FEDERAL RESERVE SYSTEM

12 CFR Part 226

[Regulation Z; Docket No. R–1393]

RIN No. 7100–AD55

Truth in Lending

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Proposed rule; request for public comment.

SUMMARY: On February 22, 2010 and June 29, 2010, the Board published in the **Federal Register** final rules amending Regulation Z's provisions that apply to open-end (not home-secured) credit plans, in each case in order to implement provisions of the Credit Card Accountability Responsibility and Disclosure Act of 2009. The Board believes that clarification is needed regarding compliance with certain aspects of the final rules. Accordingly, to facilitate compliance, the Board proposes to amend specific portions of the regulations and official staff commentary.

DATES: Comments must be received on or before January 3, 2011.

ADDRESSES: You may submit comments, identified by Docket No. R–1393 and RIN No. 7100–AD55, by any of the following methods:

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

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

FOR FURTHER INFORMATION CONTACT: Stephen Shin, Attorney, or Amy Henderson or Benjamin K. Olson, Counsels, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, at (202) 452–3667 or 452–2412; for users of Telecommunications Device for the Deaf (TDD) only, contact (202) 263–4869.

SUPPLEMENTARY INFORMATION:

I. Background

The Credit Card Act

The Credit Card Accountability Responsibility and Disclosure Act of 2009 (Credit Card Act) was signed into law on May 22, 2009. Public Law 111–24, 123 Stat. 1734 (2009). The Credit Card Act primarily amended the Truth in Lending Act (TILA) and established a number of new substantive and disclosure requirements to establish fair and transparent practices pertaining to open-end consumer credit plans.

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

Implementation of Credit Card Act

The Board issued rules to implement the provisions of the Credit Card Act in stages, consistent with the statutory timeline established by Congress. On July 22, 2009, the Board published an interim final rule to implement the provisions of the Credit Card Act that became effective on August 20, 2009. *See* 74 FR 36077. On January 12, 2010, the Board issued a final rule adopting in final form the requirements of the July 2009 interim final rule and implementing the provisions of the Credit Card Act that became effective on February 22, 2010. *See* 75 FR 7658 (February 2010 Final Rule). On June 15, 2010, the Board issued a final rule implementing the provisions of the Credit Card Act that became effective on August 22, 2010. *See* 75 FR 37526 (June 2010 Final Rule).

Since publication of the February 2010 and June 2010 Final Rules, the Board has become aware that clarification is needed to resolve confusion regarding how institutions will comply with particular aspects of those rules. Accordingly, in order to provide guidance and facilitate compliance with the final rules, the Board proposes to amend portions of the regulations and the accompanying staff commentary. These proposed amendments are discussed in detail in Section III of this **SUPPLEMENTARY INFORMATION**.

Although comment is requested on the proposed amendments, the Board emphasizes that the purpose of this rulemaking is to clarify and facilitate compliance with the consumer protections contained in the February 2010 and June 2010 Final Rules, not to reconsider the need for—or the extent of—the protections implemented in those rules. Thus, commenters are encouraged to limit their submissions accordingly.

II. Statutory Authority

In the **SUPPLEMENTARY INFORMATION** for the February 2010 and June 2010 Final Rules, the Board set forth the sources of its statutory authority under the Truth in Lending Act and the Credit Card Act. *See* 75 FR 7662 and 75 FR 37528. For purposes of these proposed rules, the Board continues to rely on this legal authority.

III. Section-by-Section Analysis

Section 226.2 Definitions and Rules of Construction

2(a) Definitions

2(a)(15) Credit Card

2(a)(15)(ii) Credit Card Account Under an Open-End (Not Home-Secured)

Consumer Credit Plan

In the February 2010 Final Rule, the Board retained the pre-existing definition of "credit card" as any card, plate, or other single credit device that may be used from time to time to obtain credit. *See* § 226.2(a)(15)(i). However, the Board also defined a new, somewhat narrower term in order to implement the provisions of the Credit Card Act that apply to "credit card account[s] under an open end consumer credit plan." Specifically, in a new § 226.2(a)(15)(ii), the Board defined the term "credit card account under an open-end (not home-secured) consumer credit plan" as meaning any open-end credit account accessed by a credit card except a home-equity plan subject to the requirements of § 226.5b accessed by a credit card or an overdraft line of credit accessed by a debit card.

The Board declined requests from industry commenters to exempt all lines of credit accessed solely by an account number from the definition in § 226.2(a)(15)(ii), noting Congress' apparent intent to apply the Credit Card Act broadly to products that meet the definition of "credit card." *See* 75 FR 7664–7665. However, the Board understands that this determination has caused uncertainty about whether *all* credit products accessed by an account number are subject to TILA's credit card provisions.

In particular, some institutions offer general purpose open-end lines of credit that are linked to a checking or other asset account with the same institution. The consumer can use the line's account number to request an extension of credit, which is then deposited into the asset account. The Board understands that there has been some confusion as to whether, in these circumstances, the account number is a "credit card" for purposes of § 226.2(a)(15)(i) and therefore a "credit card account under an open-end (not home-secured) consumer credit plan" for purposes of § 226.2(a)(15)(ii). Because most if not all credit accounts can be accessed in some fashion by an account number, the Board does not believe that Congress generally intended to treat account numbers as credit cards for purposes of TILA. However, the Board is concerned that, when an account number can be used to access an open-end line of credit to purchase goods or services, it would be inconsistent with the purposes of the Credit Card Act to exempt the line of credit from the protections provided for credit card accounts. For example, creditors may offer open-end credit accounts designed for online purchases that function like a traditional credit card account but can only be accessed using an account number. In these circumstances, the Board believes that TILA's credit card protections should apply.

Accordingly, the Board proposes to clarify the application of § 226.2(a)(15)(i) and (a)(15)(ii) to account numbers by amending comment 2(a)(15)–2, which provides illustrative examples of credit devices that are and are not credit cards. Specifically, the Board would add an additional example clarifying that an account number that accesses a credit account is not credit card, unless the account number can access an open-end line of credit to purchase goods or services. The comment would further clarify that, if, for example, a creditor provides a consumer with an open-end line of credit that can be accessed by an account number in order to transfer funds into another account (such as an asset account), the account number is not a credit card for purposes of § 226.2(a)(15)(i). However, if the account number can also access the line of credit in order to purchase goods or services (such as an account number that can be used to purchase goods or services on the Internet), the account number is a credit card for purposes of § 226.2(a)(15)(i). Furthermore, if the line of credit can also be accessed by a card (such as a debit card or prepaid card), then that card is a credit card for purposes of § 226.2(a)(15)(i).

In addition, the Board proposes to adopt a new comment 2(a)(15)–4, which would clarify the test used for determining whether an account is a credit card account under an open-end (not home-secured) consumer credit plan for purposes of § 226.2(a)(15)(ii). The Board would also amend the exception in § 226.2(a)(15)(ii)(B) to clarify that—like an overdraft line of credit accessed by a debit card—an overdraft line of credit accessed by an account number (such as when a debit card number or checking account number is used to make an online purchase that overdraws the asset account) is excluded from the definition of "credit card account under an open-end (not home-secured) consumer credit plan." Finally, for clarity and consistency, the Board would make non-substantive revisions to the exception for home-equity plans in § 226.2(a)(15)(ii)(A).

2(a)(15)(iii) Charge Card

The Board understands that there has been some confusion as to whether a charge card is a "credit card account under an open-end (not home-secured) consumer credit plan," as defined in § 226.2(a)(15)(ii). Section 226.2(a)(15)(iii) defines a "charge card" as a credit card on an account for which no periodic rate is used to compute a finance charge. The Board has historically applied the same requirements to credit and charge cards, unless otherwise stated. *See* § 226.2(a)(15); comment 2(a)(15)–3. Therefore, as discussed in the February 2010 Final Rule, the Board adopted a similar approach when implementing the provisions of the Credit Card Act. *See* 75 FR 7672–7673. Nevertheless, for clarity and consistency, the Board proposes to amend comment 2(a)(15)–3 to state that references to a credit card account under an open-end (not home-secured) consumer credit plan in Subpart B (Open-End Credit) and Subpart G (Special Rules Applicable to Credit Card Accounts and Open-End Credit Offered to Students) include charge cards unless otherwise stated.

The Board would also update the list of provisions in comment 2(a)(15)–3 that distinguish charge cards from credit cards. In addition, the Board would remove the statement in the comment that, when the term "credit card" is used in the listed provisions, it refers to credit cards other than charge cards. While generally accurate, this statement may be overbroad in certain circumstances. For example, the exemption in § 226.7(b)(12)(v)(A) and the safe harbor in § 226.52(b)(1)(ii)(C) are limited to charge card accounts that require payment of outstanding balances in full at the end of each billing cycle. Accordingly, the applicability of a particular provision should be determined based on a review of that provision and the relevant staff commentary.

Section 226.5 General Disclosure Requirements

5(b) Time of Disclosures

5(b)(2) Periodic Statements

Prior to the Credit Card Act, TILA Section 163 generally required creditors to send periodic statements for open-end consumer credit plans at least 14 days before the expiration of any period within which any credit extended may be repaid without incurring a finance charge (*i.e.,* a "grace period"). *See* 15 U.S.C. 1666b (2008). The Board's Regulation Z, however, extended this 14-day requirement to apply even if no grace period was provided. Specifically, prior to the 2009 amendments implementing the Credit Card Act, § 226.5(b)(2)(ii) required that creditors mail or deliver periodic statements at least 14 days before the date by which payment was due for purposes of avoiding not only finance charges as a result of the loss of a grace period but also any other charges (such as late payment fees). *See also* former comment 5(b)(2)(ii)–1 (2008). Thus, before the Credit Card Act, creditors were generally required to provide consumers with at least 14 days to make payments for all open-end consumer credit accounts.

Effective August 20, 2009, the Credit Card Act amended TILA Section 163 to generally prohibit a creditor from treating a payment as late or imposing additional finance charges with respect to open-end consumer credit plans unless the creditor mailed or delivered the periodic statement at least 21 days before the payment due date and the expiration of any grace period. *See* Credit Card Act § 106(b)(1). The Board's July 2009 interim final rule made corresponding amendments to § 226.5(b)(2)(ii) and the accompanying official staff commentary. *See* 74 FR 36077 (July 22, 2009). Because amended TILA 163 required that periodic statements be mailed at least 21 days before the payment due date for all open-end consumer credit accounts even if no grace period was provided, the amendments to § 226.5(b)(2)(ii) removed the pre-existing 14-day requirement as unnecessary.

However, in November 2009, the Credit CARD Technical Corrections Act of 2009 (Technical Corrections Act) further amended TILA Section 163. Public Law 111–93, 123 Stat. 2998 (Nov. 6, 2009). The Technical Corrections Act narrowed the requirement that statements be mailed or delivered at least 21 days before the payment due date to apply only to credit card accounts, rather than to all open-end consumer credit plans. However, open-end consumer credit plans that provide a grace period remain subject to the 21-day requirement in Section 163(b). In its February 2010 Final Rule, the Board narrowed the application of § 226.5(b)(2)(ii) for consistency with the Technical Corrections Act. However, in doing so, the Board inadvertently failed to reinsert the 14-day requirement for open-end consumer credit plans without a grace period.

The Board believes that it would be inconsistent with the purposes of the Credit Card Act for consumers to receive less time to make payments after its implementation than they did beforehand. Accordingly, pursuant to its authority under Section 105(a) of TILA and Section 2 of the Credit Card Act, the Board proposes to amend § 226.5(b)(2)(ii) to reinsert the 14-day requirement for open-end consumer credit plans that are not subject to the Credit Card Act's 21-day requirements. Specifically, the Board would revise § 226.5(b)(2)(ii) to require that, when an open-end account is not accessed by a credit card and does not provide a grace period, creditors must adopt reasonable procedures designed to ensure that periodic statements are mailed or delivered at least 14 days prior to the date on which the required minimum periodic payment must be made to avoid being treated as late. In addition, creditors would be required to adopt reasonable procedures designed to ensure that required minimum periodic payments received within 14 days after mailing or delivery of the periodic statement are not treated as late for any purpose. The Board would also revise the commentary to § 226.5(b)(2)(ii) for consistency with these proposed revisions.

Finally, the proposed rule would delete comment 5(b)(2)(iii)–1, which implemented the pre-Credit Card Act version of TILA Section 163 and was inadvertently retained in the February 2010 Final Rule.

Section 226.5a Credit and Charge Card Applications and Solicitations

5a(b) Required Disclosures

5a(b)(1) Annual Percentage Rate

Limitations on Rate Decreases

Section 226.5a(b)(1) requires that the tabular disclosure provided with credit and charge card applications and solicitations state 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. Section 226.5a(b)(1)(i) clarifies this disclosure requirement when a rate is a variable rate. In part, § 226.5a(b)(1)(i) provides that a card issuer may not disclose any applicable limitations on rate increases or decreases in the table.

Section 226.55 sets forth limitations on rate increases applicable to credit card accounts under an open-end (not home-secured) consumer credit plan. Section 226.55(b)(2) provides that a card issuer may increase an annual percentage rate when (1) the rate varies according to an index that is not under the card issuer's control and is available to the general public, and (2) the rate increase is due to an increase in that index. In the February 2010 Final Rule, the Board adopted comment 55(b)(2)–2 that clarified that a card issuer exercises control over the operation of an index if the variable rate based on that index is subject to a fixed minimum rate or similar requirement that does not permit the variable rate to decrease consistent with reductions in the index.

The Board is proposing to amend § 226.5a(b)(1)(i) for conformity with comment 55(b)(2)–2. The Board is aware that, as a practical matter, § 226.55(b)(2) and comment 55(b)(2)–2 preclude card issuers from imposing a variable rate that is subject to a fixed minimum rate. Accordingly, the Board is proposing to delete as unnecessary language in § 226.5a(b)(1)(i) providing that a card issuer may not disclose any applicable limitations on rate decreases in the table. The Board notes that § 226.6(b)(2)(i)(A) contains analogous language regarding limitations on rate decreases. However, § 226.55(b)(2) applies only to credit card accounts under an open-end (not home-secured) consumer credit plan while § 226.6(b) applies to all open-end (not home-secured) credit. Therefore, the Board is not proposing to delete the reference to limitations on rate decreases from § 226.6(b)(2)(i)(A). *But see* the discussion in the supplementary information to § 226.9(c)(2)(v)(C) regarding the notice requirements that apply to an open-end (not home-secured) plan with a variable rate that is subject to a fixed minimum rate.

Loss of Employee Preferential Rates

If a rate may increase as a penalty for one or more events specified in the account agreement, § 226.5a(b)(1)(iv) requires that the card issuer disclose 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. This disclosure generally must appear in the § 226.5a table; however, § 226.5a(b)(1)(iv)(B) provides that, for introductory rates as defined in § 226.16(g)(2)(ii), the card 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. The Board adopted this format requirement for the disclosure regarding loss of an introductory rate in part due to concerns that including this information in the tabular disclosure could lead to "information overload." *See* 74 FR 5244, 5286.

The Board is aware that some issuers may offer preferential or reduced rates at account opening that are not "introductory rates" as defined in § 226.16(g)(2)(ii). For example, an issuer may offer a preferential rate to its employees. Eligibility for the preferential or reduced rate is conditioned upon the consumer's continued employment with the issuer. Accordingly, if the consumer's employment is terminated, the contract provides that the rate will increase from the reduced preferential rate to a higher rate, such as the standard rate on the account.[1]

[1] The Board notes that 45 days' advance notice is required pursuant to § 226.9(g) prior to imposition

The Board is proposing a new § 226.5a(b)(1)(iv)(C), which would require that disclosures regarding the loss of an employee preferential rate be placed directly below the tabular disclosure. New § 226.5a(b)(1)(iv)(C) would generally mirror § 226.5a(b)(1)(iv)(B) and would provide that if a card issuer discloses in the table a preferential annual percentage rate for which only employees of the creditor or employees of a third party are eligible, the card issuer must briefly disclose directly beneath the table the circumstances under which such preferential rate may be revoked, and the rate that will apply after such preferential rate is revoked. The Board believes that this placement requirement is appropriate in order to prevent "information overload" and to focus consumers' attention on the disclosures that they find the most important.

The Board is proposing a new comment 5a(b)(1)–5.iv to provide guidance regarding the disclosure below the table of the circumstances under which an employee preferential rate may be revoked. Comment 5a(b)(1)–5.iv would generally mirror relevant portions of the guidance set forth in comment 5a(b)(1)–5.iii regarding the revocation of introductory rates. In addition, proposed comment 5a(b)(1)–5.iv would clarify that the description of the circumstances in which an employee preferential rate could be revoked should be brief. For example, if an issuer may increase an employee preferential rate based upon termination of the employee's employment relationship with the issuer or a third party, the comment would clarify that an issuer may describe this circumstance as "if your employment with [issuer or third party] ends."

Proposed § 226.5a(b)(1)(iv)(C) would apply only to loss of employee preferential rates. The Board solicits comment on whether there are other types of preferential or reduced rates that are not introductory rates as defined in § 226.16(g)(2)(ii) but for which similar treatment under § 226.5a would be appropriate.

For the reasons discussed above, the Board also is proposing a new § 226.6(b)(2)(i)(D)(*3*) that would mirror proposed § 226.5a(b)(1)(iv)(C) and would require that brief disclosures regarding the loss of an employee preferential rate be placed directly below the tabular disclosure provided at account opening. The Board is also proposing conforming amendments to the formatting requirements set forth in §§ 226.5a(a)(2)(iii) and 226.6(b)(1)(ii).

