required under federal or state law. The Board received no comments on proposed comment 58(b)(1)–2. For organizational reasons,

proposed comment 58(b)(1)–2 has been eliminated and the guidance contained in proposed comment 58(b)(1)–2 has been moved to § 228.58(c)(8), discussed below.

The final rule adds new comment 58(b)(1)–2, which clarifies that an agreement may consist of multiple documents that, taken together, define the legal obligation between the issuer and the consumer. As an example, comment 58(b)(1)–2 notes that provisions that mandate arbitration or allow an issuer to unilaterally alter the terms of the issuer's or consumer's obligation are part of the agreement even if they are provided to the consumer in a document separate from the basic credit contract. The definition of agreement under § 226.58(b)(1) indicates that an agreement may consist of a "document *or documents*" (emphasis added). However, several commenters indicated that it would be helpful for the Board to emphasize this point, and the Board agrees that further clarity may assist issuers in complying with § 226.58.

58(b)(2) Amends

In connection with the proposed rule, the Board solicited comment on whether issuers should be required to resubmit agreements to the Board following minor, technical changes. Commenters overwhelmingly indicated that the Board should only require resubmission of agreements following substantive changes. Commenters including both large and small card issuers noted that issuers frequently make non-substantive changes without simultaneously making substantive changes and that requiring resubmission following technical changes would impose a significant burden on issuers while providing little or no benefit to consumers. The Board agrees that requiring resubmission of agreements following minor, technical changes would impose a significant administrative burden with no corresponding benefit of increased transparency.

The final rule therefore includes a new definition of "amends" as § 226.58(b)(2). The definition specifies that an issuer amends an agreement if it makes a substantive change to the agreement. A change is substantive if it alters the rights or obligations of the card issuer or the consumer under the agreement. Any change in the pricing information, as defined in § 226.58(b)(6), is deemed to be a substantive change, and therefore an amendment. Under § 226.58(c), discussed below, an issuer is only required to resubmit an agreement to the Board following a change to the agreement if that change constitutes an amendment as defined in § 226.58(b)(2).

To provide additional clarity regarding what types of changes would be considered amendments, the final rule includes two new comments, comment 58(b)(2)–1 and 58(b)(2)–2. Comment 58(b)(2)–1 gives examples of changes that generally would be considered substantive, such as: (i) Addition or deletion of a provision giving the issuer or consumer a right under the agreement, such as a clause that allows an issuer to unilaterally change the terms of an agreement; (ii) addition or deletion of a provision giving the issuer or consumer an obligation under the agreement, such as a clause requiring the consumer to pay an additional fee; (iii) changes that may affect the cost of credit to the consumer, such as changes in a clause describing how the minimum payment will be calculated; (iv) changes that may affect how the terms of the agreement are construed or applied, such as changes in a choice-of-law provision; and (v) changes that may affect the parties to whom the agreement may apply, such as changes in a provision regarding authorized users or assignment of the agreement.

Comment 58(b)(2)–2 gives examples of changes that generally would not be considered substantive, such as: (i) Correction of typographical errors that do not affect the meaning of any terms of the agreement; (ii) changes to the issuer's corporate name, logo, or tagline; (iii) changes to the format of the agreement, such as conversion to a booklet from a full-sheet format, changes in font, or changes in margins; (iv) changes to the name of the credit card to which the program applies; (v) reordering sections of the agreement without affecting the meaning of any terms of the agreement; (vi) adding, removing, or modifying a table of contents or index; and (vii) changes to titles, headings, section numbers, or captions.

58(b)(3) Business Day

As proposed, § 226.58(b)(3) of the final rule, corresponding to proposed § 226.58(b)(2), defines "business day" as a day on which the creditor's offices are open to the public for carrying on substantially all of its business functions. This is consistent with the definition of business day used in most other sections of Regulation Z. The Board received no comments regarding proposed § 226.58(b)(2).

58(b)(4) Offers

The proposed rule provided that an issuer "offers" or "offers to the public" an agreement if the issuer is soliciting or accepting applications for new accounts that would be subject to that agreement. The Board received no comments regarding the definition of offers, and the § 226.58(b)(4) definition, corresponding to proposed § 226.58(b)(3), is adopted as proposed.

Several credit union commenters argued that credit cards issued by credit unions are not offered to the public under this definition because such cards are available only to credit union members. These commenters concluded that credit unions therefore should not be required to submit agreements to the Board for posting on the Board's Web site. The Board disagrees. The Board understands that, of the one hundred largest Visa and MasterCard credit card issuers in the United States, several dozen are credit unions, including some with hundreds of thousands of open credit card accounts and at least one with over one million open credit card accounts. In addition, credit union membership criteria have relaxed in recent years, in some cases significantly. Credit cards issued by credit unions are a significant source of open-end consumer credit, and exempting credit unions from submitting agreements to the Board would significantly lessen the usefulness of the Board's Web site as a comparison shopping tool for consumers. The final rule therefore includes new language in comment 58(b)(4)–1, corresponding to proposed comment 58(b)(3)–1, clarifying that agreements for credit cards issued by credit unions are considered to be offered to the public even though they are available only to credit union members.

The two proposed comments to the definition of offers are otherwise adopted as proposed. Comment 58(b)(4)–1, corresponding to proposed comment 58(b)(3)–1, clarifies that a card issuer is deemed to offer a credit card agreement to the public even if the issuer solicits, or accepts applications from, only a limited group of persons. For example, an issuer may market affinity cards to students and alumni of a particular educational institution or solicit only high-net-worth individuals for a particular card, but the corresponding agreements would be considered to be offered to the public. Comment 58(b)(4)–2, corresponding to proposed comment 58(b)(3)–2, clarifies that a card issuer is deemed to offer a credit card agreement to the public even if the terms of the agreement are

changed immediately upon opening of an account to terms not offered to the public.

58(b)(5) Open Account

The proposed rule provided guidance in proposed comment 58(e)–2 regarding the definition of open accounts for purposes of the de minimis exception. Proposed comment 58(e)–2 stated that, for purposes of the de minimis exception, a credit card account is considered to be open even if the account is inactive, as long as the account has not been closed by the cardholder or the card issuer and the cardholder can obtain extensions of credit on the account. In addition, if an account has only temporarily been suspended (for example, due to a report of unauthorized use), the account is considered open. However, if an account has been closed for new activity (for example, due to default by the cardholder), but the cardholder is still making payments to pay off the outstanding balance, the account need not be considered open.

The final rule eliminates this comment and adds a new definition of "open account" as § 226.58(b)(5). Under § 226.58(b)(5), an account is an "open account" or "open credit card account" if it is a credit card account under an open-end (not home-secured) consumer credit plan and either: (i) The cardholder can obtain extensions of credit on the account; or (ii) there is an outstanding balance on the account that has not been charged off. An account that has been suspended only temporarily (for example, due to a report by the cardholder of unauthorized use of the card) is considered an open account or open credit card account. The term open account is used in the de minimis, private label, and product testing exceptions under § 226.58(c) and in § 226.58(e), regarding availability of agreements to existing cardholders. These sections are discussed below.

The final rule also includes new comment 58(b)(5)–1. This comment clarifies that, under the § 226.58(b)(5) definition of open account, an account is considered open if either of the two conditions set forth in the definition are met even if the account is inactive. Similarly, the comment clarifies that an account is considered open if an account has been closed for new activity (for example, due to default by the cardholder) but the cardholder is still making payments to pay off the outstanding balance.

The definition of open account included in the final rule differs from the guidance provided in proposed comment 58(e)–2. In particular, accounts closed to new activity are considered open accounts under § 226.58(b)(5), but were not considered open accounts under the proposed comment. The Board is aware that, under the new definition of open accounts, some issuers that may have qualified for the de minimis exception under the proposed rule will not qualify for the exception under the final rule. The Board believes that the approach to accounts closed for new activity under the final rule more accurately reflects the size of an issuer's portfolio. This approach also is more consistent with the treatment of such accounts under other sections of Regulation Z.

In addition, the proposed comment applied only to the de minimis exception and did not provide guidance on the meaning of open accounts for other purposes, including for purposes of determining availability of agreements to existing cardholders. Because the definition of open account applies to all subsections of § 226.58, the addition of the defined term clarifies that issuers must provide a cardholder with a copy of his or her particular credit card agreement under § 226.58(e) even if his or her account has been closed to new activity.

58(b)(6) Pricing Information

Proposed § 226.58(b)(4) defined the term "pricing information" to include: (1) the information under § 226.6(b)(2)(i) through (b)(2)(xii), (b)(3) and (b)(4) that is required to be disclosed in writing pursuant to § 226.5(a)(1)(ii); (2) the credit limit; and (3) the method used to calculate required minimum payments. The Board received a number of comments on the proposed definition of pricing information, and the definition is adopted with modifications, as discussed below, as § 226.58(b)(6).

Section 226.58(b)(6) defines the pricing information as the information listed in § 226.6(b)(2)(i) through (b)(2)(xii) and (b)(4). The definition specifies that the pricing information does not include temporary or promotional rates and terms or rates and terms that apply only to protected balances.

Under § 226.58(b)(6), the pricing information continues to include the information listed in § 226.6(b)(2)(i) through (b)(2)(xii), as proposed. The information listed in § 226.6(b)(3) has been omitted from the final rule, as information listed under § 226.6(b)(3) required to be disclosed in writing pursuant to § 226.5(a)(1)(ii) is, by definition, included in § 226.6(b)(2). The information listed in § 226.6(b)(4) is included as proposed.

The credit limit is not included in the definition of pricing information under the final rule. Many card issuer commenters stated that the Board should not include the credit limit as an element of the pricing information. These commenters argued that the range of credit limits offered in connection with a particular agreement is likely to be so broad that it would not assist consumers in shopping for a credit card and noted that existing cardholders are notified of their individual credit limit on their periodic statements. These commenters also noted that credit limits are individually tailored and change frequently. They argued that including the credit limit as part of the pricing information therefore would require issuers to update and resubmit agreements frequently, imposing a significant burden on card issuers. The Board agrees with these commenters.

The method used to calculate minimum payments also is not included in the definition of pricing information under the final rule. Methods used to calculate minimum payments are often complex and may be difficult to explain in a form that is readily understandable but still accurate. Upon further consideration, the Board believes that including this information in the pricing information likely would cause confusion among consumers and is unlikely to assist consumers in shopping for a credit card.

The § 226.58(b)(6) definition of pricing information also excludes temporary or promotional rates and terms or rates and terms that apply only to protected balances. Several card issuer commenters noted that promotional terms change frequently and therefore become outdated quickly. They also noted that these terms may be offered only to targeted groups of consumers. Including such terms as part of the pricing information likely would lead to confusion, as consumers often would be misled into believing they could apply for a particular set of terms when in fact they could not. The Board agrees that including these terms likely would lead to substantial consumer confusion about the terms available from a particular issuer. Similarly, including rates and terms that apply only to protected balances likely would mislead consumers about the terms that would apply to an account generally.

Consumer groups commented that the Board should require issuers to disclose as part of the pricing information how the credit limit is set and under what circumstances it may be reduced and how issuers allocate the minimum payment. The Board does not believe that this information would assist

consumers in shopping for a credit card. The Board has conducted extensive consumer testing to develop account opening disclosures that are meaningful and understandable to consumers. The Board believes that these disclosures are an appropriate basis for the pricing information to be submitted to the Board and provided to cardholders under § 226.58. This additional information therefore is not included in the definition of pricing information under the final rule.

Other commenters suggested that the Board should use the disclosure requirements for credit and charge card applications and solicitations under § 226.5a, rather than the account-opening disclosures under § 226.6, as the basis for the pricing information definition. The Board continues to believe that the account-opening disclosures under § 226.6 are a more appropriate basis for the pricing information to be submitted to the Board and provided to cardholders under § 226.58. For example, the Board believes that the more robust disclosure regarding rates required by § 226.6(b)(4) would be of substantial assistance to consumers in comparing credit cards among different issuers. As proposed, the final rule continues to use § 226.6 as the basis for the definition of pricing information.

As proposed, the definition of pricing information makes reference to the provisions of § 226.6 as revised by the January 2009 Regulation Z Rule. As discussed elsewhere in this supplementary information, the Board has decided to retain the July 1, 2010, mandatory compliance date for revised § 226.6, while the effective date of § 226.58 is February 22, 2010. The definition of pricing information for purposes of § 226.58 conforms to the requirements of revised § 226.6(b)(2)(i) through (b)(2)(xii) and (b)(4) beginning on February 22, 2010, even though compliance with portions of revised § 226.6(b) is not mandatory until July 1, 2010.

58(b)(7) Private Label Credit Card Account and Private Label Credit Card Plan

In connection with the proposed rule, the Board solicited comment on whether the Board should create an exception applicable to small credit card plans offered by an issuer of any size. The Board is adopting in § 226.58(c)(6) an exception for small private label credit card plans, discussed below. The final rule includes as § 226.58(b)(7) definitions for two new defined terms, "private label credit card account" and "private label credit card plan," used in connection with that exception.

Section 226.58(b)(7) defines a private label credit card account as a credit card account under an open-end (not home-secured) consumer credit plan with a credit card that can be used to make purchases only at a single merchant or an affiliated group of merchants and defines a private label credit card plan as all of the private label credit card accounts issued by a particular issuer with credit cards usable at the same single merchant or affiliated group of merchants.

The final rule includes additional guidance regarding these definitions in four comments. Comment 58(b)(7)–1 clarifies that the term private label credit card account applies to any credit card account that meets the terms of the definition, regardless of whether the account is issued by the merchant or its affiliate or by an unaffiliated third party.

Comment 58(b)(7)–2 clarifies that accounts with so-called co-branded credit cards are not considered private label credit card accounts. Credit cards that display the name, mark, or logo of a merchant or affiliated group of merchants as well as the mark, logo, or brand of payment network are generally referred to as co-branded cards. While these credit cards may display the brand of the merchant or affiliated group of merchants as the dominant brand on the card, such credit cards are usable at any merchant that participates in the payment network. Because these credit cards can be used at multiple unaffiliated merchants, they are not considered private label credit cards under § 226.58(b)(7).

Comment 58(b)(7)–3 clarifies that an "affiliated group of merchants" means two or more affiliated merchants or other persons that are related by common ownership or common corporate control. For example, the term would include franchisees that are subject to a common set of corporate policies or practices under the terms of their franchise licenses. The term also applies to two or more merchants or other persons that agree among each other, by contract or otherwise, to accept a credit card bearing the same name, mark, or logo (other than the mark, logo, or brand of a payment network such as Visa or MasterCard), for the purchase of goods or services solely at such merchants or persons. For example, several local clothing retailers jointly agree to issue credit cards called the "Main Street Fashion Card" that can be used to make purchases only at those retailers. For purposes of this section, these retailers would be considered an affiliated group of merchants.

Comment 58(b)(7)–4 provides examples of which credit card accounts constitute a private label credit card plan under § 226.58(b)(7). As comment 58(b)(7)–4 indicates, which credit card accounts issued by a particular issuer constitute a private label credit card plan is determined by where the credit cards can be used. All of the private label credit card accounts issued by a particular issuer with credit cards that are usable at the same merchant or affiliated group of merchants constitute a single private label credit card plan, regardless of whether the rates, fees, or other terms applicable to the individual credit card accounts differ. Comment 58(b)(7)–4 provides the following example: an issuer has 3,000 open private label credit card accounts with credit cards usable only at Merchant A and 5,000 open private label credit card accounts with credit cards usable only at Merchant B and its affiliates. The issuer has two separate private label credit card plans, as defined by § 226.58(b)(7)—one plan consisting of 3,000 open accounts with credit cards usable only at Merchant A and another plan consisting of 5,000 open accounts with credit cards usable only at Merchant B and its affiliates.

Comment 58(b)(7)–4 notes that the example above remains the same regardless of whether (or the extent to which) the terms applicable to the individual open accounts differ. For example, assume that, with respect to the issuer's 3,000 open accounts with credit cards usable only at Merchant A in the example above, 1,000 of the open accounts have a purchase APR of 12 percent, 1,000 of the open accounts have a purchase APR of 15 percent, and 1,000 of the open accounts have a purchase APR of 18 percent. All of the 5,000 open accounts with credit cards usable only at Merchant B and Merchant B's affiliates have the same 15 percent purchase APR. The issuer still has only two separate private label credit card plans, as defined by § 226.58(b)(7). The open accounts with credit cards usable only at Merchant A do not constitute three separate private label credit card plans under § 226.58(b)(7), even though the accounts are subject to different terms.

Proposed 58(c) Registration With Board

Proposed § 226.58(c) required any card issuer that offered one or more credit card agreements as of December 31, 2009 to register with the Board, in the form and manner prescribed by the Board, no later than February 1, 2010. The proposed rule required issuers that had not previously registered with the Board (such as new issuers formed after

December 31, 2009) to register before the deadline for their first quarterly submission.

Proposed § 226.58(c) is not included in the final rule. The Board is eliminating the registration requirement from the final rule because of technical changes to the Board's submission process. The Board instead plans to capture the identifying information about each issuer that would have been captured during the registration process (*e.g.,* the issuer's name, address, and identifying number (such as an RSSD ID number or tax identification number), and the name, phone number and e-mail address of a contact person at the issuer) at the time of each issuer's first submission of agreements to the Board. Under the final rule, there is no requirement to register with the Board prior to submitting credit card agreements.

58(c) Submission of Agreements to Board

Proposed § 226.58(d) required that each card issuer electronically submit to the Board on a quarterly basis the credit card agreements that the issuer offers to the public. Commenters did not oppose the general requirements of proposed § 226.58(d), and the Board is adopting the proposed provision, redesignated as § 226.58(c), with certain modifications, as discussed below. Consistent with new TILA Section 122(d)(3), the Board will post the credit card agreements it receives on its Web site.

The Board proposed to use its exemptive authority under Sections 105(a) and 122(d)(5) of TILA to require issuers to submit to the Board only agreements currently offered to the public. Commenters generally were supportive of this proposed use of the Board's exemptive authority, and the Board received no comments indicating that issuers should be required to submit agreements not offered to the public. The Board continues to believe that, with respect to credit card agreements that are not currently offered to the public, the administrative burden on issuers of preparing and submitting agreements for posting on the Board's Web site would outweigh the benefit of increased transparency for consumers. The Board also continues to believe that providing an exception for agreements not currently offered to the public is appropriate both to effectuate the purposes of TILA and to facilitate compliance with TILA.

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

58(c)(1) Quarterly Submissions

Proposed § 226.58(d)(1) required issuers to send quarterly submissions to the Board no later than the first business day on or after January 31, April 30, July 31, and October 31 of each year. The proposed rule required issuers to submit: (i) The credit card agreements that the issuer offered to the public as of the last business day of the preceding calendar quarter that the issuer has not previously submitted to the Board; (ii) any credit card agreement previously submitted to the Board that was modified or amended during the preceding calendar quarter; and (iii) notification regarding any credit card agreement previously submitted to the Board that the issuer is withdrawing. Proposed comment § 226.58(d)–1 provided an example of the submission requirements as applied to a hypothetical issuer. Proposed comment 58(d)–2 clarified that an issuer is not required to make any submission to the Board if, during the previous calendar quarter, the issuer did not take any of the following actions: (1) Offering a new credit card agreement that was not submitted to the Board previously; (2) revising or amending an agreement previously submitted to the Board; and (3) ceasing to offer an agreement previously submitted to the Board.

Commenters did not oppose the Board's approach to submission of agreements as described in proposed § 226.58(d)(1). The Board therefore is adopting proposed § 226.58(d)(1) and proposed comments 58(d)–1 and 58(d)–2, redesignated in the final rule as § 226.58(c)(1) and comments 58(c)(1)–1 and 58(c)(1)–2, with certain modifications.

As discussed above, the Board is eliminating from the final rule the requirement that issuers register with the Board before submitting agreements to the Board. Section 226.58(c)(1) therefore includes a new requirement that issuers submit along with their quarterly submissions identifying information relating to the card issuer and the agreements submitted, including the issuer's name, address, and identifying number (such as an RSSD ID number or tax identification number).

In addition, Sections 226.58(c)(1) and comments 58(c)(1)–1 and (c)(1)–2 reflect, through use of the defined term "amend," that issuers are required to resubmit agreements only following substantive changes. As discussed above, commenters overwhelmingly indicated that the Board should only require resubmission of agreements following substantive changes. The Board agrees that requiring resubmission of agreements following minor, technical changes would impose a significant administrative burden with no corresponding benefit of transparency. This is reflected in the final rule by requiring that issuers resubmit agreements under § 226.58(c)(1) only when an agreement has been amended as defined in § 226.58(b)(2).

Several commenters asked that issuers be permitted to submit a complete, updated set of credit card agreements on a quarterly basis, rather than tracking which agreements are being modified, withdrawn, or added. These commenters argued that requiring issuers to track which agreements are being modified, withdrawn, or amended could impose a substantial burden on some issuers with no corresponding benefit to consumers. The Board agrees. The final rule therefore includes new comment 58(c)(1)–3, which clarifies that § 226.58(c)(1) permits an issuer to submit to the Board on a quarterly basis a complete, updated set of the credit card agreements the issuer offers to the public. The comment gives the following example: An issuer offers agreements A, B and C to the public as of March 31. The issuer submits each of these agreements to the Board by April 30 as required by § 226.58(c)(1). On May 15, the issuer amends agreement A, but does not make any changes to agreements B or C. As of June 30, the issuer continues to offer amended agreement A and agreements B and C to the public. At the next quarterly submission deadline, July 31, the issuer

must submit the entire amended agreement A and is not required to make any submission with respect to agreements B and C. The issuer may either: (i) Submit the entire amended agreement A and make no submission with respect to agreements B and C; or (ii) submit the entire amended agreement A and also resubmit agreements B and C. The comment also states that an issuer may choose to resubmit to the Board all of the agreements it offered to the public as of a particular quarterly submission deadline even if the issuer has not introduced any new agreements or amended any agreements since its last submission and continues to offer all previously submitted agreements.

Additional details regarding the submission process are provided in the Consumer and College Credit Card Agreement Submission Technical Specifications Document, which is published as Attachment I to this **Federal Register** notice and which will be available on the Board's public Web site.

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

Proposed § 226.58(d)(2), redesignated as § 226.58(c)(2), is adopted as proposed. Section 3 of the Credit Card Act provides that new TILA Section 122(d) becomes effective on February 22, 2010, nine months after the date of enactment of the Credit Card Act. Thus, consistent with Section 3 of the Credit Card Act and as proposed, the final rule requires issuers to send their initial submissions, containing credit card agreements offered to the public as of December 31, 2009, to the Board no later than February 22, 2010. The next submission must be sent to the Board no later than August 2, 2010 (the first business day on or after July 31, 2010), and must contain: (1) Any credit card agreement that the card issuer offered to the public as of June 30, 2010, that the card issuer has not previously submitted to the Board; (2) any credit card agreement previously submitted to the Board that was modified or amended after December 31, 2009, and on or before June 30, 2010, as described in § 226.58(c)(3); and (3) notification regarding any credit card agreement previously submitted to the Board that the issuer is withdrawing as of June 30, 2010, as described in § 226.58(c)(4) and (5).

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

Several card issuer commenters suggested that issuers' initial submission should be due on a date later than February 22, 2010. The Board is aware that many issuers are likely to make changes to their agreements related to other provisions of the Credit Card Act before the February 22, 2010, effective date and that agreements as of December 31, 2009, therefore will be somewhat outdated by the time they are sent to the Board on February 22, 2010. The Board believes, however, that it is important to provide consumers with access to issuer's credit card agreements promptly following the statutory effective date.

58(c)(3) Amended Agreements

Proposed § 226.58(d)(3) required that, if an issuer makes changes to an agreement previously submitted to the Board, the issuer must submit the entire revised agreement to the Board by the first quarterly submission deadline after the last day of the calendar quarter in which the change became effective. The proposed rule also specified that, if a credit card agreement has been submitted to the Board, no changes have been made to the agreement, and the card issuer continues to offer the agreement to the public, no additional submission with respect to that agreement is required. Two proposed comments, proposed comments 58(d)–3 and 58(d)–4, provided examples of situations in which resubmission would not and would be required, respectively. Proposed comment 58(d)–5 clarified that an issuer could not fulfill the requirement to submit the entire revised agreement to the Board by submitting a change-in-terms or similar notice covering only the changed terms and that revisions could not be submitted as separate riders.

The proposed rule required credit card issuers to resubmit agreements following any change, regardless of whether that change affects the substance of the agreement. As discussed above, the Board solicited comment on whether issuers should be required to resubmit agreements to the Board following minor, technical changes. Commenters overwhelmingly indicated that the Board should only require resubmission of agreements following substantive changes.

The Board agrees with these commenters that requiring resubmission of agreements following minor, technical changes would impose a significant administrative burden with no corresponding benefit of increased transparency to consumers. The final rule therefore includes a new definition of "amends" in § 226.58(b)(2), as discussed above. Under the final rule, an issuer is only required to resubmit an agreement to the Board following a change to the agreement if that change constitutes an amendment as defined in § 226.58(b)(2). The definition in § 226.58(b)(2) specifies that an issuer amends an agreement if it makes a substantive change to the agreement. A change is substantive if it alters the rights or obligations of the card issuer or the consumer under the agreement. The definition specifies that any change in the pricing information is deemed to be a substantive change and therefore an amendment. Section 226.58(c)(3) and comments 58(c)(3)–1, 58(c)(3)–2, and 58(c)(3)–3 (corresponding to proposed § 226.58(d)(3) and proposed comments 58(d)–3, 58(d)–4, and 58(d)–5) have been revised to incorporate the defined term "amend" but otherwise are adopted as proposed with several technical changes.

Under § 226.58(c)(3), corresponding to proposed § 226.58(d)(3), if a credit card agreement has been submitted to the Board, the agreement has not been amended as defined in § 226.58(b)(2) and the card issuer continues to offer the agreement to the public, no additional submission regarding that agreement is required. For example, as described in comment 58(c)(3)–1, corresponding to proposed comment 58(d)–3, a credit card issuer begins offering an agreement in October and submits the agreement to the Board the following January 31, as required by § 226.58(c)(1). As of March 31, the issuer has not amended the agreement and is still offering the agreement to the public. The issuer is not required to submit anything to the Board regarding that agreement by April 30.

If a credit card agreement that previously has been submitted to the Board is amended, as defined in § 226.58(b)(2), the final rule provides that the card issuer must submit the entire amended agreement to the Board by the first quarterly submission deadline after the last day of the calendar quarter in which the change became effective. Comment 58(c)(3)–2, corresponding to proposed comment 58(d)–4, gives the following example: an issuer submits an agreement to the

Board on October 31. On November 15, the issuer changes the balance computation method used under the agreement. Because an element of the pricing information has changed, the agreement has been amended and the issuer must submit the entire amended agreement to the Board no later than January 31.

Comment 58(c)(3)–3, corresponding to proposed comment 58(d)–5, explains that an issuer may not fulfill the requirement to submit the entire amended agreement to the Board by submitting a change-in-terms or similar notice covering only the terms that have changed. In addition, the comment emphasizes that, as required by § 226.58(c)(8)(iv), amendments must be integrated into the text of the agreement (or the addenda described in § 226.58(c)(8)), not provided as separate riders. For example, an issuer changes the purchase APR associated with an agreement the issuer has previously submitted to the Board. The purchase APR for that agreement was included in the addendum of pricing information, as required by § 226.58(c)(8). The issuer may not submit a change-in-terms or similar notice reflecting the change in APR, either alone or accompanied by the original text of the agreement and original pricing information addendum. Instead, the issuer must revise the pricing information addendum to reflect the change in APR and submit to the Board the entire text of the agreement and the entire revised addendum, even though no changes have been made to the provisions of the agreement and only one item on the pricing information addendum has changed.

58(c)(4) Withdrawal of Agreements

Proposed § 226.58(d)(4), redesignated as § 226.58(c)(4), and proposed comment 58(d)–6, redesignated as comment 58(c)(4)–1, are adopted as proposed with one technical change. The Board received no comments regarding this section and the accompanying commentary. As proposed, § 226.58(c)(4) requires an issuer to notify the Board if the issuer ceases to offer any agreement previously submitted to the Board by the first quarterly submission deadline after the last day of the calendar quarter in which the issuer ceased to offer the agreement. For example, as described in comment 58(c)(4)–1, on January 5 an issuer stops offering to the public an agreement it previously submitted to the Board. The issuer must notify the Board that the agreement is being withdrawn by April 30, the first quarterly submission deadline after March 31, the last day of the calendar quarter in which the issuer stopped offering the agreement.

58(c)(5) De Minimis Exception

Proposed § 226.58(e) provided an exception to the requirement that credit card agreements be submitted to the Board for issuers with fewer than 10,000 open credit card accounts under open-end (not home-secured) consumer credit plans. Commenters generally were supportive of this provision, and proposed § 226.58(e) is incorporated into the final rule as § 226.58(c)(5) with certain modifications as discussed below.

The proposal noted that TILA Section 122(d)(5) provides that the Board may establish exceptions to the requirements that credit card agreements be posted on creditors' Web sites and submitted to the Board for posting on the Board's Web site in any case where the administrative burden outweighs the benefit of increased transparency, such as where a credit card plan has a de minimis number of consumer account holders. The Board expressed its belief that a de minimis exception should be created, but noted that it might not be feasible to base such an exception on the number of accounts under a credit card plan. In particular, the Board stated that it was unaware of a way to define "credit card plan" that would not divide issuers' portfolios into such small units that large numbers of credit card agreements could fall under the de minimis exception. The Board therefore proposed a de minimis exception for issuers with fewer than 10,000 open credit card accounts. Under the proposed exception, such issuers were not required to submit any credit card agreements to the Board.

As described below, the Board is adopting as part of the final rule two exceptions based on the number of accounts under a credit card plan—the private label credit card exception and the product testing exception. The Board continues to believe, however, that the administrative burden on small issuers of preparing and submitting agreements would outweigh the benefit of increased transparency from including those agreements on the Board's Web site. The final rule therefore includes the proposed § 226.58(e) de minimis exception for issuers with fewer than 10,000 open accounts substantially as proposed, redesignated as § 226.58(c)(5).

In connection with the proposed rule, the Board solicited comment on the 10,000 open account threshold for the de minimis exception. Several commenters supported the 10,000 account threshold. Several other commenters stated that the threshold should be raised to 25,000 open accounts. The Board continues to believe that 10,000 open accounts is an appropriate threshold for the de minimis exception, and that threshold is retained in the final rule. One commenter stated that accounts with terms and conditions that are no longer offered to the public should not be counted toward the 10,000 account threshold. The Board believes that this exception is unworkable and could bring large numbers of issuers within the de minimis exception. The final rule therefore does not incorporate this approach.

Proposed § 226.58(e)(1) has been modified to incorporate the defined term "open account," discussed above, and redesignated as § 226.58(c)(5)(i), but otherwise is adopted as proposed. Under § 226.58(c)(5)(i), a card issuer is not required to submit any credit card agreements to the Board if the card issuer has fewer than 10,000 open credit card accounts as of the last business day of the calendar quarter.

The final rule includes new comment 58(c)(5)–1, which clarifies the relationship between the de minimis exception and the private label credit card and product testing exceptions. As comment 58(c)(5)–1 explains, the de minimis exception is distinct from the private label credit card exception under § 226.58(c)(6) and the product testing exception under § 226.58(c)(7). The de minimis exception provides that an issuer with fewer than 10,000 open credit card accounts is not required to submit any agreements to the Board, regardless of whether those agreements qualify for the private label credit card exception or the product testing exception. In contrast, the private label credit card exception and the product testing exception provide that an issuer is not required to submit to the Board agreements offered solely in connection with certain types of credit card plans with fewer than 10,000 open accounts, regardless of the issuer's total number of open accounts.

Proposed comments 58(e)–1 and 58(e)–3, redesignated as comments 58(c)(5)–2 and 58(c)(5)–3, have been modified to incorporate the defined term "open account," but otherwise are adopted as proposed. Comment 58(c)(5)–2 gives the following example of an issuer that qualifies for the de minimis exception: an issuer offers five credit card agreements to the public as of September 30. However, the issuer has only 2,000 open credit card accounts as of September 30. The issuer is not required to submit any agreements to the Board by October 31

because the issuer qualifies for the de minimis exception. Comment 58(c)(5)–3 clarifies that whether an issuer qualifies for the de minimis exception is determined as of the last business day of the calendar quarter and gives the following example: as of December 31, an issuer offers three agreements to the public and has 9,500 open credit card accounts. As of January 30, the issuer still offers three agreements, but has 10,100 open accounts. As of March 31, the issuer still offers three agreements, but has only 9,700 open accounts. Even though the issuer had 10,100 open accounts at one time during the calendar quarter, the issuer qualifies for the de minimis exception because the number of open accounts was less than 10,000 as of March 31. The issuer therefore is not required to submit any agreements to the Board under § 226.58(c)(1) by April 30.

Proposed comment 58(e)–2 provided guidance regarding the definition of open accounts for purposes of the de minimis exception. As discussed above, the Board has eliminated proposed comment 58(e)–2 from the final rule and added a definition of "open account" as § 226.58(b)(5).

Proposed § 226.58(e)(2), redesignated as § 226.58(c)(5)(ii), is adopted as proposed. Section 226.58(c)(5)(ii) specifies that if an issuer that previously qualified for the de minimis exception ceases to qualify, the card issuer must begin making quarterly submissions to the Board no later than the first quarterly submission deadline after the date as of which the issuer ceased to qualify. Proposed comment 58(e)–4, redesignated as comment 58(c)(5)–4, has been modified to incorporate the defined term "open account," but otherwise is adopted as proposed. Comment 58(c)(5)–4 clarifies that whether an issuer has ceased to qualify for the de minimis exception is determined as of the last business day of the calendar quarter and provides the following example: As of June 30, an issuer offers three agreements to the public and has 9,500 open credit card accounts. The issuer is not required to submit any agreements to the Board under § 226.58(c)(1) because the issuer qualifies for the de minimis exception. As of July 15, the issuer still offers the same three agreements, but now has 10,000 open accounts. The issuer is not required to take any action at this time, because whether an issuer qualifies for the de minimis exception under § 226.58(c)(5) is determined as of the last business day of the calendar quarter. As of September 30, the issuer still offers the same three agreements and still has 10,000 open accounts. Because the issuer had 10,000 open accounts as of September 30, the issuer ceased to qualify for the de minimis exception and must submit the three agreements it offers to the Board by October 31, the next quarterly submission deadline.

Proposed § 226.58(e)(3), redesignated as § 226.58(c)(5)(iii), has been modified to reflect the elimination of the requirement to register with the Board, as discussed above, but otherwise is adopted substantively as proposed. Section 226.58(c)(5)(iii) provides that if an issuer that did not previously qualify for the de minimis exception qualifies for the de minimis exception, the card issuer must continue to make quarterly submissions to the Board until the issuer notifies the Board that the issuer is withdrawing all agreements it previously submitted to the Board.

Proposed comment 58(e)–5, redesignated as comment 58(c)(5)–5, is similarly modified to reflect the elimination of the registration requirement, but otherwise is adopted substantively as proposed. Comment 58(c)(5)–5 gives the following example of the option to withdraw agreements under § 226.58(c)(5)(iii): An issuer has 10,001 open accounts and offers three agreements to the public as of December 31. The issuer has submitted each of the three agreements to the Board as required under § 226.58(c)(1). As of March 31, the issuer has only 9,999 open accounts. The issuer has two options. First, the issuer may notify the Board that the issuer is withdrawing each of the three agreements it previously submitted. Once the issuer has notified the Board, the issuer is no longer required to make quarterly submissions to the Board under § 226.58(c)(1). Alternatively, the issuer may choose not to notify the Board that it is withdrawing its agreements. In this case, the issuer must continue making quarterly submissions to the Board as required by § 226.58(c)(1). The issuer might choose not to withdraw its agreements if, for example, the issuer believes that it likely will cease to qualify for the de minimis exception again in the near future.

58(c)(6) Private Label Credit Card Exception

The final rule includes new section § 226.58(c)(6), which provides an exception to the requirement that credit card agreements be submitted to the Board for private label credit card plans with fewer than 10,000 open accounts. TILA Section 122(d)(5) provides that the Board may establish exceptions to the requirements that credit card agreements be posted on creditors' Web sites and submitted to the Board for posting on the Board's Web site in any case where the administrative burden outweighs the benefit of increased transparency, such as where a credit card plan has a de minimis number of consumer account holders. As discussed above, the final rule includes a de minimis exception for issuers with fewer than 10,000 total open credit card accounts as § 226.58(c)(5). As also disclosed above, the Board solicited comment in connection with the proposed rule regarding whether the Board should create a de minimis exception applicable to small credit card plans offered by an issuer of any size and, if so, how the Board should define a credit card plan. Commenters generally supported creating such an exception. One card issuer commenter suggested that the Board create an exception for credit cards that can only be used for purchases at a single merchant or affiliated group of merchants, commonly referred to as private label credit cards, regardless of issuer size.

The Board is adopting such an exception. The Board believes that the administrative burden on issuers of preparing and submitting to the Board agreements for private label credit card plans with a de minimis number of consumer account holders outweighs the benefit of increased transparency of including these agreements on the Board's Web site. The small size of these credit card plans suggests that it is unlikely that most consumers would regard these products as comparable alternatives to other credit card products. In addition, the Board is aware that the number of small private label credit card programs is very large. Including agreements associated with these plans on the Board's Web site would significantly increase the number of agreements, potentially making the Web site less useful to consumers as a comparison shopping tool. Also, the Board believes that, with respect to private label credit cards, a credit card plan can be defined sufficiently narrowly to avoid dividing issuers' portfolios into units so small that large numbers of credit card agreements would fall under the exception.

Under § 226.58(c)(6)(i), a card issuer is not required to submit to the Board a credit card agreement if, as of the last business day of the calendar quarter, the agreement: (A) Is offered for accounts under one or more private label credit card plans each of which has fewer than 10,000 open accounts; and (B) is not offered to the public other than for accounts under such a plan.

As discussed above, a private label credit card plan is defined in § 226.58(b)(7) as all of the private label credit card accounts issued by a particular issuer with credit cards usable at the same single merchant or affiliated group of merchants. For example, all of the private label credit card accounts issued by Issuer A with credit cards usable only at Merchant B and Merchant B's affiliates constitute a single private label credit card plan under § 226.58(b)(7).

The exception is limited to agreements that are "not offered to the public other than for accounts under [one or more private label credit card plans each of which has fewer than 10,000 open accounts]" in order to ensure that issuers are required to submit to the Board agreements that are offered in connection with general purpose credit card accounts or credit card accounts under large (*i.e.,* 10,000 or more open accounts) private label plans, regardless of whether those agreements also are used in connection with a small (*i.e.,* fewer than 10,000 open accounts) private label credit card plan. The Board is concerned that, without this limitation, large numbers of credit card agreements could fall under the private label credit card exception.

Section 226.58(c)(6)(ii) provides that if an agreement that previously qualified for the private label credit card exception ceases to qualify, the card issuer must submit the agreement to the Board no later than the first quarterly submission deadline after the date as of which the agreement ceased to qualify. Section 226.58(c)(6)(iii) provides that if an agreement that did not previously qualify for the private label credit card exception qualifies for the exception, the card issuer must continue to make quarterly submissions to the Board with respect to that agreement until the issuer notifies the Board that the agreement is being withdrawn.

The final rule includes six related comments. Comment 58(c)(6)–1 gives the following two examples of how the exception applies. In the first example, an issuer offers to the public a credit card agreement offered solely for private label credit card accounts with credit cards that can be used only at Merchant A. The issuer has 8,000 open accounts with such credit cards usable only at Merchant A. The issuer is not required to submit this agreement to the Board under § 226.58(c)(1) because the agreement is offered for accounts under a private label credit card plan (*i.e.,* the 8,000 private label credit card accounts with credit cards usable only at Merchant A), that private label credit card plan has fewer than 10,000 open accounts, and the credit card agreement is not offered to the public other than for accounts under that private label credit card plan.

In the second example, in contrast, the same issuer also offers to the public a different credit card agreement that is offered solely for private label credit card accounts with credit cards usable only at Merchant B. The issuer has 12,000 open accounts with such credit cards usable only at Merchant B. The private label credit card exception does not apply. Although this agreement is offered for a private label credit card plan (*i.e.,* the 12,000 private label credit card accounts with credit cards usable only at Merchant B), and the agreement is not offered to the public other than for accounts under that private label credit card plan, the private label credit card plan has more than 10,000 open accounts. (The issuer still is not required to submit to the Board the agreement offered in connection with credit cards usable only at Merchant A, as each agreement is evaluated separately under the private label credit card exception.)

Comment 58(c)(6)–2 clarifies that whether the private label credit card exception applies is determined on an agreement-by-agreement basis. Therefore, some agreements offered by an issuer may qualify for the private label credit card exception even though the issuer also offers other agreements that do not qualify, such as agreements offered for accounts with cards usable at multiple unaffiliated merchants or agreements offered for accounts under private label credit card plans with 10,000 or more open accounts.

Comment 58(c)(6)–3 clarifies the relationship between the private label credit card exception and the § 226.58(c)(5) de minimis exception. The comment notes that the two exceptions are distinct. The private label credit card exception exempts an issuer from submitting certain agreements under a private label plan to the Board, regardless of the issuer's overall size as measured by the issuer's total number of open accounts. In contrast, the de minimis exception exempts an issuer from submitting any credit card agreements to the Board if the issuer has fewer than 10,000 total open accounts. For example, an issuer offers to the public two credit card agreements. Agreement A is offered solely for private label credit card accounts with credit cards usable only at Merchant A. The issuer has 5,000 open credit card accounts with such credit cards usable only at Merchant A. Agreement B is offered solely for credit card accounts with cards usable at multiple unaffiliated merchants that participate in a major payment network. The issuer has 40,000 open credit card accounts with such payment network cards. The issuer is not required to submit agreement A to the Board under § 226.58(c)(1) because agreement A qualifies for the private label credit card exception under § 226.58(c)(6). Agreement A is offered for accounts under a private label credit card plan with fewer than 10,000 open accounts (*i.e.,* the 5,000 private label credit card accounts with credit cards usable only at Merchant A) and is not otherwise offered to the public. The issuer is required to submit agreement B to the Board under § 226.58(c)(1). The issuer does not qualify for the de minimis exception under § 226.58(c)(5) because it has more than 10,000 open accounts, and agreement B does not qualify for the private label credit card exception under § 226.58(c)(6) because it is not offered solely for accounts under a private label credit card plan with fewer than 10,000 open accounts.

Comment 58(c)(6)–4 gives the following example of when an agreement would not qualify for the private label credit card exception because it is offered to the public other than for accounts under a private label credit card plan with fewer than 10,000 open accounts. An issuer offers an agreement for private label credit card accounts with credit cards usable only at Merchant A. This private label plan has 9,000 such open accounts. The same agreement also is offered for credit card accounts with credit cards usable at multiple unaffiliated merchants that participate in a major payment network. The agreement does not qualify for the private label credit card exception. The agreement is offered for accounts under a private label credit card plan with fewer than 10,000 open accounts. However, the agreement also is offered to the public for accounts that are not part of a private label credit card plan, and therefore does not qualify for the private label credit card exception.

Comment 58(c)(6)–4 notes that, similarly, an agreement does not qualify for the private label credit card exception if it is offered in connection with one private label credit card plan with fewer than 10,000 open accounts and one private label credit card plan with 10,000 or more open accounts. For example, an issuer offers a single credit card agreement to the public. The agreement is offered for two types of accounts. The first type of account is a private label credit card account with a credit card usable only at Merchant A. The second type of account is a private label credit card account with a credit

card usable only at Merchant B. The issuer has 10,000 such open accounts with credit cards usable only at Merchant A and 5,000 such open accounts with credit cards usable only at Merchant B. The agreement does not qualify for the private label credit card exception. While the agreement is offered for accounts under a private label credit card plan with fewer than 10,000 open accounts (*i.e.,* the 5,000 open accounts with credit cards usable only at Merchant B), the agreement is also offered for accounts not under such a plan (*i.e.,* the 10,000 open accounts with credit cards usable only at Merchant A).

Comment 58(c)(6)–5 clarifies that the private label exception applies even if the same agreement is used for more than one private label credit card plan with fewer than 10,000 open accounts. For example, a card issuer has 15,000 total open private label credit card accounts. Of these, 7,000 accounts have credit cards usable only at Merchant A, 5,000 accounts have credit cards usable only at Merchant B, and 3,000 accounts have credit cards usable only at Merchant C. The card issuer offers to the public a single credit card agreement that is offered for all three types of accounts and is not offered for any other type of account. The issuer is not required to submit the agreement to the Board under § 226.58(c)(1). The agreement is used for three different private label credit card plans (*i.e.,* the accounts with credit cards usable at Merchant A, the accounts with credit cards usable at Merchant B, and the accounts with credit cards usable at Merchant C), each of which has fewer than 10,000 open accounts, and the issuer does not offer the agreement for any other type of account. The agreement therefore qualifies for the private label credit card exception under § 226.58(c)(6).

Comment 58(c)(6)–6 clarifies that the private label credit card exception applies even if an issuer offers more than one agreement in connection with a particular private label credit card plan. For example, an issuer has 5,000 open private label credit card accounts with credit cards usable only at Merchant A. The issuer offers to the public three different agreements each of which may be used in connection with private label credit card accounts with credit cards usable only at Merchant A. The agreements are not offered for any other type of credit card account. The issuer is not required to submit any of the three agreements to the Board under § 226.58(c)(1) because each of the agreements is used for a private label credit card plan which has fewer than 10,000 open accounts and none of the three is offered to the public other than for accounts under such a plan.

58(c)(7) Product Testing Exception

The final rule includes new section § 226.58(c)(7), which provides an exception to the requirement that credit card agreements be submitted to the Board for certain agreements offered to the public solely as part of product test by an issuer. As described above, TILA Section 122(d)(5) provides that the Board may establish exceptions to the requirements that credit card agreements be posted on creditors' Web sites and submitted to the Board for posting on the Board's Web site in any case where the administrative burden outweighs the benefit of increased transparency, such as where a credit card plan has a de minimis number of consumer account holders. As discussed above, the final rule includes a de minimis exception for issuers with fewer than 10,000 open credit card accounts as § 226.58(c)(5). As also discussed above, the Board solicited comment in connection with the proposed rule regarding whether the Board should create a de minimis exception applicable to small credit card plans offered by an issuer of any size and, if so, how the Board should define a credit card plan. Commenters generally supported creating such an exception. One card issuer commenter suggested that the Board create an exception for agreements offered to limited groups of consumers in connection with product testing by an issuer, regardless of issuer size.

The Board is adopting such an exception. The Board believes that the administrative burden on issuers of preparing and submitting to the Board agreements used for a small number of consumer account holders in connection with a product test by an issuer outweighs the benefit of increased transparency of including these agreements on the Board's Web site. The Board understands that issuers test new credit card strategies and products by offering credit cards to discrete, targeted groups of consumers for a limited time. Posting these agreements on the Board's and issuers' Web sites would not facilitate comparison shopping by consumers, as these terms are offered only to a limited group of consumers for a short period of time. Including these agreements could mislead consumers into believing that these terms are available more generally. In addition, posting these agreements would make issuer testing strategies transparent to competitors. Also, the Board believes that, with respect to product tests, a credit card plan can be defined sufficiently narrowly to avoid dividing issuers' portfolios into units so small that large numbers of credit card agreements would fall under the exception.

Under § 226.58(c)(7)(i), an issuer is not required to submit to the Board a credit card agreement if, as of the last day of the calendar quarter, the agreement: (A) Is offered as part of a product test offered to only a limited group of consumers for a limited period of time; (B) is used for fewer than 10,000 open accounts; and (C) is not offered to the public other than in connection with such a product test. Section 226.58(c)(7)(ii) provides that if an agreement that previously qualified for the product testing exception ceases to qualify, the card issuer must submit the agreement to the Board no later than the first quarterly submission deadline after the date as of which the agreement ceased to qualify. Section 226.58(c)(7)(iii) provides that if an agreement that did not previously qualify for the product testing exception qualifies for the exception, the card issuer must continue to make quarterly submissions to the Board with respect to that agreement until the issuer notifies the Board that the agreement is being withdrawn.

58(c)(8) Form and Content of Agreements Submitted to the Board

Many commenters on the proposed rule expressed confusion about the form and content requirements for agreements submitted to the Board. In order to make this information more readily noticeable and understandable, the Board is eliminating proposed Appendix N and incorporating the form and content requirements for agreements submitted to the Board as new § 226.58(c)(8). The form and content requirements under § 226.58(c)(8) are organized into four subsections, discussed below: (i) Form and content generally; (ii) pricing information; (iii) optional variable terms addendum; and (iv) integrated agreement. Form and content requirements included in proposed Appendix N for agreements posted on issuers' Web sites under proposed § 226.58(f)(1), redesignated as § 226.58(d), and individual cardholders' agreements provided under proposed § 226.58(f)(2), redesignated as § 226.58(e), have similarly been incorporated into those sections and are discussed below.

58(c)(8)(i) Form and Content Generally

Section 226.58(c)(8)(i)(A) states that each agreement must contain the provisions of the agreement and the pricing information in effect as of the last business day of the preceding calendar quarter, as proposed in Appendix N, paragraph 1. One commenter questioned whether a change-in-terms notice should be integrated into an agreement where the change-in-terms notice is not yet effective. The final rule therefore includes new comment 58(c)(8)–1, which gives the following example of the application of § 226.5(c)(8)(i)(A): on June 1, an issuer decides to decrease the purchase APR associated with one of the agreements it offers to the public. The change in the APR will become effective on August 1. If the issuer submits the agreement to the Board on July 31 (for example, because the agreement has been otherwise amended), the agreement submitted should not include the new lower APR because that APR was not in effect on June 30, the last business day of the preceding calendar quarter.

Section 226.58(c)(8)(i)(B) states that agreements submitted to the Board must not include any personally identifiable information relating to any cardholder, such as name, address, telephone number, or account number, as proposed in Appendix N, paragraph 1.

Section 226.58(c)(8)(i)(C) identifies certain items that are not deemed to be part of the agreement for purposes of § 226.58, and therefore are not required to be included in submissions to the Board. These items are as follows: (i) Disclosures required by state or federal law, such as affiliate marketing notices, privacy policies, or disclosures under the E-Sign Act; (ii) solicitation materials; (iii) periodic statements; (iv) ancillary agreements between the issuer and the consumer, such as debt cancellation contracts or debt suspension agreements; (v) offers for credit insurance or other optional products and other similar advertisements; and (vi) documents that may be sent to the consumer along with the credit card or credit card agreement, such as a cover letter, a validation sticker on the card, or other information about card security.

This list incorporates items identified as excluded from agreements in proposed Appendix N, paragraph 1, and proposed comment 58(b)(1)–2. In addition, one commenter asked that Board clarify that the agreement does not include ancillary agreements between the issuer and the consumer, such as debt cancellation contracts or debt suspension agreements. Because the Board agrees that including such ancillary agreements would not assist consumers in shopping for a credit card, this item is included in § 226.58(c)(8)(i)(C).

The final rule also includes new § 226.58(c)(8)(i)(D), which provides that agreements submitted to the Board must be presented in a clear and legible font.

58(c)(8)(ii) Pricing Information

Section 226.58(c)(8)(ii)(A) of the final rule specifies that pricing information must be set forth in a single addendum to the agreement that contains only the pricing information. This differs from proposed Appendix N, paragraph 1, which required issuers to set forth any information not uniform for all cardholders, including the pricing information, in an addendum to the agreement.

The Board believes, on the basis of consumer testing conducted in the context of developing the requirements for account-opening disclosures, that the pricing information (which is defined by reference to the requirements for account-opening disclosures under § 226.6) is particularly relevant to consumers in choosing a credit card. Upon further consideration, the Board has concluded that this information could be difficult for consumers to find if it is integrated into the text of the credit card agreement. The Board believes that requiring pricing information to be attached as a separate addendum would ensure that this information is easily accessible to consumers. The Board understands that cardholder agreements may be complex and densely worded, and the Board is concerned that including pricing information within such a document could hamper the ability of consumers to find and comprehend it. The Board therefore is requiring under § 226.58(c)(8)(ii)(A) that this information be provided in a separate addendum.

The final rule also includes comment 58(c)(8)–2, which clarifies that pricing information must be set forth in the separate addendum described in § 226.58(c)(8)(ii)(A) even if it is also stated elsewhere in the agreement.

Section 226.58(c)(8)(ii)(B) of the final rule provides that pricing information that may vary from one cardholder to another depending on the cardholder's creditworthiness or state of residence or other factors must be disclosed either by setting forth all the possible variations (such as purchase APRs of 13 percent, 15 percent, 17 percent, and 19 percent) or by providing a range of possible variations (such as purchase APRs ranging from 13 percent to 19 percent). This corresponds with a provision from proposed Appendix N, paragraph 1.

One commenter stated that issuers should have the flexibility to either provide pricing information and other varying information in an addendum or to provide each variation as a separate agreement. The Board's final rule does not provide this flexibility with respect to pricing information. The Board understands that issuers offer a range of terms and conditions and that issuers may make these terms and conditions available in a variety of different combinations, particularly with respect to items included in the pricing information. The Board is aware that the number of variations of pricing information is extremely large, and believes that including each of these variations on the Board's Web site likely would render the number of agreements provided on the Web site too large to be helpful to most consumers. For example, an issuer might offer credit cards with a purchase APR of 12 percent, 13 percent, 14 percent, 15 percent, 16 percent or 17 percent, an annual fee of $0, $20, or $40, and one of three debt suspension coverage fees. Including each of the 54 possible combinations of these terms as a separate agreement on the Board's Web site would likely be overwhelming to consumers shopping for a credit card.

The final rule includes comment 58(c)(8)–3, which clarifies that variations in pricing information do not constitute a separate agreement for purposes of § 226.58(c). The comment provides the following example: an issuer offers two types of credit card accounts that differ only with respect to the purchase APR. The purchase APR for one type of account is 15 percent, while the purchase APR for the other type of account is 18 percent. The provisions of the agreement and pricing information for the two types of accounts are otherwise identical. The issuer should not submit to the Board one agreement with a pricing information addendum listing a 15 percent purchase APR and another agreement with a pricing information addendum listing an 18 percent purchase APR. Instead, the issuer should submit to the Board one agreement with a pricing information addendum listing possible purchase APRs of 15 percent and 18 percent.

Section 226.58(c)(8)(ii)(C) of the final rule provides that if a rate included in the pricing information is a variable rate, the issuer must identify the index or formula used in setting the rate and the margin. Rates that may vary from one cardholder to another must be

disclosed by providing the index and the possible margins (such as the prime rate plus 5 percent, 8 percent, 10 percent, or 12 percent) or the range of possible margins (such as the prime rate plus from 5 percent to 12 percent). The value of the rate and the value of the index are not required to be disclosed.

Several card issuer commenters requested that issuers be permitted to provide interest rate information as an index and range of margins. These commenters argued that updating and resubmitting agreements every time an underlying index changes would be a substantial burden on issuers that would not provide a corresponding benefit to consumers. The Board agrees with these commenters. For purposes of comparison shopping for credit cards using the Board's Web site, consumers would be able to compare the margins offered by issuers using the same index and would be able to reference other on-line resources that provide the current values of financial indices to compare the rates offered by issuers using different indices. To provide uniformity in how variable rates are disclosed, the Board is requiring that such rates be provided as an index and margin, list of possible margins or range of possible margins.

58(c)(8)(iii) Optional Variable Terms Addendum

Section 226.58(c)(8)(iii) of the final rule provides that provisions of the agreement other than the pricing information that may vary from one cardholder to another depending on the cardholder's creditworthiness or state of residence or other factors may be set forth in a single addendum to the agreement separate from the pricing information addendum. This differs from the provisions of proposed Appendix N, paragraph 1, which required issuers to set forth any information not uniform for all cardholders in a single addendum to the agreement.

As noted above, one commenter stated that issuers should have the flexibility to either provide pricing information and other varying information in an addendum or to provide each variation as a separate agreement. The Board's final rule provides this flexibility with respect to provisions of the agreement other than the pricing information. The Board understands that there is substantially less variation in the credit card agreements offered by a particular issuer with respect to terms other than pricing information. The Board therefore believes that providing issuers with flexibility regarding how these terms are disclosed is unlikely to result in a volume of data on the Board's Web site that is overwhelming to consumers.

The final rule also includes comment 58(c)(8)–4, which gives examples of provisions that might be included in the optional variable terms addendum. For example, the addendum might include a clause that is required by law to be included in credit card agreements in a particular state but not in other states (unless, for example, a clause is included in the agreement used for all cardholders under a heading such as "For State X Residents"), the name of the credit card plan to which the agreement applies (if this information is included in the agreement), or the name of a charitable organization to which donations will be made in connection with a particular card (if this information is included in the agreement).

58(c)(8)(iv) Integrated Agreement

Section 226.58(c)(8)(iv) incorporates provisions of proposed Appendix N, paragraph 1, stating that issuers may not provide provisions of the agreement or pricing information in the form of change-in-terms notices or riders (other than the pricing information addendum and optional variable terms addendum described in § 226.58(c)(8)(ii) and (c)(8)(iii)). Changes in the provisions or pricing information must be integrated into the body of the agreement, the pricing information addendum or the optional variable terms addendum, as appropriate.

The final rule also includes new comment 58(c)(8)–5, which provides clarification regarding the integrated agreement requirement. Comment 58(c)(8)–5 explains that only two addenda may be submitted as part of an agreement—the pricing information addendum and optional variable terms addendum described in § 226.58(c)(8). Changes in provisions or pricing information must be integrated into the body of the agreement, pricing information addendum, or optional variable terms addendum. For example, it would be impermissible for an issuer to submit to the Board an agreement in the form of a terms and conditions document dated January 1, 2005, four subsequent change in terms notices, and two addenda showing variations in pricing information. Instead, the issuer must submit a document that integrates the changes made by each of the change-in-terms notices into the body of the original terms and conditions document and a single addendum displaying variations in pricing information.

As the Board stated in connection with the proposal, the Board believes that permitting issuers to submit agreements that include change-in-terms notices or riders containing amendments and revisions would be confusing for consumers and would greatly lessen the usefulness of the agreements posted on the Board's Web site. Consumers would be required to sift through change-in-terms notices and riders in an attempt to assemble a coherent picture of the terms currently offered. The Board believes that this would impose a significant burden on consumers attempting to shop for credit cards. The Board also believes that consumers in many instances would draw incorrect conclusions about which terms have been changed or superseded, causing these consumers to be misled regarding the credit card terms that are currently available. This would hinder the ability of consumers to understand and to effectively compare the terms offered by various issuers. The Board believes that issuers are better placed than consumers to assemble this information correctly. While the Board understands that this requirement may significantly increase the burden on issuers, the Board believes that the corresponding benefit of increased transparency for consumers outweighs this burden.

58(d) Posting of Agreements Offered to the Public

New TILA Section 122(d) requires that, in addition to submitting credit card agreements to the Board for posting on the Board's Web site, each card issuer must post the credit card agreements to which it is a party on its own Web site. The Board proposed to implement this requirement in proposed § 226.58(f). Proposed § 226.58(f)(1) required each issuer to post on its publicly available Web site the same agreements it submitted to the Board (*i.e.,* the agreements the issuer offered to the public). The Board proposed additional guidance regarding the posting requirement in proposed Appendix N, paragraph 2.

Commenters did not oppose the general requirements of proposed § 226.58(f)(1), and the Board is adopting the proposed provision in final form, with certain modifications, as discussed below. In the final rule, proposed § 226.58(f)(1) is redesignated § 226.58(d), and the content of Appendix N, paragraph 2, is incorporated into this section of the regulation, in order to ensure that the guidance provided is more readily noticeable and conveniently located for readers.

Comment 58(d)–1 is added in the final rule to clarify that issuers are only

required to post and maintain on their publicly available Web site the credit card agreements that the issuer must submit to the Board under § 226.58(c). If, for example, an issuer is not required to submit any agreements to the Board because the issuer qualifies for the de minimis exception under § 226.58(c)(5), the issuer is not required to post and maintain any agreements on its Web site under § 226.58(d). Similarly, if an issuer is not required to submit a specific agreement to the Board, such as an agreement that qualifies for the private label exception under § 226.58(c)(6), the issuer is not required to post and maintain that agreement under § 226.58(d) (either on the issuer's publicly available Web site or on the publicly available Web sites of merchants at which private label credit cards can be used). The comment also emphasizes that the issuer in both of these cases is still required to provide each individual cardholder with access to his or her specific credit card agreement under § 226.58(e) by posting and maintaining the agreement on the issuer's Web site or by providing a copy of the agreement upon the cardholder's request.

Comment 58(d)–2 is added to the final rule to clarify that, unlike § 226.58(e), discussed below, § 226.58(d) does not include a special rule for issuers that do not otherwise maintain a Web site. If an issuer is required to submit one or more agreements to the Board under § 226.58(c), that issuer must post those agreements on a publicly available Web site it maintains (or, with respect to an agreement for a private label credit card, on the publicly available Web site of at least one of the merchants at which the card may be used, as provided in § 226.58(d)(1)).

Some card issuer commenters suggested that issuers should be permitted to post agreements for private label or co-branded cards on the Web site of a retailer that accepts the card, rather than the issuer's own Web site; the commenters noted that consumers are more likely to find such agreements if posted on the retailer's Web site. The Board agrees with these commenters, and accordingly § 226.58(d)(1) provides that an issuer may comply by posting and maintaining an agreement offered solely for accounts under one or more private label credit card plans in accordance with the requirements of § 226.58(d) on the publicly available Web site of at least one of the merchants at which credit cards issued under each private label credit card plan with 10,000 or more open accounts may be used.