Disclosure of How Long a Penalty Rate Will Remain in Effect

If a rate may increase as a penalty for one or more events specified in the account agreement, § 226.5a(b)(1)(iv) requires that the card issuer disclose 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. The Board understands that, in light of several provisions of the Credit Card Act, there may be confusion regarding how issuers must disclose the period for which the penalty rate will remain in effect. The Board understands that historically some issuers' card agreements provided that penalty rates, once triggered, could remain in effect indefinitely. However, the enactment of the Credit Card Act established certain circumstances in which a card issuer must reduce the rate even after penalty pricing has been triggered. In particular, § 226.55(b)(4) requires a card issuer to reduce a rate that was raised based upon a delinquency of more than 60 days, if the consumer makes the first six required minimum payments on time following the effective date of the rate increase. In addition, § 226.59 requires a card issuer to periodically review accounts on which a rate increase has been imposed and, where appropriate based on the review, reduce the rate applicable to the account.

As a consequence of § 226.55(b)(4) and 226.59, the Board understands that it may be unclear how issuers should disclose the duration for which a penalty rate will be in effect, for example if the contract provides that the penalty rate may remain in effect indefinitely, except to the extent otherwise required by §§ 226.55(b)(4) and 226.59. Accordingly, the Board is proposing to amend comment 5a(b)(1)–5.i to clarify that a card issuer may not disclose in the table any limitations imposed by §§ 226.55(b)(4) and 226.59 on the duration of increased rates. Proposed comment 5a(b)(1)–5.i would set forth two examples. First, the proposed comment states that if a card issuer reserves the right to apply the increased rate to any balances indefinitely, to the extent permitted by §§ 226.55(b)(4) and 226.59, the issuer should disclose that the penalty rate may apply indefinitely. The second example would provide that if the issuer generally provides that the increased rate will apply until the consumer makes twelve timely consecutive required minimum periodic payments, except to the extent that §§ 226.54(b)(4) and 226.59 apply, the issuer should disclose that the penalty rate will apply until the consumer makes twelve consecutive timely minimum payments.

The Board believes more complex disclosures explaining the applicability of the rules in §§ 226.55(b)(4) and 226.59 would be confusing to consumers, and would be of limited assistance in shopping for credit, given that those provisions apply to all issuers. In addition, consumers to whose accounts the cure right under § 226.55(b)(4) applies will be notified of that right when they receive a notice under § 226.9(c)(2) or 226.9(g) disclosing the associated rate increase.

Other Proposed Amendments to § 226.5a(b)(1)

The Board is proposing an amendment to comment 5a(b)(1)–5.ii to correct a technical error. As discussed above, pursuant to § 226.5a(b)(1)(iv)(B), information regarding the revocation of an introductory rate is required to be disclosed directly beneath the table. Comment 5a(b)(1)–5.ii, which discusses the disclosures regarding the revocation of an introductory rate, contains an erroneous reference to a disclosure *in,* rather than *beneath,* the table. Accordingly, the Board is proposing a technical amendment to comment 5a(b)(1)–5.ii for conformity with the placement requirements in § 226.5a(b)(1)(iv)(B).

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

Comment 5a(b)(2)–4 states that, if fees required to be disclosed are waived or reduced for a limited time, the introductory fees or the fact of fee waivers may be disclosed in the table in addition to the required fees if the card issuer also discloses how long the reduced fees or waivers will remain in effect. For the reasons discussed below, the Board would revise this comment to clarify that the card issuer must comply with the disclosure requirements in §§ 226.9(c)(2)(v)(B) and 226.55(b)(1).

5a(b)(5) Grace Period

Section 226.5a(b)(5) requires that the tabular disclosure provided with credit and charge card applications and solicitations state 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.

Comment 5a(b)(5)–1 states that an issuer that offers a grace period on all purchases and conditions the grace

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of the higher rate. *See* 74 FR 5346. In addition, the limitations set forth in § 226.55 apply.

period on the consumer paying his or her outstanding balance in full by the due date each billing cycle, or on the consumer paying the outstanding balance in full by the due date in the previous and/or the current billing cycle(s) will be deemed to meet the requirements in § 226.5a(b)(5) by providing the following disclosure, as applicable: "Your due date is [at least] ___ days after the close of each billing cycle. We will not charge you any interest on purchases if you pay your entire balance by the due date each month." This model language was developed through extensive consumer testing.

In the February 2010 Final Rule, the Board adopted comment 5a(b)(5)–4, which clarifies that § 226.5a(b)(5) does not require a card issuer to disclose the limitations on the imposition of finance charges in § 226.54. Implementing the Credit Card Act, § 226.54 provides that, when a consumer pays some but not all of the balance subject to a grace period prior to the expiration of the grace period, the card issuer is prohibited from imposing finance charges on the portion of the balance paid. In adopting comment 5a(b)(5)–4, the Board was concerned that the inclusion of language attempting to describe the limitations set forth in § 226.54 could reduce the effectiveness of the grace period disclosure. The Board also stated its belief that a disclosure of the limitations set forth in § 226.54 is not necessary insofar as the model language set forth in comment 5a(b)(5)–1 accurately states that a consumer generally will not be charged any interest on purchases if the entire balance is paid by the due date each month. Thus, although § 226.54 limits the imposition of finance charges if the consumer pays less than the entire balance shown on the periodic statement, the model language achieves its intended purpose of explaining succinctly how a consumer can avoid all interest charges on purchases.

Many issuers offer a grace period on all purchases under which no interest will be charged on purchases shown on a periodic statement if a consumer pays his or her outstanding balance shown on the periodic statement in full by the due date in the previous and/or the current billing cycle(s). Many of these issuers are using the model language set forth in comment 5a(b)(5)–1, or substantially similar language, to describe the grace period and the conditions on its availability. Nonetheless, other issuers have chosen not to use the model language set forth in comment 5a(b)(5)–1, even though the issuers would be permitted to do so. Some of the issuers that have chosen not to use the model language are disclosing the grace period in more technical detail, including a discussion of the limitations on imposition of finance charges under § 226.54, and the impact of payment allocation on whether interest will be charged on purchases due to the loss of a grace period. Other issuers are including detailed language to explain the conditions on the grace period, such as an explanation that the consumer will not be charged any interest on new purchases, or any portion of a new purchase, paid by the due date on the consumer's current billing statement if the consumer paid his or her entire balance on the previous billing statement in full by the due date on that statement.

As discussed above, the Board believes the inclusion of language attempting to describe the limitations set forth in § 226.54 or the impact of payment allocation on whether interest will be charged on purchases due to the loss of a grace period could reduce the effectiveness of the grace period disclosure. Thus, the Board proposes to revise comment 5a(b)(5)–1 to clarify that issuers must not disclose in the table required by § 226.5a the limitations on the imposition of finance charges as a result of a loss of a grace period in § 226.54, or the impact of payment allocation on whether interest is charged on purchases as a result of a loss of a grace period. However, issuers would not be prohibited from disclosing this information outside the table. Comment 5a(b)(5)–4, which states that card issuers are not required to disclose the limitations set forth in § 226.54, would be deleted.

In addition, the Board proposes to revise comment 5a(b)(5)–1 to clarify that, for purposes of the tabular disclosures required by § 226.5a, certain issuers must use the disclosure language set forth in proposed comment 5a(b)(5)–1. Specifically, proposed comment 5a(b)(5)–1 notes that some issuers may offer a grace period on all purchases under which interest will not be charged on purchases if the consumer pays the outstanding balance shown on a periodic statement in full by the due date shown on that statement for one or more billing cycles. The proposed comment clarifies that in these circumstances, § 226.5a(b)(5) requires that the issuer disclose the grace period and the conditions for its applicability using the following language, or substantially similar language, as applicable: "Your due date is [at least] __ days after the close of each billing cycle. We will not charge you any interest on purchases if you pay your entire balance by the due date each month." As discussed above, this disclosure language was developed through extensive consumer testing, and the Board believes this disclosure language achieves its intended purpose of explaining succinctly how a consumer can avoid all interest charges on purchases.

The Board recognizes that some issuers may structure their grace periods differently than as described above, and the disclosure language described above may not be accurate for those issuers. Proposed comment 5a(b)(5)–1 notes that some issuers may offer a grace period on all purchases under which interest may be charged on purchases even if the consumer pays the outstanding balance shown on a periodic statement in full by the due date shown on that statement each billing cycle. For example, an issuer may charge interest on purchases if the consumer uses the account for a cash advance, regardless of whether the outstanding balance shown on the periodic statement is paid in full by the due date shown on that statement. In these circumstances, § 226.5a(b)(5) requires the issuer to amend the above disclosure language to describe accurately the conditions on the applicability of the grace period. Nonetheless, under the proposal, these issuers in disclosing the grace period and the conditions on its availability in the § 226.5a table still may not disclose the limitations on the imposition of finance charges as a result of a loss of a grace period in § 226.54, or the impact of payment allocation on whether interest is charged on purchases as a result of a loss of a grace period.

5a(b)(6) Balance Computation Method

Section 226.5a(b)(6) requires that a card issuer disclose on or with a credit card application or solicitation information about the method it uses to determine the balance for purchases on which the finance charge is computed. Comment 5a(b)(6)–1 provides guidance on how to comply with this requirement to disclose balance computation information for purchase balances. This comment also contains a cross-reference to the commentary to § 226.5a(g) for guidance on particular balance computation methods. There currently is no commentary to § 226.5a(g), so this cross-reference would be deleted as obsolete.

Section 226.6—Account-Opening Disclosures

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

6(b)(2) Required Disclosures for Account-Opening Table for Open-End (Not Home-Secured) Plans

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

The Board proposes to replace the reference to "card issuer" in § 226.6(b)(2)(i)(B) with "creditor" in order to correct a typographical error and to provide clarity and consistency with the scope of § 226.6(b).

In addition, for the reasons discussed in the supplementary information to § 226.5a(b)(1), the Board is proposing a new § 226.6(b)(2)(i)(D)(*3*) that would require that certain information regarding revocation of an employee preferential rate be disclosed directly beneath the account-opening table.

6(b)(2)(v) Grace Period

Section 226.6(b)(2)(v) requires that the account-opening summary table state the date by which or the period within which any credit 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.

Many creditors offer a grace period on purchases, but do not offer a grace period on cash advances and balance transfers. Samples G–17(B) and G–17(C) provide guidance on complying with § 226.6(b)(2)(v) when a creditor offer a grace period on purchases but no grace period on balance transfers and cash advances. *See* comment 6(b)(2)(v)–3. Specifically, Samples G–17(B) and G–17(C) contain the following model language to meet the requirements in § 226.6(b)(2)(v): "Your due date is [at least] __ days after the close of each billing cycle. We will not charge you any interest on purchases if you pay your entire balance by the due date each month. We will begin charging interest on cash advances and balance transfers on the transaction date." This model language was developed through extensive consumer testing.

Comment 6(b)(2)(v)–1 provides model language for creditors to use when they provide a grace period on all types of transactions for the account. Specifically, this comment states that an issuer that offers a grace period on all types of transactions for the account and conditions the grace period on the consumer paying his or her outstanding balance in full by the due date each billing cycle, or on the consumer paying the outstanding balance in full by the due date in the previous and/or the current billing cycle(s) will be deemed to meet the requirements in § 226.6(b)(2)(v) by providing the following disclosure, as applicable: "Your due date is [at least] __ days after the close of each billing cycle. We will not charge you any interest on your account if you pay your entire balance by the due date each month."

In addition, for the reasons discussed in the section-by-section analysis to § 226.5a(b)(5), in the February 2010 Final Rule, the Board adopted comment 6(b)(2)(v)–4, which clarifies that § 226.6(b)(2)(v) does not require a card issuer to disclose the limitations on the imposition of finance charges in § 226.54. Implementing the Credit Card Act, § 226.54 provides that, when a consumer pays some but not all of the balance subject to a grace period prior to the expiration of the grace period, the card issuer is prohibited from imposing finance charges on the portion of the balance paid. In adopting comment 6(b)(2)–4, the Board was concerned that the inclusion of language attempting to describe the limitations set forth in § 226.54 could reduce the effectiveness of the grace period disclosure.

As discussed above, many creditors offer a grace period on purchases, but do not offer a grace period on cash advances and balance transfers. Many of these creditors are using the model language set forth in Samples G–17(B) and G–17(C), or substantially similar language, to meet the requirements in § 226.6(b)(2)(v). Nonetheless, other creditors have chosen not to use this model language, even though the creditors would be permitted to do so. Some of the creditors that have chosen not to use the model language are disclosing the grace period for purchases in more technical detail, including a discussion of the limitations on imposition of finance charges under § 226.54, and the impact of payment allocation on whether interest will be charged on purchases due to the loss of a grace period. Other creditors are including detailed language to explain the conditions on the grace period for purchases, such as an explanation that the consumer will not be charged any interest on new purchases, or any portion of a new purchase, paid by the due date on the consumer's current billing statement if the consumer paid his or her entire balance on the previous billing statement in full by the due date on that statement.

Consistent with proposed changes to comment 5a(b)(5)–1 and for the reasons discussed in the section-by-section analysis to § 226.5a(b)(5), the Board proposes to revise comment 6(b)(2)(v)–1 to clarify that creditors must not disclose in the table required by § 226.6(b) the limitations on the imposition of finance charges as a result of a loss of a grace period in § 226.54, or the impact of payment allocation on whether interest is charged on transactions as a result of a loss of a grace period. The Board believes the inclusion of language attempting to describe the limitations set forth in § 226.54 and the impact of payment allocation on whether interest will be charged on transactions due to the loss of a grace period could reduce the effectiveness of the grace period disclosure required by § 226.6(b)(2)(v). Comment 6(b)(2)(v)–4, which states that card issuers are not required to disclose the limitations set forth in § 226.54, would be deleted.

In addition, consistent with proposed changes to comment 5a(b)(5)–1 and for the reasons discussed in the section-by-section analysis to § 226.5a(b)(5), the Board proposes to revise comment 6(b)(2)(v)–3 to clarify that § 226.6(b)(2)(v) requires certain creditors that provide a grace period on purchases but not on cash advances and balance transfers to use the disclosure language this is currently set forth in Samples G–17(B) and G–17(C). Specifically, proposed comment 6(b)(2)(v)–3 notes that some creditors do not offer a grace period on cash advances and balance transfers, but offers a grace period for all purchases under which interest will not be charged on purchases if the consumer pays the outstanding balance shown on a periodic statement in full by the due date shown on that statement for one or more billing cycles. Proposed comment 6(b)(2)(v)–3 clarifies that in these circumstances, § 226.6(b)(2)(v) requires that the creditor disclose the grace period for purchases and the conditions for its applicability, and the lack of a grace period for cash advances and balance transfers using the following language, or substantially similar language, as applicable: "Your due date is [at least] __ days after the close of each billing cycle. We will not charge you any interest on purchases if you pay your entire balance by the due date each month. We will begin charging interest on cash advances and balance transfers on the transaction date." This disclosure language, which also is set forth in the "Paying Interest" row in Samples G–17(B) and G–17(C), was developed through extensive consumer testing. The Board believes this disclosure language achieves its intended purpose of explaining succinctly how a consumer can avoid all interest charges on purchases, while explaining that no grace period is offered for cash advances and balance transfers.

The Board recognizes that some creditors may offer a grace period on purchases but structure their grace periods differently than as described above, and the disclosure language described above may not be accurate for those creditors. Proposed comment 6(b)(2)(v)–3 notes that some creditors may offer a grace period on all purchases under which interest may be charged on purchases even if the consumer pays the outstanding balance shown on a periodic statement in full by the due date shown on that statement each billing cycle. For example, a creditor may charge interest on purchases if the consumer uses the account for a cash advance, regardless of whether the outstanding balance shown on the periodic statement is paid in full by the due date shown on that statement. Proposed comment 6(b)(2)(v)–3 clarifies that in these circumstances, § 226.6(a)(2)(v) requires the creditor to amend the above disclosure language to accurately describe the conditions on the applicability of the grace period. Nonetheless, under the proposal, these creditors in disclosing the grace period and the conditions on its availability still may not disclose the limitations on the imposition of finance charges as a result of a loss of a grace period in 226.54, or the impact of payment allocation on whether interest is charged on purchases as a result of a loss of a grace period.

Similarly, some creditors may not offer a grace period on cash advances and balance transfers, and will begin charging interest on these transactions from a date other than the transaction date, such as the posting date. Proposed comment 6(b)(2)(v)–3 clarifies that in these circumstances, § 226.6(a)(2)(v) requires the creditor to amend the above disclosure language to be accurate.

Consistent with the proposed changes to comment 6(b)(2)(v)–3, the Board also proposes changes to comment 6(b)(2)(v)–1 which discusses circumstances where a creditor offers a grace period on all types of transactions on the account, including purchases, cash advances, and balances transfers. Specifically, proposed comment 6(b)(2)(v)–1 notes that some creditors may offer a grace period on all types of transactions under which interest will not be charged on transactions if the consumer pays the outstanding balance shown on a periodic statement in full by the due date shown on that statement for one or more billing cycles. In these circumstances, § 226.6(b)(2)(v) requires that the creditor disclose the grace period and the conditions for its applicability using the following language, or substantially similar language, as applicable: "Your due date is [at least] __ days after the close of each billing cycle. We will not charge you any interest on your account if you pay your entire balance by the due date each month." Proposed comment 6(b)(2)(v)–1 also notes that other creditors may offer a grace period on all types of transactions under which interest may be charged on transactions even if the consumer pays the outstanding balance shown on a periodic statement in full by the due date shown on that statement each billing cycle. This proposed comment clarifies that in these circumstances, § 226.6(b)(2)(v) requires the creditor to amend the above disclosure language to describe accurately the conditions on the applicability of the grace period.

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

Section 226.6(b)(2)(vi) requires that a creditor disclose information about balance computation methods as part of the account-opening disclosures. Specifically, § 226.6(b)(2)(vi) provides that a creditor must disclose 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 § 226.6(b)(4)(i)(D) is provided with the account-opening disclosures. The information required by § 226.6(b)(2)(vi) must appear directly beneath the account-opening summary table. *See* § 226.6(b)(2)(ii).