Comment 58(d)–3 is included in the final rule to clarify how this provision would apply. The comment provides the following example: A card issuer has 100,000 open private label credit card accounts. Of these, 75,000 open accounts have credit cards usable only at Merchant A and 25,000 open accounts have credit cards usable only at Merchant B and Merchant B's affiliates, Merchants C and D. The card issuer offers to the public a single credit card agreement that is offered for both of these types of accounts and is not offered for any other type of account.

The issuer is required to submit the agreement to the Board under § 226.58(c)(1). Because the issuer is required to submit the agreement to the Board under § 226.58(c)(1), the issuer is required to post and maintain the agreement on the issuer's publicly available Web site under § 226.58(d). However, because the agreement is offered solely for accounts under one or more private label credit card plans, the issuer may comply with § 226.58(d) in either of two ways. First, the issuer may comply by posting and maintaining the agreement on the issuer's own publicly available Web site. Alternatively, the issuer may comply by posting and maintaining the agreement on the publicly available Web site of Merchant A *and* the publicly available Web site of at least one of Merchants B, C and D. It would not be sufficient for the issuer to post the agreement on Merchant A's Web site alone because § 226.58(d) requires the issuer to post the agreement on the publicly available Web site of "at least one of the merchants at which cards issued under *each* private label credit card plan may be used" (emphasis added).

The comment also provides an additional, contrasting example, as follows: Assume that an issuer has 100,000 open private label credit card accounts. Of these, 5,000 open accounts have credit cards usable only at Merchant A and 95,000 open accounts have credit cards usable only at Merchant B and Merchant B's affiliates, Merchants C and D. The card issuer offers to the public a single credit card agreement that is offered for both of these types of accounts and is not offered for any other type of account.

The issuer is required to submit the agreement to the Board under § 226.58(c)(1). Because the issuer is required to submit the agreement to the Board under § 226.58(c)(1), the issuer is required to post and maintain the agreement on the issuer's publicly available Web site under § 226.58(d). However, because the agreement is offered solely for accounts under one or more private label credit card plans, the issuer may comply with § 226.58(d) in either of two ways. First, the issuer may comply by posting and maintaining the agreement on the issuer's own publicly available Web site. Alternatively, the issuer may comply by posting and maintaining the agreement on the publicly available Web site of at least one of Merchants B, C and D. The issuer is not required to post and maintain the agreement on the publicly available Web site of Merchant A because the issuer's private label credit card plan consisting of accounts with cards usable only at Merchant A has fewer than 10,000 open accounts.

Section 226.58(d)(2) incorporates provisions from proposed Appendix N, paragraph 2, stating that agreements posted pursuant to this section must conform to the form and content requirements for agreements submitted to the Board specified in § 226.58(c)(8), except as provided in § 226.58(d) (for example, as provided in § 226.58(d)(3), agreements posted on an issuer's Web site need not conform to the electronic format required for submission to the Board, as discussed below).

Proposed Appendix N clarified that the agreements posted on an issuer's Web site need not conform to the electronic format required for submission to the Board. This clarification is incorporated into the final rule as § 226.58(d)(3), which states that agreements posted pursuant to this section may be posted in any electronic format that is readily usable by the general public. For example, when posting the agreements on its own Web site, an issuer may post the agreements in plain text format, in PDF format, in HTML format, or in some other electronic format, provided the format is readily usable by the general public.

Consumer group comments suggested that the rule should ensure that consumers are able to access credit card agreements offered to the public through an issuer's Web site without being required to provide personal information. The Board believes that the intent of the statute is to allow access to credit card agreements offered to the public without having to provide such information; accordingly, § 226.58(d)(3) also includes language setting forth this requirement, as well as a requirement that agreements posted on the issuer's Web site must be placed in a location that is prominent and readily accessible by the public, moved from proposed Appendix N, paragraph 2.

Section 226.58(d)(4) incorporates provisions from proposed Appendix N, paragraph 2, stating that an issuer must update the agreements posted on its

Web site at least as frequently as the quarterly schedule required for submission of agreements to the Board. If the issuer chooses to update the agreements on its Web site more frequently, the agreements posted on the issuer's Web site may contain the provisions of the agreement and the pricing information in effect as of a date other than the last business day of the preceding calendar quarter.

Consumer group commenters suggested that the final rule clarify that any member of the public may have access to the agreement for any open account, whether or not currently offered to the public. The Board is not adopting such a requirement because, as discussed above, the Board believes the administrative burden associated with providing access to all open accounts would outweigh the benefit to consumers. A consumer group commenter asked that the rule require that, when a change is made to an agreement, the on-line version of that agreement be updated within a specific period of time no greater than 72 hours. The final rule does not include this requirement because the Board believes the burden to card issuers of updating agreements in such a short time would outweigh the benefit. In addition, if a consumer applies or is solicited for a credit card, the consumer will receive updated disclosures under § 226.5a. Finally, the same commenter suggested that issuers should be required to archive previous versions of credit card agreements and allow on-line access to them for purposes of comparison. The Board believes the burden to card issuers of being required to archive and make available all previous versions of its credit card agreements would outweigh the benefit to consumers.

58(e) Agreements for All Open Accounts

In addition to the requirements under proposed § 226.58(f)(1), proposed § 226.58(f)(2) required each issuer to provide each individual cardholder with access to his or her specific credit card agreement, by either: (1) Posting and maintaining the individual cardholder's agreement on the issuer's Web site; or (2) making a copy of each cardholder's agreement available to the cardholder upon that cardholder's request. Proposed Appendix N, paragraph 3, provided further guidance on these requirements. Proposed § 226.58(f)(2), along with material from proposed Appendix N, paragraph 3, is incorporated into the final rule as § 226.58(e), with certain modifications, as discussed below.

As discussed above, the Board is exercising its authority to create exceptions from the requirements of new TILA Section 122(d) with respect to the submission of certain agreements to the Board for posting on the Board's Web site. However, the Board believes that it would not be appropriate to apply these exceptions to the requirement that issuers provide cardholders with access to their specific credit card agreement through the issuer's Web site. In particular, the Board believes that, for the reasons discussed above, posting credit card agreements that are not currently offered to the public on the Board's Web site would not be beneficial to consumers. However, the Board believes that the benefit of increased transparency of providing an individual cardholder access to his or her specific credit card agreement is substantial regardless of whether the cardholder's agreement continues to be offered by the issuer. The Board believes that this benefit outweighs the administrative burden on issuers of providing such access, and the final rule therefore does not exempt agreements that are not offered to the public from the requirements of § 226.58(e).

Similarly, the final rule provides that card issuers with fewer than 10,000 open credit card accounts are not required to submit agreements to the Board, and provides for other exceptions from the requirement to submit agreements. However, the Board believes that the benefit of increased transparency associated with providing an individual cardholder with access to his or her specific credit card agreement is substantial regardless of the whether the card issuer is required to submit the agreement to the Board for posting on the Board's Web site. The Board believes that this benefit of increased transparency for consumers outweighs the administrative burden on issuers of providing such access, and therefore § 226.58(e) in the final rule does not include the exceptions from the requirement to submit agreements to the Board under § 226.58(c).

Comment 58(e)–1 clarifies that the requirement to provide access to credit card agreements under § 226.58(e) applies to all open credit card accounts, regardless of whether such agreements are required to be submitted to the Board pursuant to § 226.58(c) (or posted on the issuer's Web site pursuant to § 226.58(d)). For example, an issuer that is not required to submit agreements to the Board because it qualifies for the de minimis exception under § 226.58(c)(5) still is required to provide cardholders with access to their specific agreements under § 226.58(e). Similarly, an agreement that is no longer offered to the public is not required to be submitted to the Board under § 226.58(c), but nevertheless must be provided to the cardholder to whom it applies under § 226.58(e). This comment corresponds to proposed comment 58(f)(2)–2.

Section 226.58(e)(1)(ii) provides issuers with the option to make copies of cardholder agreements available on request because the Board believes that the benefit of increased transparency associated with immediate access to cardholder agreements, as compared to access after a brief waiting period, does not outweigh the administrative burden on issuers of providing immediate access. The Board believes that the administrative burden associated with posting each cardholder's credit card agreement on the issuer's Web site may be substantial for some issuers. In particular, the Board notes that some smaller institutions with limited information technology resources could find a requirement to post all cardholder's agreements to be a significant burden. The Board understands that it is important that all cardholders be able to obtain copies of their credit card agreements promptly, and § 226.58(e)(1)(ii) ensures that this will occur.

Under proposed § 226.58(f)(2)(ii), a card issuer that chose to make agreements available upon request was required to provide the cardholder with the ability to request a copy of the agreement both: (1) By using the issuer's Web site (such as by clicking on a clearly identified box to make the request); and (2) by calling a toll-free telephone number displayed on the Web site and clearly identified as to purpose. Commenters suggested that an exception should be created for issuers that do not maintain toll-free telephone numbers; the commenters contended that maintaining a toll-free telephone number could be a substantial burden for small issuers, and noted that issuers that currently do not maintain toll-free telephone numbers likely have a primarily local customer base. The final rule, in § 226.58(e)(1)(ii), does not require that the telephone number for cardholders to call to request copies of their agreements be toll-free, but instead provides that the telephone line must be "readily available."

Comment 58(e)–2 provides guidance on the "readily available" standard, stating that to satisfy the readily available standard, the card issuer must provide enough telephone lines so that cardholders get a reasonably prompt response, but that the issuer need only provide telephone service during normal business hours. The comment

further states that, within its primary service area, the issuer must provide a local or toll-free telephone number, but that the issuer need not provide a toll-free number or accept collect long-distance calls from outside the area where it normally conducts business. This standard is based on a comparable requirement under Regulation E, 12 CFR Part 205, that requires financial institutions to provide a telephone line for consumers to call for certain purposes. *See* Regulation E, § 205.10(a)(1)(iii), 12 CFR 205.10(a)(1)(iii), and comment 10(a)(1)–7 in the Regulation E Official Staff Commentary, 12 CFR Part 205, Supplement I, paragraph 10(a)(1)–7.

A number of commenters addressed the requirement to provide cardholders the ability to request a copy of their agreement by using the issuer's Web site (under proposed § 226.58(f)(2)(ii)(A), redesignated § 226.58(e)(1)(ii)(A) in the final rule), in addition to the ability to request a copy by calling a telephone number. The commenters noted that many card issuers do not have interactive Web sites, and that some may not have Web sites of any kind; they contended that permitting cardholders to request copies of their particular agreements through a Web site would require creating and maintaining an interactive Web site and complying with privacy and data security requirements, which could represent a significant compliance burden, especially for smaller issuers. The commenters suggested various alternative means for providing cardholders the means to request copies of their agreements.

Based on information received from financial institution trade associations and service providers, it appears that a substantial number of card issuers do not maintain interactive Web sites, and that some issuers (for example, more than 250 credit unions) do not have Web sites of any kind. The Board believes that cardholders should be provided with convenient means to request copies of their credit card agreements, but that there are alternative methods that would serve this purpose and would not require issuers that do not have interactive Web sites to incur the expense to create and maintain such Web sites; the Board believes that the burden of creating and maintaining such Web sites would not be outweighed by the convenience to cardholders of being able to request a copy of their agreements directly through a Web site, as opposed to using an alternative means.

Accordingly, in the final rule, § 226.58(e)(2) sets forth a special rule for card issuers that do not have a Web site or that have a Web site that is not interactive (*i.e.,* a Web site from which a cardholder cannot access specific information about his or her individual account). Section 226.58(e)(2) provides that, instead of complying with § 226.58(e)(1), such an issuer may make agreements available upon request by providing the cardholder with the ability to request a copy of the agreement by calling a readily available telephone line, the number for which is: (i) Displayed on the issuer's Web site and clearly identified as to purpose; or (ii) included on each periodic statement sent to the cardholder and clearly identified as to purpose.

The final rule includes comment 58(e)–3, which further clarifies how this special rule applies. Comment 58(e)–3 clarifies that an issuer that does not maintain a Web site from which cardholders can access specific information about their individual accounts is not required to provide a cardholder with the ability to request a copy of the agreement by using the issuer's Web site. The comment further clarifies that an issuer without a Web site of any kind could comply by disclosing the telephone number on each periodic statement; an issuer with a non-interactive Web site could comply in the same way, or alternatively could comply by displaying the telephone number on the issuer's Web site.

Under proposed § 226.58(f)(2)(ii), if a cardholder requested a copy of his or her credit card agreement (either using the issuer's Web site or by calling the telephone number provided), the issuer was required to send, or otherwise make available to, the cardholder a copy of the agreement within 10 business days after receiving the request. The Board solicited comments on whether issuers should have a shorter or longer period in which to respond to cardholder requests. Some commenters contended that 10 business days would not provide sufficient time to respond to a request; the commenters noted that they will be required to integrate changes in terms into the agreement and provide pricing information, which, particularly for older agreements that may have had many changes in terms over the years, could require more time. The commenters suggested various longer time periods to respond to a cardholder request, including 30 business days or 60 calendar days.

The Board believes that it would be reasonable to provide more time for an issuer to respond to a cardholder request for a copy of the credit card agreement. Although cardholders should be able to obtain a copy of their agreement promptly, integrating changes in terms may require more time for older agreements; for newer agreements with fewer changes since the account was opened, the cardholder is more likely to still have a copy of the agreement and therefore less likely to need to request a copy. For all agreements, the pricing information has been disclosed to cardholders at the time the account is opened, and much of the pricing information is disclosed again on periodic statements. Accordingly, the final rule, in §§ 226.58(e)(1)(ii) and (e)(2), provides that the issuer must send or otherwise make available to the cardholder the agreement in electronic or paper form within 30 calendar days after receiving the cardholder's request.

Proposed comment 58(f)(2)–3 provided guidance on the deadline for providing agreements upon request. In the final rule, the comment is redesignated comment 58(e)–4. The comment states that if an issuer chooses to respond to a cardholder's request by mailing a paper copy of the cardholder's agreement, the issuer would be required to mail the agreement no later than 30 days after receipt of the cardholder's request. Alternatively, if an issuer chooses to respond to a cardholder's request by posting the cardholder's agreement on the issuer's Web site, the issuer must post the agreement on its Web site no later than 30 days after receipt of the cardholder's request. The comment further notes that, under § 226.58(e)(3)(v), issuers are permitted to provide copies of agreements in either paper or electronic form, regardless of the form of the cardholder's request, as discussed below.

Section 226.58(e)(3) states requirements for the form and content of agreements, and is drawn largely from proposed Appendix N, paragraph 3, and proposed staff commentary. Section 226.58(e)(3)(i) corresponds to part of paragraph 3(b) of proposed Appendix N, and states that except as elsewhere provided, agreements posted on the card issuer's Web site pursuant to § 226.58(e)(1)(i) or made available upon the cardholder's request pursuant to § 226.58(e)(1)(ii) or (e)(2) must conform to the form and content requirements for agreements submitted to the Board specified in § 226.58(c)(8).

Section 226.58(e)(3)(ii) corresponds to proposed Appendix N, paragraph 3(a), and states that if a card issuer posts an agreement on its Web site or otherwise provides an agreement to a cardholder electronically pursuant to § 226.58(e), the agreement may be posted in any electronic format that is readily usable

by the general public and must be placed in a location that is prominent and readily accessible to the cardholder.

Section 226.58(e)(1)(iii) is drawn from part of paragraph 3(b) of proposed Appendix N and provides that agreements posted or otherwise provided pursuant to § 226.58(e) may contain personally identifiable information relating to the cardholder, such as name, address, telephone number, or account number, provided that the issuer takes appropriate measures to make the agreement accessible only to the cardholder or other authorized persons.

Section 226.58(e)(1)(iv) corresponds generally to proposed Appendix N, paragraph (c), and states that agreements must set forth the specific provisions and pricing information applicable to the particular cardholder, and that agreement provisions and pricing information must be complete and accurate as of a date no more than 60 days prior to the date on which the agreement is posted on the card issuer's Web site or the cardholder's request is received.

Finally, § 226.58(e)(1)(v) is drawn from proposed comment 58(f)(2)–1, and provides that agreements provided upon request may be provided by the issuer in either electronic or paper form, regardless of the form of the cardholder's request.

Paragraph 3(d) of proposed Appendix N clarified that issuers may not provide provisions of the agreement or pricing information in the form of change-in-terms notices or riders. This language is not incorporated into the text of the final rule as part of § 226.58(e), but the requirement nevertheless applies because § 226.58(e) provides that agreements posted on the card issuer's Web site or made available upon the cardholder's request must conform to the form and content requirements for agreements submitted to the Board specified in § 226.58(c)(8), and § 226.58(c)(8) imposes this requirement. Thus, changes in provisions or pricing information must be integrated into the text of the agreement (or into the pricing information described in § 226.58(c)(8)(ii)). For example, it is not permissible for an issuer to send to a cardholder under § 226.58(e)(1)(ii) an agreement consisting of a terms and conditions document dated January 1, 2005, and four subsequent change-in-terms notices. Instead, the issuer is required to send to the cardholder a single document that integrates the changes made by each of the change-in-terms notices into the body of the terms and conditions document or the pricing information addendum.

The Board believes that it is important for consumers be able to accurately assess the terms of a credit card agreement to which they are a party. As described above in connection with the integrated agreement requirement for agreements submitted to the Board, the Board believes that requiring consumers to sift through change-in-terms notices and riders in an attempt to assemble the current version of a credit card agreement imposes a significant burden on consumers, is likely to lead to consumer confusion, and would greatly lessen the usefulness of making credit card agreements available under the final rule. The Board believes that these arguments apply with even more force in the context of providing an individual cardholder with access to his or her specific credit card agreement. Permitting issuers to provide provisions of the agreement or pricing information as change-in-terms notices or riders would require consumers to bear the burden of assembling a coherent picture of the terms to which they are currently subject. The Board believes that this likely would hinder the ability of many consumers to understand the terms applicable to them. The Board also believes that consumers in many instances would draw incorrect conclusions about which terms have been changed or superseded, causing these consumers to be misled regarding the terms of their credit card agreement. The Board believes that issuers are better placed than consumers to assemble this information correctly. While the Board understands that this may significantly increase the burden on issuers, the Board believes that the corresponding benefit of increased transparency for consumers outweighs this burden.

Some commenters suggested that the final rule provide an exception from the requirements of § 226.58(e) for accounts purchased from another issuer. Similarly, commenters suggested an exception for older accounts. Commenters argued that in such cases, issuers may not have the agreements and therefore may find it difficult or impossible to comply. The final rule does not contain the suggested exceptions. The Board believes that cardholders need to be able to obtain the credit card agreements to which they are parties.

Finally, some commenters suggested that the final rule provide a grace period during which issuers would not be required to provide an integrated agreement upon request, but could instead send the cardholder the initial agreement and all subsequent change in terms notices. Alternatively, it was suggested that such a grace period be provided for accounts opened prior to a specific date. The final rule does not provide such a grace period. As discussed above, it likely would be difficult in many cases for cardholders to understand a complex credit card agreement supplemented by change in terms notices. In addition, as discussed above, the final rule allows 30 days (as opposed to 10 business days, as proposed) for issuers to respond to cardholder requests, in part in order to provide issuers sufficient time to integrate change in terms notices with the initial agreement before sending it to the cardholder.

58(f) E-Sign Act Requirements

Section § 226.58(f), corresponding to proposed § 226.58(f)(3), provides that card issuers may provide credit card agreements in electronic form under § 226.58(d) and (e) without regard to the consumer notice and consent requirements of section 101(c) of the Electronic Signatures in Global and National Commerce Act (E-Sign Act) (15 U.S.C. 7001 *et seq.*). Because new TILA Section 122(d) specifies that credit card issuers must provide access to cardholder agreements on the issuer's Web site, the Board believes that the requirements of the E-Sign Act do not apply.

Appendix M1—Repayment Disclosures

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

TILA Section 127(b)(11), as added by Section 1301(a) of the Bankruptcy Act,

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

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

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

Calculating the minimum payment repayment estimate. As proposed in the October 2009 Regulation Z Proposal, the minimum payment repayment estimate would have been an estimate of the number of months that it would take to pay the outstanding balance shown on the periodic statement, if the consumer pays only the required minimum monthly payments and if no further advances are made. The final rule adopts guidance in Appendix M1 to part 226 for calculating the minimum payment repayment estimate as proposed with several modifications as discussed below. The guidance in Appendix M1 to part 226 for calculating the minimum payment repayment estimate is similar to the guidance that the Board adopted in Appendix M2 to part 226 in the January 2009 Regulation Z Rule for calculating the actual repayment disclosure. Under Appendix M1 to part 226, credit card issuers generally must calculate the minimum payment repayment estimate for a consumer based on the minimum payment formula(s), the APRs and the outstanding balance currently applicable to a consumer's account. For other terms that may impact the calculation of the minimum payment repayment estimate, issuers are allowed to make certain assumption about these terms.

1. *Minimum payment formulas.* When calculating the minimum payment repayment estimate, in the October 2009 Regulation Z Proposal, the Board proposed that credit card issuers generally must use the minimum payment formula(s) that apply to a cardholder's account. The final rule retains this provision as proposed. Appendix M1 to part 226 provides that in calculating the minimum payment repayment estimate, if more than one minimum payment formula applies to an account, the issuer must apply each minimum payment formula to the portion of the balance to which the formula applies. In providing the minimum payment repayment estimate, an issuer must disclose the longest repayment period calculated. For example, assume that an issuer uses one minimum payment formula to calculate the minimum payment amount for a general revolving feature, and another minimum payment formula to calculate the minimum payment amount for special purchases, such as a "club plan purchase." Also, assume that based on a consumer's balances in these features, the repayment period calculated pursuant to Appendix M1 to part 226 for the general revolving feature is 5 years, while the repayment period calculated for the special purchase feature is 3 years. This issuer must disclose 5 years as the repayment period for the entire balance to the consumer. This provision of the final rule differs from the approach adopted in the January 2009 Regulation Z Rule, which gave card issuers the option of disclosing either the longest repayment period calculated or the repayment period calculated for each minimum payment formula, when disclosing the actual repayment disclosures through a toll-free telephone number. The Board believes that allowing card issuers to disclose on the periodic statement the repayment period calculated for each minimum payment formula might create "information overload" for consumers and might distract the consumer from other important information that is contained on the periodic statement.

Under proposed Appendix M1 to part 226, card issuers would have been allowed to disregard promotional terms related to payments, such as deferred billing promotional plans and skip payment features. In response to the October 2009 Regulation Z Proposal, several industry commenters requested clarification on how to handle promotional programs that involve a reduction in the requirement minimum payment for a limited time period, such as may occur with fixed payment programs. These commenters suggested that the Board provide a card issuer with flexibility to choose whether the repayment disclosures are based only on the promotional minimum payment or on the minimum payments as they will be calculated over the duration of the account.

The final rule retains the provision in Appendix M1 to part 226 that if any promotional terms related to payments apply to a cardholder's account, such as a deferred billing plan where minimum payments are not required for 12 months, credit card issuers may assume no promotional terms apply to the account. In Appendix M1 to part 226, the term "promotional terms" is defined as terms of a cardholder's account that will expire in a fixed period of time, as set forth by the card issuer. Appendix M1 to part 226 clarifies that issuers have two alternatives for handling promotional minimum payments. Under the first alternative, an issuer may disregard the promotional minimum payment during the promotional period, and instead calculated the minimum payment repayment estimate using the standard minimum payment formula that is applicable to the account. For example, assume that a promotional

minimum payment of $10 applies to an account for six months, and then after the promotional period expires, the minimum payment is calculated as 2 percent of the outstanding balance on the account or $20 whichever is greater. An issuer may assume during the promotional period that the $10 promotional minimum payment does not apply, and instead calculate the minimum payment disclosures based on the minimum payment formula of 2 percent of the outstanding balance or $20, whichever is greater. The Board notes that allowing issuers to disregard promotional payment terms on accounts where the promotional payment terms apply only for a limited amount of time eases compliance burden on issuers, without a significant impact on the accuracy of the repayment estimates for consumers.

Under the second alternative, an issuer in calculating the minimum payment repayment estimate during the promotional period may choose not to disregard the promotional minimum payment but instead may calculate the minimum payments as they will be calculated over the duration of the account. In the above example, an issuer could calculate the minimum payment repayment estimate during the promotional period by assuming the $10 promotional minimum payment will apply for the first six months and then assuming the 2 percent or $20 (whichever is greater) minimum payment formula will apply until the balance is repaid. Appendix M1 to part 226 clarifies, however, that in calculating the minimum payment repayment estimate during a promotional period, an issuer may not assume that the promotional minimum payment will apply until the outstanding balance is paid off by making only minimum payments (assuming the repayment estimate is longer than the promotional period.) In the above example, the issuer may not calculate the minimum payment repayment estimate during the promotional period by assuming that the $10 promotional minimum payment will apply beyond the six months until the outstanding balance is repaid. The Board believes that allowing the card issuer to assume during the promotional period that the promotional minimum payment will apply indefinitely would distort the repayment disclosures provided to consumers.

2. *Annual percentage rates.* Generally, when calculating the minimum payment repayment estimate, the October 2009 Regulation Z Proposal would have required credit card issuers to use each of the APRs that currently apply to a consumer's account, based on the portion of the balance to which that rate applies.

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

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

For deferred interest or similar plans, under the October 2009 Regulation Z Proposal, if minimum payments under the plan will repay the balances or transactions prior to the expiration of the specified period of time, a card issuer would have been required to assume that the consumer will not be obligated to pay the accrued interest. This means, in calculating the minimum payment repayment estimate, the card issuer must apply a zero percent APR to the balance subject to the deferred interest or similar plan. If, however, minimum payments under the deferred interest or similar plan may not repay the balances or transactions in full prior to the expiration of the specified period of time, a credit card issuer would have been required to assume that a consumer will not repay the balances or transactions in full prior to the expiration of the specified period and thus the consumer will be obligated to pay the accrued interest. This means, in calculating the minimum payment repayment estimate, the card issuer must apply the APR at which interest is accruing to the balance subject to the deferred interest or similar plan. The final rule retains these provisions as proposed. This approach with respect to deferred interest or similar plans is consistent with the assumption that only minimum payments are made in repaying the balance on the account.

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

3. *Outstanding balance.* When calculating the minimum payment repayment estimate, the Board proposed that credit card issuers must use the outstanding balance on a consumer's account as of the closing date of the last billing cycle. The final rule retains this provision as proposed. Issuers would not be required to take into account any

transactions consumers may have made since the last billing cycle. The Board believes that this approach would make it easier for consumers to understand the minimum payment repayment estimate, because the outstanding balance used to calculate the minimum payment repayment estimate would be the same as the outstanding balance shown on the periodic statement. Issuers would be allowed to round the outstanding balance to the nearest whole dollar to calculate the minimum payment repayment estimate.

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

a. *Balance computation method.* The Board proposed to allow issuers to use the average daily balance method for purposes of calculating the minimum payment repayment estimate. The average daily balance method is commonly used by issuers to compute the balance on credit card accounts. Nonetheless, requiring use of the average daily balance method makes other assumptions necessary, including the length of the billing cycle, and when payments are made. The Board proposed to allow an issuer to assume a monthly or daily periodic rate applies to the account. If a daily periodic rate is used, the issuer would be allowed to assume either (1) a year is 365 days long, and all months are 30.41667 days long, or (2) a year is 360 days long, and all months are 30 days long. Both sets of assumptions about the length of the year and months would yield the same repayment estimates. The Board also proposed to allow issuers to assume that payments are credited on the last day of the month. The final rule retains these provisions with one modification. Based on comments received in response to the October 2009 Regulation Z Proposal, Appendix M1 to part 226 is revised to allow card issuers to assume either that payments are credited on the last day of the month or the last day of the billing cycle.

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

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

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

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

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

f. *Payment allocation.* In proposed Appendix M1 to part 226, the Board proposed to allow issuers to assume that payments are allocated to lower APR balances before higher APR balances

when multiple APRs apply to an account. The final rule retains this provision as proposed. As discussed in the section-by-section analysis to § 226.53, the rule permits issuers to allocate minimum payment amounts as they choose; however, issuers are restricted in how they may allocate payments above the minimum payment amount. The Board assumes that issuers are likely to allocate the minimum payment amount to lower APR balances before higher APR balances, and issuers may assume that is the case in calculating the minimum payment repayment estimate.

g. *Account not past due and the account balance does not exceed the credit limit.* The proposed rule would have allowed issuers to assume that the consumer's account is not past due and the account balance is not over the credit limit. The final rule retains this provision as proposed. The Board believes that this assumption will ease compliance burden on issuers, without a significant impact on the accuracy of the repayment estimates for consumers. In response to the October 2009 Regulation Z Proposal, one commenter asked for confirmation that if the account terms operate such that the past due amount will be added to the minimum payment due in the next billing cycle, the card issuer may assume that the consumer will pay that higher minimum payment amount in the next billing cycle in calculating the minimum payment repayment estimate. The Board notes that while issuers are allowed to assume that an account is not past due, the issuer is not required to assume that fact. The Board notes that under Appendix M1 to part 226, when calculating the minimum payment repayment estimate, a credit card issuer may make certain assumptions about account terms (as set forth in paragraph (b)(4) of Appendix M1 to part 226) or may use the account term that applies to a consumer's account.

h. *Rounding assumed payments, current balance and interest charges to the nearest cent.* Under proposed Appendix M1 to part 226, when calculating the minimum payment repayment estimate, an issuer would have been permitted to round to the nearest cent the assumed payments, current balance and interest charges for each month, as shown in proposed Appendix M2 to part 226. The final rule retains this provision as proposed.

5. *Tolerances.* The Board proposed to provide that the minimum payment repayment estimate calculated by an issuer will be considered accurate if it is not more than 2 months above or below the minimum payment repayment estimate determined in accordance with the guidance in proposed Appendix M1 to part 226, prior to rounding. The final rule retains this provision with one technical revision as discussed below. This tolerance would prevent small variations in the calculation of the minimum payment repayment estimate from causing a disclosure to be inaccurate. Take, for example, a minimum payment formula of the greater of 2 percent or $20 and two separate amortization calculations that, at the end of 28 months, arrived at remaining balances of $20 and $20.01 respectively. The $20 remaining balance would be paid off in the 29th month, resulting in the disclosure of a 2-year repayment period due to the Board's rounding rule set forth in § 226.7(b)(12)(i)(B). The $20.01 remaining balance would be paid off in the 30th month, resulting in the disclosure of a 3-year repayment period due to the Board's rounding rule. Thus, in the example above, an issuer would be in compliance with the guidance in Appendix M1 to part 226 by disclosing 3 years, instead of 2 years, because the issuer's estimate is within the 2 months' tolerance, prior to rounding. In addition, the rule also provides that even if an issuer's estimate is more than 2 months above or below the minimum payment repayment estimate calculated using the guidance in Appendix M1 to part 226, so long as the issuer discloses the correct number of years to the consumer based on the rounding rule set forth in § 226.7(b)(12)(i)(B), the issuer would be in compliance with the guidance in Appendix M1 to part 226. For example, assume the minimum payment repayment estimate calculated using the guidance in Appendix M1 to part 226 is 32 months (2 years, 8 months), and the minimum payment repayment estimate calculated by the issuer is 38 months (3 years, 2 months). Under the rounding rule set forth in § 226.7(b)(12)(i)(B), both of these estimates would be rounded and disclosed to the consumer as 3 years. Thus, if the issuer disclosed 3 years to the consumer, the issuer would be in compliance with the guidance in Appendix M1 to part 226 even through the minimum payment repayment estimate calculated by the issuer is outside the 2 months' tolerance amount.