The names of the balance computation methods listed in § 226.5a(g) describe balance computation methods for purchases (*e.g.,* "*average daily balance (including new purchases)*" and "*average daily balance (excluding new purchases)*"). Nonetheless, unlike § 226.5a(b)(6), creditors are required in § 226.6(b)(2)(vi) to disclose the balance computation method used for each feature on the account. Samples G–17(B) and G–17(C) provide guidance on how to disclose the balance computation method where the same method is used for all features on the account. *See* comment 6(b)(2)(vi)–1. Samples G–17(B) and G–17(C) disclose, as an example, the "*average daily balance (including new purchases)*" as the method that is being used to calculate the balance for all features on the account. Thus, for simplicity, where the balance for each feature is computed using the same balance computation method, a creditor may use the name of the appropriate balance computation method listed in § 226.5a(g) (*e.g.,* "*average daily balance (including new purchases)*") to satisfy the requirement to disclose the name of the method for all features on the account, even though the name only refers to purchases.

Questions have been asked, however, regarding whether a creditor may revise the names of the balance computation methods listed in § 226.5a(g) to be more accurate by referring more broadly to all new transactions (rather than referring only to "new purchases") when the same method is used to calculate the balances for all features on the account. For example, creditors have asked whether they can revise the name listed in § 226.5a(g)(i) to disclose it as "*average daily balance (including new transactions)*" when this method is used to calculate the balances for all features of the account. Also, creditors have asked whether they may revise the names listed in § 226.5a(g) to be applicable to features other than purchases. Creditors in some cases may disclose the balance computation methods separately for each feature, such as when a different balance computation method applies to purchases than to cash advances.

To address these compliance issues and to provide additional flexibility to creditors, the Board proposes to revise comment 6(b)(2)(vi)–1 to provide that in cases where the balance for each feature is computed using the same balance computation method, a single identification of the name of the balance computation method is sufficient. In that case, the proposed comment makes explicitly clear that a creditor may use an appropriate name listed in § 226.5a(g) (*e.g.,* "*average daily balance (including new purchases)*") to satisfy the requirement to disclose the name of the method for all features on the account, even though the name only refers to purchases. For example, if a creditor uses the average daily balance method including new transactions as the balance computation method for all features, a creditor may use the name "*average daily balance (including new purchases)*" listed in § 226.5a(g)(i) to satisfy the requirement to disclose the name of the balance computation method for all features. As an alternative, the proposed comment provides that a creditor may revise the balance computation names listed in § 226.5a(g) to refer more broadly to all new credit transactions, such as using the language "new transactions" or "current transactions" (*e.g.,* "*average daily balance (including new transactions)*"), rather than simply referring to new purchases when the same method is used to calculate the balances for all features of the account.

In addition, the Board proposes to add comment 6(b)(2)(vi)–2 to address situations where a creditor is disclosing the name of the balance computation methods separately for each feature. In that case, in using the names listed in § 226.5a(g) to satisfy the requirements of § 226.6(b)(2)(vi) for features other than purchases, a creditor must revise the names listed in § 226.5a(g) to refer to the other features. For example, when disclosing the name of the balance computation method applicable to cash advances, a creditor must revise the name listed in § 226.5a(g)(i) to disclose it as "*average daily balance (including new cash advances)*" when the balance for cash advances is figured by adding the outstanding balance (including new cash advances and deducting payments and credits) for each day in the billing cycle, and then dividing by the number of days in the billing cycle. Similarly, a creditor must revise the name listed in § 226.5a(g)(ii) to disclose it as "*average daily balance (excluding new cash advances)*" when the balance for cash advances is figured by adding the outstanding balance (excluding new cash advances and deducting payments and credits) for each day in the billing cycle, and then dividing by the number of days in the billing cycle.

Section 226.7 Periodic Statement

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

7(b)(5) Balance on Which Finance Charge Computed

Section 226.7(b)(5) provides that a creditor must disclose on the periodic statement 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.* 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.

Comment 7(b)(5)–7 provides guidance on the use of one balance computation method explanation or name when multiple balances are disclosed. Specifically, comment 7(b)(5)–7 notes that sometimes the creditor will disclose more than one balance to which a periodic rate was applied, even though each balance was computed using the same balance computation method. For example, if a plan involves purchases and cash advances that are subject to different rates, more than one balance must be disclosed, even though the same computation method is used for determining the balance for each feature. In these cases, one explanation or a single identification of the name of the balance computation method is sufficient. In addition, sometimes the creditor separately discloses the portions of the balance that are subject to different rates because different portions of the balance fall within two or more balance ranges, even when a combined balance disclosure would be permitted under comment 7(b)(5)–1. In these cases, one explanation or a single identification of the name of the balance computation method is also sufficient (assuming, of course, that all portions of the balance were computed using the same method).

The comment does not specify, however, whether in this case a creditor may use the balance computation method names listed in § 226.5a(g) (*e.g.,* "*average daily balance (including new purchases)*") as the single identification of the name of the balance computation method used for all features, even though the name only refers to purchases. In addition, as discussed in the section-by-section analysis to § 226.6(b)(2)(vi), questions have been asked as to whether a creditor may revise the names of the balance computation methods listed in § 226.5a(g) to refer more broadly to all new transactions (rather than referring only to "new purchases") when the same method is used to calculate the balances for all features on the account. For example, creditors have asked whether they may revise the name listed in § 226.5a(g)(i) to disclose it as "*average daily balance (including new transactions)*" when this method is used to calculate the balances for all features of the account. Also, creditors have asked whether they may revise the names listed in § 226.5a(g) to be applicable to features other than purchases. Creditors in some cases may disclose the balance computation methods separately for each feature, such as when a different balance computation method applies to purchases than for cash advances.

To address these compliance issues and to provide additional flexibility to creditors, consistent with proposed guidance in comment 6(b)(2)(vi), the Board proposes to revise comment 7(b)(5)–7 to provide that in cases where each balance was computed using the same balance computation method, a creditor may use an appropriate name listed in § 226.5a(g) (*e.g.,* "*average daily balance (including new purchases)*") as the single identification of the name of the balance computation method applicable to all features, even though the name only refers to purchases. For example, if a creditor uses the average daily balance method including new transactions as the balance computation method for all features, a creditor may use the name "*average daily balance (including new purchases)*" listed in § 226.5a(g)(i) to satisfy the requirement to disclose the name of the balance computation method for all features. As an alternative, the proposed comment provides that a creditor may revise the balance computation names listed in § 226.5a(g) to refer more broadly to all new credit transactions, such as using the language "new transactions" or "current transactions" (*e.g.,* "*average daily balance (including new transactions)*"), rather than simply referring to new purchases when the same method is used to calculate the balances for all features of the account.

Also consistent with proposed comment 6(b)(2)(vi)–2, the Board proposes to add a new comment 7(b)(5)–8 to address situations where a creditor is disclosing the name of the balance computation methods separately for each feature. Proposed comment 7(b)(5)–8 provides that in those cases, where a creditor is using the names listed in § 226.5a(g) to satisfy the requirements of § 226.7(b)(5) for features other than purchases, a creditor must revise the names listed in § 226.5a(g) to refer to the other features. For example, when disclosing the name of the balance computation method applicable to cash advances, a creditor must revise the name listed in § 226.5a(g)(i) to disclose it as "*average daily balance (including new cash advances)*" when the balance for cash advances is figured by adding the outstanding balance (including new cash advances and deducting payments and credits) for each day in the billing cycle, and then dividing by the number of days in the billing cycle. Similarly, a creditor must revise the name listed in § 226.5a(g)(ii) to disclose it as "*average daily balance (excluding new cash advances)*" when the balance for cash advances is figured by adding the outstanding balance (excluding new cash advances and deducting payments and credits) for each day in the billing cycle, and then dividing by the number of days in the billing cycle.

7(b)(6) Charges Imposed

Section 226.7(b)(6) generally requires the disclosure of the amounts of any charges imposed on a plan, which consists of finance charges attributable to periodic interest rates (disclosed as *Interest Charged*), and charges imposed as part of a plan other than charges attributable to periodic interest rates (disclosed as *Fees*). In addition, calendar year to date totals for both interest and fees must be disclosed. Comment 7(b)(6)–3 provides guidance for disclosing calendar-year-to-date totals for fees. In order to avoid inconsistency, the Board proposes to amend comment 7(b)(6)–3 to clarify that this guidance applies to fees as well as interest charged.

7(b)(12) Repayment Disclosures

Section 226.7(b)(12) requires that for a credit card account under an open-end (not home-secured) consumer credit plan, card issuers generally must disclose the following repayment 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 length of time it would take to repay the outstanding balance if the consumer pays only the required minimum monthly payments and no further advances are made; (3) the total cost to the consumer of paying the balance in full if the consumer pays only the required minimum monthly payment and 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 not further advances are made; (5) the total cost to the consumer of paying the balance in full if the consumer pays the balance over 36 months; (6) the total savings of paying the balance in 36 months (rather than making only minimum payments); and (7) a toll-free telephone number at which the consumer may receive information about accessing consumer credit counseling. *See* § 226.7(b)(12)(i).

To simplify the disclosures, § 226.7(b)(12)(i) and (ii) provide that card issuers must round the following disclosures to the nearest whole dollar when disclosing them on the periodic statement: (1) The minimum payment total cost estimate, (2) the estimated monthly payment for repayment in 36 months, (3) the total cost estimate for repayment in 36 months, and (4) the savings estimate for repayment in 36 months. *See* § 226.7(b)(12)(i)(C), (b)(12)(i)(F)(*1*)(*i*), (b)(12)(i)(F)(*1*)(*iii*), (b)(12)(i)(F)(*1*)(*iv*) and (b)(12)(ii)(C). Some card issuers have requested, however, that they be permitted to provide these disclosures on the periodic statement rounded to the nearest cent to be more accurate and to avoid potential consumer confusion that rounding to the dollar might cause in certain circumstances. For example, assume that a consumer's balance is $3,000 and the APR on the account is 14.4%. The estimated monthly payment to repay the balance in 36 months would be $103.12 (rounded to the nearest cent). A card issuer would be required to disclose on the periodic statement the estimated monthly payment for repayment in 36 months as $103, and the total cost estimate for repayment in 36 months as $3,712. (The total cost estimate for repayment in 36 months is calculated by multiplying $103.12 times 36, and rounding that result to the nearest whole dollar.) Nonetheless, if a consumer pays $103 each month for 36 months, the consumer will have paid only $3,708 (not the $3,712 shown on the statement). Thus, rounding the disclosures to whole dollars when providing them on the periodic statement in some cases may make the disclosures appear to be inconsistent with each other.

To provide additional flexibility to card issuers, the Board proposes to revise § 226.7(b)(12)(i) and (b)(12)(ii) to allow card issuers, at their option, to provide the following disclosures on the periodic statement either rounded to the nearest whole dollar or to the nearest cent: (1) The minimum payment total cost estimate, (2) the estimated monthly payment for repayment in 36 months, (3) the total cost estimate for repayment in 36 months, and (4) the savings estimate for repayment in 36 months. Nonetheless, proposed comment 7(b)(12)–1 would provide that an issuer's rounding for all of these disclosures must be consistent. An issuer may round all of these disclosures to the nearest whole dollar when providing them on periodic statements, or may round all of these disclosures to the nearest cent. An issuer may not, however, round some of the disclosures to the nearest whole dollar, while rounding other disclosures to the nearest cent. Requiring an issuer to be consistent in how it rounds these disclosures helps to ensure that these disclosures remain consistent with each other.

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

Section 226.7(b)(14) generally requires disclosure of the date by which any outstanding balance subject to a deferred interest or similar program must be paid in full in order to avoid finance charges on the front of each periodic statement issued during the deferred interest period. In order to avoid potential confusion, the Board proposes to amend § 226.7(b)(14) to clarify that the disclosure required by § 226.7(b)(14) may be on the front of any page of each periodic statement issued during the deferred interest period that reflects the deferred interest or similar transaction. The Board believes this clarification will ensure that consumers continue to receive conspicuous disclosure of the end of the deferred interest period and also provides greater certainty and flexibility to creditors in order to facilitate compliance. Accordingly, the Board also proposes to amend the example in comment 7(b)–1.iv for consistency with the proposed revision.

Section 226.9 Subsequent Disclosure Requirements

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

9(b)(3) Checks That Access a Credit Card Account

Section 226.9(b)(3) sets forth requirements for disclosures that must be provided with checks that access a credit card account. These disclosures set forth certain key terms, such as the rates that will apply to the checks, any transaction fees applicable to the checks, and whether or not a grace period is given within which any credit extended by use of the checks may be repaid without incurring interest charges. The Board is proposing to clarify that if any rate disclosed pursuant to § 226.9(b)(3) is a variable rate, the card issuer must disclose that the rate may vary and how the rate is determined. The Board believes that it is appropriate that consumers be informed if the rates that apply to checks that access a credit card account are variable rates, to better assist consumers with making an informed decision regarding use of the checks.

Proposed § 226.9(b)(3)(iii) would generally mirror the disclosure requirements for variable rates set forth in §§ 226.5a(b)(1)(i) and 226.6(b)(2)(i)(A). Proposed § 226.9(b)(3)(iii) provides that if any annual percentage rate required to be disclosed pursuant to § 226.9(b)(3)(i) is a variable rate, the card issuer must 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. In addition, a card issuer may not disclose any applicable limitations on rate increases in the table. The Board believes that the approach in §§ 226.5a(b)(1)(i) and 226.6(b)(2)(i)(A), which was based in part on consumer testing conducted on behalf of the Board, strikes the appropriate balance between informing consumers of key information regarding the variable rate or rates while avoiding overly detailed information that may be confusing to consumers.

Section 226.9(b)(3)(i) requires that the disclosures given in connection with checks that access a credit card account be in the form of a table with headings, content, and form substantially similar to Sample G–19. The Board has been asked whether the "substantially similar" standard would permit a card issuer to provide a combined table that discloses the terms applicable both to access checks and other types of transactions. The Board is proposing a new comment 9(b)(3)(i)–2 to clarify that a card issuer may include in the tabular disclosure provided pursuant to § 226.9(b)(3) disclosures regarding the terms offered on non-check transactions, provided that such transactions are subject to the same terms that are required to be disclosed pursuant to § 226.9(b)(3)(i) for the checks that access a credit card account. Proposed comment 9(b)(3)(i)–2 would further state, however, that a card issuer may not include in the table information regarding additional terms that are not required disclosures for access checks pursuant to § 226.9(b)(3).

The Board believes that if a card issuer offers a single set of terms that apply both to checks that access a credit card account and to other transactions, it is appropriate to permit the card issuer to present one combined tabular disclosure. For example, a card issuer may offer a single set of promotional terms that apply both to checks that access a credit card account and to balance transfers made without use of an access check. Under these circumstances, the Board believes that it is unnecessary to require card issuers to provide two substantively identical but separate sets of disclosures, one for check transactions and one for other balance transfers. Accordingly, the Board believes that proposed comment 9(b)(3)(i)–2 would ensure that consumers continue to receive clear disclosures regarding checks that access a credit card account, while at the same time minimizing the operational burden that would be associated with providing two sets of disclosures of substantively identical terms.

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

Comment 9(c)(2)–1 states that, except as provided in § 226.9(g)(1), no notice of a change in terms need be given if the specific change is set forth initially, such as rate increases under a properly disclosed variable-rate plan in accordance with § 226.9(c)(2)(v)(C). The Board would revise this comment to clarify that the initial disclosure of the change must be provided consistent with any applicable requirements. For example, no notice of a change in terms is required when a promotional rate expires, provided that the card issuer disclosed the terms associated with that promotional rate consistent with § 226.9(c)(2)(v)(B).

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

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

Section 226.9(c)(2) sets forth the change-in-terms notice requirements for open-end consumer credit plans that are not home-secured. Section 226.9(c)(2)(i) states that, when a significant change in account terms as described in § 226.9(c)(2)(ii) is made to a term required to be disclosed under § 226.6(b)(3), (b)(4), or (b)(5), a creditor must generally provide a written notice at least 45 days prior to the effective date of the change. Section 226.9(c)(2)(i) defines a "significant change in account terms" as a change to a term required to be disclosed under § 226.6(b)(1) and (b)(2), an increase in the required minimum periodic payment, or the acquisition of a security interest.

The Board is aware that some confusion has arisen regarding the references to § 226.6(b)(3), (b)(4), and (b)(5) contained in § 226.9(c)(2). In particular, given that "significant change in account terms" is defined in § 226.9(c)(2)(ii) generally with respect to terms required to be disclosed in the account-opening table under § 226.6(b)(1) and (b)(2), several creditors have asked the Board to clarify what advance notice requirements apply when a change is made to a term required to be disclosed under § 226.6(b)(3), (b)(4), or (b)(5) that (1) may impact a term required to be disclosed in the account-opening table pursuant to § 226.6(b)(1) and (b)(2), but (2) is not a term that itself is required or permitted to be included in the account-opening table. For example, the Board has been asked whether 45 days' advance notice is required prior to changing the schedule on which the value of a variable annual percentage rate is adjusted, if the formula for computing the value of the variable rate otherwise remains the same (*i.e.,* based on the same index and margin). The Board notes that the variable annual percentage rate is a term required to be disclosed pursuant to § 226.6(b)(1) and (b)(2). In contrast, the schedule on which the rate is computed is not required or permitted to be disclosed in the tabular disclosure pursuant to § 226.6(b)(1) and (b)(2). However, the schedule on which the rate is computed is required to be disclosed at account opening outside of the table pursuant to § 226.6(b)(4).

The Board is proposing several amendments to § 226.6(b)(1) and (b)(2) to clarify the advance notice requirements for changes to terms specified in § 226.6(b)(3), (b)(4), or (b)(5) that are not also terms required to be disclosed under § 226.6(b)(1) and (b)(2). First, the Board is proposing to delete as unnecessary the references to § 226.6(b)(3), (b)(4) and (b)(5), as well as a reference to increases in the required minimum periodic payment, from § 226.9(c)(2)(i). The Board believes that for clarity the term "significant change in account terms" should be defined exclusively in § 226.9(c)(2)(ii) and that deletion of the references to § 226.6(b)(3), (b)(4) and (b)(5) and increases in the required minimum periodic payment in § 226.9(c)(2)(i) will alleviate confusion regarding compliance with the change-in-terms notice requirements.