In response to comments received on the October 2009 Regulation Z Proposal, Appendix M1 to part 226 is revised to clarify that the 2-month tolerance described above will apply even if the card issuer uses the consumer's account terms in calculating the minimum payment repayment estimate (instead of the listed assumptions set forth in paragraph (b)(4) of Appendix M1 to part 226).

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

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

years), the minimum payment total cost estimate would be deemed to be accurate.

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

In calculating the estimated monthly payment for repayment in 36 months, the Board proposed to require an issuer to use a weighted APR that is based on the APRs that apply to a cardholder's account and the portion of the balance to which the rate applies, as shown in proposed Appendix M2 to part 226. In response to the October 2009 Regulation Z Proposal, several industry commenters requested that the Board allow issuers to utilize other methods of calculating the estimated monthly payment for repayment in 36 months (other than a weighted average). These commenters indicate that use of the weighted average does not seem to provide the most accurate calculation in all circumstances and other methods of calculating the estimated monthly payment for repayment in 36 months, which do not use the weighted average, provide less variance and are arguably more accurate.

Based on these comments, Appendix M1 to part 226 is revised to permit card issuers to use methods of calculating the estimated monthly payment for repayment in 36 months other than a weighted average, so long as the calculation results in the same payment amount each month and so long as the total of the payments would pay off the outstanding balance shown on the periodic statement within 36 months. The Board believes this approach will provide card issuers with the flexibility to use calculation methods other than a weighed APR that provide more accurate estimates of the monthly payment for repayment in 36 months.

Nonetheless, Appendix M1 to part 226 would still permit, but not require, card issuers to use a weighted APR to calculate the estimated monthly payment for repayment in 36 months. The Board believes that permitting card issuers to use a weighted APR to calculate the estimated monthly payment for repayment in 36 months when multiple APRs apply to an account will ease compliance burden on issuers by significantly simplifying the calculation of the estimated monthly payment, without a significant impact on the accuracy of the estimated monthly payments for consumers.

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

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

In the October 2009 Regulation Z Proposal, the Board requested comment on whether the Board should adopt specific tolerances for calculation and disclosure of the estimated monthly payment for repayment in 36 months, and if so, what those tolerances should be. In response to the October 2009 Regulation Z Proposal, one industry commenter suggested the Board adopt a tolerance of 10 percent, such that the estimated monthly payment for repayment in 36 months that is disclosed to the consumer would be considered accurate if it is not more than 10 percent above or below the estimated monthly payment for repayment in 36 months determined in accordance with the guidance in Appendix M1 to part 226. Another industry commenter suggested 5 percent as the tolerance amount. The final rule adopts 10 percent as the tolerance amount for accuracy of the estimated monthly payment for repayment in 36 months, to account for complexity in calculating that disclosure.

Calculating the total cost estimate for repayment in 36 months. Under proposed Appendix M1 to part 226, when calculating the total cost estimate for repayment in 36 months, a credit card issuer would have been required to total the dollar amount of the interest and principal that the consumer would pay if he or she made the estimated monthly payment for repayment in 36 months calculated under proposed Appendix M1 to part 226 each month for 36 months. The final rule retains this provision as proposed.

In the October 2009 Regulation Z Proposal, the Board requested comment on whether the Board should adopt specific tolerances for calculation and disclosure of the total cost estimate for repayment in 36 months, and if so, what those tolerances should be. In response to the October 2009 Regulation Z Proposal, one industry commenter suggested that the Board amend Appendix M1 to part 226 to provide that the total cost estimate for repayment in 36 months is deemed accurate if it is based on the estimated monthly payment for repayment in 36 months that is calculated in accordance with paragraph (d) of Appendix M1 to part 226. The Board recognizes that the total cost estimate for repayment in 36

months is an estimate. Accordingly, the Board revises Appendix M1 to part 226 to incorporate the above accuracy standard for the total cost estimate for repayment in 36 months.

Calculating savings estimate for repayment in 36 months. Under proposed Appendix M1 to part 226, when calculating the savings estimate for repayment in 36 months, a credit card issuer would be required to subtract the total cost estimate for repayment in 36 months calculated under paragraph (e) of Appendix M1 (rounded to the nearest whole dollar as set forth in proposed § 226.7(b)(12)(i)(F)(*3*)) from the minimum payment total cost estimate calculated under paragraph (c) of Appendix M1 (rounded to the nearest whole dollar as set forth in proposed § 226.7(b)(12)(i)(C)). The final rule retains this provision as proposed.

In the October 2009 Regulation Z Proposal, the Board requested comment on whether the Board should adopt specific tolerances for calculation and disclosure of the savings estimate for repayment in 36 months, and if so, what those tolerances should be. In response to the October 2009 Regulation Z Proposal, one industry commenter suggested that the Board amend Appendix M1 to part 226 to provide that the savings estimate for repayment in 36 months is deemed to be accurate if it is based on the total cost estimate for repayment in 36 months that is calculated in accordance with paragraph (e) of Appendix M1 to part 226 and the minimum payment total cost estimate calculated under paragraph (c) of Appendix M1 to part 226. The Board recognizes that the savings estimate for repayment in 36 months is an estimate. Accordingly, the Board revises Appendix M1 to part 226 to incorporate the above accuracy standard for the saving estimate.

Appendix M2—Sample Calculations of Repayment Disclosures

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

Additional Issues Raised by Commenters

Circumvention or Evasion

Consumer groups and a member of Congress requested that the Board adopt a provision specifically prohibiting creditors from circumventing or evading Regulation Z. However, this request seems to suggest that circumvention or evasion of Regulation Z is permitted unless specifically prohibited by the Board when, in fact, the opposite is true. Nothing in TILA or Regulation Z permits a creditor to circumvent or evade their provisions. Thus, although the Board agrees that circumvention or evasion of Regulation Z is prohibited, the Board does not believe that it is necessary or appropriate to adopt a provision specifically prohibiting circumvention or evasion. Furthermore, because the requested provision would be broad and general, the Board is concerned that it would produce uncertainty for creditors regarding compliance with Regulation Z and for the agencies that supervise compliance with Regulation Z without producing compensating benefits for consumers.

Accordingly, it appears that the better approach is for the Board to continue using its authority under TILA Section 105(a) to prevent circumvention or evasion by prohibiting specific practices that—although arguably not expressly prohibited by TILA—are nevertheless clearly inconsistent with its provisions. For example, in this rulemaking, the Board has:

- Provided that the restrictions in revised TILA Section 171 and new TILA Section 172 on increasing annual percentage rates and certain fees continue to apply after an account is closed or acquired by another creditor or after the balance is transferred to another credit account issued by the same creditor or its affiliate or subsidiary. *See* § 226.55(d).
- Provided that a card issuer that uses fixed "floors" to exercise control over the operation of an index cannot utilize the exception for variable rates in revised TILA Section 171(b)(2). *See* comment 55(b)(2)–2.
- Provided that the restrictions in new TILA Section 127(n) apply not only to fees charged to a credit card account but also to fees that the consumer is required to pay with respect to that account through other means (such as through a payment from the consumer to the card issuer or from another credit account provided by the card issuer). *See* comment 52(a)(1)–1.

The Board will continue to monitor industry practices and take action when appropriate. In addition, Section 502 of the Credit Card Act requires that—at least every two years—the Board conduct a review of, among other things, the terms of credit card agreements, the practices of card issuers, the effectiveness of credit card disclosures, and the adequacy of protections against unfair or deceptive acts or practices relating to credit cards.

Waiver or Forfeiture of Protections

Consumer groups also requested that—in order to prevent creditors from misleading consumers into consenting to practices prohibited by Regulation Z—the Board adopt a provision affirmatively stating that the protections in Regulation Z cannot be waived or forfeited. However, as above, this request incorrectly assumes that creditors are generally permitted to engage in practices prohibited by Regulation Z in these circumstances. There is no such general exception to the provisions in Regulation Z. Instead, the Board has expressly and narrowly defined the circumstances in which a consumer's consent or request alters the requirements in Regulation Z.[74] For this reason, the Board does not believe that the requested provision is necessary.

VI. Mandatory Compliance Dates

A. *Mandatory compliance dates—in general.* The mandatory compliance date for the portion of § 226.5(a)(2)(iii) regarding use of the term "fixed" and for §§ 226.5(b)(2)(ii), 226.7(b)(11), 226.7(b)(12), 226.7(b)(13), 226.9(c)(2) (except for 226.9(c)(2)(iv)(D)), 226.9(e), 226.9(g) (except for 226.9(g)(3)(ii)), 226.9(h), 226.10, 226.11(c), 226.16(f), and §§ 226.51–226.58 is February 22, 2010. The mandatory compliance date for all other provisions of this final rule is July 1, 2010. For those provisions that are effective July 1, 2010, except to the extent that early compliance with this final rule is permitted, creditors generally must comply with the existing requirements of Regulation Z until July 1, 2010.

B. *Prospective application of new rules.* The final rule is prospective in application. The following paragraphs set forth additional guidance and examples as to how a creditor must

[74] *See, e.g.,* comment 53(b)–5 (clarifying that preprinted language in an account agreement or on a payment coupon does not constitute a consumer request for purposes of allocating a payment in excess of the minimum pursuant to § 226.53(b)(2)); revised § 226.9(c)(2)(i) (clarifying that the statement in § 226.9(c)(2)(i) that the 45-day timing requirement does not apply if the consumer has agreed to a particular change is solely intended for use in the unusual instance when a consumer substitutes collateral or when the creditor can advance additional credit only if a change relatively unique to that consumer is made).

comply with the final rule by the relevant mandatory compliance date.

C. *Tabular summaries that accompany applications or solicitations (§ 226.5a).* Credit and charge card applications provided or made available to consumers on or after July 1, 2010 must comply with the final rule, including format and terminology requirements. For example, if a direct-mail application or solicitation is mailed to a consumer on June 30, 2010, it is not required to comply with the new requirements, even if the consumer does not receive it until July 7, 2010. If a direct-mail application or solicitation is mailed to consumers on or after July 1, 2010, however, it must comply with the final rule. If a card issuer makes an application or solicitation available to the general public, such as "take-one" applications, any new applications or solicitations issued by the creditor on or after July 1, 2010 must comply with the new rule. However, if a card issuer issues an application or solicitation by making it available to the public prior to July 1, 2010, for example by restocking an in-store display of "take-one" applications on June 15, 2010, those applications need not comply with the new rule, even if a consumer may pick up one of the applications from the display after July 1, 2010. Any "take-one" applications that the card issuer uses to restock the display on or after July 1, 2010, however, must comply with the final rule.

D. *Account-opening disclosures (§ 226.6).* Account-opening disclosures furnished on or after July 1, 2010 must comply with the final rule, including format and terminology requirements. The relevant date for purposes of this requirement is the date on which the disclosures are furnished, not when the consumer applies for the account. For example, if a consumer applies for an account on June 30, 2010, but the account-opening disclosures are not mailed until July 2, 2010, those disclosures must comply with the final rule. In addition, if the disclosures are furnished by mail, the relevant date is the day on which the disclosures were sent, not the date on which the consumer receives the disclosures. Thus, if a creditor mails the account-opening disclosures on June 30, 2010, even if the consumer receives those disclosures on July 7, 2010, the disclosures are not required to comply with the final rule.

E. *Periodic statements (§ § 226.7 and 226.5(b)(2)).*

Timing requirements (§ 226.5(b)(2)). As discussed in the July 2009 Regulation Z Interim Final Rule, revised TILA Section 163 (as amended by the Credit Card Act) became effective on August 20, 2009. Accordingly, the interim final rule's revisions to § 226.5(b)(2)(ii) also became effective on August 22, 2009. In the interim final rule, the Board recognized that, with respect to open-end consumer credit plans other than credit cards, it could be difficult for some creditors to update their systems to produce periodic statements by August 20, 2009 that disclosed payment due dates and grace period expiration dates (if applicable) that were consistent with the 21-day requirement in revised § 226.5(b)(2)(ii). As a result, the Board noted the possibility that, for a short period of time after August 20, some periodic statements for open-end consumer credit plans other than credit cards might disclose payment due dates and grace period expiration dates (if applicable) that were technically inconsistent with the interim final rule. In these circumstances, the Board stated that the creditor could remedy this technical issue by prominently disclosing elsewhere on or with the periodic statement that the consumer's payment will not be treated as late for any purpose if received within 21 days after the statement was mailed or delivered.

However, on November 6, 2009, the Technical Corrections Act amended Section 163(a) to remove the requirement that creditors provide periodic statements at least 21 days before the payment due date with respect to open-end consumer credit plans other than credit card accounts. Thus, effective November 6, 2009, creditors were no longer required to comply with § 226.5(b)(2)(ii) to the extent inconsistent with TILA Section 163(a), as amended by the Technical Corrections Act.

As noted above, the final rule's revisions to § 226.5(b)(2)(ii) and its commentary are intended to implement the Technical Corrections Act and to clarify certain aspects of the interim final rule. These revisions are not intended to impose any new substantive requirements on creditors. Nevertheless, to the extent that these revisions require creditors to make any changes to their systems or processes for providing periodic statements, the relevant date for purposes of determining when a creditor must comply with the final rule is the date on which the periodic statement is mailed or delivered, not the due date or grace period expiration date reflected on the statement. Thus, if a periodic statement is mailed or delivered on February 22, the creditor must have reasonable procedures designed to ensure that the payment due date and the grace period expiration date are not earlier than March 15, consistent with the revisions to § 226.5(b)(2)(ii) in this final rule. However, if a periodic statement is mailed or delivered on February 21, the revisions to § 226.5(b)(2)(ii) in this final rule do not apply to that statement.

Content requirements (§ 226.7). Periodic statements mailed or delivered on or after February 22, 2010 must comply with § 226.7(b)(11), (b)(12), and (b)(13) of the final rule. The requirement in § 226.7(b)(11)(i)(A) that the due date for a credit card account under an open-end (not home-secured) consumer credit plan be the same day each month applies beginning with the first statement for an account that is mailed or delivered on or after February 22, 2010. The due date disclosed on the last statement for an account mailed or delivered prior to February 22, 2010 need not be the same day of the month as the due date disclosed on the first statement for that account that is mailed or delivered on or after February 22, 2010.

For all other requirements of § 226.7(b), periodic statements mailed or delivered on or after July 1, 2010 must comply with the final rule. For example, if a creditor mails a periodic statement to the consumer on June 30, 2010, that statement is not required to comply with the final rule, even if the consumer does not receive the statement until July 7, 2010.

For periodic statements mailed on or after July 1, 2010, fees and interest charges must be disclosed for the statement period and year-to-date. For the year-to-date figure, creditors comply with the final rule by aggregating fees and interest charges beginning with the first periodic statement mailed on or after July 1, 2010. The first statement mailed on or after July 1, 2010 need not disclose aggregated fees and interest charges from prior cycles in the year. At the creditor's option, however, the year-to-date figure may reflect amounts computed in accordance with comment 7(b)(6)–3 for prior cycles in the year.

The Board recognizes that a creditor may wish to comply with certain provisions of the final rule for periodic statements that are mailed prior to July 1, 2010. A creditor may phase in disclosures required on the periodic statement under the final rule that are not currently required prior to July 1, 2010. A creditor also may generally omit from the periodic statement any disclosures that are not required under the final rule prior to July 1, 2010. However, a creditor must continue to disclose an effective APR unless and until that creditor provides disclosures

of fees and interest that comply with § 226.7(b)(6) of the final rule. Similarly, as provided in § 226.7(a), in connection with a HELOC, a creditor must continue to disclose an effective APR unless and until that creditor provides fee and interest disclosures under § 226.7(b)(6).

F. *Checks that access a credit card account (§ 226.9(b)).* A creditor must comply with the disclosure requirements of § 226.9(b)(3) of the final rule for checks that access a credit account that are provided on or after July 1, 2010. Thus, for example, if a creditor mails access checks to a consumer on June 30, 2010, these checks are not required to comply with new § 226.9(b)(3), even if the consumer receives them on July 7, 2010.

G. *Notices of changes in terms and penalty rate increases for credit card accounts under an open-end (not home-secured) consumer credit plan (§ 226.9(c)(2) and (g)).*

In general. With the exception of the formatting requirements in § 226.9(c)(2)(iv)(D) and (g)(3)(ii), compliance with § 226.9(c)(2) and (g) is mandatory on the effective date of this final rule, February 22, 2010. Compliance with the formatting requirements set forth in § 226.9(c)(2)(iv)(D) and (g)(3)(ii) is mandatory on July 1, 2010.

Change in terms notices. The relevant date for determining whether a change-in-terms notice must comply with the new requirements of revised § 226.9(c)(2) is generally the date on which the notice is provided, not the effective date of the change. Therefore, if a card issuer provides a notice of a change in terms for a credit card account under an open-end (not home-secured) consumer credit plan pursuant to § 226.9(c)(2) of the July 2009 Regulation Z Interim Final Rule prior to February 22, 2010, the notice generally is required to comply with the requirements of § 226.9(c)(2) of the Board's July 2009 Regulation Z Interim Final Rule rather than the final rule.

Accordingly, a card issuer may provide a notice in accordance with the July 2009 Regulation Z Interim Final Rule on February 20, 2010 disclosing a change-in-terms effective April 6, 2009. This notice would not be required to comply with the revised requirements of this final rule. For example, if the change being disclosed is a rate increase due to the consumer's failure to make a required minimum payment within 60 days of the due date, a notice provided prior to February 22, 2010 is not required to disclose the consumer's right to cure the rate increase by making the first six minimum payments on time following the effective date of the rate increase.

This transition guidance is similar to the guidance the Board provided with the July 2009 Regulation Z Interim Final Rule. The Board believes that this is the appropriate way to implement the February 22, 2010 effective date in order to ensure that institutions are provided the full implementation period provided under the Credit Card Act. In the alternative, the Credit Card Act could be construed to require creditors to provide notices, pursuant to new § 226.9(c)(2), 45 days in advance of changes occurring on or after February 22. However, this reading would create uncertainty regarding compliance with the rule by requiring creditors to begin providing change-in-terms notices in accordance with revised § 226.9(c)(2) prior to the publication of this final rule. Accordingly, for clarity and consistency, the Board believes the better interpretation is that creditors must begin to comply with amended TILA Section 127(i) (as implemented in amended § 226.9(c)(2)) for change-in-terms notices provided on or after February 22, 2010.

Penalty rate increases. For rate increases due to the consumer's default or delinquency or as a penalty, the 45-day timing requirement of § 226.9(g) of the July 2009 Regulation Z Interim Final Rule currently applies to credit card accounts under an open-end (not home-secured) consumer credit plan.

The Board is adopting an amended § 226.9(g) in this final rule, which retains the 45-day notice requirement from the July 2009 Regulation Z Interim Final Rule, with several changes. For example, for rate increases due to the consumer's failure to make a required minimum payment within 60 days of the due date, the final rule requires disclosure of the consumer's right to cure the rate increase by making the first six minimum payments on time following the effective date of the rate increase. Similar to, and for the reasons discussed in connection with, the transition guidance for § 226.9(c)(2), the relevant date for determining whether a change-in-terms notice must comply with the new requirements of revised § 226.9(g) is generally the date on which the notice is provided, not the effective date of the rate increase. Therefore, if a card issuer provides a notice of a rate increase due to delinquency, default, or as a penalty for a credit card account under an open-end (not home-secured) consumer credit plan pursuant to § 226.9(g) of the July 2009 Regulation Z Interim Final Rule prior to February 22, 2010, the notice generally is required to comply with the requirements of § 226.9(g) of the Board's July 2009 Regulation Z Interim Final Rule rather than the final rule.

Workout and temporary hardship arrangements. The Board's July 2009 Regulation Z Interim Final Rule amended § 226.9(c)(2) and (g) to provide that creditors are not required to provide 45 days advance notice when a rate is increased due to the completion or failure of a workout or temporary hardship arrangement, provided that, among other things, the creditor had provided the consumer prior to commencement of the arrangement with a clear and conspicuous written disclosure of the terms of the arrangement (including any increases due to completion or failure of the arrangement). This final rule further amends § 226.9(c)(2)(v)(D) to provide that, although this disclosure must generally be in writing, a creditor may disclose the terms of the arrangement orally by telephone, provided that the creditor mails or delivers a written disclosure of the terms to the consumer as soon as reasonably practicable after the oral disclosure is provided.

The revision to § 226.9(c)(2)(v)(D) recognizes that workout and temporary hardship arrangements are frequently established over the telephone and that creditors often apply the reduced rate immediately. Accordingly, to the extent that a creditor disclosed the terms of a workout or temporary hardship arrangement orally by telephone prior to February 22, 2010, the creditor may increase a rate to the extent consistent with § 226.9(c)(2)(v)(D)(*1*) on or after February 22 so long as the creditor has mailed or delivered written disclosure of the terms to the consumer by February 22.

Changes necessary to comply with final rule. The Board understands that, in order to comply with the final rule by February 22, 2010, card issuers may have to make changes to the account terms set forth in a consumer's credit agreement or similar legal documents. The Board also understands that, in some circumstances, the terms of the account may be inconsistent with the final rule on February 22, 2010 because those terms have not yet been amended consistent with the 45-day notice requirement in § 226.9(c)(2). For example, if a card issuer provides a notice on January 30, 2010 informing the consumer of changes to the method used to calculate a variable rate necessary to comply with § 226.55(b)(2), changes to the balance computation method necessary to comply with § 226.54, § 226.9(c)(2) technically prohibits the issuer from applying those changes to the account until March 16,

2010. In these circumstances, however, the card issuer must comply with the provisions of the final rule on February 22, 2010, even if the terms of the account have not yet been amended consistent with § 226.9(c)(2). Otherwise, card issuers could continue to, for example, calculate variable rates in a manner that is inconsistent with § 226.55(b)(2) after February 22, which would not be consistent with Congress' intent.

Accordingly, if on February 22, 2010 the terms of an account are inconsistent with the final rule, the card issuer is prohibited from enforcing those terms, even if those terms have not yet been amended consistent with the 45-day notice requirement in § 226.9(c)(2). Illustrative examples are provided below in the transition guidance for § 226.55(b)(2).

Right to reject. The Board's July 2009 Regulation Z Interim Final Rule adopted § 226.9(h), which provides consumers with the right to reject certain significant changes in account terms. Under § 226.9(h), the right to reject applies when the card issuer is required to disclose that right in a § 226.9 notice. Current § 226.9(c) and (g) generally require disclosure of the right to reject when a rate is increased and when certain other significant account terms are changed. However, under the final rule, disclosure of the right to reject will no longer be required for rate increases because § 226.55 generally prohibits application of increased rates to existing balances. Thus, card issuers are not required to provide consumers with the right to reject a rate increase that is subject to § 226.55, consistent with the transition guidance for § 226.55 (discussed below).

Furthermore, as discussed above with respect to § 226.9(c)(2), the Board understands that card issuers will have to make significant changes in account terms in order to comply with the final rule by February 22, 2010. Because it would not be appropriate to permit consumers to reject changes that are mandated by the Credit Card Act and this final rule, card issuers are not required to provide consumers with the right to reject a change that is necessary to comply with the final rule. For example, card issuers are not required to provide a right to reject for changes to a balance computation method necessary to comply with § 226.54 or changes to the method used to calculate a variable rate necessary to comply with § 226.55(b)(2).

H. *Notices of changes in terms and penalty rate increases for other open-end (not home-secured) plans (§ 226.9(c)(2) and (g)).*

Change in terms notices—in general. Compliance with § 226.9(c)(2) of the final rule (except for the formatting requirements of § 226.9(c)(2)(iv)(D)) is mandatory on February 22, 2010 for open-end (not home-secured) plans that are not credit card accounts under an open-end (not home-secured) consumer credit plan. Prior to February 22, 2010, such creditors may provide change-in-terms notices 15 days in advance of a change, consistent with § 226.9(c)(1) of the July 2009 Interim Final Rule. For example, such a creditor may mail a change-in-terms notice to a consumer on February 20, 2010 disclosing a change effective on March 7, 2010. In contrast, a notice of a rate increase sent on February 22, 2010 would be required to comply with § 226.9(c)(2) of the final rule (except for the formatting requirements of § 226.9(c)(2)(iv)(D)), and thus the change disclosed in the notice could have an effective date no earlier than April 8, 2010.

Promotional rates.[75] Some creditors that are not card issuers may have outstanding promotional rate programs that were in place before the effective date of this final rule, but under which the promotional rate will not expire until after February 22, 2010. For example, a creditor may have offered its consumers a 5% promotional rate on transactions beginning on September 1, 2009 that will be increased to 15% effective as of September 1, 2010. Such creditors may have concerns about whether the disclosures that they have provided to consumers in accordance with these arrangements are sufficient to qualify for the exception in § 226.9(c)(2)(v)(B). The Board notes that § 226.9(c)(2)(v)(B) of this final rule requires written disclosures of the term of the promotional rate and the rate that will apply when the promotional rate expires. The final rule further requires that the term of the promotional rate and the rate that will apply when the promotional rate expires be disclosed in close proximity and equally prominent to the disclosure of the promotional rate. The Board anticipates that many creditors offering such a promotional rate program may already have complied with these advance notice requirements in connection with offering the promotional program.

The Board is nonetheless aware that some other creditors may be uncertain whether written disclosures provided at the time an existing promotional rate program was offered are sufficient to comply with the exception in § 226.9(c)(2)(v)(B). For example, for promotional rate offers provided after February 22, 2010, the disclosure under § 226.9(c)(2)(v)(B)(*1*) must include the rate that will apply after the expiration of the promotional period. For an existing promotional rate program, a creditor might instead have disclosed this rate narratively, for example by stating that the rate that will apply after expiration of the promotional rate is the standard annual percentage rate applicable to purchases. The Board does not believe that it is appropriate to require a creditor that generally provided disclosures consistent with § 226.9(c)(2)(v)(B), but that are technically not compliant because they described the post-promotional rate narratively, to provide consumers with 45 days' advance notice before expiration of the promotional period. This would have the impact of imposing the requirements of this final rule retroactively, to disclosures given prior to the February 22, 2010 effective date. Therefore, a creditor that generally made disclosures in connection with an open-end (not home-secured) plan that is not a credit card account under an open-end (not home-secured) consumer credit plan prior to February 22, 2010 complying with § 226.9(c)(2)(v)(B) but that describe the type of post-promotional rate rather than disclosing the actual rate is not required to provide an additional notice pursuant to § 226.9(c)(2) before expiration of the promotional rate in order to use the exception.

Similarly, the Board acknowledges that there may be some creditors with outstanding promotional rate programs that did not make, or, without conducting extensive research, are not aware if they made, written disclosures of the length of the promotional period and the post-promotional rate. For example, some creditors may have made these disclosures orally. For the same reasons described in the foregoing paragraph, the Board believes that it would be inappropriate to preclude use of the § 226.9(c)(2)(v)(B) exception by creditors offering these promotional rate programs. That interpretation of the rule would in effect require creditors to have complied with the precise requirements of the exception before the February 22, 2010 effective date. However, the Board believes at the same time that it would be inconsistent with the intent of the Credit Card Act for creditors that provided no advance notice of the term of the promotion and the post-promotional rate to receive an

[75] For simplicity, the Board refers in this transition guidance to "promotional rates." However, pursuant to new comment 9(c)(2)(v)–9, this transition guidance is intended to apply equally to deferred interest or similar programs.

exemption from the general notice requirements of § 229.9(c)(2).

Consequently, any creditor that is not a card issuer that provides a written disclosure to consumers subject to an existing promotional rate program, prior to February 22, 2010, stating the length of the promotional period and the rate or type of rate that will apply after that promotional rate expires is not required to provide an additional notice pursuant to § 226.9(c)(2) prior to applying the post-promotional rate. In addition, any creditor that is not a card issuer that provided, prior to February 22, 2010, oral disclosures of the length of the promotional period and the rate or type of rate that will apply after the promotional period also need not provide an additional notice under § 226.9(c)(2). However, any creditor subject to § 226.9(c)(2) that is not a card issuer and has not provided advance notice of the term of a promotion and the rate that will apply upon expiration of that promotion in the manner described above prior to February 22, 2010 will be required to provide 45 days' advance notice containing the content set forth in this final rule before raising the rate.

Penalty rate increases. For open-end (not home-secured) plans that are not credit card accounts under an open-end (not home-secured) consumer credit plan, § 226.9(c)(1) of the July 2009 Regulation Z Interim Final Rule requires only that notice of an increase due to the consumer's default, delinquency, or as a penalty must be given before the effective date of the change. Therefore, the relevant date for purposes of such penalty rate increases generally is the date on which the increase becomes effective. For example, if a consumer makes a late payment on February 15, 2010 that triggers penalty pricing, a creditor that is not a card issuer may increase the rate effective on or before February 21, 2010 in compliance with § 226.9(c)(1) of the July 2009 Regulation Z Interim Final Rule, and need not provide 45 days' advance notice of the change.

The Board is aware that there may be some circumstances in which a consumer's actions prior to February 22, 2010 trigger a penalty rate, but a creditor that is not a card issuer may be unable to implement that rate increase prior to February 22, 2010. For example, a consumer may make a late payment on February 15, 2010 that triggers a penalty rate, but the creditor may not be able to implement that rate increase until March 1, 2010 for operational reasons. In these circumstances, the Board believes that requiring 45 days' advance notice prior to the imposition of the penalty rate would not be appropriate, because it would in effect require compliance with new § 226.9(g) prior to the February 22 effective date. Therefore, for such penalty rate increases that are triggered, but cannot be implemented, prior to February 22, 2010, a creditor must either provide the consumer, prior to February 22, 2010, with a written notice disclosing the impending rate increase and its effective date, or must comply with new § 226.9(g). In the example described above, therefore, a creditor could mail to the consumer a notice on February 20, 2010 disclosing that the consumer has triggered a penalty rate increase that will be effective on March 1, 2010. If the creditor mailed such a notice, it would not be required to comply with new § 226.9(g). This transition guidance applies only to penalty rate increases triggered prior to February 22, 2010; if a consumer engages in actions that trigger penalty pricing on February 22, 2010, the creditor must comply with new § 226.9(g) and, accordingly, must provide the consumer with a notice at least 45 days in advance of the effective date of the increase.