Second, the Board is proposing to amend the definition of "significant change in account terms" in § 226.9(c)(2)(ii) to clarify to which terms the 45-day advance notice requirements in § 226.9(c)(2) apply. Section 226.9(c)(2)(ii) would be amended to define "significant change in account terms" as a change to a term required to be disclosed under § 226.6(b)(1) and (b)(2), an increase in the required minimum periodic payment, a change to a term required to be disclosed under § 226.6(b)(4), or the acquisition of a security interest.

The Board notes that proposed § 226.9(c)(2)(ii) would not specifically identify changes in terms required to be disclosed under § 226.6(b)(3) in the list of "significant change[s] in account terms." The Board believes that a reference to § 226.6(b)(3) is unnecessary, for several reasons. Section 226.6(b)(3) addresses disclosure of charges imposed as part of an open-end (not home-secured) plan. Certain charges imposed as part of a plan are specifically required to be disclosed in the account-opening table under § 226.6(b)(1) and (b)(2), while other charges imposed as part of the plan are not required or permitted to be disclosed in the table. Therefore, the 45-day advance notice requirement would continue to apply to charges that are identified in § 226.6(b)(3) that are also required to be disclosed in the account-opening table under § 226.6(b)(1) and (b)(2). In addition, § 226.9(c)(2)(iii) sets forth a special rule for notice of changes to charges imposed as part of the plan that are not required to be disclosed in the account-opening table. In particular, for charges imposed as part of the plan under § 226.6(b)(3) that are not required to be disclosed in the account-opening table under § 226.6(b)(1) and (b)(2), § 226.9(c)(2)(iii) requires a creditor to either, at its option (1) provide at least 45 days' written advance notice before the change becomes effective, or (2) provide notice orally or in writing of the amount of the charge to an affected consumer at a relevant time before the consumer agrees to or becomes obligated to pay the charge. The Board is proposing one wording change to § 226.9(c)(2)(iii) and comment 9(c)(2)(iii)–1; the Board proposes to replace the word "may" with "must," in order to clarify that increases in, or the introduction of new, charges imposed as part of the plan under § 226.6(b)(3) must be disclosed in accordance with § 226.9(c)(2)(iii).

Proposed § 226.9(c)(2)(ii) would specifically categorize changes in terms required to be disclosed under § 226.6(b)(4) as "significant change[s] in account terms." Section 226.6(b)(4) requires disclosure of certain information regarding periodic rates that may be used to calculate interest. The Board believes that changes in the manner in which annual percentage rates are computed are significant changes because they may impact the amount of interest imposed on a consumer's account, which is one of the key costs associated with open-end (not home-secured) credit. While certain details regarding rates mandated by § 226.6(b)(4) are not required or permitted to be disclosed in the account-opening table, changes in the manner in which an interest rate is computed may have a direct impact on the annual percentage rate expressed as a yearly rate, which is a required disclosure in the account-opening table under § 226.6(b)(1) and (b)(2). For example, for variable rates § 226.6(b)(4) requires disclosure of the frequency with which the rate may increase and the circumstances under which the rate may increase, both of which may impact the computation of the rate required to be disclosed in the account-opening table. Thus, the Board believes that 45 days' advance notice of such changes is appropriate to ensure that consumers can take actions to mitigate the potential impact of changes in the way in which the annual percentage rate or rates applicable to their accounts are computed.

Finally, unlike current § 226.9(c)(2)(i), the definition of "significant change[s] in account terms" in proposed § 226.9(c)(2)(ii) would not expressly reference the disclosures required by § 226.6(b)(5). Section 226.6(b)(5) requires that a creditor disclose, to the extent applicable, certain information regarding voluntary credit insurance, debt cancellation or debt suspension coverage, security interests, and a statement regarding the consumer's billing rights. The disclosures regarding voluntary credit insurance and similar products and the statement of billing rights set forth in § 226.6(b)(5) are not terms of the account, but specific forms of disclosures that must be given. Accordingly, given that these are not terms of the account, the Board believes that there are no corresponding changes in terms for which it is appropriate to require advance notice.[2] In contrast, in the February 2010 Final Rule, the Board expressly included the acquisition of a security interest in the definition of "significant change in account terms" for which 45 days' advance notice must generally be provided.

9(c)(2)(iv) Disclosure Requirements

As discussed above, the Board is proposing to amend § 226.9(c)(2)(ii) to expressly provide that changes to terms required to be disclosed under § 226.6(b)(4) are "significant change[s] in account terms." The Board is proposing several conforming changes to § 226.9(c)(2)(iv), which sets forth the disclosure requirements for the 45-day advance notice of a significant change in account terms. First, the Board is proposing to amend § 226.9(c)(iv)(A)(*1*) to provide that the notice must include a summary of changes made to terms required to be disclosed under § 226.6(b)(4). Second, the Board is proposing to amend § 226.9(c)(2)(iv)(D)(*1*) to clarify the formatting requirements for the notice provided in advance of a change to a term required to be disclosed under § 226.6(b)(4). Section 226.9(c)(2)(iv)(D)(*1*) generally requires that the summary of changes included with a change-in-terms notice be in a tabular format, with headings and format substantially similar to any of the account-opening tables found in G–17 to appendix G. However, terms required to be disclosed under § 226.6(b)(4), such as the margin for a variable rate, are not permitted to be included in the account-opening table, and accordingly would not be in a tabular format in the samples in G–17 to appendix G. Accordingly, the Board proposes to amend § 226.9(c)(2)(iv)(D)(*1*) to expressly state that the summary of a term required to be disclosed under § 226.6(b)(4) that is not required to be disclosed under § 226.6(b)(1) and (b)(2) need not be in a tabular format.

The Board also is proposing several changes related to disclosure of the right to reject certain types of changes. When a creditor makes a significant change in account terms on a credit card account under an open-end (not home-secured) consumer credit plan, § 226.9(c)(2)(iv)(B) generally requires the creditor to disclose certain information regarding the consumer's right to reject that change under § 226.9(h). Section 226.9(c)(2)(iv)(B) also lists several types of changes to which the right to reject does not apply, including a change in the balance computation method necessary to comply with § 226.54. The Board adopted this exemption in the February 2010 Final Rule in order to facilitate compliance with the limitations on the imposition of finance charges in § 226.54, which implemented the Credit Card Act's prohibition on the two-cycle balance computation method. *See* 75 FR 7696, 7730.

Because § 226.54 went into effect on February 22, 2010, the Board proposes to remove the exemption in § 226.9(c)(2)(iv)(B) for changes necessary to comply with § 226.54. In its place, the Board is proposing to adopt an exemption stating that, when a fee has been reduced consistent with the Servicemembers Civil Relief Act (SCRA), 50 U.S.C. app. 501 *et seq.,* or a similar federal or state statute or regulation, the right to reject does not apply to an increase in that fee once the statute or regulation no longer applies, provided that the amount of the increased fee does not exceed the amount of that fee prior to the reduction.

As discussed in greater detail below with respect to § 226.55(b)(6), the SCRA and some state statutes generally require creditors to reduce interest rates and

[2] The Board notes that charges for voluntary credit insurance, debt cancellation or debt suspension coverage are "charges imposed as part of the plan" under § 226.6(b)(3)(ii)(F), and accordingly changes in the cost of such coverage would be required to be disclosed in accordance with § 226.9(c)(2)(iii).

fees for consumers who are engaged in military service. When the SCRA or similar state statute ceases to apply, § 226.9(c) generally requires the creditor to provide 45 days' advance notice of any increase in a rate or fee. The right to reject does not apply to rate increases, but § 226.55(b)(6) limits the ability of a card issuer to increase the rate that applies to the existing balance on a credit card account under an open-end (not home-secured) consumer credit plan in these circumstances. Specifically, § 226.55(b)(6) provides that, if the SCRA requires a card issuer to reduce an interest rate on an existing balance when a consumer enters military service, the rate applied to that balance when the consumer leaves military service cannot exceed the rate that applied prior to military service. In other words, consumers cannot be worse off once the SCRA ceases to apply than they were before the SCRA began to apply.

The Board understands that, in order to comply with the SCRA and similar federal or state statute or regulation, many creditors reduce or cease to impose annual fees, late payment fees, and other types of fees while a consumer is in military service. Although the right to reject generally applies to increases in fees required to be disclosed under § 226.6(b)(1) and (b)(2) (such as annual fees and late payment fees), the Board believes that, when a consumer leaves military service and the legal requirements of the SCRA or a similar federal or state statute or regulation cease to apply, it is appropriate to permit creditors to return fees to pre-existing levels. Accordingly, the Board would exempt such increases from the right to reject. However, the right to reject would continue to apply if a creditor sought to apply a fee that exceeded the amount of the fee prior to the consumer entering military service.

Comments 9(c)(2)(iv)–3 and –4 and comments 9(c)(2)(v)–3 and –4 clarify that, if a creditor is changing a rate applicable to a consumer's account from a non-variable rate to a variable rate (or vice versa), the creditor must provide a notice pursuant to § 226.9(c) even if the new rate is lower than the prior rate. The Board would revise this guidance to clarify that notice is not required pursuant to § 226.9(c)(2) when a lower rate is applied in connection with a promotional or other temporary rate program or a workout or temporary hardship arrangement, provided that the terms of that program or arrangement are disclosed consistent with § 226.9(c)(2)(v)(B) or (c)(2)(v)(D). In these circumstances, the Board believes that the 45-day notice requirement would unnecessarily delay application of a lower rate to a consumer's account in circumstances where § 226.9(c)(2)(v)(B) or (c)(2)(v)(D) generally require that the consumer be informed of the terms associated with the lower rate before it is applied to the account. Furthermore, when a promotional or temporary rate or workout or temporary hardship arrangement is applied to an account, the substantive limitations in § 226.55(b)(1) and (b)(5) protect consumers from unanticipated increases in the rates that apply to existing balances.

The Board would also clarify that notice pursuant to § 226.9(c)(2) is not required when the creditor applies a lower rate in order to comply with the SCRA or a similar federal or state statute or regulation. Finally, in order to eliminate redundancy and ensure consistent guidance, the Board would replace comments 9(c)(2)(v)–3 and –4 with cross references to comments 9(c)(2)(iv)–3 and –4.

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

Temporary Rate Exception

Section 226.9(c)(2) generally requires that 45 days' advance notice be provided of significant changes in account terms for open-end (not home-secured) consumer credit plans. Several exceptions to this 45-day advance notice requirement are set forth in § 226.9(c)(2)(v). Section 226.9(c)(2)(v)(B) sets forth an exception for increases in annual percentage rates upon the expiration of a period of time, provided that prior to the commencement of that period, the creditor discloses to the consumer clearly and conspicuously in writing the length of the period and the annual percentage rate that will apply after that period. Section 226.9(c)(2)(v)(B)(*2*) requires that the disclosure of the length of the period and the rate that will apply after expiration of the period must be disclosed in close proximity and equal prominence to the first listing of the disclosure of the rate that applies during the specified period of time.

The Board is proposing to clarify the proximity and prominence requirements for the disclosure of introductory rates that are disclosed at account opening. The Board understands that there is confusion regarding how to comply with the proximity and prominence rules in § 226.9(c)(2)(v)(B) when an introductory rate is being disclosed in the account-opening table. The rules in § 226.6(b) contain prescriptive formatting and font size requirements for the disclosures required to be provided in tabular form at account opening. Section 226.6(b)(1) requires that the tabular disclosure have headings, content, and format substantially similar to any of the applicable tables in G–17 in appendix G. In addition, § 226.6(b)(2)(i) requires that annual percentage rates for purchases be disclosed in the tabular disclosure provided at account opening in 16-point font. Section 226.6(b)(1)(i) requires that annual percentage rates required to be disclosed pursuant to § 226.6(b)(2)(i), including introductory rates required to be disclosed under § 226.6(b)(2)(i)(F), be disclosed in bold text.

Sample G–17(C) contains a sample disclosure of an introductory rate on purchases, where the introductory and standard annual percentage rates are presented in bold 16-point font in accordance with § 226.6(b)(1)(i) and (b)(2)(i). However, the disclosure of the introductory period is displayed in 10-point font and is not presented in bold text, consistent with § 226.6(b). The Board understands that there is confusion regarding whether the § 226.6(b) tabular disclosure would be deemed to comply with the formatting requirements in § 226.9(c)(2)(v)(B)(*2*), because the period is disclosed in a smaller font than the font in which the relevant rates are disclosed, and is not in bold text.

The Board believes that additional clarification is appropriate as to the relationship between the formatting requirements of §§ 226.9(c)(2)(v)(B)(*2*) and 226.6(b). The Board believes that if the information described in § 226.9(c)(2)(v)(B)(*2*) is included in the account-opening table provided pursuant to, and in compliance with, § 226.6(b), it should be deemed to meet the equal prominence and close proximity requirements of § 226.9(c)(2)(v)(B). The format and presentation of information in the account-opening table was informed by the Board's consumer testing, and the Board believes that the requirements of § 226.6(b) are appropriate and sufficient to convey key information regarding introductory rates to consumers. Accordingly, the Board is proposing to adopt a new comment 9(c)(2)(v)–10 which states that a disclosure of the information described in § 226.9(c)(2)(v)(B)(*1*) provided in the account-opening table in accordance with § 226.6(b) complies with the requirements of § 226.9(c)(2)(v)(B)(*2*), if the listing of the introductory rate in such tabular disclosure also is the first listing as described in comment 9(c)(2)(v)–6. Existing comments

9(c)(2)(v)–10 through 9(c)(2)(v)–12 would be renumbered accordingly.

Comment 9(c)(2)(v)–5 sets forth guidance regarding the disclosure requirements for temporary rates when the temporary rate reduction is initially offered to the consumer by telephone. Comment 9(c)(2)(v)–5 states that the timing requirements of § 226.9(c)(2)(v)(B) are deemed to have been met, and written disclosures required by § 226.9(c)(2)(v)(B) may be provided as soon as reasonably practicable after the first transaction subject to a rate that will be in effect for a specified period of time (a temporary rate) if: (1) The consumer accepts the offer of the temporary rate by telephone; (2) the creditor permits the consumer to reject the temporary rate offer and have the rate or rates that previously applied to the consumer's balances reinstated for 45 days after the creditor mails or delivers the written disclosures required by § 226.9(c)(2)(v)(B); and (3) the disclosures required by § 226.9(c)(2)(v)(B) and the consumer's right to reject the temporary rate offer and have the rate or rates that previously applied to the consumer's account reinstated are disclosed to the consumer as part of the temporary rate offer.

As discussed in the supplementary information to the February 2010 Final Rule, the Board believes that this rule for telephone offers of promotional rates ensures that consumers may take immediate advantage of promotions that they believe to be beneficial, while protecting consumers by allowing them to terminate the promotion with no adverse consequences, upon receipt of written disclosures. Consistent with the rationale discussed in the February 2010 Final Rule, the Board is proposing to amend comment 9(c)(2)(v)–5.ii to provide that, in connection with telephone offers of temporary rates or fees,[3] the creditor need not permit the consumer to reject the temporary rate or temporary fee offer if the rate or rates or fee that will apply following expiration of the temporary rate do not exceed the rate or rates or fee that applied immediately prior to commencement of the temporary rate. The Board believes that, since such an offer never results in the increase in an interest rate or fee even on a prospective basis, it is unnecessary to provide consumers with the opportunity to reject such an offer. The Board is proposing a conforming change to comment 9(c)(2)(v)–5.iii.

[3] As discussed below, the Board is proposing to apply the exception in § 226.9(c)(2)(v)(B) to temporary fee reductions; accordingly, proposed comment 9(c)(2)(v)–5.ii would apply both to temporary rate and temporary fee offers.

Exception for Temporary Reductions in Fees

The Board also is proposing to amend § 226.9(c)(2)(v)(B) to provide an exception to the advance notice requirements for increases in fees that occur after the expiration of a specified period of time. The Board declined to adopt a specific exception for temporary or promotional fee programs in the February 2010 Final Rule because the Credit Card Act did not contain such an exception and because an exception did not appear to be necessary. *See* 75 FR 7699. In the supplementary information to the February 2010 Final Rule, the Board noted that nothing in Regulation Z prohibits a creditor from providing notice of a future increase in a fee at the same time it temporarily reduces the fee; a creditor could provide information regarding the temporary reduction in the same notice, provided that it is not interspersed with the content required to be disclosed pursuant to § 226.9(c)(2)(iv). See 75 FR 7699.

Nevertheless, upon further review, for the reasons also discussed in the supplementary information to § 226.55(b)(1), the Board believes that it may be appropriate to use its authority under TILA Section 105(a) to specifically address the advance notice requirements for temporary or promotional fees in order to encourage issuers to disclose and structure such programs in a consistent manner that enables consumers to understand the associated costs. Accordingly, the Board proposes to amend § 226.9(c)(2)(v)(B) to apply to increases in fees upon the expiration of a specified period of time. Thus, § 226.9(c)(2)(v)(B) would permit a card issuer to increase a fee after a specified period of time without providing 45 days' advance notice, if the card issuer provides the consumer in advance with a clear and conspicuous written disclosure of the length of the period and the fee or charge that will apply after expiration of the period. In addition, the Board is proposing to amend comments 9(c)(2)(v)–5 through 9(c)(2)(v)–7 to expressly refer to temporary fee offers.

In addition, for clarity, and for consistency with the proposed changes to § 226.9(c)(2)(v)(B), the Board is proposing to amend comment 9(c)(2)(v)–2, which addresses skip features offered in connection with open-end (not home-secured) consumer credit plans. Comment 9(c)(2)(v)–2 addresses the disclosures that must be given when a credit program allows consumers to skip or reduce one or more payments during the year or involves temporary reductions in finance charges. The Board notes that comment 9(c)(2)(v)–2 was amended in the February 2010 Final Rule for conformity with the exception in § 226.9(c)(2)(v)(B) for temporary reductions in interest rates. In particular, the Board added a new comment 9(c)(2)(v)–2.ii that clarifies the notice requirements for temporary reductions in interest rates. *See* 75 FR 7702. Because the Board is proposing to expand § 226.9(c)(2)(v)(B) to cover promotional fee offers in addition to promotional rate offers, the Board is proposing to amend comment 9(c)(2)(v)–2.ii to also cover temporary reductions in fees; comment 9(c)(2)(v)–2.i would accordingly apply only to programs that permit a consumer to skip or reduce a payment.