I. *Renewal disclosures (§ 226.9(e)).* Amended § 226.9(e) is effective February 22, 2010. Accordingly, renewal notices provided on or after February 22, 2010 must be provided 30 days in advance of renewal and must comply with § 226.9(e). If a creditor provides a renewal notice prior to February 22, 2010, even if the renewal occurs after the effective date, that notice need not comply with the final rule. For example, a card issuer may impose an annual fee and provide a renewal notice on February 21, 2010 consistent with the alternative timing rule currently in § 226.9(e)(2). In addition, the requirement to provide a renewal notice based on an undisclosed change in a term required to be disclosed pursuant to § 226.6(b)(1) and (b)(2) applies only if the change occurred on or after February 22, 2010. The Board believes that this is appropriate because card issuers may not have systems in place to track whether undisclosed changes of the type subject to § 226.9(e) have occurred prior to the effective date of this rule.

J. *Advertising rules (§ 226.16).* Advertisements occurring on or after February 22, 2010, such as an advertisement broadcast on the radio, published in a newspaper, or mailed on February 22, 2010 or later, must comply with the new rules regarding the use of the term "fixed." Thus, an advertisement mailed on February 21, 2010 is not required to comply with the final rule regarding use of the term "fixed" even if that advertisement is received by the consumer on February 28, 2010. Advertisements occurring on or after July 1, 2010, such as an advertisement broadcast on the radio, published in a newspaper, or mailed on July 1, 2010 or later, must comply with the remainder of the final rule regarding advertisements.

K. *Additional rules regarding disclosures.* The final rule contains additional new rules, such as revisions to certain definitions, that differ from current interpretations and are prospective. For example, creditors may rely on current interpretations on the definition of "finance charge" in § 226.4 regarding the treatment of fees for cash advances obtained from automatic teller machines (ATMs) until July 1, 2010. On or after that date, however, such fees must be treated as a finance charge. For example, for account-opening disclosures provided on or after July 1, 2010, a creditor will need to disclose fees to obtain cash advances at ATMs in accordance with the requirements § 226.6 of the final rule for disclosing finance charges. In addition, a HELOC creditor that chooses to continue to disclose an effective APR on the periodic statement will need to treat fees for obtaining cash advances at ATMs as finance charges for purposes of computing the effective APR on or after July 1, 2010. Similarly, foreign transaction fees must be treated as a finance charge on or after July 1, 2010.

L. *Definition of open-end credit.* As discussed in the section-by-section analysis to § 226.2(a)(20), all creditors must provide closed-end or open-end disclosures, as appropriate in light of revised § 226.2(a)(20) and the associated commentary, as of July 1, 2010.

M. *Implementation of disclosure rules in stages.* As noted above, commenters indicated creditors will likely implement the disclosure requirements of the final rule for which compliance is mandatory by July 1, 2010 in stages. As a result, some disclosures may contain existing terminology required currently under Regulation Z while other disclosures may contain new terminology required in this final rule. For example, the final rule requires creditors to use the term "penalty rate" when referring to a rate that can be increased due to a consumer's delinquency or default or as a penalty. In addition, creditors are required under the final rule to use a phrase other than the term "grace period" in describing whether a grace period is offered for purchases or other transactions. The final rule also requires in some circumstances that a creditor use a term other than "finance charge," such as

"interest charge." As discussed in the section-by-section analysis to the January 2009 Regulation Z Rule, during the implementation period, terminology need not be consistent across all disclosures. For example, if a creditor uses terminology required by the final rule in the disclosures given with applications or solicitations, that creditor may continue to use existing terminology in the disclosures it provides at account-opening or on periodic statements until July 1, 2010. Similarly, a creditor may use one of the new terms or phrases required by the final rule in a certain disclosure but is not required to use other terminology required by the final rule in that disclosure prior to the mandatory compliance date. For example, the creditor may use new terminology to describe the grace period, consistent with the final rule, in the disclosures it provides at account-opening, but may continue to use other terminology currently permitted under the rules to describe a penalty rate in the same account-opening disclosure. By the mandatory compliance date of this rule, however, all disclosures must have consistent terminology.

N. *Ability to pay rules (§ 226.51).* Section 226.51 applies to the opening of all accounts on or after February 22, 2010 as well as to all credit line increases occurring on or after February 22, 2010 for existing accounts. Industry commenters suggested that the Board apply the provisions of § 226.51 to applications received on or after February 22, 2010. The Board is concerned, however, that if the rule is applied only to applications received on or after February 22, 2010, it will be possible for a consumer whose application is received before February 22, 2010 but whose account is not opened until after February 22, 2010 to be deprived of the protections afforded by the statute. TILA Section 150 states, in part, that a card issuer may not *open* a credit card account unless the card issuer has considered the consumer's ability to make the required payments. Similarly, for consumer under 21 years old, TILA Section 127(c)(8) prohibits the issuance of a credit card without the submission of a written application meeting the requirements set forth in the statute. Therefore, the Board believes the relevant date is the date the account is opened.

Industry commenters also requested that the Board provide an exception to § 226.51 for accounts opened in response to solicitations and applications mailed before February 22, 2010. For the same reasons associated with the Board's decision to apply § 226.51 to applications received on or after February 22, 2010, the Board declines to make such an exception. The Board, however, is providing a limited exception for firm offers of credit made before February 22, 2010. The Fair Credit Reporting Act prohibits conditioning an offer on the consumer's income if income was not previously established as one of the card issuer's specific criteria prior to prescreening. 15. U.S.C. 1681a(l)(1)(A). Consequently, the Board does not believe § 226.51 should apply to accounts opened in response to firm offers of credit made before February 22, 2010 where income was not previously established as a specific criteria prior to prescreening.

The Board also received requests that the provisions of § 226.51 not apply to credit line increases on accounts in existence before February 22, 2010. The Board believes that grandfathering such accounts would be contrary to the Credit Card Act's purpose, and therefore declines to make such an exception. The Board notes, however, that § 226.51(b)(2) only applies to accounts that have been opened pursuant to § 226.51(b)(1)(ii). As a result, if a consumer under the age of 21 has an existing account that was opened before February 22, 2010 without a cosigner, guarantor, or joint accountholder, the issuer need not obtain the written consent required under § 226.51(b)(2) before increasing the credit limit. The issuer, however, must still evaluate the consumer's ability to make the required payments under the credit line increase, consistent with § 226.51(a). If the consumer under the age of 21 is not able to make the required payments under the credit line increase, the issuer may either refrain from granting the credit line increase or have the consumer obtain a cosigner, guarantor, or joint accountholder on the account, consistent with the procedures set forth in § 226.51(b)(1)(ii), for the increased credit line. Moreover, if a consumer under the age of 21 has an existing account that was opened before February 22, 2010 with a cosigner, guarantor, or joint accountholder, the issuer must comply with § 226.51(b)(2) before increasing the credit limit, whether or not such cosigner, guarantor, or joint accountholder is at least 21 years old.

O. *Limitations on fees (§ 226.52).* The effective date for new TILA Section 127(n) is February 22, 2010. Accordingly, card issuers must comply with § 226.52(a) beginning on February 22, 2010. However, § 226.52(a) does not apply to accounts opened prior to February 22, 2010.

Some commenters suggested that the limitations in new TILA Section 127(n) should apply to accounts opened less than one year before the statutory effective date. Although the Board has generally taken the position that the provisions of the Credit Card Act apply to existing accounts as of the effective date, the Board has also generally attempted to avoid applying those provisions retroactively. Section 127(n) is different than most provisions of the Credit Card Act because it applies only during a specified period of time (the first year after account opening). Thus, if the Board were to apply § 226.52(a) to any account opened on or after February 23, 2009, card issuers could be in violation of the 25 percent limit as a result of fees that were permissible at the time they were imposed.[76]

The Board believes that limiting application of new TILA Section 127(n) and § 226.52(a) to accounts opened on or after February 22, 2010 is consistent with Congress' intent. The Credit Card Act expressly provides that certain requirements in revised TILA Section 148(b) apply retroactively. Specifically, although the Credit Card Act was enacted on May 22, 2009, revised TILA Section 148(b)(2) states that the requirement that card issuers review rate increases no less frequently than once every six months applies to "accounts as to which the annual percentage rate has been increased since January 1, 2009." However, Congress did not include any language in new TILA Section 127(n) suggesting that it should apply retroactively.

P. *Payment allocation (§ 226.53).* The effective date for revised TILA Section 164(b) is February 22, 2010. Accordingly, card issuers must comply with § 226.53 beginning on February 22, 2010. As of that date, § 226.53 applies to existing as well as new accounts and balances. Thus, if a card issuer receives a payment that exceeds the required minimum periodic payment on or after February 22, 2010, the card issuer must apply the excess amount consistent with § 226.53.

Q. *Limitations on the imposition of finance charges (§ 226.54).* The effective

[76] For example, if the Board interpreted new TILA Section 127(n) as applying retroactively, a card issuer that opened an account with a $500 limit and $150 dollars in fees for the issuance or availability of credit on March 1, 2009 would be in violation of the Credit Card Act, despite the fact that the legislation was not enacted until May 22, 2009. Similarly, a card issuer that opened an account with a $500 limit and $125 dollars in fees for the issuance or availability of credit on June 1, 2009 would be prohibited from charging any fees to the account (other than those exempted by § 226.52(a)(2)) until June 1, 2010 as a result of imposing fees that were permitted at the time of imposition.

date for new TILA Section 127(j) is February 22, 2010. Accordingly, card issuers must comply with § 226.54 beginning on February 22, 2010. The Board understands that card issuers generally calculate finance charges imposed with respect to transactions that occur during a billing cycle at the end of that cycle. Accordingly, if § 226.54 were applied to billing cycles that end on or after February 22, 2010, card issuers would be required to comply with its requirements with respect to transactions that occurred before February 22, 2010. However, for the reasons discussed above, the Board does not believe that Congress intended the provisions of the Credit Card Act to apply retroactively unless expressly provided. Accordingly, § 226.54 applies to the imposition of finance charges with respect to billing cycles that begin on or after February 22, 2010.

R. *Limitations on increasing annual percentage rates, fees, and charges (§ 226.55).* The effective date for revised TILA Section 171 and new TILA Section 172 is February 22, 2010. Accordingly, compliance with § 226.55 is mandatory beginning on February 22, 2010.

Prohibition on increases in rates and fees (§ 226.55(a)). Beginning on February 22, 2010, § 226.55(a) prohibits a card issuer from increasing an annual percentage rate or a fee or charge required to be disclosed under § 226.6(b)(2)(ii), (iii), or (xii) unless the increase is consistent with one of the exceptions in § 226.55(b) or the implementation guidance discussed below. The prohibition in § 226.55(a) applies to both existing accounts and accounts opened after February 22, 2010.

Temporary rates—generally (§ 226.55(b)(1)).[77] If a rate that will increase upon the expiration of a specified period of time applies to a balance on February 22, 2010, § 226.55(b)(1) permits the card issuer to apply an increased rate to that balance at expiration of the period so long as the card issuer previously disclosed to the consumer the length of the period and the rate that would apply upon expiration of the period. For example, if on February 22, 2010 a 5% rate applies to a $1,000 purchase balance and that rate is scheduled to increase to 15% on June 1, 2010, the card issuer may apply the 15% rate to any remaining portion of the $1,000 balance on June 1, provided that the card issuer previously disclosed that the 15% rate would apply on June 1.

A card issuer has satisfied the disclosure requirement in § 226.55(b)(1)(i) if it has provided disclosures consistent with § 226.9(c)(2)(v)(B), as adopted by the Board in the July 2009 Regulation Z Interim Final Rule. Because § 226.9(c)(2)(v)(B) became effective on August 20, 2009, the Board expects that card issuers will have satisfied the disclosure requirement in § 226.55(b)(1)(i) with respect to any temporary rate offered on or after that date. However, the Board understands that, with respect to temporary rates offered prior to August 20, 2009, card issuers may be uncertain whether the disclosures provided at the time those rates were offered are sufficient to comply with § 226.9(c)(2)(v)(B) and § 226.55(b)(1)(i). The Board addressed this issue in the implementation guidance for § 226.9(c)(2)(v)(B) in the July 2009 Regulation Z Interim Final Rule. *See* 74 FR 36091–36092. That guidance applies equally with respect to § 226.55(b)(1)(i).

Specifically, the Board stated in the July 2009 Regulation Z Interim Final Rule that, if prior to August 20, 2009 a creditor provided disclosures that generally complied with § 226.9(c)(2)(v)(B) but described the type of increased rate that would apply upon expiration of the period instead of disclosing the actual rate,[78] the creditor could utilize the exception in § 226.9(c)(2)(v)(B). *See* 74 FR 36092. In these circumstances, a card issuer has also satisfied the requirements of § 226.55(b)(1)(i).

In addition, the Board acknowledged in the July 2009 Regulation Z Interim Final Rule that, prior to August 20, 2009, some creditors may not have provided written disclosures of the period during which the temporary rate would apply and the increased rate that would apply thereafter or may not be able to determine if they provided such disclosures without conducting extensive research.[79] The Board stated that, in these circumstances, a creditor could utilize the exception in § 226.9(c)(2)(v)(B) if it provided written disclosures that met the requirements in § 226.9(c)(2)(v)(B) prior to August 20, 2009 or if it can demonstrate that it provided oral disclosures that otherwise meet the requirements in § 226.9(c)(2)(v)(B). *See* 74 FR 36092. Similarly, in these circumstances, a card issuer that satisfies either of these criteria has also satisfied the requirements of § 226.55(b)(1)(i).

Temporary rates—six-month requirement (§ 226.55(b)(1)). The requirement in § 226.55(b)(1) that temporary rates expire after a period of no less than six months applies to temporary rates offered on or after February 22, 2010. Thus, for example, if a card issuer offered a temporary rate on December 1, 2009 that applies to purchases until March 1, 2010, § 226.55(b)(1) would not prohibit the card issuer from applying an increased rate to the purchase balance on March 1 so long as the card issuer previously disclosed the period during which the temporary rate would apply and the increased rate that would apply thereafter. Some commenters suggested that the six-month requirement in § 226.55(b)(1) (which implements new TILA Section 172(b)) should apply to temporary rates offered less than six months before the statutory effective date (in other words, any temporary rate offered after September 22, 2009). However, as discussed above with respect to the restrictions on fees during the first year after account opening in new TILA Section 127(n) and new § 226.52(a), the Board believes that limiting application of the six-month requirement in new TILA Section 172(b) to temporary rates offered on or after February 22, 2010 is consistent with Congress' intent because—in contrast to revised TILA Section 148—Congress did not expressly provide that new TILA Section 172(b) applies retroactively.

Variable rates (§ 226.55(b)(2)). If a rate that varies according to a publicly-available index applies to a balance on February 22, 2010, the card issuer may continue to adjust that rate due to changes in the relevant index consistent with § 226.55(b)(2). However, if on February 22, 2010 the account terms governing the variable rate permit the card issuer to exercise control over the operation of the index in a manner that is inconsistent with § 226.55(b)(2) or its commentary, the card issuer is prohibited from enforcing those terms with respect to subsequent adjustments to the variable rate, even if the terms of the account have not yet been amended consistent with the 45-day notice requirement in § 226.9(c). The following examples illustrate the application of this guidance:

- Assume that the billing cycles for a credit card account begin on the first day of the month and end on the last day of the month. The terms of the account provide that, at the beginning of each billing cycle, the card issuer will

[77] For simplicity, this implementation guidance refers to rates subject to § 226.55(b)(1) as "temporary rates." However, pursuant to comment 55(b)(1)–3, this guidance is intended to apply equally to deferred interest or similar programs.

[78] For example: "After six months, the standard annual percentage rate applicable to purchases will apply."

[79] For example, some creditors may have provided these disclosures orally.

calculate the variable rate by adding a margin of 10 percentage points to the value of a publicly-available index on the last day of the prior billing cycle. However, contrary to § 226.55(b)(2), the terms of the account also provide that the variable rate will not decrease below 15%. *See* comment 55(b)(2)–2. On January 30, 2010, the card issuer provides a notice pursuant to § 226.9(c)(2) informing the consumer that, effective March 16, the 15% fixed minimum rate will be removed from the account terms. On January 31, the value of the index is 3% but, consistent with the fixed minimum rate, the card issuer applies a 15% rate beginning on February 1. The card issuer is not required to adjust the variable rate on February 22 because the terms of the account do not provide for a rate adjustment until the beginning of the March billing cycle. However, if the value of the index is 3% on February 28, the card issuer must apply a 13% rate beginning on March 1, even though the amendment to the account terms is not effective until March 16.

• Assume that the billing cycles for a credit card account begin on the first day of the month and end on the last day of the month. The terms of the account provide that, at the beginning of each billing cycle, the card issuer will calculate the variable rate by adding a margin of 10 percentage points to the value of a publicly-available index. However, contrary to § 226.55(b)(2), the terms of the account also provide that the variable rate will be calculated based on the highest index value during the prior billing cycle. *See* comment 55(b)(2)–2. On January 30, 2010, the card issuer provides a notice pursuant to § 226.9(c)(2) informing the consumer that, effective March 16, the terms of the account will be amended to provide that the variable rate will be calculated based on the value of the index on the last day of the prior billing cycle. On January 31, the value of the index is 4.9% but, because the highest value for the index during the January billing cycle was 5.1%, the card issuer applies a 15.1% rate beginning on February 1. The card issuer is not required to adjust the variable rate on February 22 because the terms of the account do not provide for a rate adjustment until the beginning of the March billing cycle. However, if the value of the index is 4.9% on February 28, the card issuer complies with § 226.55(b)(2) if it applies a 14.9% rate beginning on March 1, even though the amendment to the account terms is not effective until March 16.

Increases in rates and certain fees and charges that apply to new transactions (§ 226.55(b)(3)). Section 226.55(b)(3) applies to any increase in a rate or in a fee or charge required to be disclosed under § 226.6(b)(2)(ii), (iii), or (xii) that is effective on or after February 22, 2010. Some commenters argued that the Board should adopt guidance similar to that in the July 2009 Regulation Z Interim Final Rule, where the Board determined that the relevant date for purposes of compliance with revised § 226.9(c)(2) and new § 226.9(g) was generally the date on which the notice was provided. That guidance, however, was based in large part on concerns about requiring creditors to comply with revised TILA Section 127(i) with respect to notices provided as much as 45 days prior to the statutory effective date. *See* 74 FR 36091.

In contrast, under this guidance, card issuers are only required to comply with revised TILA Section 171 with respect to increases that take effect *after* the statutory effective date. Furthermore, if the relevant date for compliance with § 226.55(b)(3) was the date on which a § 226.9(c) or (g) notice was provided, card issuers would be permitted to apply increased rates, fees, or charges to existing balances until April 7, 2010 so long as the notice was sent before the Credit Card Act's February 22, 2010 effective date. The Board does not believe that this was Congress' intent.

The following examples illustrate the application of this guidance:

• On January 7, 2010, a card issuer provides a notice of an increase in the purchase rate pursuant to § 226.9(c). Consistent with § 226.9(c), the increased rate is effective on February 21, 2010. Therefore, § 226.55(b)(3) does not apply. Accordingly, on February 21, 2010, the card issuer may apply the increased rate to both new purchases and the existing purchase balance (provided the consumer has not rejected application of the increased rate to the existing balance pursuant to § 226.9(h)).

• On January 8, 2010, a card issuer provides a notice of an increase in the purchase rate pursuant to § 226.9(c). Consistent with § 226.9(c), the increased rate is effective on February 22, 2010. Therefore, § 226.55(b)(3) applies. Accordingly, on February 22, 2010, the card issuer cannot apply the increased rate to purchases that occurred on or before January 22, 2010 (which is the fourteenth day after provision of the notice) but may apply the increased rate to purchases that occurred after that date.

Prohibition on increasing rates and certain fees and charges during first year after account opening (§ 226.55(b)(3)(iii)). The prohibition in § 226.55(b)(3)(iii) on increasing rates and certain fees and charges during the first year after account opening applies to accounts opened on or after February 22, 2010. Some commenters suggested that this provision (which implements new TILA Section 172(a)) should apply to accounts opened less than one year before the statutory effective date. However, as discussed above with respect to new TILA Section 172(b), the Board believes that limiting application of new TILA Section 172(a) to accounts opened on or after February 22, 2010 is consistent with Congress' intent because Congress did not expressly provide that new TILA Section 172(a) applies retroactively.

Delinquencies of more than 60 days (§ 226.55(b)(4)). Section 226.55(b)(4) applies once an account becomes more than 60 days delinquent even if the delinquency began prior to February 22, 2010. For example, if the required minimum periodic payment due on January 1, 2010 has not been received by March 3, 2010, § 226.55(b)(4) permits the card issuer to apply an increased rate, fee, or charge to existing balances on the account after providing notice pursuant to § 226.9(c) or (g).

Workout and temporary hardship arrangements (§ 226.55(b)(5)). Section 226.55(b)(5) applies to workout and temporary hardship arrangements that apply to an account on February 22, 2010. A card issuer that has complied with § 226.9(c)(2)(v)(D) or the transition guidance for that provision has satisfied the disclosure requirement in § 226.55(b)(5)(i).

If a workout or temporary hardship arrangement applies to an account on February 22, 2010 and the consumer completes or fails to comply with the terms of the arrangement on or after that date, § 226.55(b)(5)(ii) only permits the card issuer to apply an increased rate, fee, or charge that does not exceed the rate, fee, or charge that applied prior to commencement of the workout arrangement. For example, assume that, on January 1, 2010, a card issuer decreases the rate that applies to a $5,000 balance from 30% to 5% pursuant to a workout or temporary hardship arrangement between the issuer and the consumer. Under this arrangement, the consumer must pay by the fifteenth of each month in order to retain the 5% rate. The card issuer does not receive the payment due on March 15 until March 20. In these circumstances, § 226.55(b)(5)(ii) does not permit the card issuer to apply a rate to any remaining portion of the $5,000 balance that exceeds the 30% penalty rate.

Servicemembers Civil Relief Act (§ 226.55(b)(6)). If a card issuer reduced an annual percentage rate pursuant to

50 U.S.C. app. 527 prior to February 22, 2010 and the consumer leaves military service on or after that date, § 226.55(b)(6) only permits the card issuer to apply an increased rate that does not exceed the rate that applied prior to the reduction.

Closed or acquired accounts and transferred balances (§ 226.55(d)). Section 226.55(d) applies to any credit card account under an open-end (not home-secured) consumer credit plan that is closed on or after February 22, 2010 or acquired by another creditor on or after February 22, 2010. Section 226.55(d) also applies to any balance that is transferred from a credit card account under an open-end (not home-secured) consumer credit plan issued by a creditor to another credit account issued by the same creditor or its affiliate or subsidiary on or after February 22, 2010. Thus, beginning on February 22, 2010, card issuers are prohibited from increasing rates, fees, or charges in these circumstances to the extent inconsistent with § 226.55, its commentary, and this guidance.

S. *Over-the-limit transactions (§ 226.56).* For credit card accounts opened prior to February 22, 2010, a card issuer may elect to provide an opt-in notice to all of its account-holders on or with the first periodic statement sent after the effective date of the final rule. Card issuers that choose to do so are prohibited from assessing any over-the-limit fees or charges after the effective date of the rule and prior to providing the opt-in notice, and subsequently could not assess any such fees or charges unless and until the consumer opts in and the card issuer sends written confirmation of the opt-in. The final rule does not, however, require that a card issuer waive fees that are incurred in connection with over-the-limit transactions that occur prior to February 22, 2010 even if the consumer has not opted in by the effective date. Thus, for example, a card issuer may assess fees if the consumer engages in an over-the-limit transaction prior to February 22, 2010, but the transaction posts or is charged to the account after that date, even if the consumer has not opted in by the effective date.

Early compliance. For existing accounts, an opt-in requirement could potentially result in a disruption in a consumer's ability to complete transactions if card issuers could not send notices, and obtain consumer opt-ins, until February 22, 2010. Accordingly, the Board solicited comment regarding whether a creditor should be permitted to obtain consumer consent for the payment of over-the-limit transactions prior to that date. Allowing creditors to obtain consumer consent prior to February 22, 2010 could also allow creditors to phase in their delivery of opt-in notices and processing of consumer consents.

Industry commenters agreed that the rule should permit creditors to obtain consents prior to February 22, 2010 to enable both creditors and consumers to avoid a flood of opt-in notices and transaction denials on or after that date. One industry commenter urged the Board to permit creditors to obtain valid consumer consents so long as they follow the requirements set forth in the proposed rule and provide the proposed model form. In contrast, consumer groups and one state government agency argued that creditors should not be permitted to obtain consumer consents prior to the effective date of the rule because they did not believe that the rule as proposed afforded consumers adequate protections.

Under the final rule, card issuers may provide the notice and obtain the consumer's affirmative consent prior to the effective date, provided that the card issuer complies with all the requirements in § 226.56, including the requirements to segregate the notice and provide written confirmation of the consumer's choice. The opt-in notice must also include the specified content in § 226.56(e)(1). Use of Model Form G–25(A), or a substantially similar notice, constitutes compliance with the notice requirements in § 226.56(e)(1). *See* § 226.56(e)(3). If an existing account-holder responds to an opt-in notice provided before February 22, 2010 and expresses a desire not to opt in, the Board expects that the card issuer would honor the consumer's choice at that time, unless the card issuer has clearly and conspicuously explained in the opt-in notice that the opt-in protections do not apply until that date.

In addition, in order to minimize potential disruptions to the payment systems that may otherwise result if card issuers could not send notices or obtain consumer consents until near the effective date of the rule, the Board believes that it is appropriate to treat opt-in notices that follow the model form as proposed as a substantially similar notice to the final model form for purposes of § 226.56(e)(3). That is, card issuers that provide opt-in notices based on the proposed model form would be deemed to be in compliance with the over-the-limit opt-in provisions, provided that the other requirements of the rule, including the written confirmation requirement, are satisfied. The Board anticipates that such relief would be temporary, however, and expects that card issuers will transition to the final Model Form G–25(A) as soon as reasonably practicable after February 22, 2010 in order to retain the safe harbor.

Prohibited practices. Sections 226.56(j)(2)–(4) prohibit certain credit card acts or practices regarding the imposition of over-the-limit fees. These prohibitions are based on the Board's authority under TILA Section 127(k)(5)(B) to prescribe regulations that prevent unfair or deceptive acts or practices in connection with the manipulation of credit limits designed to increase over-the-limit fees or other penalty fees. However, compliance with the provisions of the final rule is not required before February 22, 2010. Thus, the final rule and the Board's accompanying analysis should have no bearing on whether or not acts or practices restricted or prohibited under this rule are unfair or deceptive before the effective date of this rule.

Unfair acts or practices can be addressed through case-by-case enforcement actions against specific institutions, through regulations applying to all institutions, or both. An enforcement action concerns a specific institution's conduct and is based on all of the facts and circumstances surrounding that conduct. By contrast, a regulation is prospective and applies to the market as a whole, drawing bright lines that distinguish broad categories of conduct.

Moreover, as part of the Board's unfairness analysis, the Board has considered that broad regulations, such as the prohibitions in connection with over-the-limit practices in the final rule, can require large numbers of institutions to make major adjustments to their practices, and that there could be more harm to consumers than benefit if the regulations were effective earlier than the effective date. If institutions were not provided a reasonable time to make changes to their operations and systems to comply with the final rule, they would either incur excessively large expenses, which would be passed on to consumers, or cease engaging in the regulated activity altogether, to the detriment of consumers. For example, card issuers may be required to make significant systems changes in order to ensure that fees and interest charges assessed during a billing cycle did not cause an over-the-limit fee or charge to be imposed on a consumer's account. Thus, because the Board finds an act or practice unfair only when the harm outweighs the benefits to consumers or to competition, the implementation period preceding the effective date set forth in the final rule is integral to the

Board's decision to restrict or prohibit certain acts or practices by regulation.

For these reasons, acts or practices occurring before the effective date of the final rule will be judged on the totality of the circumstances under applicable laws or regulations. Similarly, acts or practices occurring after the rule's effective date that are not governed by these rules will be judged on the totality of the circumstances under applicable laws or regulations. Consequently, only acts or practices covered by the rule that occur on or after the effective date would be prohibited by the regulation.

T. *Reporting and marketing rules for college student open-end credit (§ 226.57).*

Prohibited inducements (§ 226.57(c)). All tangible items offered to induce a college student to apply for or participate in an open end consumer credit plan, on or near the campus of an institution of higher education or at an event sponsored by or related to an institution of higher education, are prohibited on or after February 22, 2010 pursuant to § 226.57(c). If a college student has submitted an application for, or agreed to participate in, an open-end consumer credit plan prior to February 22, 2010, in reliance on the offer of a tangible item, such item may still be provided to the student on or after February 22, 2010.

Submission of reports to Board (§ 226.57(d)). Section 226.57(d)(3) provides that card issuers must submit the first report regarding college credit card agreements for the 2009 calendar year to the Board by February 22, 2010.

U. *Internet posting of credit card agreements (§ 226.58).* Section 226.58(c)(2) provides that card issuers must submit credit card agreements offered to the public as of December 31, 2009 to the Board no later than February 22, 2010.

V. *Open-End Credit Secured by Real Property.*

In the May 2009 Regulation Z Proposed Clarifications, the Board solicited comment on whether additional transition guidance is needed for creditors that offer open-end credit secured by real property, where it is unclear whether that property is, or remains, the consumer's dwelling. The issue arose because the January 2009 Regulation Z Rule preserved certain existing rules, for example the rules under §§ 226.6, 226.7, and 226.9, for home-equity plans subject to § 226.5b pending the completion of the Board's separate review of the rules applicable to home-secured credit. The Board noted that creditors offering open-end credit secured by real property may be uncertain how they should comply with the January 2009 Regulation Z Rule. Financial institution commenters suggested that creditors be permitted to treat all open-end credit secured by residential property as covered by § 226.5b, rather than the rules for open-end (not home-secured) credit, regardless of whether the property is the consumer's dwelling. Consumer group commenters did not address this issue.

In the August 2009 Regulation Z HELOC Proposal, the Board proposed to adopt a new comment 5–1 that would provide guidance in situations where a creditor is uncertain whether an open-end credit plan is covered by the § 226.5b rules for HELOCs or the rules for open-end (not home-secured) credit. The comment period on this proposal closed on December 24, 2009, and the Board is still considering the comments it received.

Accordingly, the Board believes that until the August 2009 Regulation Z HELOC Proposal is finalized, it is appropriate to permit creditors that offer open-end credit secured by real property that are uncertain whether the plan is covered by § 226.5b to comply with this final rule by complying with, at their option, either the new rules that apply to open-end (not home-secured) credit, or the existing rules applicable to home-equity plans. Therefore, if a creditor that offers open-end credit secured by real property is uncertain whether that property is, or remains, the consumer's dwelling, that creditor may comply with either the new rules regarding account-opening disclosures in § 226.6(b), periodic statement disclosures in § 226.7(b), and change-in-terms notices in § 226.9(c)(2), or the existing rules as preserved in §§ 226.6(a), 226.7(a), and 226.9(c)(1). However, such a creditor must treat the product consistently for the purpose of the disclosures in §§ 226.6, 226.7, and 226.9(c); for example, a creditor may not provide account-opening disclosures consistent with the new requirements of § 226.6(b) and periodic statement disclosures consistent with the existing requirements for HELOCs under § 226.7(a). In addition, as of the mandatory compliance date for this final rule, creditors must comply with any requirements of this final rule that apply to all open-end credit regardless of whether it is home-secured, such as the provision in § 226.10(d) regarding weekend or holiday due dates. This transition guidance applies only to provisions of Regulation Z that are amended by this rulemaking; accordingly, this transition guidance does not address creditors' responsibilities under other sections of Regulation Z, such as §§ 226.5b and 226.15.