Variable Rate Exception

The Board is proposing to correct a typographical error in § 226.9(c)(2)(v)(C). Section 226.9(c)(2)(v)(C) contains an exception to the 45-day advance notice requirements for increases in variable annual percentage rates in accordance with a credit card agreement that provides for a change in the rate according to operation of an index that is not under the control of the creditor and is available to the general public. In the proposal that led to the February 2010 Final Rule, proposed § 226.9(c)(2)(v)(C) referred to an increase "in accordance with a credit card or other account agreement." In the February 2010 Final Rule, the phrase "or other account" was inadvertently deleted, without explanation in the supplementary information. The Board's intent was for the exception in § 226.9(c)(2)(v)(C) to apply both to credit card accounts and to other open-end (not home-secured) consumer credit plans. Accordingly, the Board is proposing to insert the phrase "or other account" into § 226.9(c)(2)(v)(C).

The exception to the advance notice requirements for an increase in a variable annual percentage rate is conditioned on the rate varying according to the operation of an index that is not under the control of the creditor and is available to the general public. Comment 9(c)(2)(v)–11 contains a cross-reference to comment 55(b)(2)–2 for guidance on when an index is deemed to be under the "card issuer's" control. The Board is aware that there has been some confusion regarding the relationship between comment 55(b)(2)–2 and the exception set forth in § 226.9(c)(2)(v)(C). Comment 55(b)(2)–2 provides that an index is under a card issuer's control if, among other things, the variable rate is subject to a fixed minimum rate or similar requirement that does not permit the variable rate to decrease consistent with reductions in the index. The substantive limitations on rate increases in § 226.55 and comment 55(b)(2)–2 apply only to credit card accounts under an open-end (not home-secured) consumer credit plan, while the advance notice requirements in § 226.9(c)(2) and the variable-rate exception in § 226.9(c)(2)(v)(C) apply to all open-end (not home-secured) consumer credit plans. Thus, the Board has been asked whether the variable-rate exception to the advance notice requirements set forth in § 226.9(c)(2)(v)(C) applies to an open-end (not home-secured) consumer credit plan, if the variable rate is subject to a fixed minimum or "floor."

The Board proposes to clarify that a variable rate plan that is subject to a fixed minimum or "floor" does not meet the conditions of the exception to the advance notice requirements set forth in § 226.9(c)(2)(v)(C). The Board believes that it is appropriate to adopt a consistent interpretation of "an index that is not under the control of the creditor" for all open-end (not home-secured) credit. The Board is proposing to amend comment 9(c)(2)(v)–11 (renumbered as comment 9(c)(2)(v)–12) to refer to guidance on when an index is deemed to be under "a creditor's" control, rather than "the card issuer's" control. The Board notes that the substantive provisions of § 226.55 continue to apply only to credit card accounts under an open-end (not home-secured) consumer credit plan; however, the proposed change would clarify that 45 days' advance notice is required prior to a rate increase on a variable-rate plan subject to a fixed minimum or floor, for all open-end (not home-secured) plans.

Section 226.10 Payments

10(b) Specific Requirements for Payments

10(b)(4) Nonconforming Payments

Section 226.10 sets forth rules regarding the prompt crediting of payments and the permissibility of assessing fees to make expedited payments. Section 226.10(a) generally requires that payments be credited to a consumer's account as of the date of receipt, except that § 226.10(b) permits creditors to specify reasonable requirements for payments provided that those requirements enable most consumers to make conforming payments. Section 226.10(b)(4) addresses the crediting of payments that do not conform to the requirements specified by the creditor; if a creditor specifies requirements for the consumer to follow in making payments as permitted under § 226.10 but accepts a payment that does not conform to the requirements, such nonconforming payments must be credited within five days of receipt.

The Board is aware that there is confusion regarding the distinction between conforming payments, which must be credited as of the date of receipt, and nonconforming payments, which must be credited within five days of receipt. Currently, § 226.10(b)(4) refers to requirements specified "on or with the periodic statement," which may be read to suggest that payments received by any means not specified on or with the periodic statement generally are nonconforming payments. However, the rule in § 226.10(b) that permits a creditor to specify reasonable requirements for making payments is silent as to the manner in which these requirements must be communicated to consumers in order for such payments to be considered conforming payments. In addition, comment 10(b)–2 expressly provides that if a creditor promotes electronic payment via its Web site, any payments made via the Web site are generally conforming payments for purposes of § 226.10(b), which indicates that conforming payments are not only those payments made via methods specified on the periodic statement.

The Board believes that additional clarification is appropriate regarding the distinction between conforming and nonconforming payments, in order to facilitate compliance with the rule and to ensure that payments are posted promptly in accordance with consumer expectations and the intent of TILA Section 164. TILA Section 164, as amended by the Credit Card Act, provides in part that payments received from a consumer for an open-end consumer credit plan shall be posted promptly to the account as specified in regulations of the Board. The Board believes that, if a creditor promotes a specific method of making payments, the intent of TILA Section 164 is best effectuated by a rule that requires payments made by that method to be credited as of the date of receipt.

Accordingly, the Board is proposing to amend comment 10(b)–2 to provide that if a creditor promotes a specific payment method, any payments made via that method (prior to any cut-off time specified by the creditor to the extent permitted by § 226.10(b)(2)), are generally conforming payments for purposes of § 226.10(b). To provide further guidance, the Board also proposes to add two additional examples to comment 10(b)–2. Proposed comment 10(b)(2)–ii states that if a creditor promotes payment by telephone (for example, by including the option to pay by telephone in a menu of options provided to consumers at a toll-free number disclosed on its periodic statement), payments made by telephone would generally be conforming payments for purposes of § 226.10(b). Similarly, proposed comment 10(b)(2)–iii states that if a creditor promotes in-person payments, for example by stating in an advertisement that payments may be made in person at its branch locations, such in-person payments made at a branch or office of the creditor generally would be conforming payments for purposes of § 226.10(b). The Board believes that if a creditor promotes that payments may be made via a certain method, it would be inappropriate to permit the creditor to delay crediting such payments for five days after receipt. In contrast, proposed comment 10(b)–2 would not apply if the creditor makes a general promotional statement regarding payments that does not refer to a specific payment method, for example a statement that the creditor offers "many convenient payment options."

For conformity, the Board also is proposing to amend § 226.10(b)(4), which addresses the treatment of nonconforming payments, to provide that if a creditor specifies, on or with the periodic statement, requirements for the consumer to follow in making payments, but accepts a payment that does not conform to the requirements via a payment method that the creditor does not otherwise promote, the creditor shall credit the payment within five days of receipt.

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

Section 226.10(e) generally prohibits imposing a separate fee for allowing consumers to make a payment by any method, unless such payment method involves expedited service by a customer service representative of the card issuer. The Board understands that card issuers may use third-party service providers to provide payment-related services on behalf of the issuer, such as receiving or processing payments from consumers. In some circumstances, the third-party service provider may charge consumers a separate fee for making a payment—for example, when a payment is made electronically through a Web site. The Board believes that it would be inconsistent with the purposes of the

Credit Card Act for consumers to pay a separate fee for making a payment through a third party who is receiving payment on behalf of the issuer, unless the issuer itself would be permitted to charge the fee. Accordingly, the Board proposes to adopt a new comment 10(e)–4 to prohibit third party service providers or other third parties who receive payments on behalf of a card issuer from charging a separate fee for payment, except as otherwise permitted by paragraph (e).

10(f) Changes by Card Issuer

The Board proposes to replace a reference to "consumer" in comment 226.10(f)–3.ii with "card issuer" in order to correct a typographical error.

Section 226.12 Special Credit Card Provisions

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

Section 226.12(c)(1) provides that, when a cardholder asserts a claim or defense against a card issuer, the cardholder may withhold payment up to the amount of credit outstanding for the property or services that gave rise to the dispute and any finance or other charges imposed on that amount. Comment 12(c)–4 clarifies that the amount of the claim or defense that the cardholder may assert shall not exceed the amount of credit outstanding for the disputed transaction at the time the cardholder first notifies the card issuer or the person honoring the credit card of the existence of the claim or defense. It further clarifies that, to determine the amount of credit outstanding, payments and other credits shall be applied to: (i) Late charges in the order of entry to the account; then to (ii) finance charges in the order of entry to the account; and then to (iii) any other debits in the order of entry to the account. It also clarifies that, if more than one item is included in a single extension of credit, credits are to be distributed pro rata according to prices and applicable taxes. Although the February 2010 Final Rule moved this language from a footnote in § 226.12 to the commentary, the guidance itself remained unchanged.

The Board understands that there has been some confusion about the interaction between the guidance on applying payments in comment 12(c)–4 and the payment allocation requirements in § 226.53. For credit card accounts under an open-end (not home-secured) consumer credit plan, § 226.53 generally requires card issuers to apply payments above the minimum first to the balance with the highest rate. Comment 53–3 clarifies that, when a consumer has asserted a claim or defense against a card issuer pursuant to § 226.12(c), the card issuer must apply any payment above the minimum in a manner that avoids or minimizes any reduction in the amount subject to that claim or defense. Illustrative examples are provided.

In order to remove any inconsistency and to facilitate compliance, the Board would revise comment 12(c)–4 to clarify that, with respect to credit card accounts under an open-end (not home-secured) consumer credit plan, card issuers must comply with § 226.53 and the guidance in comment 53–3. However, with respect to other types of credit card accounts (such as credit cards that access home-equity plans), the Board would retain the long-standing guidance in comment 12(c)–4.

Section 226.13 Billing Error Resolution

13(c) Time for Resolution; General Procedures

Section 226.13(c)(2) generally requires a creditor to complete the billing error investigation procedures within two billing cycles (but no later than 90 days) after receiving a billing error notice. To ensure that creditors promptly complete their investigations under TILA, the Board adopted a new comment 13(c)(2)–2 in the February 2010 Final Rule to clarify that a creditor must conclusively determine whether an error occurred within two complete billing cycles (but in no event later than 90 days) after receiving a billing error notice. Once this period has expired, the comment further clarified that the creditor may not reverse any amounts previously credited for an asserted billing error, even if the creditor subsequently obtains evidence indicating that the billing error did not occur as asserted.

Since adoption of the comment, the Board has received questions regarding whether § 226.13(c)(2) would prohibit creditors from reversing amounts previously credited by the creditor after conclusion of the two billing cycle time frame if the consumer subsequently receives a credit in the amount of the error from the merchant or person that had honored the credit card. Such an occurrence might arise, for example, because the error investigation time frames under card network rules provide merchants additional time beyond the time frame under § 226.13 to respond to a consumer error claim. As a result, a merchant may not issue a credit to the consumer's account until after the creditor has already resolved the consumer's error claim in the consumer's favor in order to comply with the time frame established under Regulation Z. In those cases, the consumer could receive more than one credit for the same billing error, one from the creditor and another from the merchant or other person honoring the credit card.

The purpose of the billing error resolution time frame is to enable consumers to have their error claims investigated and resolved promptly. That is, TILA Section 161, as implemented by § 226.13, is intended to bring finality to the billing error resolution process, and to avoid the potential of undue surprise for consumers caused by the reversal of previously credited funds when a creditor fails to complete its investigation in a timely manner. In contrast, the potential for consumer harm would not arise when a consumer has already been made whole for the error by the person honoring the credit card. In such a case, the Board believes that the creditor should be permitted to reverse amounts previously credited by the creditor to correct the error in order to avoid giving the consumer a windfall for that transaction.

Accordingly, the Board proposes to revise comment 13(c)(2)–2 to clarify that the requirement to complete an error investigation within two billing cycles does not prevent a creditor from reversing amounts it has previously credited to a consumer's account in circumstances where a consumer's account has been credited more than once for the same billing error. The proposed comment further clarifies that the reversal of the credit by the creditor is appropriate so long as the total amount of the remaining credits is equal to or more than the amount of the error and the consumer does not incur any fees or other charges as a result of the timing of the creditor's reversal. Thus, to ensure compliance with the requirements of § 226.13, a creditor should delay the reversal of the amounts the creditor has previously credited to the consumer's account until after the subsequent merchant credit has posted to the consumer's account. An illustrative example is set forth in the proposed comment.

Section 226.14 Determination of Annual Percentage Rate

14(a) General Rule

The Board understands that clarification may be appropriate regarding the effect of a leap year on determining the annual percentage rate for disclosures required for open-end (not home-secured) credit accounts. The Board proposes to add a new comment 14(a)–6 to clarify that a creditor may disregard any variance in the annual percentage rate which occurs solely by reason of the addition of February 29 in a leap year. For example, a creditor may use 365 days as the number of periods in a leap year when computing an annual percentage rate. In addition, if an annual percentage rate is computed using 366 days as the number of periods in a leap year, a variance in rate which occurs solely because of the addition of February 29 in the annual percentage rate computation would not trigger disclosure and other requirements under §§ 226.9 and 226.55. The Board believes that the proposed comment promotes accuracy in the disclosure of annual percentage rates and minimizes potential consumer confusion and operational burden for creditors.

Section 226.16 Advertising

16(g) Promotional Rates and Fees

Section 226.16(g) currently sets forth the requirements for advertisements of promotional or introductory rates on open-end (not home-secured) plans. In general, § 226.16(g) requires that certain advertisements of promotional or introductory rates state the promotional period, post-promotional rate, and, in some cases, the term "introductory" or "intro," in order to promote consumer understanding of the terms of such a promotional or introductory rate offer. As discussed elsewhere in this supplementary information, the Board is proposing changes to §§ 226.9(c)(2) and 226.55 to implement additional disclosure requirements and limitations for offers of temporary reduced or promotional fees. The Board is proposing conforming changes to § 226.16(g) to require that certain advertisements of promotional fees also state the promotional period, post-promotional fee, and, in some cases, the term "introductory" or "intro," in order to promote consumer understanding of the terms of such promotional or introductory fee offers. The Board is proposing these changes using its authority under TILA Section 105(a) to effectuate the purposes of TILA. The Board believes requiring that creditors clearly disclose the conditions of a promotional fee offer will promote the informed use of credit by consumers.

The disclosure requirements under § 226.16(g) generally would apply to "promotional fee[s]," as defined in new § 226.16(g)(2)(iv). In particular, § 226.16(g)(2)(iv) would define "promotional fee" as a fee required to be disclosed under § 226.6(b)(1) and (b)(2) on an open-end (not home-secured) plan for a specified period of time that is lower than the fee that will be in effect at the end of that period. Accordingly, the new advertising requirements for promotional fee offers would apply only when the promotional fee being offered is a fee required to be disclosed in the account-opening table provided pursuant to § 226.6(b). The Board believes, based in part on its consumer testing, that § 226.6(b)(1) and (b)(2) require disclosure of the fees that are the most important to consumers. Accordingly, the Board believes that these key fees are those for which a creditor is the most likely to advertise a promotion. In addition, the application of the § 226.16(g) disclosure requirements to fees required to be disclosed pursuant to § 226.6(b)(1) and (b)(2) is consistent with the approach that the Board has taken in § 226.9(c)(2)(ii) when defining "significant changes in account terms." The Board also proposes several additional amendments to § 226.16(g) and the associated commentary in order to conform the advertising disclosures for promotional fees to the advertising disclosures for promotional rate offers in § 226.16(g).

Section 226.30 Limitation on Rates

The Board proposes to make a technical correction to comment 30–8.i.C to correct a typographical error.

Section 226.51 Ability To Pay

Section 226.51 implements the provisions of the Credit Card Act that require card issuers to assess a consumer's ability to pay before opening a new credit card account or increasing the credit limit on an existing account. Section 226.51(a) implements TILA Section 150, which provides that "[a] card issuer may not open any credit card account for any consumer under an open end consumer credit plan, or increase any credit limit applicable to such account, unless the card issuer considers the ability of the consumer to make the required payments under the terms of such account." Section 226.51(b) implements TILA Section 127(c)(8), which prohibits a card issuer from opening a credit card account for a consumer who is under the age of 21 unless the consumer has submitted a written application that meets certain requirements. Specifically, the application must require either: (1) "Submission by the consumer of financial information, including through an application, indicating an independent means of repaying any obligation arising from the proposed extension of credit in connection with the account"; or (2) the signature of a cosigner who has such means, is 21 or older, and assumes joint liability for the account.[4]

The Board generally intended § 226.51 to establish consistent standards for evaluating a consumer's ability to pay. Specifically, § 226.51 requires that card issuers establish and maintain reasonable written policies and procedures to consider the income or assets and the current obligations of all consumers, regardless of age. *See* § 226.51(a)(1)(ii), (b)(1)(i), and (b)(2)(ii)(B). For all consumers, a card issuer must consider either the ratio of debt obligations to income, the ratio of debt obligations to assets, or the income the consumer will have after paying debt obligations. *See id.* Furthermore, regardless of a consumer's age, it would be unreasonable for a card issuer not to review any information about a consumer's income, assets, or current obligations, or to issue a credit card to a consumer who does not have any income or assets. *See id.*

Some card issuers request on application forms that applicants simply provide their "income," while other issuers request that applicants provide their "household income." The Board understands that there has been some confusion as to whether information provided by a consumer in response to a request for household income can be used by a card issuer to satisfy the requirements of § 226.51. In particular, the Board understands that there has been some uncertainty as to whether § 226.51 established different standards for underage consumers and other consumers with respect to the consideration of household income or assets. There appear to be three sources of this confusion.