VII. Regulatory Flexibility Analysis

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

Prior to the October 2009 Regulation Z Proposal, the Board conducted initial and final regulatory flexibility analyses and ultimately concluded that the rules in the Board's January 2009 Regulation Z Rule and July 2009 Regulation Z Interim Final Rule would have a significant economic impact on a substantial number of small entities. *See* 72 FR 33033–33034 (June 14, 2007); 74 FR 5390–5392; 74 FR 36092–36093. As discussed in **I. Background and Implementation of the Credit Card Act** and **V. Section-by-Section Analysis,** several of the provisions of the Credit Card Act are similar to provisions in the Board's January 2009 Regulation Z Rule and July 2009 Regulation Z Interim Final Rule. To the extent that the provisions in the October 2009 Regulation Z Proposal were substantially similar to provisions in those rules, the Board continued to rely on the regulatory flexibility analyses conducted for the Board's January 2009 Regulation Z Rule and July 2009 Regulation Z Interim Final Rule. The Credit Card Act, however, also addressed practices or mandated disclosures that were not addressed in the Board's January 2009 Regulation Z Rules and July 2009 Regulation Z Interim Final Rule. The Board prepared an initial regulatory flexibility analysis in connection with the October 2009 Regulation Z Proposal, which reached the preliminary conclusion that the proposed rule would impose additional requirements and burden on small entities. *See* 74 FR 54198–54200 (October 21, 2009). The Board received no significant comments addressing the initial regulatory flexibility analysis. Therefore, based on its prior analyses and for the reasons stated below, the Board has concluded that the final rule will have a significant economic impact on a substantial number of small entities. Accordingly, the Board has prepared the following final regulatory flexibility analysis pursuant to section 604 of the RFA.

1. *Statement of the need for, and objectives of, the rule.* The final rule implements a number of new substantive and disclosure provisions required by the Credit Card Act, which establishes fair and transparent practices relating to the extension of

open-end consumer credit plans. The supplementary information above describes in detail the reasons, objectives, and legal basis for each component of the final rule.

2. *Summary of the significant issues raised by public comment in response to the Board's initial analysis, the Board's assessment of such issues, and a statement of any changes made as a result of such comments.* As discussed above, the Board's initial regulatory flexibility analysis reached the preliminary conclusion that the proposed rule would have a significant economic impact on a substantial number of small entities. *See* 74 FR 54199 (October 21, 2009). The Board received no comments specifically addressing this analysis.

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

4. *Recordkeeping, reporting, and compliance requirements.* The final rule does not impose any new recordkeeping requirements. The final rule does, however, impose new reporting and compliance requirements. The reporting and compliance requirements of this rule are described above in **V. Section-by-Section Analysis**. The Board notes that the precise costs to small entities to conform their open-end credit disclosures to the final rule and the costs of updating their systems to comply with the rule are difficult to predict. These costs will depend on a number of factors that are unknown to the Board, including, among other things, the specifications of the current systems used by such entities to prepare and provide disclosures and administer open-end accounts, the complexity of the terms of the open-end credit products that they offer, and the range of such product offerings.

Provisions Regarding Consumer Credit Card Accounts

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

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

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

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

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

Section 226.52 generally limits the imposition of fees by card issuers during the first year after account opening. This provision will reduce revenue that some entities derive from fees.

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

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

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

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

Section 226.56 prohibits small entities that are card issuers from imposing fees or charges for an over-the-limit transaction unless the card issuer provides the consumer with notice and obtains the consumer's affirmative consent, or opt-in. Compliance with this provision will impose additional costs on small entities in order to provide notice and obtain consent, if the small entity elects to impose fees or charges for over-the-limit transactions. Section 226.56 may reduce revenue that certain small entities derive from fees and

charges related to over-the-limit transaction. In addition, § 226.56 will require some small entities to alter their systems in order to comply with the provision. The cost of such change will depend on the size of the institution and the composition of its portfolio.

Section 226.58 requires small entities that are card issuers to post agreements for open-end consumer credit card plans on the card issuer's Web site and to submit those agreements to the Board for posting in a publicly-available on-line repository established and maintained by the Board. The cost of compliance will depend on the size of the institution and the composition of its portfolio. Section 226.58(c)(5), however, provides a de minimis exception, which will reduce the economic impact and compliance burden on small entities. Under § 226.58(c)(5), a card issuer is not required to submit an agreement to the Board if the card issuer has fewer than 10,000 open accounts under open-end consumer credit card plans subject to § 226.5a as of the last business day of the calendar quarter.

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

5. *Other federal rules.* Other than the January 2009 FTC Act Rule and similar rules adopted by other Agencies, the Board has not identified any federal rules that duplicate, overlap, or conflict with the Board's revisions to TILA. As discussed in the supplementary information to the final rule, the Board is withdrawing its January 2009 FTC Act Rule, which is published elsewhere in today's **Federal Register**.

6. *Significant alternatives to the final revisions.* The provisions of the final rule implement the statutory requirements of the Credit Card Act that go into effect on February 22, 2010. The Board sought to avoid imposing additional burden, while effectuating the statute in a manner that is beneficial to consumers. The Board did not receive any comment on any significant alternatives, consistent with the Credit Card Act, which would minimize impact of the final rule on small entities.

VIII. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3506; 5 CFR Part 1320 Appendix A.1), the Board reviewed the final rule under the authority delegated to the Board by the Office of Management and Budget (OMB). The collection of information that is required by this final rule is found in 12 CFR part 226. The Federal Reserve may not conduct or sponsor, and an organization is not required to respond to, this information collection unless the information collection displays a currently valid OMB control number. The OMB control number is 7100–0199.[80]

This information collection is required to provide benefits for consumers and is mandatory (15 U.S.C. 1601 *et seq.*). The respondents/recordkeepers are creditors and other entities subject to Regulation Z, including for-profit financial institutions, small businesses, and institutions of higher education. TILA and Regulation Z are intended to ensure effective disclosure of the costs and terms of credit to consumers. For open-end credit, creditors are required to, among other things, disclose information about the initial costs and terms and to provide periodic statements of account activity, notices of changes in terms, and statements of rights concerning billing error procedures. Regulation Z requires specific types of disclosures for credit and charge card accounts and home-equity plans. For closed-end loans, such as mortgage and installment loans, cost disclosures are required to be provided prior to consummation. Special disclosures are required in connection with certain products, such as reverse mortgages, certain variable-rate loans, and certain mortgages with rates and fees above specified thresholds. TILA and Regulation Z also contain rules concerning credit advertising. Creditors are required to retain evidence of compliance for twenty-four months (§ 226.25), but Regulation Z does not specify the types of records that must be retained.

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

As discussed in **I. Background and Implementation of the Credit Card Act**, a notice of proposed rulemaking (NPR) was published in the **Federal Register** on October 21, 2009 (74 FR 54124). The comment period for this notice expired on November 20, 2009. No comments specifically addressing the paperwork burden estimates were received; therefore, the estimates will remain unchanged as published in the NPR.

Based on the adjustments to the Board's prior estimates in the October 2009 Regulation Z Proposal and the Board's PRA analysis in the January 2009 Regulation Z Rule, the final rule will impose a one-time increase in the total annual burden under Regulation Z for all respondents regulated by the Federal Reserve by 575,452 hours. The total one-time burden increase represents averages for all respondents regulated by the Federal Reserve. The Federal Reserve expects that the amount of time required to implement each of the changes adopted by the final rule for a given financial institution or entity may vary based on the size and complexity of the respondent. In addition, the Federal Reserve estimates that, on a continuing basis, the final rule will increase the total annual burden on a continuing basis by 70,400 hours. The total annual burden will therefore increase by 645,852 hours from 1,008,962 to 1,654,814 hours.[81]

The Board has a continuing interest in the public's opinion of the collection of information. Comments on the collection of information should be sent to Michelle Shore, Federal Reserve Board Clearance Officer, Division of Research and Statistics, Mail Stop 95–A, Board of Governors of the Federal Reserve System, Washington, DC 20551, with copies of such comments sent to the Office of Management and Budget, Paperwork Reduction Project (7100–0199), Washington, DC 20503.

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

[81] The burden estimate for this final rule does not include the burden addressing changes to implement provisions of Closed-End Mortgages (Docket No. R–1366) or the Home-Equity Lines of Credit (Docket No. R–1367), as announced in separate proposed rulemakings. *See* 74 FR 43232 and 74 FR 43428. In addition, the burden estimate for this final rule does not include the burden addressing changes to implement the notification of sale or transfer of mortgage loans (Docket No. R–1378), as announced in an interim final rulemaking. *See* 74 FR 60143.

List of Subjects in 12 CFR Part 226

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

Text of Final Revisions

■ For the reasons set forth in the preamble, the Board amends Regulation Z, 12 CFR part 226, as set forth below:

PART 226—TRUTH IN LENDING (REGULATION Z)

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

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

Subpart A—General

■ 2. Section 226.1 is revised to read as follows:

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

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

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

(c) *Coverage.* (1) In general, this regulation applies to each individual or business that offers or extends credit when four conditions are met:

(i) The credit is offered or extended to consumers;

(ii) The offering or extension of credit is done regularly; [1]

(iii) The credit is subject to a finance charge or is payable by a written agreement in more than four installments; and

(iv) The credit is primarily for personal, family, or household purposes.

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

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

(4) Furthermore, certain requirements of § 226.57 apply to institutions of higher education.

(d) *Organization.* The regulation is divided into subparts and appendices as follows:

(1) Subpart A contains general information. It sets forth:

(i) The authority, purpose, coverage, and organization of the regulation;

(ii) The definitions of basic terms;

(iii) The transactions that are exempt from coverage; and

(iv) The method of determining the finance charge.

(2) Subpart B contains the rules for open-end credit. It requires that account-opening disclosures and periodic statements be provided, as well as additional disclosures for credit and charge card applications and solicitations and for home-equity plans subject to the requirements of § 226.5a and § 226.5b, respectively. It also describes special rules that apply to credit card transactions, treatment of payments and credit balances, procedures for resolving credit billing errors, annual percentage rate calculations, rescission requirements, and advertising.

(3) Subpart C relates to closed-end credit. It contains rules on disclosures, treatment of credit balances, annual percentages rate calculations, rescission requirements, and advertising.

(4) Subpart D contains rules on oral disclosures, disclosures in languages other than English, record retention, effect on state laws, state exemptions, and rate limitations.

(5) Subpart E contains special rules for certain mortgage transactions. Section 226.32 requires certain disclosures and provides limitations for loans that have rates and fees above specified amounts. Section 226.33 requires disclosures, including the total annual loan cost rate, for reverse mortgage transactions. Section 226.34 prohibits specific acts and practices in connection with mortgage transactions that are subject to § 226.32. Section 226.35 prohibits specific acts and practices in connection with higher-priced mortgage loans, as defined in § 226.35(a). Section 226.36 prohibits specific acts and practices in connection with credit secured by a consumer's principal dwelling.

(6) Subpart F relates to private education loans. It contains rules on disclosures, limitations on changes in terms after approval, the right to cancel the loan, and limitations on co-branding in the marketing of private education loans.

(7) Subpart G relates to credit card accounts under an open-end (not home-secured) consumer credit plan (except for § 226.57(c), which applies to all open-end credit plans). Section 226.51 contains rules on evaluation of a consumer's ability to make the required payments under the terms of an account. Section 226.52 limits the fees that a consumer can be required to pay with respect to an open-end (not home-secured) consumer credit plan during the first year after account opening. Section 226.53 contains rules on allocation of payments in excess of the minimum payment. Section 226.54 sets forth certain limitations on the imposition of finance charges as the result of a loss of a grace period. Section 226.55 contains limitations on increases in annual percentage rates, fees, and charges for credit card accounts. Section 226.56 prohibits the assessment of fees or charges for over-the-limit transactions unless the consumer affirmatively consents to the creditor's payment of over-the-limit transactions. Section 226.57 sets forth rules for reporting and marketing of college student open-end credit. Section 226.58 sets forth requirements for the Internet posting of credit card accounts under an open-end (not home-secured) consumer credit plan.

(8) Several appendices contain information such as the procedures for

[1] [Reserved].

determinations about state laws, state exemptions and issuance of staff interpretations, special rules for certain kinds of credit plans, a list of enforcement agencies, and the rules for computing annual percentage rates in closed-end credit transactions and total-annual-loan-cost rates for reverse mortgage transactions.

(e) *Enforcement and liability.* Section 108 of the act contains the administrative enforcement provisions. Sections 112, 113, 130, 131, and 134 contain provisions relating to liability for failure to comply with the requirements of the act and the regulation. Section 1204 (c) of title XII of the Competitive Equality Banking Act of 1987, Public Law 100–86, 101 Stat. 552, incorporates by reference administrative enforcement and civil liability provisions of sections 108 and 130 of the act.

■ 3. Section 226.2 is revised to read as follows:

§ 226.2 Definitions and rules of construction.

(a) *Definitions.* For purposes of this regulation, the following definitions apply:

(1) *Act* means the Truth in Lending Act (15 U.S.C. 1601 *et seq.*).

(2) *Advertisement* means a commercial message in any medium that promotes, directly or indirectly, a credit transaction.

(3) [Reserved] [2]

(4) *Billing cycle* or *cycle* means the interval between the days or dates of regular periodic statements. These intervals shall be equal and no longer than a quarter of a year. An interval will be considered equal if the number of days in the cycle does not vary more than four days from the regular day or date of the periodic statement.

(5) *Board* means the Board of Governors of the Federal Reserve System.

(6) *Business day* means a day on which the creditor's offices are open to the public for carrying on substantially all of its business functions. However, for purposes of rescission under §§ 226.15 and 226.23, and for purposes of §§ 226.19(a)(1)(ii), 226.19(a)(2), 226.31, and 226.46(d)(4), the term means all calendar days except Sundays and the legal public holidays specified in 5 U.S.C. 6103(a), such as New Year's Day, the Birthday of Martin Luther King, Jr., Washington's Birthday, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans Day, Thanksgiving Day, and Christmas Day.

(7) *Card issuer* means a person that issues a credit card or that person's agent with respect to the card.

(8) *Cardholder* means a natural person to whom a credit card is issued for consumer credit purposes, or a natural person who has agreed with the card issuer to pay consumer credit obligations arising from the issuance of a credit card to another natural person. For purposes of § 226.12(a) and (b), the term includes any person to whom a credit card is issued for any purpose, including business, commercial or agricultural use, or a person who has agreed with the card issuer to pay obligations arising from the issuance of such a credit card to another person.

(9) *Cash price* means the price at which a creditor, in the ordinary course of business, offers to sell for cash property or service that is the subject of the transaction. At the creditor's option, the term may include the price of accessories, services related to the sale, service contracts and taxes and fees for license, title, and registration. The term does not include any finance charge.

(10) *Closed-end credit* means consumer credit other than "open-end credit" as defined in this section.

(11) *Consumer* means a cardholder or natural person to whom consumer credit is offered or extended. However, for purposes of rescission under §§ 226.15 and 226.23, the term also includes a natural person in whose principal dwelling a security interest is or will be retained or acquired, if that person's ownership interest in the dwelling is or will be subject to the security interest.

(12) *Consumer credit* means credit offered or extended to a consumer primarily for personal, family, or household purposes.

(13) *Consummation* means the time that a consumer becomes contractually obligated on a credit transaction.

(14) *Credit* means the right to defer payment of debt or to incur debt and defer its payment.

(15)(i) *Credit card* means any card, plate, or other single credit device that may be used from time to time to obtain credit.

(ii) *Credit card account under an open-end (not home-secured) consumer credit plan* means any open-end credit account accessed by a credit card, except:

(A) A credit card that accesses a home-equity plan subject to the requirements of § 226.5b; or

(B) An overdraft line of credit accessed by a debit card.

(iii) *Charge card* means a credit card on an account for which no periodic rate is used to compute a finance charge.

(16) *Credit sale* means a sale in which the seller is a creditor. The term includes a bailment or lease (unless terminable without penalty at any time by the consumer) under which the consumer—

(i) Agrees to pay as compensation for use a sum substantially equivalent to, or in excess of, the total value of the property and service involved; and

(ii) Will become (or has the option to become), for no additional consideration or for nominal consideration, the owner of the property upon compliance with the agreement.

(17) *Creditor* means:

(i) A person who regularly extends consumer credit [3] that is subject to a finance charge or is payable by written agreement in more than four installments (not including a down payment), and to whom the obligation is initially payable, either on the face of the note or contract, or by agreement when there is no note or contract.

(ii) For purposes of §§ 226.4(c)(8) (Discounts), 226.9(d) (Finance charge imposed at time of transaction), and 226.12(e) (Prompt notification of returns and crediting of refunds), a person that honors a credit card.

(iii) For purposes of subpart B, any card issuer that extends either open-end credit or credit that is not subject to a finance charge and is not payable by written agreement in more than four installments.

(iv) For purposes of subpart B (except for the credit and charge card disclosures contained in §§ 226.5a and 226.9(e) and (f), the finance charge disclosures contained in § 226.6(a)(1) and (b)(3)(i) and § 226.7(a)(4) through (7) and (b)(4) through (6) and the right of rescission set forth in § 226.15) and subpart C, any card issuer that extends closed-end credit that is subject to a finance charge or is payable by written agreement in more than four installments.

(v) A person regularly extends consumer credit only if it extended credit (other than credit subject to the requirements of § 226.32) more than 25 times (or more than 5 times for transactions secured by a dwelling) in the preceding calendar year. If a person did not meet these numerical standards in the preceding calendar year, the numerical standards shall be applied to the current calendar year. A person regularly extends consumer credit if, in any 12-month period, the person originates more than one credit extension that is subject to the requirements of § 226.32 or one or more

[2] [Reserved].

[3] [Reserved].

such credit extensions through a mortgage broker.

(18) *Downpayment* means an amount, including the value of property used as a trade-in, paid to a seller to reduce the cash price of goods or services purchased in a credit sale transaction. A deferred portion of a downpayment may be treated as part of the downpayment if it is payable not later than the due date of the second otherwise regularly scheduled payment and is not subject to a finance charge.

(19) *Dwelling* means a residential structure that contains one to four units, whether or not that structure is attached to real property. The term includes an individual condominium unit, cooperative unit, mobile home, and trailer, if it is used as a residence.

(20) *Open-end credit* means consumer credit extended by a creditor under a plan in which:

(i) The creditor reasonably contemplates repeated transactions;

(ii) The creditor may impose a finance charge from time to time on an outstanding unpaid balance; and

(iii) The amount of credit that may be extended to the consumer during the term of the plan (up to any limit set by the creditor) is generally made available to the extent that any outstanding balance is repaid.

(21) *Periodic rate* means a rate of finance charge that is or may be imposed by a creditor on a balance for a day, week, month, or other subdivision of a year.

(22) *Person* means a natural person or an organization, including a corporation, partnership, proprietorship, association, cooperative, estate, trust, or government unit.

(23) *Prepaid finance charge* means any finance charge paid separately in cash or by check before or at consummation of a transaction, or withheld from the proceeds of the credit at any time.

(24) *Residential mortgage transaction* means a transaction in which a mortgage, deed of trust, purchase money security interest arising under an installment sales contract, or equivalent consensual security interest is created or retained in the consumer's principal dwelling to finance the acquisition or initial construction of that dwelling.

(25) *Security interest* means an interest in property that secures performance of a consumer credit obligation and that is recognized by state or federal law. It does not include incidental interests such as interests in proceeds, accessions, additions, fixtures, insurance proceeds (whether or not the creditor is a loss payee or beneficiary), premium rebates, or interests in after-acquired property. For purposes of disclosures under §§ 226.6 and 226.18, the term does not include an interest that arises solely by operation of law. However, for purposes of the right of rescission under §§ 226.15 and 226.23, the term does include interests that arise solely by operation of law.

(26) *State* means any state, the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession of the United States.

(b) *Rules of construction.* For purposes of this regulation, the following rules of construction apply:

(1) Where appropriate, the singular form of a word includes the plural form and plural includes singular.

(2) Where the words *obligation* and *transaction* are used in the regulation, they refer to a consumer credit obligation or transaction, depending upon the context. Where the word *credit* is used in the regulation, it means *consumer credit* unless the context clearly indicates otherwise.

(3) Unless defined in this regulation, the words used have the meanings given to them by state law or contract.

(4) Footnotes have the same legal effect as the text of the regulation.

(5) Where the word *amount* is used in this regulation to describe disclosure requirements, it refers to a numerical amount.

■ 4. Section 226.3 is revised to read as follows:

§ 226.3 Exempt transactions.

This regulation does not apply to the following: [4]

(a) *Business, commercial, agricultural, or organizational credit.*

(1) An extension of credit primarily for a business, commercial or agricultural purpose.

(2) An extension of credit to other than a natural person, including credit to government agencies or instrumentalities.

(b) *Credit over $25,000 not secured by real property or a dwelling.* An extension of credit in which the amount financed exceeds $25,000 or in which there is an express written commitment to extend credit in excess of $25,000, unless the extension of credit is:

(1) Secured by real property, or by personal property used or expected to be used as the principal dwelling of the consumer; or

(2) A private education loan as defined in § 226.46(b)(5).

(c) *Public utility credit.* An extension of credit that involves public utility services provided through pipe, wire, other connected facilities, or radio or similar transmission (including extensions of such facilities), if the charges for service, delayed payment, or any discounts for prompt payment are filed with or regulated by any government unit. The financing of durable goods or home improvements by a public utility is not exempt.

(d) *Securities or commodities accounts.* Transactions in securities or commodities accounts in which credit is extended by a broker-dealer registered with the Securities and Exchange Commission or the Commodity Futures Trading Commission.

(e) *Home fuel budget plans.* An installment agreement for the purchase of home fuels in which no finance charge is imposed.

(f) *Student loan programs.* Loans made, insured, or guaranteed pursuant to a program authorized by title IV of the Higher Education Act of 1965 (20 U.S.C. 1070 *et seq.*).

(g) *Employer-sponsored retirement plans.* An extension of credit to a participant in an employer-sponsored retirement plan qualified under Section 401(a) of the Internal Revenue Code, a tax-sheltered annuity under Section 403(b) of the Internal Revenue Code, or an eligible governmental deferred compensation plan under Section 457(b) of the Internal Revenue Code (26 U.S.C. 401(a); 26 U.S.C. 403(b); 26 U.S.C. 457(b)), provided that the extension of credit is comprised of fully vested funds from such participant's account and is made in compliance with the Internal Revenue Code (26 U.S.C. 1 *et seq.*).

■ 5. Section 226.4 is revised to read as follows:

§ 226.4 Finance charge.

(a) *Definition.* The finance charge is the cost of consumer credit as a dollar amount. It includes any charge payable directly or indirectly by the consumer and imposed directly or indirectly by the creditor as an incident to or a condition of the extension of credit. It does not include any charge of a type payable in a comparable cash transaction.

(1) *Charges by third parties.* The finance charge includes fees and amounts charged by someone other than the creditor, unless otherwise excluded under this section, if the creditor:

(i) Requires the use of a third party as a condition of or an incident to the extension of credit, even if the consumer can choose the third party; or

(ii) Retains a portion of the third-party charge, to the extent of the portion retained.

(2) *Special rule; closing agent charges.* Fees charged by a third party that

[4] [Reserved].

conducts the loan closing (such as a settlement agent, attorney, or escrow or title company) are finance charges only if the creditor—

(i) Requires the particular services for which the consumer is charged;

(ii) Requires the imposition of the charge; or

(iii) Retains a portion of the third-party charge, to the extent of the portion retained.

(3) *Special rule; mortgage broker fees.* Fees charged by a mortgage broker (including fees paid by the consumer directly to the broker or to the creditor for delivery to the broker) are finance charges even if the creditor does not require the consumer to use a mortgage broker and even if the creditor does not retain any portion of the charge.

(b) *Examples of finance charges.* The finance charge includes the following types of charges, except for charges specifically excluded by paragraphs (c) through (e) of this section:

(1) Interest, time price differential, and any amount payable under an add-on or discount system of additional charges.

(2) Service, transaction, activity, and carrying charges, including any charge imposed on a checking or other transaction account to the extent that the charge exceeds the charge for a similar account without a credit feature.

(3) Points, loan fees, assumption fees, finder's fees, and similar charges.

(4) Appraisal, investigation, and credit report fees.

(5) Premiums or other charges for any guarantee or insurance protecting the creditor against the consumer's default or other credit loss.

(6) Charges imposed on a creditor by another person for purchasing or accepting a consumer's obligation, if the consumer is required to pay the charges in cash, as an addition to the obligation, or as a deduction from the proceeds of the obligation.

(7) Premiums or other charges for credit life, accident, health, or loss-of-income insurance, written in connection with a credit transaction.

(8) Premiums or other charges for insurance against loss of or damage to property, or against liability arising out of the ownership or use of property, written in connection with a credit transaction.

(9) Discounts for the purpose of inducing payment by a means other than the use of credit.

(10) Charges or premiums paid for debt cancellation or debt suspension coverage written in connection with a credit transaction, whether or not the coverage is insurance under applicable law.

(c) *Charges excluded from the finance charge.* The following charges are not finance charges:

(1) Application fees charged to all applicants for credit, whether or not credit is actually extended.

(2) Charges for actual unanticipated late payment, for exceeding a credit limit, or for delinquency, default, or a similar occurrence.

(3) Charges imposed by a financial institution for paying items that overdraw an account, unless the payment of such items and the imposition of the charge were previously agreed upon in writing.

(4) Fees charged for participation in a credit plan, whether assessed on an annual or other periodic basis.

(5) Seller's points.

(6) Interest forfeited as a result of an interest reduction required by law on a time deposit used as security for an extension of credit.

(7) *Real-estate related fees.* The following fees in a transaction secured by real property or in a residential mortgage transaction, if the fees are bona fide and reasonable in amount:

(i) Fees for title examination, abstract of title, title insurance, property survey, and similar purposes.

(ii) Fees for preparing loan-related documents, such as deeds, mortgages, and reconveyance or settlement documents.

(iii) Notary and credit-report fees.

(iv) Property appraisal fees or fees for inspections to assess the value or condition of the property if the service is performed prior to closing, including fees related to pest-infestation or flood-hazard determinations.

(v) Amounts required to be paid into escrow or trustee accounts if the amounts would not otherwise be included in the finance charge.

(8) Discounts offered to induce payment for a purchase by cash, check, or other means, as provided in section 167(b) of the Act.

(d) *Insurance and debt cancellation and debt suspension coverage.* (1) *Voluntary credit insurance premiums.* Premiums for credit life, accident, health, or loss-of-income insurance may be excluded from the finance charge if the following conditions are met:

(i) The insurance coverage is not required by the creditor, and this fact is disclosed in writing.

(ii) The premium for the initial term of insurance coverage is disclosed in writing. If the term of insurance is less than the term of the transaction, the term of insurance also shall be disclosed. The premium may be disclosed on a unit-cost basis only in open-end credit transactions, closed-end credit transactions by mail or telephone under § 226.17(g), and certain closed-end credit transactions involving an insurance plan that limits the total amount of indebtedness subject to coverage.

(iii) The consumer signs or initials an affirmative written request for the insurance after receiving the disclosures specified in this paragraph, except as provided in paragraph (d)(4) of this section. Any consumer in the transaction may sign or initial the request.

(2) *Property insurance premiums.* Premiums for insurance against loss of or damage to property, or against liability arising out of the ownership or use of property, including single interest insurance if the insurer waives all right of subrogation against the consumer,[5] may be excluded from the finance charge if the following conditions are met:

(i) The insurance coverage may be obtained from a person of the consumer's choice,[6] and this fact is disclosed. (A creditor may reserve the right to refuse to accept, for reasonable cause, an insurer offered by the consumer.)

(ii) If the coverage is obtained from or through the creditor, the premium for the initial term of insurance coverage shall be disclosed. If the term of insurance is less than the term of the transaction, the term of insurance shall also be disclosed. The premium may be disclosed on a unit-cost basis only in open-end credit transactions, closed-end credit transactions by mail or telephone under § 226.17(g), and certain closed-end credit transactions involving an insurance plan that limits the total amount of indebtedness subject to coverage.

(3) *Voluntary debt cancellation or debt suspension fees.* Charges or premiums paid for debt cancellation coverage for amounts exceeding the value of the collateral securing the obligation or for debt cancellation or debt suspension coverage in the event of the loss of life, health, or income or in case of accident may be excluded from the finance charge, whether or not the coverage is insurance, if the following conditions are met:

(i) The debt cancellation or debt suspension agreement or coverage is not required by the creditor, and this fact is disclosed in writing;

(ii) The fee or premium for the initial term of coverage is disclosed in writing. If the term of coverage is less than the term of the credit transaction, the term

[5] [Reserved].

[6] [Reserved].

of coverage also shall be disclosed. The fee or premium may be disclosed on a unit-cost basis only in open-end credit transactions, closed-end credit transactions by mail or telephone under § 226.17(g), and certain closed-end credit transactions involving a debt cancellation agreement that limits the total amount of indebtedness subject to coverage;

(iii) The following are disclosed, as applicable, for debt suspension coverage: That the obligation to pay loan principal and interest is only suspended, and that interest will continue to accrue during the period of suspension.

(iv) The consumer signs or initials an affirmative written request for coverage after receiving the disclosures specified in this paragraph, except as provided in paragraph (d)(4) of this section. Any consumer in the transaction may sign or initial the request.

(4) *Telephone purchases.* If a consumer purchases credit insurance or debt cancellation or debt suspension coverage for an open-end (not home-secured) plan by telephone, the creditor must make the disclosures under paragraphs (d)(1)(i) and (ii) or (d)(3)(i) through (iii) of this section, as applicable, orally. In such a case, the creditor shall:

(i) Maintain evidence that the consumer, after being provided the disclosures orally, affirmatively elected to purchase the insurance or coverage; and

(ii) Mail the disclosures under paragraphs (d)(1)(i) and (ii) or (d)(3)(i) through (iii) of this section, as applicable, within three business days after the telephone purchase.

(e) *Certain security interest charges.* If itemized and disclosed, the following charges may be excluded from the finance charge:

(1) Taxes and fees prescribed by law that actually are or will be paid to public officials for determining the existence of or for perfecting, releasing, or satisfying a security interest.

(2) The premium for insurance in lieu of perfecting a security interest to the extent that the premium does not exceed the fees described in paragraph (e)(1) of this section that otherwise would be payable.