First, the Board understands that some of the uncertainty regarding household income results from the fact that, in the February 2010 Final Rule, the Board expressly concluded that the income of an underage consumer's spouse could not be used to satisfy the requirements of § 226.51(b) but did not state a similar conclusion with respect to the general rule in § 226.51(a). *See* 75 FR 7723. However, the issue of spousal or other household income was not addressed in the context of § 226.51(a) because it was not raised during the comment period. Accordingly, the Board is addressing the issue in this rulemaking.

[4] Section 226.51(b) also implements TILA Section 127(p), which requires that, when a cosigner has assumed joint liability for a credit card account issued to an underage consumer, the account's credit limit may not be increased unless the cosigner approves in writing, and assumes joint liability for, the increase.

Second, the Board understands that there has been some confusion as to whether Regulation B (12 CFR Part 202) requires a card issuer to consider spousal or other household income when considering a consumer's ability to pay under § 226.51. In response to concerns raised by commenters, the Board stated in the February 2010 Final Rule that, when a card issuer is evaluating an underage consumer's ability to pay under § 226.51(b), Regulation B does not compel the issuer to consider the income of the consumer's spouse. *See* 75 FR 7723. The Board also stated that card issuers would not violate Regulation B by virtue of complying with the requirements in § 226.51(b). *Id.* However, the Board understands that these statements may have left some uncertainty because they did not expressly address the general ability to pay requirement in § 226.51(a), which applies to all consumers regardless of age. Accordingly, the Board clarifies that Regulation B does not compel a card issuer to consider spousal or other household income when considering an applicant's ability to pay under either § 226.51(a) or (b), unless, for example, the spouse or household member is a joint applicant or accountholder or state law grants the applicant an ownership interest in the income of his or her spouse. Furthermore, the Board clarifies that card issuers would not violate Regulation B by virtue of complying with the requirements in § 226.51(a) or (b). Thus, to the extent that a card issuer is not permitted to consider spousal or other household income when evaluating a consumer's ability to pay under § 226.51, the card issuer's failure to consider such income when performing that evaluation does not violate Regulation B.

Third, the Board understands that the use of the word "independent" in § 226.51(b) but not in § 226.51(a) has been interpreted by some as prohibiting consideration of household income with respect to underage consumers but permitting it for other consumers. This difference in wording reflects the language in the statutory provisions implemented by § 226.51(a) and (b). Specifically, § 226.51(a)(1) follows TILA Section 150 in requiring a card issuer to consider the ability of the consumer to make the required payments, whereas § 226.51(b)(1)(i) tracks TILA Section 127(c)(8)(B)(ii) by requiring a card issuer to obtain financial information indicating that an underage consumer without a cosigner has an independent ability to make those payments.

Congress' use of "independent" in TILA Section 127(c)(8)(B)(ii) but not in TILA Section 150 could be interpreted as establishing a less stringent standard for consideration of household income if the consumer is 21 or older. However, TILA Section 150 requires card issuers to consider "the ability of *the consumer* to make the required payments," which indicates that Congress intended card issuers to base this evaluation only on the ability of the consumer (or consumers) applying for the account. Indeed, to the extent that TILA Section 150 was intended to ensure that credit cards are not issued to consumers who lack the ability to pay, it could be inconsistent with that purpose to permit a card issuer to open a credit card account for a consumer without income or assets based on the income or assets of a spouse or other household member (unless the consumer has an ownership interest in the household income or assets). Accordingly, using its authority under TILA Section 105(a) and Section 2 of the Credit Card Act, the Board proposes to amend § 226.51 to require that, regardless of the consumer's age, a card issuer must consider the consumer's *independent* ability to make the required payments. In addition to providing a single, consistent standard for evaluating a consumer's ability to pay, the Board believes that this proposed revision is consistent with the intent of TILA Section 150.

Consistent with the proposed amendments to § 226.51, the Board would revise comment 51(a)(1)–4 to clarify that, as a general matter, consideration of information regarding the consumer's household income or assets does not by itself satisfy the requirement in § 226.51(a)(1) to consider the consumer's independent ability to pay. The comment would further clarify that, if, for example, a card issuer requests on its application form that applicants provide their household income, the card issuer may not rely solely on that income information to satisfy the requirements of § 226.51(a). Instead, the card issuer would need to obtain additional information about the applicants' independent income (such as by contacting the applicants). However, the comment would also clarify that, if a card issuer requests on its application form that applicants provide their income (without referring to household income), the card issuer may rely on the information provided to satisfy the requirements of § 226.51(a). For organizational purposes, comment 51(a)(1)–4 would be divided into subparagraphs, and this guidance would be set forth in subparagraph 51(a)(1)–4.iii.

The Board would also add additional guidance regarding spousal income in new subparagraph 52(a)(1)–4.i, which addresses the types of income or assets that may be considered when performing the § 226.51(a) analysis. The Board would clarify that, when an applicant's spouse is not a joint applicant or joint accountholder, a card issuer may consider the spouse's income or assets to the extent that a federal or state statute or regulation grants the applicant an ownership interest in that income or those assets. For example, assume that a consumer is applying for a credit card account, but the consumer's spouse is not a joint applicant. If the consumer and the spouse reside in a community property state where state law grants the consumer joint ownership of income or assets acquired by the spouse during the marriage, the income or assets are considered the consumer's income or assets for purposes of the § 226.51(a) analysis.

The Board acknowledges that the proposed amendments to § 226.51 and its commentary could prevent a consumer without income or assets from opening a credit card account despite the fact that the consumer has access to (but not an ownership interest in) the income or assets of a spouse or other household member. However, the Board has previously concluded that it would be inconsistent with the intent of the Credit Card Act for a card issuer to issue a credit card to a consumer who does not have any income or assets. *See* § 226.51(a)(1)(ii). Furthermore, a consumer without independent income or assets could still open a credit card account by applying jointly with a spouse or household member who has sufficient income or assets. *See* comment 51(a)(1)–6. Nevertheless, the Board solicits comment on whether it would be appropriate to provide greater flexibility in these circumstances.

The Board also notes that, as discussed in the February 2010 Final Rule, neither the Credit Card Act nor § 226.51 requires verification of information provided by a consumer regarding income or assets. *See* 75 FR 7721. Thus, while a card issuer that, for example, prompts applicants to provide household income on an application form could not rely on that information by itself to satisfy the requirements of § 226.51(a), a card issuer that requests on the application form that applicants provide their own income is not required to verify that the income provided by the applicant does not include household income.

Finally, consistent with the proposed amendments to §§ 226.9, 226.16, and 226.55 regarding fees that increase after a specified period of time, the Board would amend comment 51(a)(2)–3 to clarify that, when estimating the required minimum periodic payments for purposes of the safe harbor in § 226.51(a)(2)(ii), the issuer must use the fee that will apply after the specified period. This approach is consistent with the guidance regarding promotional rates in comment 51(a)(2)–2.

Section 226.52 Limitations on Fees

52(a) Limitations Prior to Account Opening and During First Year After Account Opening

Section 226.52(a)(1) generally limits the total amount of fees that a consumer may be required to pay with respect to a credit card account under an open-end (not home-secured) consumer credit plan to 25 percent of the account's credit limit at account opening.[5] This limitation applies "during the first year after the account is opened." However, the Board understands that some card issuers are requiring consumers to pay application, processing, or similar fees prior to account opening that, when combined with other fees charged after account opening, exceed the 25 percent threshold in § 226.52(a)(1). As discussed below, to the extent that § 226.52(a)(1) permits this practice, the Board is concerned that the regulation is inconsistent with the purposes of TILA (as amended by the Credit Card Act). Accordingly, pursuant to its authority under TILA Section 105(a) and Section 2 of the Credit Card Act, the Board proposes to amend § 226.52(a)(1) to apply to fees the consumer is required to pay prior to account opening.

The Credit Card Act amended TILA Section 127 by creating a new paragraph (n). *See* Credit Card Act § 105. Section 127(n)(1) provides that, "[i]f the terms of a credit card account under an open end consumer credit plan require the payment of any fees (other than any late fee, over-the-limit fee, or fee for a payment returned for insufficient funds) by the consumer in the first year during which the account is opened in an aggregate amount in excess of 25 percent of the total amount of credit authorized under the account when the account is opened, no payment of any fees (other than any late fee, over-the-limit fee, or fee for a payment returned for insufficient funds) may be made from the credit made available under the terms of the account." 15 U.S.C. 1637(n)(1). Section 127(n)(2) further provides that Section 127(n) may not "be construed as authorizing any imposition or payment of advance fees otherwise prohibited by any provision of law." 15 U.S.C. 1637(n)(2).

As discussed in the February 2010 Final Rule, the Board believes that Section 127(n) was intended to prevent card issuers from requiring consumers to pay excessive fees in order to obtain a credit card account. *See* 75 FR 7724–7726. Many subprime credit card issuers require payment of substantial one-time fees when an account is opened (such as application fees, program fees, and annual fees). By linking the maximum amount of permissible fees to the amount of credit extended, Section 127(n)(1) and § 226.52(a)(1) establish a direct relationship between the costs and benefits associated with opening a credit card account. If, for example, a card issuer provides a consumer with a $500 credit limit when the account is opened, the issuer is prohibited from requiring the consumer to pay more than $125 in non-exempt fees at account opening. Furthermore, in order to ensure that the statutory relationship between fees and the account's credit limit is maintained for a reasonable period of time, Section 127(n)(1) and § 226.52(a)(1) apply for one year after an account is opened. Thus, a card issuer that charges non-exempt fees that equal 25 percent of the credit limit at account opening cannot require the consumer to pay any transaction fees, monthly maintenance fees, or other non-exempt fees for one year after account opening.

52(a)(1) General Rule

The Board understands that, because § 226.52(a)(1) states that its limitations apply "*during* the first year after the account is opened," there has been some uncertainty as to whether those limitations apply to fees that a consumer is required to pay prior to account opening. As noted above, some card issuers are currently requiring consumers to pay application or processing fees prior to account opening that, when combined with other fees charged to the account after account opening, exceed 25 percent of the account's initial credit limit. While this practice is consistent with the current language of § 226.52(a)(1), the Board believes that it is inconsistent with intent of Section 127(n)(1) insofar as it disturbs the statutory relationship between the costs and benefits of opening a credit card account. Accordingly, in order to effectuate the purpose of Section 127(n)(1), the Board proposes to use its authority under TILA Section 105(a) and Section 2 of the Credit Card Act to amend § 226.52(a)(1) to apply to fees the consumer is required to pay before account opening and during the first year after account opening.[6]

The Board is also aware of some confusion regarding when the one-year period in § 226.52(a)(1) begins and ends. For this reason, the Board proposes to further amend § 226.52(a)(1) to provide that, for purposes of that paragraph, an account is considered open no earlier than the date on which the account may first be used by the consumer to engage in transactions. This approach is generally consistent with § 226.5(b)(1)(i), which provides that the account-opening disclosures required by § 226.6 must be provided before the first transaction is made under the plan. Although § 226.5(b)(1)(iv) and (b)(1)(v) permit creditors to collect membership fees and application fees excludable from the finance charge under § 226.4(c)(1) before providing account-opening disclosures in certain circumstances, the Board is concerned that, because the ability to engage in transactions is a primary benefit of a credit card account, it would be inconsistent with the purpose of Section 127(n)(1) if the one-year period expired less than one year after the consumer could first use the account for transactions. However, because card issuers may have different processes for opening credit card accounts, the Board solicits comment on any operational difficulties posed by this amendment.

The Board also understands that the references in § 226.52(a)(1) and comment 52(a)(1)–1 to the charging of fees *to* a credit card account have raised concerns as to whether § 226.52(a)(1) permits card issuers to require consumers to pay an unlimited amount of fees with respect to a credit card account so long as none of those fees are actually charged to the account. Although this language was based on the language of the Credit Card Act, the Board does not believe that Congress intended this result. Indeed, as discussed in the February 2010 Final

[5] Late payment fees, over-the-limit fees, and returned payment fees are exempt from this requirement, as are fees that the consumer is not required to pay with respect to the account. *See* § 226.52(a)(2).

[6] Although TILA Section 127(n)(2) refers to the "imposition or payment of advance fees," the Board does not interpret this reference as excluding "advance fees" from the application of Section 127(n)(1). On the contrary, Section 127(n)(2) specifically states that Section 127(n) cannot "be construed as authorizing any imposition or payment of advance fees otherwise prohibited by any provision of law," which the Board understands to mean that a fee that falls under the 25 percent threshold may nevertheless be subject to other legal restrictions. For example, comment 52(a)(3)–1 cites 16 CFR § 310.4(a)(4), which prohibits any telemarketer or seller from "[r]equesting or receiving payment of any fee or consideration in advance of obtaining a loan or other extension of credit when the seller or telemarketer has guaranteed or represented a high likelihood of success in obtaining or arranging a loan or other extension of credit for a person."

Rule, the Board believes that Congress intended the 25 percent limitation to apply not only to fees charged to a credit card account but also to fees collected from other sources with respect to the account (such as fees that are charged to a consumer's deposit account). See 75 FR 7724–7726. Accordingly, in order to resolve any ambiguity, the Board would use its authority under TILA Section 105(a) and Section 2 of the Credit Card Act to simplify § 226.52(a)(1) by removing this language. The Board would also make conforming amendments to comment 52(a)(1)–1.

The Board also proposes to amend the commentary to § 226.52(a)(1) for consistency with the proposed revisions discussed above and to make certain non-substantive clarifications and corrections.

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

In addition, the Board understands that there has been some uncertainty as to whether minimum interest charges are subject to § 226.52(a)(1). The Board has previously stated elsewhere in Regulation Z that such charges should be treated as fees. *See* comment 7(b)(6)–4. Accordingly, for consistency, the Board proposes to amend comment 52(a)(2)–1 to clarify that, while § 226.52(a)(1) does not apply to charges attributable to periodic interest rates, it applies to charges imposed as a substitute for interest when the interest charge would not otherwise exceed a minimum threshold. In addition, the Board would clarify that § 226.52(a)(1) applies to other fixed finance charges.

52(a)(3) Rule of Construction

The Board proposes to correct a typographical error in § 226.52(a)(3) by replacing the words "This paragraph (a)" with "Paragraph (a) of this section."

52(b) Limitations on Penalty Fees

Section 226.52(b)(1) prohibits card issuers from imposing fees for violating the terms or other requirements of an open-end (not home-secured) consumer credit plan unless the dollar amount of the fee either represents a reasonable proportion of the total costs incurred by the issuer as a result of the type of violation or complies with the applicable safe harbor amount. Furthermore, under § 226.52(b)(2), the dollar amount of the fee cannot exceed the dollar amount associated with the violation and a card issuer cannot impose more than one fee based on a single event or transaction. In order to facilitate compliance, the Board proposes to amend § 226.52(b) and the accompanying commentary to provide additional guidance and illustrative examples.

52(b)(1)(ii) Safe Harbors

The safe harbors in § 226.52(b)(1)(ii)(A)–(B) provide that a card issuer may impose a fee of $25 for an initial violation and a fee of $35 for any additional violation of the same type during the next six billing cycles. As discussed in the June 2010 Final Rule, the Board believes that permitting card issuers to impose a higher fee for repeated violations during a relatively brief period generally reflects the increased costs incurred by issuers as a result of repeated violations, deters future violations, and addresses consumer conduct that is more indicative of loss. *See* 75 FR 37531–37534, 37540–37543.

The safe harbors in § 226.52(b)(1)(ii) address circumstances in which a violation is repeated in one of the six billing cycles following the billing cycle during which the initial violation occurred. However, the safe harbors do not expressly address circumstances in which a repeated violation occurs in the *same* billing cycle as the initial violation. The Board would correct this oversight by amending § 226.52(b)(1)(ii)(B) to state that a card issuer may impose a $35 fee for a subsequent violation of the same type that occurs *during the same billing cycle* or during the next six billing cycles. The Board would also make additional, non-substantive clarifying amendments to § 226.52(b)(1)(ii).[7]

There are relatively few circumstances in which a card issuer may impose multiple fees for multiple violations of the same type during a billing cycle. Section 226.56(j)(1) prohibits card issuers from imposing more than one over-the-limit fee per billing cycle. Furthermore, § 226.52(b)(2)(ii) prohibits the imposition of more than one penalty fee based on a single event or transaction, which prevents card issuers from imposing more than one late payment fee during a billing cycle. In addition, as discussed in comment 52(b)(2)(i)–1, a card issuer may not impose multiple returned payment fees by submitting the same check for payment multiple times. However, if, for example, a consumer makes two separate payments that are returned during the same billing cycle, the Board believes that it is consistent with the purpose of the safe harbors in § 226.52(b)(1)(ii)(A)–(B) to permit the card issuer to impose a $35 fee for the second returned payment. Accordingly, the Board would revise § 226.52(b)(1)(ii)(B) to clarify that this is permitted. The Board would also amend comment 52(b)(1)(ii)–1 for consistency with the proposed revisions to § 226.52(b)(1)(ii)(A)–(B) and provide an illustrative example in comment 52(b)(2)(ii)–1.

In addition, the Board would revise comment 52(b)(1)(ii)–1.ii to provide additional guidance regarding the relationship between the safe harbors in § 226.52(b)(1)(ii), the prohibition on imposing multiple fees based on a single event or transaction in § 226.52(b)(2)(ii), and the limitations on fees for exceeding the credit limit in § 226.56(j)(1). Consistent with the Credit Card Act, § 226.56(j)(1) permits card issuers to impose multiple over-the-limit fees based on a single over-the-limit transaction when the consumer does not make payments sufficient to bring the balance under the credit limit by the next payment due date (although no more than three fees may be imposed with respect to any single transaction). *See* Credit Card Act § 102(a); TILA Section 127(k); *see also* 75 FR 7751–7752. Because it appears that Congress intended to permit multiple over-the-limit fees based on a single over-the-limit transaction in these circumstances, the Board does not believe that it would be appropriate to interpret § 226.52(b) as prohibiting such fees. Accordingly, the Board would provide additional guidance in comment 52(b)(1)(ii)–1.ii clarifying that, to the extent permitted by § 226.56(j)(1), § 226.52(b)(2)(ii) does not prohibit a card issuer from imposing fees for exceeding the credit limit in consecutive billing cycles based on the same over-the-limit transaction. The Board would further clarify that, in these circumstances, the second and third over-the-limit fees permitted by § 226.56(j)(1) may be $35, consistent with the safe harbor for repeated violations in § 226.52(b)(1)(ii)(B). A cross-reference would be inserted to comment 52(b)(2)(ii)–1, where similar guidance and an illustrative example would also be provided.

52(b)(2)(i) Fees That Exceed Dollar Amount Associated With Violation

Section 226.52(b)(2)(i)(B)(*2*) prohibits a card issuer from imposing a fee based on account inactivity (including the consumer's failure to use the account for a particular number or dollar amount of transactions or a particular type of transaction). As an illustrative example, comment 52(b)(2)(i)–5 states that § 226.52(b)(2)(i)(B)(*2*) prohibits a card issuer from imposing a $50 fee when a

[7] In particular, the Board would move the language in § 226.52(b)(1)(ii)(A) and (B) regarding adjustments to the safe harbor amounts based on changes in the Consumer Price Index to a new § 226.52(b)(1)(ii)(D).

consumer fails to use the account for $2,000 in purchases over the course of a year. Furthermore, the comment clarifies that § 226.52(b)(2)(i)(B)(*2*) prohibits a card issuer from imposing a $50 annual fee on all accounts but waiving the fee if the consumer uses the account for $2,000 in purchases over the course of a year.

The Board understands that comment 52(b)(2)(i)–5 has created some confusion as to whether card issuers are prohibited from considering account activity as a factor when, for example, responding to an individual consumer's request that an annual fee be waived. This was not the Board's intent. Instead, the example in comment 52(b)(2)(i)–5 was intended to clarify that card issuers are prohibited from achieving indirectly through a systematic waiver of annual fees a result that is directly prohibited by § 226.52(b)(2)(i)(B)(*2*): Establishing a program under which only consumers who do not use an account for at least $2,000 in purchases over the course of a year are charged an additional $50. Accordingly, the Board proposes to amend comment 52(b)(2)(i)–5 to clarify that, if a card issuer does not promote the waiver or rebate of the annual fee for purposes of § 226.55(e), § 226.52(b)(2)(i)(B)(*2*) does not prohibit the issuer from considering account activity when waiving or rebating annual fees on individual accounts (such as in response to a consumer's request). The promotion of waivers and rebates is discussed in detail below with respect to proposed § 226.55(e).

52(b)(2)(ii) Multiple Fees Based On a Single Event or Transaction

The Board proposes to amend comment 52(b)(2)(ii)–1 to provide additional examples further illustrating the application of § 226.52(b)(2)(ii). Among other things, these examples clarify that—if the required minimum periodic payment is not made during a billing cycle and a late payment fee is imposed—the card issuer may include the unpaid amount in the required minimum periodic payment due during the next billing cycle and impose a second late payment fee under § 226.52(b)(2)(ii) if the consumer fails to make the second minimum payment. However, the examples also clarify that—if a consumer makes a required minimum periodic payment by the applicable due date—the card issuer may not impose a late payment fee based on the consumer's failure to also pay past due amounts that the card issuer chose not to include in that required minimum periodic payment.

The Board understands that, for loss mitigation and other purposes, some card issuers do not include past due amounts in the required minimum periodic payment. The Board acknowledges that this practice is beneficial to consumers to the extent that it prevents some delinquent consumers from becoming even more delinquent. For example, if a card issuer does not include past due amounts in the required minimum periodic payment, a consumer could remain one payment past due indefinitely without ever becoming more than 60 days delinquent and thereby avoid the application of a penalty rate to existing balances pursuant to § 226.55(b)(4). However, a consumer who makes the required minimum periodic payment reflected on the periodic statement by the due date should not be charged a late payment fee. It is inconsistent with the purpose of § 226.52(b)(2)(ii) for a consumer to be charged more than one late payment fee based on the failure to make a single required minimum periodic payment.

The Board proposal also amends comment 52(b)(2)(ii)–1 to provide an example of the application of § 226.52(b)(2)(ii) in circumstances where an over-the-limit fee and a returned payment fee could be based on a single event or transaction such that § 226.52(b)(2)(ii) would only permit the card issuer to impose a single fee. In addition, the Board would provide an example illustrating that § 226.52(b)(2)(ii) would permit multiple returned payment fees to be imposed during a single billing cycle if each fee was based on a separate returned payment.

Section 226.53 Allocation of Payments

53(b) Special Rules

Section 226.53(a) implements TILA Section 164(b)(1), which requires that card issuers generally allocate amounts paid by the consumer in excess of the required minimum periodic payment first to the balance with the highest annual percentage rate and then to other balances in descending order based on the applicable rate. However, TILA Section 164(b)(2) and § 226.53(b)(1) set forth a special rule for accounts with balances subject to a deferred interest or similar program. In these circumstances, a card issuer is required to allocate excess payments first to the balance subject to the program during the two billing cycles immediately preceding expiration of the program. In addition, in the February 2010 Final Rule, the Board used its authority under TILA Section 105(a) and Section 2 of the Credit Card Act to adopt § 226.53(b)(2), which permits card issuers to allocate excess payments among the balances in the manner requested by the consumer when a balance on the account is subject to a deferred interest or similar program. *See* 75 FR 7728–7729.

The Board understands that there is some concern regarding the appropriate allocation of payments when an account has multiple balances, one of which is secured. For example, some private label credit cards permit consumers to purchase equipment that is subject to a security interest (such as a motorcycle, snowmachine, or riding lawnmower) as well as related items that are not (such as helmets and other accessories). If the rate that applies to an unsecured balance is higher than the rate that applies to the secured balance, § 226.53(a) currently requires the card issuer to apply excess payments first to the unsecured balance. While this allocation method is generally beneficial to consumers insofar as it minimizes interest charges, it could also make it difficult for a consumer to pay off the secured balance in order to obtain a release of the security interest. For example, if a consumer wishes to sell, trade in, or otherwise dispose of the property in which the card issuer has a security interest, § 226.53(a) requires the consumer to pay off not only the secured balance but also any other balances to which a higher rate applies.

The Board believes that, in this narrow set of circumstances, it may be beneficial to consumers to provide greater flexibility regarding the allocation of excess payments. Accordingly, pursuant to its authority under TILA Section 105(a) and Section 2 of the Credit Card Act, the Board proposes to redesignate the special rules for accounts with deferred interest or similar balances as § 226.53(b)(1)(i) and (b)(1)(ii) and to adopt a new special rule for accounts with secured balances in § 226.53(b)(2). Specifically, the revised § 226.53(b)(2) would provide that, when a balance on a credit card account under an open-end (not home-secured) consumer credit plan is secured, the card issuer may at its option allocate any amount paid by the consumer in excess of the required minimum periodic payment to that balance if requested by the consumer.

The Board would also revise the commentary to § 226.53 consistent with the proposed revisions to § 226.53(b). In particular, the Board would clarify that the guidance in comment 53(b)–3 on what constitutes a consumer request when an account has a deferred interest or similar balance also applies when an account has a secured balance.

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

55(a) General Rule

Section 226.55 implements the restrictions on increases in annual percentage rates and certain fees and charges in TILA Sections 171 and 172. Section 226.55(a) prohibits card issuers from increasing an annual percentage rate or any fee or charge required to be disclosed under § 226.6(b)(2)(ii), (b)(2)(iii), or (b)(2)(xii) unless specifically permitted by one of the exceptions in § 226.55(b). The Board understands that there has been some confusion as to whether an increase in a rate, fee, or charge is subject to this prohibition when the consumer was previously notified of the circumstances giving rise to the increase. Accordingly, in order to remove any ambiguity, the Board proposes to amend comment 55(a)–1 to clarify that—except as specifically provided in § 226.55(b)—the prohibition in § 226.55(a) applies even if the circumstances under which an increase will occur are disclosed in advance.

55(b) Exceptions

Section 226.55(b) contains exceptions to the general rule in § 226.55(a). As a general matter, these exceptions are not mutually exclusive, and a card issuer may increase a rate, fee, or charge pursuant to one exception even if that increase would not be permitted under a different exception. Comment 55(b)–1 provides illustrative examples of the interaction between the different exceptions in § 226.55(b).

The Board proposes to amend comment 55(b)–1 to provide additional guidance regarding the interaction between the exception in § 226.55(b)(4) for accounts that become more than 60 days delinquent, the exception in § 226.55(b)(5) for accounts subject to a workout or temporary hardship arrangement, and the exception in § 226.55(b)(6) for accounts subject to the SCRA or a similar federal or state statute or regulation. Section 226.55(b)(4)(ii) implements the "cure" provision in TILA Section 171(b)(4)(B), which allows a consumer whose rate has been increased as a result of a delinquency of more than 60 days to "terminate" the increase (in other words, reduce the rate to the pre-existing value) by making the next six required minimum payments by the due date. For example, if the rate on a $1,000 balance was increased from 12% to 30% on January 31 based on a delinquency of more than 60 days, § 226.55(b)(4)(ii) requires the card issuer to reduce the rate on any remaining portion of the $1,000 balance to 12% if the consumer makes the required minimum periodic payments for February, March, April, May, June, and July by the relevant due date.

However, the Board understands that, in certain circumstances, a consumer may be placed on a workout or temporary hardship arrangement or enter military service after a rate has been increased based on a delinquency of more than 60 days but before the consumer has made the six timely payments necessary to obtain a reduction under § 226.55(b)(4)(ii). Section 226.55(b)(5) implements TILA Section 171(b)(3), which provides that a card issuer may increase the rate on an existing balance when a workout or temporary hardship arrangement is completed or fails, so long as the increased rate does not exceed the rate that applied prior to the arrangement. For example, if a card issuer reduced a consumer's rate on a $1,000 balance from 30% to 15% as part of a workout or temporary hardship arrangement, § 226.55(b)(5) would permit the card issuer to increase the rate on any remaining portion of the $2,000 balance to 30% upon completion or failure of the arrangement.

Similarly, when the rate that applies to a balance is reduced pursuant to the SCRA because the consumer enters military service, § 226.55(b)(6) permits the card issuer to reinstate the pre-existing rate for that balance once the consumer leaves military service. For example, if a card issuer reduced a consumer's rate on a $1,000 balance from 30% to 6% pursuant to the SCRA, § 226.55(b)(6) would permit the card issuer to increase the rate on any remaining portion of the $1,000 balance to 30% once the consumer leaves military service and the SCRA no longer applies.

Accordingly, when a consumer obtains a § 226.55(b)(4)(ii) reduction during a workout or temporary hardship arrangement or while in military service, it is unclear whether § 226.55(b)(5) or (b)(6) would permit the card issuer to negate that reduction by returning existing balances to the rate that applied prior to commencement of the arrangement or military service. Because § 226.55(b)(4)(ii) implements a specific statutory requirement that a rate increase based on a delinquency of more than 60 days be terminated if the consumer makes the next six required minimum payments on time, the Board believes it would be inconsistent with the intent of that requirement to interpret the exceptions in § 226.55(b)(5) and (b)(6) as overriding the reduction in rate. Thus, the Board would revise comment 55(b)–1 to clarify that, if § 226.55(b)(4)(ii) requires a card issuer to decrease the rate, fee, or charge that applies to a balance while the account is subject to a workout or temporary hardship arrangement or subject to the SCRA or a similar federal or state statute or regulation, the card issuer may not impose a higher rate, fee, or charge on that balance pursuant to § 226.55(b)(5) or (b)(6). The Board would also provide the following illustrative example: Assume that, on January 1, the annual percentage rate that applies to a $1,000 balance is increased from 12% to 30% pursuant to § 226.55(b)(4). On February 1, the rate on that balance is decreased from 30% to 15% consistent with § 226.55(b)(5) as a part of a workout or temporary hardship arrangement. On July 1, § 226.55(b)(4)(ii) requires the card issuer to reduce the rate that applies to any remaining portion of the $1,000 balance from 15% to 12%. If the consumer subsequently completes or fails to comply with the terms of the workout or temporary hardship arrangement, the card issuer may not increase the 12% rate on any remaining portion of the $1,000 balance pursuant to § 226.55(b)(5).

55(b)(1) Temporary Rate, Fee, or Charge Exception

Section 226.55(b)(1) implements TILA Section 171(b)(1), which permits a card issuer to increase a temporary or promotional rate upon expiration of a period of at least six months, provided that the card issuer discloses in advance the length of the period and the rate that will apply after expiration. However, neither § 226.55(b)(1) nor TILA Section 171(b)(1) addresses circumstances in which an annual fee or other fee or charge subject to § 226.55 increases after a specified period of time. As discussed above, the Board declined to adopt a specific exception for temporary or promotional fee programs in the February 2010 Final Rule because the Credit Card Act did not contain such an exception and because an exception did not appear to be necessary. *See* 75 FR 7734 n. 48; *see also id.* 7699, 7706–7707. Indeed, the Board noted that nothing in the February 2010 Final Rule prohibited a creditor from providing notice of an increase in a fee at the same time it temporarily reduces the fee; a creditor could provide information regarding the temporary reduction in the same notice, provided that it is not interspersed with the content required to be disclosed pursuant to § 226.9(c)(2)(iv). *See* 75 FR 7699; *see also* comment 5a(b)(2)–4.

Nevertheless, as discussed above with respect to § 226.9(c)(2)(v)(B), the Board believes that, upon further review, it may be appropriate to use its authority under TILA Section 105(a) and Section 2 of the Credit Card Act to specifically address temporary or promotional programs for fees or charges subject to § 226.55 in order to encourage issuers to disclose and structure such programs in a consistent manner that enables consumers to understand the associated costs. Accordingly, the Board proposes to amend § 226.55(b)(1) to apply to temporary or promotional programs for fees and charges required to be disclosed under § 226.6(b)(2)(ii), (b)(2)(iii), or (b)(2)(xii). Thus, for example, § 226.55(b)(1) would permit a card issuer to increase an annual fee after a specified period of time if the card issuer provides the consumer in advance with a clear and conspicuous written disclosure of the length of the period and the fee or charge that will apply after expiration of the period.

In addition, the Board would amend comments 55(b)(1)–2 and –4 for consistency with the proposed revisions to § 226.55(b)(1), to provide additional illustrative examples, and to make other non-substantive clarifications. The Board would also add a new comment 55(b)(1)–5 to clarify that, although the limitations in § 226.55(b)(1)(ii) on applying an increased rate to certain types of transactions would also apply to increased fees or charges subject to § 226.55, card issuers generally are not prohibited from increasing a fee or charge that applies to the account as whole (to the extent consistent with the notice requirements in § 226.9 and § 226.55(b)(3)). Finally, the Board would add an additional example to comment 55(b)–3 to clarify the application of § 226.55 when the specified time periods for temporary rates overlap.

55(b)(3) Advance Notice Exception

Section 226.55(b)(3) provides that a card issuer may generally increase the rate, fee, or charge that will apply to new transactions after complying with the notice requirements in § 226.9. However, § 226.55(b)(3)(iii) further provides that a card issuer cannot use this exception to increase a rate, fee, or charge during the first year after account opening.

The Board understands that there has been some confusion regarding the circumstances under which an increased fee or charge applies to an existing balance (as opposed to the account as a whole) and therefore does not qualify for the exception in § 226.55(b)(3). In particular, there has been uncertainty as to whether an increased fee or charge can be applied to a closed account or an account on which transaction privileges have been suspended. Because an account cannot be used for new transactions in these circumstances, an increased fee or charge subject to § 226.55 could only be applied to the account's existing balance. In addition, §§ 226.52(b)(2)(i)(B)(*3*) and 226.55(d)(1) generally prohibit a card issuer from applying a new or increased fee or charge to a closed account. Accordingly, to provide greater clarity, the Board would amend § 226.55(b)(3)(iii) to state that § 226.55(b)(3) does not permit a card issuer to increase a rate, fee, or charge subject to § 226.55 while an account is closed or while the card issuer does not permit the consumer to use the account for new transactions.

Finally, consistent with the proposed amendments to § 226.52(a)(1), the Board would clarify that, for purposes of § 226.55(b)(3)(iii), an account is considered open no earlier than the date on which the account may first be used by the consumer to engage in transactions.

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

Section 226.55(b)(6) provides that, when a card issuer is required by the SCRA to reduce the annual percentage rate for an account to 6% when the consumer enters military service, the card issuer may increase the rate once the SCRA no longer applies, subject to certain limitations. However, § 226.55(b)(6) does not address circumstances in which the SCRA's broad definition of "interest" requires the card issuer to reduce not only the annual percentage rate but also fees or charges while the consumer is in military service. *See* 50 U.S.C. app. 527(d)(1) (defining "interest" as including "service charges, renewal charges, fees, or any other charges (except bona fide insurance) with respect to an obligation or liability"). Accordingly, the Board would amend § 226.55(b)(6) and the relevant commentary to clarify that, to the extent the SCRA also requires the card issuer to reduce a fee or charge required to be disclosed under § 226.6(b)(2)(ii), (b)(2)(iii), or (b)(2)(xii), the card issuer is generally permitted to increase that fee or charge once the SCRA no longer applies.

The Board also understands that many states have enacted statutes that—like the SCRA—require creditors to reduce rates, fees, and charges while a consumer is in military service. *See, e.g.,* La. Rev. Stat. Ann. § 29:312; N.Y. Mil. Law art. 13 § 323–a; R.I. Gen. Laws § 30–7–10; Utah Code Ann. § 39–7–111. Accordingly, in order to clarify that § 226.55 does not prevent a card issuer from increasing a rate, fee, or charge to the pre-existing amount once a state law requirement no longer applies, the Board would amend the exception in § 226.55(b)(6) to apply to decreases imposed pursuant to the SCRA or "a similar federal or state statute or regulation." Corresponding amendments would be made to the relevant commentary.