(3) *Taxes on security instruments.* Any tax levied on security instruments or on documents evidencing indebtedness if the payment of such taxes is a requirement for recording the instrument securing the evidence of indebtedness.

(f) *Prohibited offsets.* Interest, dividends, or other income received or to be received by the consumer on deposits or investments shall not be deducted in computing the finance charge.

Subpart B—Open-End Credit

■ 6. Section 226.5 is revised to read as follows:

§ 226.5 General disclosure requirements.

(a) *Form of disclosures.* (1) *General.* (i) The creditor shall make the disclosures required by this subpart clearly and conspicuously.

(ii) The creditor shall make the disclosures required by this subpart in writing,[7] in a form that the consumer may keep,[8] except that:

(A) The following disclosures need not be written: Disclosures under § 226.6(b)(3) of charges that are imposed as part of an open-end (not home-secured) plan that are not required to be disclosed under § 226.6(b)(2) and related disclosures of charges under § 226.9(c)(2)(iii)(B); disclosures under § 226.9(c)(2)(vi); disclosures under § 226.9(d) when a finance charge is imposed at the time of the transaction; and disclosures under § 226.56(b)(1)(i).

(B) The following disclosures need not be in a retainable form: Disclosures that need not be written under paragraph (a)(1)(ii)(A) of this section; disclosures for credit and charge card applications and solicitations under § 226.5a; home-equity disclosures under § 226.5b(d); the alternative summary billing-rights statement under § 226.9(a)(2); the credit and charge card renewal disclosures required under § 226.9(e); and the payment requirements under § 226.10(b), except as provided in § 226.7(b)(13).

(iii) The disclosures required by this subpart may be provided to the consumer in electronic form, subject to compliance with the consumer consent and other applicable provisions of the Electronic Signatures in Global and National Commerce Act (E-Sign Act) (15 U.S.C. 7001 *et seq.*). The disclosures required by §§ 226.5a, 226.5b, and 226.16 may be provided to the consumer in electronic form without regard to the consumer consent or other provisions of the E-Sign Act in the circumstances set forth in those sections.

(2) *Terminology.* (i) Terminology used in providing the disclosures required by this subpart shall be consistent.

(ii) For home-equity plans subject to § 226.5b, the terms *finance charge* and *annual percentage rate,* when required to be disclosed with a corresponding amount or percentage rate, shall be more conspicuous than any other required disclosure.[9] The terms need not be more conspicuous when used for periodic statement disclosures under § 226.7(a)(4) and for advertisements under § 226.16.

(iii) If disclosures are required to be presented in a tabular format pursuant to paragraph (a)(3) of this section, the term *penalty APR* shall be used, as applicable. The term *penalty APR* need not be used in reference to the annual percentage rate that applies with the loss of a promotional rate, assuming the annual percentage rate that applies is not greater than the annual percentage rate that would have applied at the end of the promotional period; or if the annual percentage rate that applies with the loss of a promotional rate is a variable rate, the annual percentage rate is calculated using the same index and margin as would have been used to calculate the annual percentage rate that would have applied at the end of the promotional period. If credit insurance or debt cancellation or debt suspension coverage is required as part of the plan, the term *required* shall be used and the program shall be identified by its name. If an annual percentage rate is required to be presented in a tabular format pursuant to paragraph (a)(3)(i) or (a)(3)(iii) of this section, the term *fixed,* or a similar term, may not be used to describe such rate unless the creditor also specifies a time period that the rate will be fixed and the rate will not increase during that period, or if no such time period is provided, the rate will not increase while the plan is open.

(3) *Specific formats.* (i) Certain disclosures for credit and charge card applications and solicitations must be provided in a tabular format in accordance with the requirements of § 226.5a(a)(2).

(ii) Certain disclosures for home-equity plans must precede other disclosures and must be given in accordance with the requirements of § 226.5b(a).

(iii) Certain account-opening disclosures must be provided in a tabular format in accordance with the requirements of § 226.6(b)(1).

(iv) Certain disclosures provided on periodic statements must be grouped together in accordance with the requirements of § 226.7(b)(6) and (b)(13).

(v) Certain disclosures provided on periodic statements must be given in accordance with the requirements of § 226.7(b)(12).

[7] [Reserved].

[8] [Reserved].

[9] [Reserved].

(vi) Certain disclosures accompanying checks that access a credit card account must be provided in a tabular format in accordance with the requirements of § 226.9(b)(3).

(vii) Certain disclosures provided in a change-in-terms notice must be provided in a tabular format in accordance with the requirements of § 226.9(c)(2)(iv)(D).

(viii) Certain disclosures provided when a rate is increased due to delinquency, default or as a penalty must be provided in a tabular format in accordance with the requirements of § 226.9(g)(3)(ii).

(b) *Time of disclosures.* (1) *Account-opening disclosures.* (i) *General rule.* The creditor shall furnish account-opening disclosures required by § 226.6 before the first transaction is made under the plan.

(ii) *Charges imposed as part of an open-end (not home-secured) plan.* Charges that are imposed as part of an open-end (not home-secured) plan and are not required to be disclosed under § 226.6(b)(2) may be disclosed after account opening but before the consumer agrees to pay or becomes obligated to pay for the charge, provided they are disclosed at a time and in a manner that a consumer would be likely to notice them. This provision does not apply to charges imposed as part of a home-equity plan subject to the requirements of § 226.5b.

(iii) *Telephone purchases.* Disclosures required by § 226.6 may be provided as soon as reasonably practicable after the first transaction if:

(A) The first transaction occurs when a consumer contacts a merchant by telephone to purchase goods and at the same time the consumer accepts an offer to finance the purchase by establishing an open-end plan with the merchant or third-party creditor;

(B) The merchant or third-party creditor permits consumers to return any goods financed under the plan and provides consumers with a sufficient time to reject the plan and return the goods free of cost after the merchant or third-party creditor has provided the written disclosures required by § 226.6; and

(C) The consumer's right to reject the plan and return the goods is disclosed to the consumer as a part of the offer to finance the purchase.

(iv) *Membership fees.* (A) *General.* In general, a creditor may not collect any fee before account-opening disclosures are provided. A creditor may collect, or obtain the consumer's agreement to pay, membership fees, including application fees excludable from the finance charge under § 226.4(c)(1), before providing account-opening disclosures if, after receiving the disclosures, the consumer may reject the plan and have no obligation to pay these fees (including application fees) or any other fee or charge. A membership fee for purposes of this paragraph has the same meaning as a fee for the issuance or availability of credit described in § 226.5a(b)(2). If the consumer rejects the plan, the creditor must promptly refund the membership fee if it has been paid, or take other action necessary to ensure the consumer is not obligated to pay that fee or any other fee or charge.

(B) *Home-equity plans.* Creditors offering home-equity plans subject to the requirements of § 226.5b are not subject to the requirements of paragraph (b)(1)(iv)(A) of this section.

(v) *Application fees.* A creditor may collect an application fee excludable from the finance charge under § 226.4(c)(1) before providing account-opening disclosures. However, if a consumer rejects the plan after receiving account-opening disclosures, the consumer must have no obligation to pay such an application fee, or if the fee was paid, it must be refunded. *See* § 226.5(b)(1)(iv)(A).

(2) *Periodic statements.* (i) *Statement required.* The creditor shall mail or deliver a periodic statement as required by § 226.7 for each billing cycle at the end of which an account has a debit or credit balance of more than $1 or on which a finance charge has been imposed. A periodic statement need not be sent for an account if the creditor deems it uncollectible, if delinquency collection proceedings have been instituted, if the creditor has charged off the account in accordance with loan-loss provisions and will not charge any additional fees or interest on the account, or if furnishing the statement would violate federal law.

(ii) *Timing requirements.* (A) *Payment due date.* For credit card accounts under an open-end (not home-secured) consumer credit plan, a card issuer must adopt reasonable procedures designed to ensure that:

(*1*) Periodic statements are mailed or delivered at least 21 days prior to the payment due date disclosed on the statement pursuant to § 226.7(b)(11)(i)(A); and

(*2*) The card issuer does not treat as late for any purpose a required minimum periodic payment received by the card issuer within 21 days after mailing or delivery of the periodic statement disclosing the due date for that payment.

(B) *Grace period expiration date.* For open-end consumer credit plans, a creditor must adopt reasonable procedures designed to ensure that:

(*1*) Periodic statements are mailed or delivered at least 21 days prior to the date on which any grace period expires; and

(*2*) The creditor does not impose finance charges as a result of the loss of a grace period if a payment that satisfies the terms of the grace period is received by the creditor within 21 days after mailing or delivery of the periodic statement.

(*3*) For purposes of paragraph (b)(2)(ii)(B) of this section, "grace period" means a period within which any credit extended may be repaid without incurring a finance charge due to a periodic interest rate.[10]

(3) *Credit and charge card application and solicitation disclosures.* The card issuer shall furnish the disclosures for credit and charge card applications and solicitations in accordance with the timing requirements of § 226.5a.

(4) *Home-equity plans.* Disclosures for home-equity plans shall be made in accordance with the timing requirements of § 226.5b(b).

(c) *Basis of disclosures and use of estimates.* Disclosures shall reflect the terms of the legal obligation between the parties. If any information necessary for accurate disclosure is unknown to the creditor, it shall make the disclosure based on the best information reasonably available and shall state clearly that the disclosure is an estimate.

(d) *Multiple creditors; multiple consumers.* If the credit plan involves more than one creditor, only one set of disclosures shall be given, and the creditors shall agree among themselves which creditor must comply with the requirements that this regulation imposes on any or all of them. If there is more than one consumer, the disclosures may be made to any consumer who is primarily liable on the account. If the right of rescission under § 226.15 is applicable, however, the disclosures required by §§ 226.6 and 226.15(b) shall be made to each consumer having the right to rescind.

(e) *Effect of subsequent events.* If a disclosure becomes inaccurate because of an event that occurs after the creditor mails or delivers the disclosures, the resulting inaccuracy is not a violation of this regulation, although new disclosures may be required under § 226.9(c).

■ 7. Section 226.5a is revised to read as follows:

[10] [Reserved].

§ 226.5a Credit and charge card applications and solicitations.

(a) *General rules.* The card issuer shall provide the disclosures required under this section on or with a solicitation or an application to open a credit or charge card account.

(1) *Definition of solicitation.* For purposes of this section, the term *solicitation* means an offer by the card issuer to open a credit or charge card account that does not require the consumer to complete an application. A "firm offer of credit" as defined in section 603(l) of the Fair Credit Reporting Act (15 U.S.C. 1681a(l)) for a credit or charge card is a solicitation for purposes of this section.

(2) *Form of disclosures; tabular format.* (i) The disclosures in paragraphs (b)(1) through (5) (except for (b)(1)(iv)(B)) and (b)(7) through (15) of this section made pursuant to paragraph (c), (d)(2), (e)(1) or (f) of this section generally shall be in the form of a table with headings, content, and format substantially similar to any of the applicable tables found in G–10 in appendix G to this part.

(ii) The table described in paragraph (a)(2)(i) of this section shall contain only the information required or permitted by this section. Other information may be presented on or with an application or solicitation, provided such information appears outside the required table.

(iii) Disclosures required by paragraphs (b)(1)(iv)(B) and (b)(6) of this section must be placed directly beneath the table.

(iv) When a tabular format is required, any annual percentage rate required to be disclosed pursuant to paragraph (b)(1) of this section, any introductory rate required to be disclosed pursuant to paragraph (b)(1)(ii) of this section, any rate that will apply after a premium initial rate expires required to be disclosed under paragraph (b)(1)(iii) of this section, and any fee or percentage amounts required to be disclosed pursuant to paragraphs (b)(2), (b)(4), (b)(8) through (b)(13) of this section must be disclosed in bold text. However, bold text shall not be used for: Any maximum limits on fee amounts disclosed in the table that do not relate to fees that vary by state; the amount of any periodic fee disclosed pursuant to paragraph (b)(2) of this section that is not an annualized amount; and other annual percentage rates or fee amounts disclosed in the table.

(v) For an application or a solicitation that is accessed by the consumer in electronic form, the disclosures required under this section may be provided to the consumer in electronic form on or with the application or solicitation.

(vi)(A) Except as provided in paragraph (a)(2)(vi)(B) of this section, the table described in paragraph (a)(2)(i) of this section must be provided in a prominent location on or with an application or a solicitation.

(B) If the table described in paragraph (a)(2)(i) of this section is provided electronically, it must be provided in close proximity to the application or solicitation.

(3) *Fees based on a percentage.* If the amount of any fee required to be disclosed under this section is determined on the basis of a percentage of another amount, the percentage used and the identification of the amount against which the percentage is applied may be disclosed instead of the amount of the fee.

(4) *Fees that vary by state.* Card issuers that impose fees referred to in paragraphs (b)(8) through (12) of this section that vary by state may, at the issuer's option, disclose in the table required by paragraph (a)(2)(i) of this section: the specific fee applicable to the consumer's account; or the range of the fees, if the disclosure includes a statement that the amount of the fee varies by state and refers the consumer to a disclosure provided with the table where the amount of the fee applicable to the consumer's account is disclosed. A card issuer may not list fees for multiple states in the table.

(5) *Exceptions.* This section does not apply to:

(i) Home-equity plans accessible by a credit or charge card that are subject to the requirements of § 226.5b;

(ii) Overdraft lines of credit tied to asset accounts accessed by check-guarantee cards or by debit cards;

(iii) Lines of credit accessed by check-guarantee cards or by debit cards that can be used only at automated teller machines;

(iv) Lines of credit accessed solely by account numbers;

(v) Additions of a credit or charge card to an existing open-end plan;

(vi) General purpose applications unless the application, or material accompanying it, indicates that it can be used to open a credit or charge card account; or

(vii) Consumer-initiated requests for applications.

(b) *Required disclosures.* The card issuer shall disclose the items in this paragraph on or with an application or a solicitation in accordance with the requirements of paragraphs (c), (d), (e)(1) or (f) of this section. A credit card issuer shall disclose all applicable items in this paragraph except for paragraph (b)(7) of this section. A charge card issuer shall disclose the applicable items in paragraphs (b)(2), (4), (7) through (12), and (15) of this section.

(1) *Annual percentage rate.* Each periodic rate that may be used to compute the finance charge on an outstanding balance for purchases, a cash advance, or a balance transfer, expressed as an annual percentage rate (as determined by § 226.14(b)). When more than one rate applies for a category of transactions, the range of balances to which each rate is applicable shall also be disclosed. The annual percentage rate for purchases disclosed pursuant to this paragraph shall be in at least 16-point type, except for the following: Oral disclosures of the annual percentage rate for purchases; or a penalty rate that may apply upon the occurrence of one or more specific events.

(i) *Variable rate information.* If a rate disclosed under paragraph (b)(1) of this section is a variable rate, the card issuer shall also disclose the fact that the rate may vary and how the rate is determined. In describing how the applicable rate will be determined, the card issuer must identify the type of index or formula that is used in setting the rate. The value of the index and the amount of the margin that are used to calculate the variable rate shall not be disclosed in the table. A disclosure of any applicable limitations on rate increases or decreases shall not be included in the table.

(ii) *Discounted initial rate.* If the initial rate is an introductory rate, as that term is defined in § 226.16(g)(2)(ii), the card issuer must disclose in the table the introductory rate, the time period during which the introductory rate will remain in effect, and must use the term "introductory" or "intro" in immediate proximity to the introductory rate. The card issuer also must disclose the rate that would otherwise apply to the account pursuant to paragraph (b)(1) of this section. Where the rate is not tied to an index or formula, the card issuer must disclose the rate that will apply after the introductory rate expires. In a variable-rate account, the card issuer must disclose a rate based on the applicable index or formula in accordance with the accuracy requirements set forth in paragraphs (c)(2), (d)(3), or (e)(4) of this section, as applicable.

(iii) *Premium initial rate.* If the initial rate is temporary and is higher than the rate that will apply after the temporary rate expires, the card issuer must disclose the premium initial rate pursuant to paragraph (b)(1) of this section and the time period during which the premium initial rate will

remain in effect. Consistent with paragraph (b)(1) of this section, the premium initial rate for purchases must be in at least 16-point type. The issuer must also disclose in the table the rate that will apply after the premium initial rate expires, in at least 16-point type.

(iv) *Penalty rates.* (A) *In general.* Except as provided in paragraph (b)(1)(iv)(B) of this section, if a rate may increase as a penalty for one or more events specified in the account agreement, such as a late payment or an extension of credit that exceeds the credit limit, the card issuer must disclose pursuant to paragraph (b)(1) of this section the increased rate that may apply, a brief description of the event or events that may result in the increased rate, and a brief description of how long the increased rate will remain in effect.

(B) *Introductory rates.* If the issuer discloses an introductory rate, as that term is defined in § 226.16(g)(2)(ii), in the table or in any written or electronic promotional materials accompanying applications or solicitations subject to paragraph (c) or (e) of this section, the issuer must briefly disclose directly beneath the table the circumstances, if any, under which the introductory rate may be revoked, and the type of rate that will apply after the introductory rate is revoked.

(v) *Rates that depend on consumer's creditworthiness.* If a rate cannot be determined at the time disclosures are given because the rate depends, at least in part, on a later determination of the consumer's creditworthiness, the card issuer must disclose the specific rates or the range of rates that could apply and a statement that the rate for which the consumer may qualify at account opening will depend on the consumer's creditworthiness, and other factors if applicable. If the rate that depends, at least in part, on a later determination of the consumer's creditworthiness is a penalty rate, as described in paragraph (b)(1)(iv) of this section, the card issuer at its option may disclose the highest rate that could apply, instead of disclosing the specific rates or the range of rates that could apply.

(vi) *APRs that vary by state.* Issuers imposing annual percentage rates that vary by state may, at the issuer's option, disclose in the table: the specific annual percentage rate applicable to the consumer's account; or the range of the annual percentage rates, if the disclosure includes a statement that the annual percentage rate varies by state and refers the consumer to a disclosure provided with the table where the annual percentage rate applicable to the consumer's account is disclosed. A card issuer may not list annual percentage rates for multiple states in the table.

(2) *Fees for issuance or availability.* (i) Any annual or other periodic fee that may be imposed for the issuance or availability of a credit or charge card, including any fee based on account activity or inactivity; how frequently it will be imposed; and the annualized amount of the fee.

(ii) Any non-periodic fee that relates to opening an account. A card issuer must disclose that the fee is a one-time fee.

(3) *Fixed finance charge; minimum interest charge.* Any fixed finance charge and a brief description of the charge. Any minimum interest charge if it exceeds $1.00 that could be imposed during a billing cycle, and a brief description of the charge. The $1.00 threshold amount shall be adjusted periodically by the Board to reflect changes in the Consumer Price Index. The Board shall calculate each year a price level adjusted minimum interest charge using the Consumer Price Index in effect on June 1 of that year. When the cumulative change in the adjusted minimum value derived from applying the annual Consumer Price level to the current minimum interest charge threshold has risen by a whole dollar, the minimum interest charge will be increased by $1.00. The issuer may, at its option, disclose in the table minimum interest charges below this threshold.

(4) *Transaction charges.* Any transaction charge imposed by the card issuer for the use of the card for purchases.

(5) *Grace period.* The date by which or the period within which any credit extended for purchases may be repaid without incurring a finance charge due to a periodic interest rate and any conditions on the availability of the grace period. If no grace period is provided, that fact must be disclosed. If the length of the grace period varies, the card issuer may disclose the range of days, the minimum number of days, or the average number of days in the grace period, if the disclosure is identified as a range, minimum, or average. In disclosing in the tabular format a grace period that applies to all types of purchases, the phrase "How to Avoid Paying Interest on Purchases" shall be used as the heading for the row describing the grace period. If a grace period is not offered on all types of purchases, in disclosing this fact in the tabular format, the phrase "Paying Interest" shall be used as the heading for the row describing this fact.

(6) *Balance computation method.* The name of the balance computation method listed in paragraph (g) of this section that is used to determine the balance for purchases on which the finance charge is computed, or an explanation of the method used if it is not listed. In determining which balance computation method to disclose, the card issuer shall assume that credit extended for purchases will not be repaid within the grace period, if any.

(7) *Statement on charge card payments.* A statement that charges incurred by use of the charge card are due when the periodic statement is received.

(8) *Cash advance fee.* Any fee imposed for an extension of credit in the form of cash or its equivalent.

(9) *Late payment fee.* Any fee imposed for a late payment.

(10) *Over-the-limit fee.* Any fee imposed for exceeding a credit limit.

(11) *Balance transfer fee.* Any fee imposed to transfer an outstanding balance.

(12) *Returned-payment fee.* Any fee imposed by the card issuer for a returned payment.

(13) *Required insurance, debt cancellation or debt suspension coverage.* (i) A fee for insurance described in § 226.4(b)(7) or debt cancellation or suspension coverage described in § 226.4(b)(10), if the insurance or debt cancellation or suspension coverage is required as part of the plan; and

(ii) A cross reference to any additional information provided about the insurance or coverage accompanying the application or solicitation, as applicable.

(14) *Available credit.* If a card issuer requires fees for the issuance or availability of credit described in paragraph (b)(2) of this section, or requires a security deposit for such credit, and the total amount of those required fees and/or security deposit that will be imposed and charged to the account when the account is opened is 15 percent or more of the minimum credit limit for the card, a card issuer must disclose the available credit remaining after these fees or security deposit are debited to the account, assuming that the consumer receives the minimum credit limit. In determining whether the 15 percent threshold test is met, the issuer must only consider fees for issuance or availability of credit, or a security deposit, that are required. If fees for issuance or availability are optional, these fees should not be considered in determining whether the disclosure must be given. Nonetheless, if the 15 percent threshold test is met, the issuer in providing the disclosure must disclose the amount of available

credit calculated by excluding those optional fees, and the available credit including those optional fees. This paragraph does not apply with respect to fees or security deposits that are not debited to the account.

(15) *Web site reference.* A reference to the Web site established by the Board and a statement that consumers may obtain on the Web site information about shopping for and using credit cards.

(c) *Direct mail and electronic applications and solicitations.* (1) *General.* The card issuer shall disclose the applicable items in paragraph (b) of this section on or with an application or solicitation that is mailed to consumers or provided to consumers in electronic form.

(2) *Accuracy.* (i) Disclosures in direct mail applications and solicitations must be accurate as of the time the disclosures are mailed. An accurate variable annual percentage rate is one in effect within 60 days before mailing.

(ii) Disclosures provided in electronic form must be accurate as of the time they are sent, in the case of disclosures sent to a consumer's e-mail address, or as of the time they are viewed by the public, in the case of disclosures made available at a location such as a card issuer's Web site. An accurate variable annual percentage rate provided in electronic form is one in effect within 30 days before it is sent to a consumer's e-mail address, or viewed by the public, as applicable.

(d) *Telephone applications and solicitations.* (1) *Oral disclosure.* The card issuer shall disclose orally the information in paragraphs (b)(1) through (7) and (b)(14) of this section, to the extent applicable, in a telephone application or solicitation initiated by the card issuer.

(2) *Alternative disclosure.* The oral disclosure under paragraph (d)(1) of this section need not be given if the card issuer either:

(i)(A) Does not impose a fee described in paragraph (b)(2) of this section; or

(B) Imposes such a fee but provides the consumer with a right to reject the plan consistent with § 226.5(b)(1)(iv); and

(ii) The card issuer discloses in writing within 30 days after the consumer requests the card (but in no event later than the delivery of the card) the following:

(A) The applicable information in paragraph (b) of this section; and

(B) As applicable, the fact that the consumer has the right to reject the plan and not be obligated to pay fees described in paragraph (b)(2) or any other fees or charges until the consumer has used the account or made a payment on the account after receiving a billing statement.

(3) *Accuracy.* (i) The oral disclosures under paragraph (d)(1) of this section must be accurate as of the time they are given.

(ii) The alternative disclosures under paragraph (d)(2) of this section generally must be accurate as of the time they are mailed or delivered. A variable annual percentage rate is one that is accurate if it was:

(A) In effect at the time the disclosures are mailed or delivered; or

(B) In effect as of a specified date (which rate is then updated from time to time, but no less frequently than each calendar month).

(e) *Applications and solicitations made available to general public.* The card issuer shall provide disclosures, to the extent applicable, on or with an application or solicitation that is made available to the general public, including one contained in a catalog, magazine, or other generally available publication. The disclosures shall be provided in accordance with paragraph (e)(1) or (e)(2) of this section.

(1) *Disclosure of required credit information.* The card issuer may disclose in a prominent location on the application or solicitation the following:

(i) The applicable information in paragraph (b) of this section;

(ii) The date the required information was printed, including a statement that the required information was accurate as of that date and is subject to change after that date; and

(iii) A statement that the consumer should contact the card issuer for any change in the required information since it was printed, and a toll-free telephone number or a mailing address for that purpose.

(2) *No disclosure of credit information.* If none of the items in paragraph (b) of this section is provided on or with the application or solicitation, the card issuer may state in a prominent location on the application or solicitation the following:

(i) There are costs associated with the use of the card; and

(ii) The consumer may contact the card issuer to request specific information about the costs, along with a toll-free telephone number and a mailing address for that purpose.

(3) *Prompt response to requests for information.* Upon receiving a request for any of the information referred to in this paragraph, the card issuer shall promptly and fully disclose the information requested.

(4) *Accuracy.* The disclosures given pursuant to paragraph (e)(1) of this section must be accurate as of the date of printing. A variable annual percentage rate is accurate if it was in effect within 30 days before printing.

(f) *In-person applications and solicitations.* A card issuer shall disclose the information in paragraph (b) of this section, to the extent applicable, on or with an application or solicitation that is initiated by the card issuer and given to the consumer in person. A card issuer complies with the requirements of this paragraph if the issuer provides disclosures in accordance with paragraph (c)(1) or (e)(1) of this section.

(g) *Balance computation methods defined.* The following methods may be described by name. Methods that differ due to variations such as the allocation of payments, whether the finance charge begins to accrue on the transaction date or the date of posting the transaction, the existence or length of a grace period, and whether the balance is adjusted by charges such as late payment fees, annual fees and unpaid finance charges do not constitute separate balance computation methods.

(1)(i) *Average daily balance (including new purchases).* This balance is figured by adding the outstanding balance (including new purchases and deducting payments and credits) for each day in the billing cycle, and then dividing by the number of days in the billing cycle.

(ii) *Average daily balance (excluding new purchases).* This balance is figured by adding the outstanding balance (excluding new purchases and deducting payments and credits) for each day in the billing cycle, and then dividing by the number of days in the billing cycle.

(2) *Adjusted balance.* This balance is figured by deducting payments and credits made during the billing cycle from the outstanding balance at the beginning of the billing cycle.

(3) *Previous balance.* This balance is the outstanding balance at the beginning of the billing cycle.

(4) *Daily balance.* For each day in the billing cycle, this balance is figured by taking the beginning balance each day, adding any new purchases, and subtracting any payment and credits.

■ 8. Revise § 226.6 to read as follows:

§ 226.6 Account-opening disclosures.

(a) *Rules affecting home-equity plans.* The requirements of this paragraph (a) apply only to home-equity plans subject to the requirements of § 226.5b. A creditor shall disclose the items in this section, to the extent applicable:

(1) *Finance charge.* The circumstances under which a finance charge will be

imposed and an explanation of how it will be determined, as follows:

(i) A statement of when finance charges begin to accrue, including an explanation of whether or not any time period exists within which any credit extended may be repaid without incurring a finance charge. If such a time period is provided, a creditor may, at its option and without disclosure, impose no finance charge when payment is received after the time period's expiration.

(ii) A disclosure of each periodic rate that may be used to compute the finance charge, the range of balances to which it is applicable,[11] and the corresponding annual percentage rate.[12] If a creditor offers a variable-rate plan, the creditor shall also disclose: the circumstances under which the rate(s) may increase; any limitations on the increase; and the effect(s) of an increase. When different periodic rates apply to different types of transactions, the types of transactions to which the periodic rates shall apply shall also be disclosed. A creditor is not required to adjust the range of balances disclosure to reflect the balance below which only a minimum charge applies.

(iii) An explanation of the method used to determine the balance on which the finance charge may be computed.

(iv) An explanation of how the amount of any finance charge will be determined,[13] including a description of how any finance charge other than the periodic rate will be determined.

(2) *Other charges.* The amount of any charge other than a finance charge that may be imposed as part of the plan, or an explanation of how the charge will be determined.

(3) *Home-equity plan information.* The following disclosures described in § 226.5b(d), as applicable:

(i) A statement of the conditions under which the creditor may take certain action, as described in § 226.5b(d)(4)(i), such as terminating the plan or changing the terms.

(ii) The payment information described in § 226.5b(d)(5)(i) and (ii) for both the draw period and any repayment period.

(iii) A statement that negative amortization may occur as described in § 226.5b(d)(9).

(iv) A statement of any transaction requirements as described in § 226.5b(d)(10).

(v) A statement regarding the tax implications as described in § 226.5b(d)(11).

(vi) A statement that the annual percentage rate imposed under the plan does not include costs other than interest as described in § 226.5b(d)(6) and (d)(12)(ii).

(vii) The variable-rate disclosures described in § 226.5b(d)(12)(viii), (d)(12)(x), (d)(12)(xi), and (d)(12)(xii), as well as the disclosure described in § 226.5b(d)(5)(iii), unless the disclosures provided with the application were in a form the consumer could keep and included a representative payment example for the category of payment option chosen by the consumer.

(4) *Security interests.* The fact that the creditor has or will acquire a security interest in the property purchased under the plan, or in other property identified by item or type.

(5) *Statement of billing rights.* A statement that outlines the consumer's rights and the creditor's responsibilities under §§ 226.12(c) and 226.13 and that is substantially similar to the statement found in Model Form G–3 or, at the creditor's option, G–3(A), in appendix G to this part.

(b) *Rules affecting open-end (not home-secured) plans.* The requirements of paragraph (b) of this section apply to plans other than home-equity plans subject to the requirements of § 226.5b.

(1) *Form of disclosures; tabular format for open-end (not home-secured) plans.* Creditors must provide the account-opening disclosures specified in paragraph (b)(2)(i) through (b)(2)(v) (except for (b)(2)(i)(D)(*2*)) and (b)(2)(vii) through (b)(2)(xiv) of this section in the form of a table with the headings, content, and format substantially similar to any of the applicable tables in G–17 in appendix G.

(i) *Highlighting.* In the table, any annual percentage rate required to be disclosed pursuant to paragraph (b)(2)(i) of this section; any introductory rate permitted to be disclosed pursuant to paragraph (b)(2)(i)(B) or required to be disclosed under paragraph (b)(2)(i)(F) of this section, any rate that will apply after a premium initial rate expires permitted to be disclosed pursuant to paragraph (b)(2)(i)(C) or required to be disclosed pursuant to paragraph (b)(2)(i)(F), and any fee or percentage amounts required to be disclosed pursuant to paragraphs (b)(2)(ii), (b)(2)(iv), (b)(2)(vii) through (b)(2)(xii) of this section must be disclosed in bold text. However, bold text shall not be used for: Any maximum limits on fee amounts disclosed in the table that do not relate to fees that vary by state; the amount of any periodic fee disclosed pursuant to paragraph (b)(2) of this section that is not an annualized amount; and other annual percentage rates or fee amounts disclosed in the table.

(ii) *Location.* Only the information required or permitted by paragraphs (b)(2)(i) through (b)(2)(v) (except for (b)(2)(i)(D)(*2*)) and (b)(2)(vii) through (b)(2)(xiv) of this section shall be in the table. Disclosures required by paragraphs (b)(2)(i)(D)(*2*), (b)(2)(vi) and (b)(2)(xv) of this section shall be placed directly below the table. Disclosures required by paragraphs (b)(3) through (b)(5) of this section that are not otherwise required to be in the table and other information may be presented with the account agreement or account-opening disclosure statement, provided such information appears outside the required table.

(iii) *Fees that vary by state.* Creditors that impose fees referred to in paragraphs (b)(2)(vii) through (b)(2)(xi) of this section that vary by state and that provide the disclosures required by paragraph (b) of this section in person at the time the open-end (not home-secured) plan is established in connection with financing the purchase of goods or services may, at the creditor's option, disclose in the account-opening table the specific fee applicable to the consumer's account, or the range of the fees, if the disclosure includes a statement that the amount of the fee varies by state and refers the consumer to the account agreement or other disclosure provided with the account-opening table where the amount of the fee applicable to the consumer's account is disclosed. A creditor may not list fees for multiple states in the account-opening summary table.

(iv) *Fees based on a percentage.* If the amount of any fee required to be disclosed under this section is determined on the basis of a percentage of another amount, the percentage used and the identification of the amount against which the percentage is applied may be disclosed instead of the amount of the fee.

(2) *Required disclosures for account-opening table for open-end (not home-secured) plans.* A creditor shall disclose the items in this section, to the extent applicable:

(i) *Annual percentage rate.* Each periodic rate that may be used to compute the finance charge on an outstanding balance for purchases, a cash advance, or a balance transfer, expressed as an annual percentage rate (as determined by § 226.14(b)). When more than one rate applies for a category of transactions, the range of balances to which each rate is applicable shall also be disclosed. The annual percentage rate for purchases disclosed pursuant to this paragraph shall be in at least 16-point type, except for the following: A penalty

[11] [Reserved].

[12] [Reserved].

[13] [Reserved].

rate that may apply upon the occurrence of one or more specific events.

(A) *Variable-rate information.* If a rate disclosed under paragraph (b)(2)(i) of this section is a variable rate, the creditor shall also disclose the fact that the rate may vary and how the rate is determined. In describing how the applicable rate will be determined, the creditor must identify the type of index or formula that is used in setting the rate. The value of the index and the amount of the margin that are used to calculate the variable rate shall not be disclosed in the table. A disclosure of any applicable limitations on rate increases or decreases shall not be included in the table.

(B) *Discounted initial rates.* If the initial rate is an introductory rate, as that term is defined in § 226.16(g)(2)(ii), the creditor must disclose the rate that would otherwise apply to the account pursuant to paragraph (b)(2)(i) of this section. Where the rate is not tied to an index or formula, the creditor must disclose the rate that will apply after the introductory rate expires. In a variable-rate account, the card issuer must disclose a rate based on the applicable index or formula in accordance with the accuracy requirements of paragraph (b)(4)(ii)(G) of this section. Except as provided in paragraph (b)(2)(i)(F) of this section, the creditor is not required to, but may disclose in the table the introductory rate along with the rate that would otherwise apply to the account if the creditor also discloses the time period during which the introductory rate will remain in effect, and uses the term "introductory" or "intro" in immediate proximity to the introductory rate.

(C) *Premium initial rate.* If the initial rate is temporary and is higher than the rate that will apply after the temporary rate expires, the creditor must disclose the premium initial rate pursuant to paragraph (b)(2)(i) of this section. Consistent with paragraph (b)(2)(i) of this section, the premium initial rate for purchases must be in at least 16-point type. Except as provided in paragraph (b)(2)(i)(F) of this section, the creditor is not required to, but may disclose in the table the rate that will apply after the premium initial rate expires if the creditor also discloses the time period during which the premium initial rate will remain in effect. If the creditor also discloses in the table the rate that will apply after the premium initial rate for purchases expires, that rate also must be in at least 16-point type.

(D) *Penalty rates.* (*1*) *In general.* Except as provided in paragraph (b)(2)(i)(D)(*2*) of this section, if a rate may increase as a penalty for one or more events specified in the account agreement, such as a late payment or an extension of credit that exceeds the credit limit, the creditor must disclose pursuant to paragraph (b)(2)(i) of this section the increased rate that may apply, a brief description of the event or events that may result in the increased rate, and a brief description of how long the increased rate will remain in effect. If more than one penalty rate may apply, the creditor at its option may disclose the highest rate that could apply, instead of disclosing the specific rates or the range of rates that could apply.

(*2*) *Introductory rates.* If the creditor discloses in the table an introductory rate, as that term is defined in § 226.16(g)(2)(ii), creditors must briefly disclose directly beneath the table the circumstances under which the introductory rate may be revoked, and the rate that will apply after the introductory rate is revoked.

(E) *Point of sale where APRs vary by state or based on creditworthiness.* Creditors imposing annual percentage rates that vary by state or based on the consumer's creditworthiness and providing the disclosures required by paragraph (b) of this section in person at the time the open-end (not home-secured) plan is established in connection with financing the purchase of goods or services may, at the creditor's option, disclose pursuant to paragraph (b)(2)(i) of this section in the account-opening table:

(*1*) The specific annual percentage rate applicable to the consumer's account; or

(*2*) The range of the annual percentage rates, if the disclosure includes a statement that the annual percentage rate varies by state or will be determined based on the consumer's creditworthiness and refers the consumer to the account agreement or other disclosure provided with the account-opening table where the annual percentage rate applicable to the consumer's account is disclosed. A creditor may not list annual percentage rates for multiple states in the account-opening table.

(F) *Credit card accounts under an open-end (not home-secured) consumer credit plan.* Notwithstanding paragraphs (b)(2)(i)(B) and (b)(2)(i)(C) of this section, for credit card accounts under an open-end (not home-secured) plan, issuers must disclose in the table—

(*1*) Any introductory rate as that term is defined in § 226.16(g)(2)(ii) that would apply to the account, consistent with the requirements of paragraph (b)(2)(i)(B) of this section, and

(*2*) Any rate that would apply upon the expiration of a premium initial rate, consistent with the requirements of paragraph (b)(2)(i)(C) of this section.

(ii) *Fees for issuance or availability.* (A) Any annual or other periodic fee that may be imposed for the issuance or availability of an open-end plan, including any fee based on account activity or inactivity; how frequently it will be imposed; and the annualized amount of the fee.

(B) Any non-periodic fee that relates to opening the plan. A creditor must disclose that the fee is a one-time fee.

(iii) *Fixed finance charge; minimum interest charge.* Any fixed finance charge and a brief description of the charge. Any minimum interest charge if it exceeds $1.00 that could be imposed during a billing cycle, and a brief description of the charge. The $1.00 threshold amount shall be adjusted periodically by the Board to reflect changes in the Consumer Price Index. The Board shall calculate each year a price level adjusted minimum interest charge using the Consumer Price Index in effect on the June 1 of that year. When the cumulative change in the adjusted minimum value derived from applying the annual Consumer Price level to the current minimum interest charge threshold has risen by a whole dollar, the minimum interest charge will be increased by $1.00. The creditor may, at its option, disclose in the table minimum interest charges below this threshold.

(iv) *Transaction charges.* Any transaction charge imposed by the creditor for use of the open-end plan for purchases.

(v) *Grace period.* The date by which or the period within which any credit extended may be repaid without incurring a finance charge due to a periodic interest rate and any conditions on the availability of the grace period. If no grace period is provided, that fact must be disclosed. If the length of the grace period varies, the creditor may disclose the range of days, the minimum number of days, or the average number of the days in the grace period, if the disclosure is identified as a range, minimum, or average. In disclosing in the tabular format a grace period that applies to all features on the account, the phrase "How to Avoid Paying Interest" shall be used as the heading for the row describing the grace period. If a grace period is not offered on all features of the account, in disclosing this fact in the tabular format, the phrase "Paying Interest" shall be used as the heading for the row describing this fact.

(vi) *Balance computation method.* The name of the balance computation method listed in § 226.5a(g) that is used

to determine the balance on which the finance charge is computed for each feature, or an explanation of the method used if it is not listed, along with a statement that an explanation of the method(s) required by paragraph (b)(4)(i)(D) of this section is provided with the account-opening disclosures. In determining which balance computation method to disclose, the creditor shall assume that credit extended will not be repaid within any grace period, if any.

(vii) *Cash advance fee.* Any fee imposed for an extension of credit in the form of cash or its equivalent.

(viii) *Late payment fee.* Any fee imposed for a late payment.

(ix) *Over-the-limit fee.* Any fee imposed for exceeding a credit limit.

(x) *Balance transfer fee.* Any fee imposed to transfer an outstanding balance.

(xi) *Returned-payment fee.* Any fee imposed by the creditor for a returned payment.

(xii) *Required insurance, debt cancellation or debt suspension coverage.* (A) A fee for insurance described in § 226.4(b)(7) or debt cancellation or suspension coverage described in § 226.4(b)(10), if the insurance, or debt cancellation or suspension coverage is required as part of the plan; and

(B) A cross reference to any additional information provided about the insurance or coverage, as applicable.

(xiii) *Available credit.* If a creditor requires fees for the issuance or availability of credit described in paragraph (b)(2)(ii) of this section, or requires a security deposit for such credit, and the total amount of those required fees and/or security deposit that will be imposed and charged to the account when the account is opened is 15 percent or more of the minimum credit limit for the plan, a creditor must disclose the available credit remaining after these fees or security deposit are debited to the account. The determination whether the 15 percent threshold is met must be based on the minimum credit limit for the plan. However, the disclosure provided under this paragraph must be based on the actual initial credit limit provided on the account. In determining whether the 15 percent threshold test is met, the creditor must only consider fees for issuance or availability of credit, or a security deposit, that are required. If fees for issuance or availability are optional, these fees should not be considered in determining whether the disclosure must be given. Nonetheless, if the 15 percent threshold test is met, the creditor in providing the disclosure must disclose the amount of available credit calculated by excluding those optional fees, and the available credit including those optional fees. The creditor shall also disclose that the consumer has the right to reject the plan and not be obligated to pay those fees or any other fee or charges until the consumer has used the account or made a payment on the account after receiving a periodic statement. This paragraph does not apply with respect to fees or security deposits that are not debited to the account.

(xiv) *Web site reference.* For issuers of credit cards that are not charge cards, a reference to the Web site established by the Board and a statement that consumers may obtain on the Web site information about shopping for and using credit cards.

(xv) *Billing error rights reference.* A statement that information about consumers' right to dispute transactions is included in the account-opening disclosures.

(3) *Disclosure of charges imposed as part of open-end (not home-secured) plans.* A creditor shall disclose, to the extent applicable:

(i) For charges imposed as part of an open-end (not home-secured) plan, the circumstances under which the charge may be imposed, including the amount of the charge or an explanation of how the charge is determined. For finance charges, a statement of when the charge begins to accrue and an explanation of whether or not any time period exists within which any credit that has been extended may be repaid without incurring the charge. If such a time period is provided, a creditor may, at its option and without disclosure, elect not to impose a finance charge when payment is received after the time period expires.

(ii) Charges imposed as part of the plan are:

(A) Finance charges identified under § 226.4(a) and § 226.4(b).

(B) Charges resulting from the consumer's failure to use the plan as agreed, except amounts payable for collection activity after default, attorney's fees whether or not automatically imposed, and post-judgment interest rates permitted by law.

(C) Taxes imposed on the credit transaction by a state or other governmental body, such as documentary stamp taxes on cash advances.

(D) Charges for which the payment, or nonpayment, affect the consumer's access to the plan, the duration of the plan, the amount of credit extended, the period for which credit is extended, or the timing or method of billing or payment.

(E) Charges imposed for terminating a plan.

(F) Charges for voluntary credit insurance, debt cancellation or debt suspension.

(iii) Charges that are not imposed as part of the plan include:

(A) Charges imposed on a cardholder by an institution other than the card issuer for the use of the other institution's ATM in a shared or interchange system.

(B) A charge for a package of services that includes an open-end credit feature, if the fee is required whether or not the open-end credit feature is included and the non-credit services are not merely incidental to the credit feature.

(C) Charges under § 226.4(e) disclosed as specified.

(4) *Disclosure of rates for open-end (not home-secured) plans.* A creditor shall disclose, to the extent applicable:

(i) For each periodic rate that may be used to calculate interest:

(A) *Rates.* The rate, expressed as a periodic rate and a corresponding annual percentage rate.

(B) *Range of balances.* The range of balances to which the rate is applicable; however, a creditor is not required to adjust the range of balances disclosure to reflect the balance below which only a minimum charge applies.

(C) *Type of transaction.* The type of transaction to which the rate applies, if different rates apply to different types of transactions.

(D) *Balance computation method.* An explanation of the method used to determine the balance to which the rate is applied.

(ii) *Variable-rate accounts.* For interest rate changes that are tied to increases in an index or formula (variable-rate accounts) specifically set forth in the account agreement:

(A) The fact that the annual percentage rate may increase.

(B) How the rate is determined, including the margin.

(C) The circumstances under which the rate may increase.

(D) The frequency with which the rate may increase.

(E) Any limitation on the amount the rate may change.

(F) The effect(s) of an increase.

(G) Except as specified in paragraph (b)(4)(ii)(H) of this section, a rate is accurate if it is a rate as of a specified date and this rate was in effect within the last 30 days before the disclosures are provided.

(H) Creditors imposing annual percentage rates that vary according to an index that is not under the creditor's

control that provide the disclosures required by paragraph (b) of this section in person at the time the open-end (not home-secured) plan is established in connection with financing the purchase of goods or services may disclose in the table a rate, or range of rates to the extent permitted by § 226.6(b)(2)(i)(E), that was in effect within the last 90 days before the disclosures are provided, along with a reference directing the consumer to the account agreement or other disclosure provided with the account-opening table where an annual percentage rate applicable to the consumer's account in effect within the last 30 days before the disclosures are provided is disclosed.

(iii) *Rate changes not due to index or formula.* For interest rate changes that are specifically set forth in the account agreement and not tied to increases in an index or formula:

(A) The initial rate (expressed as a periodic rate and a corresponding annual percentage rate) required under paragraph (b)(4)(i)(A) of this section.

(B) How long the initial rate will remain in effect and the specific events that cause the initial rate to change.

(C) The rate (expressed as a periodic rate and a corresponding annual percentage rate) that will apply when the initial rate is no longer in effect and any limitation on the time period the new rate will remain in effect.

(D) The balances to which the new rate will apply.

(E) The balances to which the current rate at the time of the change will apply.

(5) *Additional disclosures for open-end (not home-secured) plans.* A creditor shall disclose, to the extent applicable:

(i) *Voluntary credit insurance, debt cancellation or debt suspension.* The disclosures in §§ 226.4(d)(1)(i) and (d)(1)(ii) and (d)(3)(i) through (d)(3)(iii) if the creditor offers optional credit insurance or debt cancellation or debt suspension coverage that is identified in § 226.4(b)(7) or (b)(10).

(ii) *Security interests.* The fact that the creditor has or will acquire a security interest in the property purchased under the plan, or in other property identified by item or type.

(iii) *Statement of billing rights.* A statement that outlines the consumer's rights and the creditor's responsibilities under §§ 226.12(c) and 226.13 and that is substantially similar to the statement found in Model Form G–3(A) in appendix G to this part.

■ 9. Revise § 226.7 to read as follows:

§ 226.7 Periodic statement.

The creditor shall furnish the consumer with a periodic statement that discloses the following items, to the extent applicable:

(a) *Rules affecting home-equity plans.* The requirements of paragraph (a) of this section apply only to home-equity plans subject to the requirements of § 226.5b. Alternatively, a creditor subject to this paragraph may, at its option, comply with any of the requirements of paragraph (b) of this section; however, any creditor that chooses not to provide a disclosure under paragraph (a)(7) of this section must comply with paragraph (b)(6) of this section.

(1) *Previous balance.* The account balance outstanding at the beginning of the billing cycle.

(2) *Identification of transactions.* An identification of each credit transaction in accordance with § 226.8.

(3) *Credits.* Any credit to the account during the billing cycle, including the amount and the date of crediting. The date need not be provided if a delay in accounting does not result in any finance or other charge.

(4) *Periodic rates.* (i) Except as provided in paragraph (a)(4)(ii) of this section, each periodic rate that may be used to compute the finance charge, the range of balances to which it is applicable,[14] and the corresponding annual percentage rate.[15] If no finance charge is imposed when the outstanding balance is less than a certain amount, the creditor is not required to disclose that fact, or the balance below which no finance charge will be imposed. If different periodic rates apply to different types of transactions, the types of transactions to which the periodic rates apply shall also be disclosed. For variable-rate plans, the fact that the periodic rate(s) may vary.

(ii) *Exception.* An annual percentage rate that differs from the rate that would otherwise apply and is offered only for a promotional period need not be disclosed except in periods in which the offered rate is actually applied.

(5) *Balance on which finance charge computed.* The amount of the balance to which a periodic rate was applied and an explanation of how that balance was determined. When a balance is determined without first deducting all credits and payments made during the billing cycle, the fact and the amount of the credits and payments shall be disclosed.

(6) *Amount of finance charge and other charges.* Creditors may comply with paragraphs (a)(6) of this section, or with paragraph (b)(6) of this section, at their option.

[14] [Reserved].

[15] [Reserved].

(i) *Finance charges.* The amount of any finance charge debited or added to the account during the billing cycle, using the term *finance charge.* The components of the finance charge shall be individually itemized and identified to show the amount(s) due to the application of any periodic rates and the amounts(s) of any other type of finance charge. If there is more than one periodic rate, the amount of the finance charge attributable to each rate need not be separately itemized and identified.

(ii) *Other charges.* The amounts, itemized and identified by type, of any charges other than finance charges debited to the account during the billing cycle.

(7) *Annual percentage rate.* At a creditor's option, when a finance charge is imposed during the billing cycle, the annual percentage rate(s) determined under § 226.14(c) using the term *annual percentage rate.*

(8) *Grace period.* The date by which or the time period within which the new balance or any portion of the new balance must be paid to avoid additional finance charges. If such a time period is provided, a creditor may, at its option and without disclosure, impose no finance charge if payment is received after the time period's expiration.

(9) *Address for notice of billing errors.* The address to be used for notice of billing errors. Alternatively, the address may be provided on the billing rights statement permitted by § 226.9(a)(2).

(10) *Closing date of billing cycle; new balance.* The closing date of the billing cycle and the account balance outstanding on that date.

(b) *Rules affecting open-end (not home-secured) plans.* The requirements of paragraph (b) of this section apply only to plans other than home-equity plans subject to the requirements of § 226.5b.

(1) *Previous balance.* The account balance outstanding at the beginning of the billing cycle.

(2) *Identification of transactions.* An identification of each credit transaction in accordance with § 226.8.

(3) *Credits.* Any credit to the account during the billing cycle, including the amount and the date of crediting. The date need not be provided if a delay in crediting does not result in any finance or other charge.

(4) *Periodic rates.* (i) Except as provided in paragraph (b)(4)(ii) of this section, each periodic rate that may be used to compute the interest charge expressed as an annual percentage rate and using the term *Annual Percentage Rate,* along with the range of balances to which it is applicable. If no interest

charge is imposed when the outstanding balance is less than a certain amount, the creditor is not required to disclose that fact, or the balance below which no interest charge will be imposed. The types of transactions to which the periodic rates apply shall also be disclosed. For variable-rate plans, the fact that the annual percentage rate may vary.

(ii) *Exception.* A promotional rate, as that term is defined in § 226.16(g)(2)(i), is required to be disclosed only in periods in which the offered rate is actually applied.

(5) *Balance on which finance charge computed.* The amount of the balance to which a periodic rate was applied and an explanation of how that balance was determined, using the term *Balance Subject to Interest Rate.* When a balance is determined without first deducting all credits and payments made during the billing cycle, the fact and the amount of the credits and payments shall be disclosed. As an alternative to providing an explanation of how the balance was determined, a creditor that uses a balance computation method identified in § 226.5a(g) may, at the creditor's option, identify the name of the balance computation method and provide a toll-free telephone number where consumers may obtain from the creditor more information about the balance computation method and how resulting interest charges were determined. If the method used is not identified in § 226.5a(g), the creditor shall provide a brief explanation of the method used.

(6) *Charges imposed.* (i) The amounts of any charges imposed as part of a plan as stated in § 226.6(b)(3), grouped together, in proximity to transactions identified under paragraph (b)(2) of this section, substantially similar to Sample G–18(A) in appendix G to this part.

(ii) *Interest.* Finance charges attributable to periodic interest rates, using the term *Interest Charge,* must be grouped together under the heading *Interest Charged,* itemized and totaled by type of transaction, and a total of finance charges attributable to periodic interest rates, using the term *Total Interest,* must be disclosed for the statement period and calendar year to date, using a format substantially similar to Sample G–18(A) in appendix G to this part.

(iii) *Fees.* Charges imposed as part of the plan other than charges attributable to periodic interest rates must be grouped together under the heading *Fees,* identified consistent with the feature or type, and itemized, and a total of charges, using the term *Fees,* must be disclosed for the statement period and calendar year to date, using a format substantially similar to Sample G–18(A) in appendix G to this part.

(7) *Change-in-terms and increased penalty rate summary for open-end (not home-secured) plans.* Creditors that provide a change-in-terms notice required by § 226.9(c), or a rate increase notice required by § 226.9(g), on or with the periodic statement, must disclose the information in § 226.9(c)(2)(iv)(A) and (c)(2)(iv)(B) (if applicable) or § 226.9(g)(3)(i) on the periodic statement in accordance with the format requirements in § 226.9(c)(2)(iv)(D), and § 226.9(g)(3)(ii). See Forms G–18(F) and G–18(G) in appendix G to this part.

(8) *Grace period.* The date by which or the time period within which the new balance or any portion of the new balance must be paid to avoid additional finance charges. If such a time period is provided, a creditor may, at its option and without disclosure, impose no finance charge if payment is received after the time period's expiration.

(9) *Address for notice of billing errors.* The address to be used for notice of billing errors. Alternatively, the address may be provided on the billing rights statement permitted by § 226.9(a)(2).

(10) *Closing date of billing cycle; new balance.* The closing date of the billing cycle and the account balance outstanding on that date. The new balance must be disclosed in accordance with the format requirements of paragraph (b)(13) of this section.

(11) *Due date; late payment costs.* (i) Except as provided in paragraph (b)(11)(ii) of this section and in accordance with the format requirements in paragraph (b)(13) of this section, for a credit card account under an open-end (not home-secured) consumer credit plan, a card issuer must provide on each periodic statement:

(A) The due date for a payment. The due date disclosed pursuant to this paragraph shall be the same day of the month for each billing cycle.

(B) The amount of any late payment fee and any increased periodic rate(s) (expressed as an annual percentage rate(s)) that may be imposed on the account as a result of a late payment. If a range of late payment fees may be assessed, the card issuer may state the range of fees, or the highest fee and at the issuer's option with the highest fee an indication that the fee imposed could be lower. If the rate may be increased for more than one feature or balance, the card issuer may state the range of rates or the highest rate that could apply and at the issuer's option an indication that the rate imposed could be lower.

(ii) *Exception.* The requirements of paragraph (b)(11)(i) of this section do not apply to the following:

(A) Periodic statements provided solely for charge card accounts; and

(B) Periodic statements provided for a charged-off account where payment of the entire account balance is due immediately.

(12) *Repayment disclosures.* (i) *In general.* Except as provided in paragraphs (b)(12)(ii) and (b)(12)(v) of this section, for a credit card account under an open-end (not home-secured) consumer credit plan, a card issuer must provide the following disclosures on each periodic statement:

(A) The following statement with a bold heading: "Minimum Payment Warning: If you make only the minimum payment each period, you will pay more in interest and it will take you longer to pay off your balance;"

(B) The minimum payment repayment estimate, as described in Appendix M1 to this part. If the minimum payment repayment estimate is less than 2 years, the card issuer must disclose the estimate in months. Otherwise, the estimate must be disclosed in years and rounded to the nearest whole year;

(C) The minimum payment total cost estimate, as described in Appendix M1 to this part. The minimum payment total cost estimate must be rounded to the nearest whole dollar;

(D) A statement that the minimum payment repayment estimate and the minimum payment total cost estimate are based on the current outstanding balance shown on the periodic statement. A statement that the minimum payment repayment estimate and the minimum payment total cost estimate are based on the assumption that only minimum payments are made and no other amounts are added to the balance;

(E) A toll-free telephone number where the consumer may obtain from the card issuer information about credit counseling services consistent with paragraph (b)(12)(iv) of this section; and

(F)(*1*) Except as provided in paragraph (b)(12)(i)(F)(*2*) of this section, the following disclosures:

(*i*) The estimated monthly payment for repayment in 36 months, as described in Appendix M1 to this part. The estimated monthly payment for repayment in 36 months must be rounded to the nearest whole dollar;

(*ii*) A statement that the card issuer estimates that the consumer will repay the outstanding balance shown on the periodic statement in 3 years if the consumer pays the estimated monthly payment each month for 3 years;

(*iii*) The total cost estimate for repayment in 36 months, as described in Appendix M1 to this part. The total cost estimate for repayment in 36 months must be rounded to the nearest whole dollar; and

(*iv*) The savings estimate for repayment in 36 months, as described in Appendix M1 to this part. The savings estimate for repayment in 36 months must be rounded to the nearest whole dollar.

(*2*) The requirements of paragraph (b)(12)(i)(F)(*1*) of this section do not apply to a periodic statement in any of the following circumstances:

(*i*) The minimum payment repayment estimate that is disclosed on the periodic statement pursuant to paragraph (b)(12)(i)(B) of this section after rounding is three years or less;

(*ii*) The estimated monthly payment for repayment in 36 months, as described in Appendix M1 to this part, rounded to the nearest whole dollar that is calculated for a particular billing cycle is less than the minimum payment required for the plan for that billing cycle; and

(*iii*) A billing cycle where an account has both a balance in a revolving feature where the required minimum payments for this feature will not amortize that balance in a fixed amount of time specified in the account agreement and a balance in a fixed repayment feature where the required minimum payment for this fixed repayment feature will amortize that balance in a fixed amount of time specified in the account agreement which is less than 36 months.

(ii) *Negative or no amortization.* If negative or no amortization occurs when calculating the minimum payment repayment estimate as described in Appendix M1 of this part, a card issuer must provide the following disclosures on the periodic statement instead of the disclosures set forth in paragraph (b)(12)(i) of this section:

(A) The following statement: "Minimum Payment Warning: Even if you make no more charges using this card, if you make only the minimum payment each month we estimate you will never pay off the balance shown on this statement because your payment will be less than the interest charged each month";

(B) The following statement: "If you make more than the minimum payment each period, you will pay less in interest and pay off your balance sooner";

(C) The estimated monthly payment for repayment in 36 months, as described in Appendix M1 to this part. The estimated monthly payment for repayment in 36 months must be rounded to the nearest whole dollar;

(D) A statement that the card issuer estimates that the consumer will repay the outstanding balance shown on the periodic statement in 3 years if the consumer pays the estimated monthly payment each month for 3 years; and

(E) A toll-free telephone number where the consumer may obtain from the card issuer information about credit counseling services consistent with paragraph (b)(12)(iv) of this section.

(iii) *Format requirements.* A card issuer must provide the disclosures required by paragraph (b)(12)(i) or (b)(12)(ii) of this section in accordance with the format requirements of paragraph (b)(13) of this section, and in a format substantially similar to Samples G–18(C)(1), G–18(C)(2) and G–18(C)(3) in Appendix G to this part, as applicable.

(iv) *Provision of information about credit counseling services.* (A) *Required information.* To the extent available from the United States Trustee or a bankruptcy administrator, a card issuer must provide through the toll-free telephone number disclosed pursuant to paragraphs (b)(12)(i) or (b)(12)(ii) of this section the name, street address, telephone number, and Web site address for at least three organizations that have been approved by the United States Trustee or a bankruptcy administrator pursuant to 11 U.S.C. 111(a)(1) to provide credit counseling services in, at the card issuer's option, either the state in which the billing address for the account is located or the state specified by the consumer.

(B) *Updating required information.* At least annually, a card issuer must update the information provided pursuant to paragraph (b)(12)(iv)(A) of this section for consistency with the information available from the United States Trustee or a bankruptcy administrator.

(v) *Exemptions.* Paragraph (b)(12) of this section does not apply to:

(A) Charge card accounts that require payment of outstanding balances in full at the end of each billing cycle;

(B) A billing cycle immediately following two consecutive billing cycles in which the consumer paid the entire balance in full, had a zero outstanding balance or had a credit balance; and

(C) A billing cycle where paying the minimum payment due for that billing cycle will pay the entire outstanding balance on the account for that billing cycle.

(13) *Format requirements.* The due date required by paragraph (b)(11) of this section shall be disclosed on the front of the first page of the periodic statement. The amount of the late payment fee and the annual percentage rate(s) required by paragraph (b)(11) of this section shall be stated in close proximity to the due date. The ending balance required by paragraph (b)(10) of this section and the disclosures required by paragraph (b)(12) of this section shall be disclosed closely proximate to the minimum payment due. The due date, late payment fee and annual percentage rate, ending balance, minimum payment due, and disclosures required by paragraph (b)(12) of this section shall be grouped together. Sample G–18(D) in Appendix G to this part sets forth an example of how these terms may be grouped.

(14) *Deferred interest or similar transactions.* For accounts with an outstanding balance subject to a deferred interest or similar program, the date by which that outstanding balance must be paid in full in order to avoid the obligation to pay finance charges on such balance must be disclosed on the front of each periodic statement issued during the deferred interest period beginning with the first periodic statement issued during the deferred interest period that reflects the deferred interest or similar transaction. The disclosure provided pursuant to this paragraph must be substantially similar to Sample G–18(H) in Appendix G to this part.

■ 10. Section 226.8 is revised to read as follows:

§ 226.8 Identifying transactions on periodic statements.

The creditor shall identify credit transactions on or with the first periodic statement that reflects the transaction by furnishing the following information, as applicable.[16]

(a) *Sale credit.* (1) Except as provided in paragraph (a)(2) of this section, for each credit transaction involving the sale of property or services, the creditor must disclose the amount and date of the transaction, and either:

(i) A brief identification [17] of the property or services purchased, for creditors and sellers that are the same or related; [18] or

(ii) The seller's name; and the city and state or foreign country where the transaction took place.[19] The creditor may omit the address or provide any suitable designation that helps the consumer to identify the transaction when the transaction took place at a location that is not fixed; took place in

[16] [Reserved].

[17] [Reserved].

[18] [Reserved].

[19] [Reserved].