Finally, the Board understands that, while the SCRA and some similar state statutes only require creditors to reduce the rates, fees, and charges that apply to obligations incurred *before* the consumer enters military service, some card issuers voluntarily apply the reduced rate, fee, or charge to transactions that occur *after* the consumer has entered military service. Accordingly, the Board would adopt a new comment 55(b)(6)–2 clarifying that, if a card issuer decreases all rates, fees, and charges to amounts that are consistent with the SCRA or a similar federal or state statute or regulation (including rates, fees, and charges that apply to new transactions), the card issuer may increase those rates, fees, and charges consistent with § 226.55(b)(6). The Board would also revise the example in current comment 55(b)(6)–2 to illustrate the application of this guidance and redesignate that example as comment 55(b)(6)–3.

55(c) Treatment of Protected Balances

Section 226.55(c) addresses the treatment of "protected balances," which are the existing balances to which a card issuer may not apply an increased rate, fee, or charge under § 226.55. Comment 55(c)(1)-3 provides guidance regarding the application of increased fees or charges to protected balances. In particular, this comment clarifies that, while a card issuer is prohibited from applying an increased fee or charge that is subject to § 226.55 to a protected balance, a card issuer is not prohibited from increasing a fee or charge that applies to the account as a whole or to balances other than the protected balance. The Board would revise this comment to clarify that a card issuer's ability to increase a fee or charge is also subject to the limitations in § 226.55(b)(3)(iii) on increasing fees during the first year after account opening, while an account is closed, or while transaction privileges are suspended.

The Board would also add a new comment 55(c)(1)-4 clarifying that nothing in § 226.55 prohibits a card issuer from changing the balance computation method that applies to new transactions as well as protected balances. However, the Board notes that, before changing the balance computation method, a card issuer must comply with the notice requirements in § 226.9(c)(2).

55(e) Promotional Waivers or Rebates of Interest, Fees, and Other Charges

Some card issuers offer promotional programs under which interest charges or fees will be waived or rebated so long as the consumer pays on time and otherwise complies with the account terms. For example, a card issuer might offer a promotion under which interest accrues on purchases at an annual percentage rate of 15% but will be waived for six months if the consumer pays on time each billing cycle. While this type of promotional program may be intended to encourage timely payment, a consumer who relies on the promotion when making transactions and then, for example, inadvertently pays one day late will experience a significant and potentially unexpected increase in the cost of those transactions. In contrast, if a consumer relies on a promotional rate when making transactions, TILA Section 171(b)(1) and § 226.55(b)(1) do not permit the card issuer to increase the cost of those transactions by revoking the promotional rate unless the account becomes more than 60 days past due. Thus, the Board is concerned that the revocation of promotional waiver or rebate programs based on so-called "hair trigger" violations of the account terms may be inconsistent with the purposes of the Credit Card Act.

In order to address these concerns, the Board is proposing to use its authority under TILA Section 105(a) and Section 2 of the Credit Card Act to add a new § 226.55(e), which would clarify that, if a card issuer promotes the waiver or rebate of interest, fees, or other charges subject to § 226.55, any cessation of the waiver or rebate constitutes an increase in a rate, fee, or charge for purposes of § 226.55. Thus, for example, if a card issuer promotes an interest waiver program, the card issuer must comply with § 226.55(b)(1) by disclosing the length of the promotion and the rate that will apply after the promotion expires. Furthermore, the card issuer would be prohibited from effectively increasing the interest charges for existing balances by ceasing or terminating the waiver during the promotional period, unless the account becomes more than 60 days delinquent consistent with § 226.55(b)(4).

The Board notes that § 226.55(e) is intended to address *promotional* programs involving waivers or rebates of interest, fees, and charges. The Board does not intend to restrict a card issuer's ability to waive or rebate interest, fees, or other charges in order to resolve disputes, address compliance concerns, or retain customers. Accordingly, comment 55(e)-1 would clarify that nothing in § 226.55 prohibits a card issuer from waiving or rebating finance charges due to a periodic interest rate or a fee or charge required to be disclosed under § 226.6(b)(2)(ii), (b)(2)(iii), or (b)(2)(xii). This comment would also provide examples of promotional waiver or rebate programs that would comply with § 226.55.

Comment 55(e)-2 would clarify the circumstances under which a card issuer would be considered to promote a waiver or rebate program for purposes of § 226.55(e). As a general matter, this comment would follow the existing guidance regarding advertisements in § 226.2(a)(2) and the accompanying commentary. Thus, a card issuer would promote a waiver or rebate program for purposes of § 226.55(e) if, for example, it disclosed the waiver or rebate in a newspaper, magazine, leaflet, promotional flyer, catalog, sign, or point-of-sale display. Similarly, a card issuer would promote a waiver or rebate program for purposes of § 226.55(e) if disclosed the waiver or rebate on radio or television or through electronic advertisements (such as on the Internet). *See* comment 2(a)(2)-1.i. In contrast, a card issuer generally would not promote a program for purposes of § 226.55(e) if it disclosed the waiver or rebate in a communication that is not an advertisement for purposes of § 226.2(a)(2), such as in educational materials that do not solicit business. *See* comment 2(a)(2)-1.ii.

However, the Board would deviate from the guidance in comment 2(a)(2)-1 in one important respect. Comments 2(a)(2)-1.ii.A and F provide, respectively, as examples of communications that are not advertisements "direct personal contacts" and "[c]ommunications about an existing credit account (for example, a promotion encouraging additional or different uses of an existing credit card account)." While these exclusions are appropriate for purposes of § 226.2(a)(2), it would be inconsistent with the purpose of § 226.55(e) to exclude from coverage waiver or rebate programs that are promoted directly to existing account holders. Accordingly, comment 55(e)-2 would clarify that programs disclosed to existing account holders are subject to § 226.55(e), unless the disclosure is either provided in relation to an inquiry or dispute about a specific charge or occurs after the card issuer has waived or rebated the interest, fees, or other charges. Thus, the comment would clarify that a card issuer is not promoting a waiver or rebate for purposes of § 226.55(e) if, for example, a consumer calls the issuer to dispute a fee that appears on his or her periodic statement and the issuer offers to waive the fee in order to resolve the dispute. Similarly, a card issuer would not be promoting a waiver or rebate if, for example, it waives interest charges that were erroneously imposed and then discloses that waiver on a periodic statement or in a letter. This guidance is consistent with the Board's desire to avoid restricting card issuers' ability to waive or rebate interest, fees, or other charges in order to resolve disputes, address compliance concerns, or retain customers.

Similarly, the comment would also provide a number of additional examples of circumstances in which a waiver or rebate is not promoted for purposes of § 226.55(e), including when a card issuer communicates with a consumer about a waiver or rebate in relation to an inquiry or dispute about a specific charge, when a card issuer waives or rebates interest, fees, or other charges in order to comply with a legal requirement (such as the fee limitations in § 226.52(a)), when a card issuer discloses a grace period, and when a card issuer provides an undisclosed period after the payment due date during which interest, fees, or other charges are waived or rebated even if a payment has not been received. The Board solicits comment on other examples of circumstances in which a card issuer may waive or rebate interest, fees, or charges subject to § 226.55 without promoting the waiver or rebate.

The Board understands that many card issuers promote rewards programs under which consumers can earn points, cash back, or similar benefits based on purchases, interest charges, or other factors. The Board further understands that some card issuers condition these benefits on the consumer making timely payments and otherwise complying with the account terms. Because TILA Sections 171 and 172 do not address these types of benefits, the loss of rewards generally does not raise the same concerns as the loss of a waiver or rebate of interest, fees, or other charges subject to § 226.55. Accordingly, comment 55(e)-2 would clarify that a card issuer is not promoting a waiver or rebate for purposes of § 226.55(e) if it provides benefits (such as rewards points or cash back based on purchases or finance charges) that can be applied to the account as credits, provided that the benefits are not promoted as reducing interest, fees, or other charges subject to § 226.55.

Finally, comment 55(e)-3 would provide guidance regarding the relationship between § 226.55(e) and a grace period. Specifically, this comment would clarify that § 226.55(e) does not apply to the waiver of finance charges due to a periodic rate consistent with a grace period, as defined in § 226.5(b)(2)(ii)(*3*).

Section 226.58 Internet Posting of Credit Card Agreements

58(b) Definitions

58(b)(4) Card Issuer

The Board proposes to add new § 226.58(b)(4) which would define the term card issuer solely for purposes of § 226.58. New § 226.58(b)(4) would provide that, for purposes of § 226.58, card issuer or issuer means the entity to which a consumer is legally obligated, or would be legally obligated, under the terms of a credit card agreement.

The Board also proposes to add new comment 58(b)(4)–1, which would provide the following example of how the definition of card issuer would apply. Bank X and Bank Y work together to issue credit cards. A consumer that obtains a credit card issued pursuant to this arrangement between Bank X and Bank Y is subject to an agreement that states "This is an agreement between you, the consumer, and Bank X that governs the terms of your Bank Y Credit Card." The card issuer in this example is Bank X, because the agreement creates a legally enforceable obligation between the consumer and Bank X. Bank X is the issuer even if the consumer applied for the card through a link on Bank Y's Web site and the cards prominently feature the Bank Y logo on the front of the card.

The Board understands that, in some cases, more than one institution is involved in the administration of a credit card program. For example, a smaller bank may partner with a larger bank to market credit cards to the smaller bank's customers. The Board also understands that the terms of these arrangements can vary, for example with respect to which institution uses its name and brand in marketing materials, develops and implements underwriting criteria, sets interest rates and other terms, approves applications, provides monthly statements and other disclosures to consumers, collects payments, and absorbs the risk of default or fraud.

Section 226.2(a)(7) of Regulation Z defines a card issuer as a person that issues a credit card or that person's agent with respect to the card. Under this definition, more than one card issuer may be associated with a single credit card account. This definition may be a source of confusion with respect to § 226.58. For example, the § 226.58(c)(5) de minimis exception provides that an issuer is not required to submit agreements to the Board under § 226.58(c)(1) if the issuer has fewer than 10,000 open credit card accounts as of the last business day of the calendar quarter. If two institutions are involved in issuing a credit card, one institution may have fewer than 10,000 open accounts while the other has more than 10,000 open accounts. It may be difficult to determine whether the de minimis exception applies in such cases. In addition, § 226.58(d) requires an issuer to post and maintain on its publicly available Web site the credit card agreements the issuer is required to submit to the Board. Where two institutions are involved in issuing a credit card, it may be unclear which institution should post and maintain the agreements on its Web site. Similarly, § 226.58(e)(2) provides that an issuer that does not maintain an interactive Web site is permitted to allow individual cardholders to request copies of their agreements solely by calling a readily available telephone line, rather than both by using the issuer's Web site and by calling a readily available telephone line. If two institutions are involved in issuing a credit card, one institution may maintain a Web site from which cardholders can access specific information about their accounts while the other does not. In such cases, it may be difficult to determine whether the § 226.58(e)(2) special rule applies.

The Board therefore believes that it would be beneficial to clarify which institution is the card issuer for purposes of § 226.58. The Board is proposing to define card issuer with respect to a particular agreement as the entity to which a consumer is legally obligated, or would be legally obligated, under the terms of that agreement. The Board is proposing this approach for several reasons.

First, the proposed definition creates a bright-line rule that would enable institutions involved in issuing credit cards to determine their obligations under § 226.58. Second, the proposed definition is consistent with the actual legal relationship into which a consumer enters under a credit card agreement.

Third, the Board understands that the institution to which the consumer is legally obligated under the agreement in most cases will be in a better position to provide accurate, up-to-date agreements both to the Board and to consumers. The Board understands that, in many cases, the institution that is a party to the agreement also is the institution that prepares the agreement, sends the agreement to consumers at account opening, and updates and revises the agreement. That institution likely would be in the best position to determine which agreements currently are offered to the public and to identify the agreement to which a particular cardholder is subject. The Board also understands that, in many cases, the institution that is a party to the agreement also is the institution that maintains a Web site on which cardholders can obtain information about their accounts (if such a Web site is maintained). Many consumers would look to such a Web site when attempting to obtain a copy of their credit card agreements.

Fourth, the Board understands that an institution that partners with multiple other institutions to issue credit cards in many cases will use the same agreement for all of the credit cards issued in connection with those arrangements. Therefore, while the number of credit cards issued with a given partner institution may be small, the total number of consumers subject to the corresponding agreement may be quite large. The Board believes that it would be beneficial to have such agreements submitted to the Board for posting on the Board's Web site.

The Board is aware that consumers in some cases may be unsure about which institution issues their credit card. For example, a consumer may apply for a credit card through a link on the Web site of a bank with which the consumer has a pre-existing relationship, and the face of the credit card may prominently display that bank's logo. In some such cases, the consumer may assume that the card is issued by that bank, even though Web site disclaimers, the credit card agreement, the back of the credit card, and other materials explain that the card is issued by another institution. The Board believes, however, that institutions can take steps to alleviate this confusion, for example by disclosing the identity of the other institution and providing contact information for the other institution or a link to the other institution's Web site. The Board also believes that consumers would benefit from having a clearer understanding of to what institution they are legally obligated under a credit card agreement.

The proposed definition would apply solely with respect to § 226.58 and would not change the definition of card issuer for purposes of other provisions of Regulation Z. The proposed definition therefore should not affect other Regulation Z compliance obligations.

The Board solicits comment on the proposed definition of card issuer, on what additional guidance with respect to the definition would be helpful, and on whether there are alternative, preferable approaches to defining card issuer for purposes of § 226.58.

As a result of the Board's proposal to add new § 226.58(b)(4) defining the term card issuer, the Board proposes to renumber §§ 226.58(b)(4), (b)(5), (b)(6), and (b)(7) as §§ 226.58(b)(5), (b)(6), (b)(7), and (b)(8), respectively. The Board also proposes to make conforming changes to references to these subsections included in other subsections of § 226.58 and the official staff commentary.

58(b)(6) Pricing Information

The Board proposes to amend the definition of pricing information included in § 226.58(b) to omit the information listed in § 226.6(b)(4) from the definition. The Board continues to believe that consumers should receive the more robust disclosure regarding rates required by § 226.6(b)(4) in the account-opening disclosures governed by § 226.6(b). However, under § 226.58 it appears that at least some of the additional disclosures required by § 226.6(b)(4) may be a source of confusion to both consumers and issuers. For example, § 226.6(b)(4) requires card issuers to disclose the periodic rate as well as the corresponding APR. Account-opening disclosures reflect the terms of a specific consumer's account at the time that account is opened. The APR is disclosed as a value, and the corresponding periodic rate therefore is relatively straightforward to state and understand. However, agreements submitted to the Board under § 226.58 reflect a range of pricing terms that may be offered in connection with a set of terms and conditions and are updated only quarterly. Section 226.58(c)(8)(ii)(C) therefore requires issuers to identify the index or formula and the margin used to set a variable rate, rather than the value of the rate or the value of the index. In this context, it is difficult to state the corresponding periodic rate in a way that is accurate and understandable. With respect to other information required to be disclosed under § 226.6(b)(4), such as the circumstances and frequency under which a variable rate may increase and any limitation on the amount a variable rate may change, it is not clear whether this information is useful to consumers when reviewing agreements under § 226.58.

The Board solicits comment on whether the definition of pricing information should continue to include some or all of the additional disclosure regarding rates specified in § 226.6(b)(4), or whether the Board should omit this disclosure from the definition as proposed.

58(c) Submission of Agreements to Board

58(c)(1) Quarterly Submissions

Quarterly Submission Deadlines. The Board proposes to amend § 226.58(c)(1) to state that quarterly submissions must be sent 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. These quarterly submission deadlines were inadvertently omitted from the February 2010 Final Rule.

Submission of Amended Agreements. The Board proposes to revise § 226.58(c)(1)(iii) to clarify that issuers are required to submit amended agreements to the Board only if the issuer offered the amended agreement to the public as of the last business day of the preceding calendar quarter. Amended agreements that the issuer no longer offered to the public as of the last business day of the preceding calendar quarter are not required to be submitted to the Board.

The Board also proposes to revise § 226.58(c)(3) regarding amended agreements, as discussed below.

Notice of Withdrawal of Agreements. The Board proposes to amend § 226.58(c)(1)(iv) to include cross references to §§ 226.58(c)(6) and (c)(7), in addition to §§ 226.58(c)(4) and (c)(5). These cross references were unintentionally omitted from the February 2010 Final Rule.

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

The Board proposes to delete the § 226.58(c)(2) special rules for the initial and second submissions to the Board and to reserve § 226.58(c)(2). Section 226.58(c)(2) provided special rules for the timing and contents of submissions required to be sent to the Board by February 22, 2010, and August 2, 2010. These special rules were necessary to reconcile the statutorily-mandated February 22, 2010, initial submission deadline with the ongoing reporting schedule based on calendar quarters set forth in the February 2010 Final Rule. Because the February 22, 2010, and August 2, 2010, deadlines have passed, § 226.58(c)(2) has no prospective relevance. The Board therefore proposes to delete the special rules related to those deadlines and reserve this section.

58(c)(3) Amended Agreements

The Board proposes to amend § 226.58(c)(3) to clarify that issuers are required to submit amended agreements to the Board only if the issuer offered the amended agreement to the public as of the last business day of the preceding calendar quarter. Amended agreements that the issuer no longer offered to the public as of the last business day of the calendar quarter should not be submitted to the Board.

The Board also proposes to revise comment 58(c)(3)–2 to reflect this clarification and to add new comment 58(c)(3)–3, which would provide the following example of the application of revised § 226.58(c)(3): On December 31 a card issuer offers two agreements, Agreement A and Agreement B. The issuer submits these agreements to the Board by January 31 as required by § 226.58. On February 15, the issuer amends both Agreement A and Agreement B. On February 28, the issuer stops offering Agreement A to the public. On March 15, the issuer amends Agreement B a second time. As a result, on March 31, the last business day of the calendar quarter, the issuer offers to the public one agreement—Agreement B as amended on March 15. By the April 30 quarterly submission deadline, the issuer must: (1) Notify the Board that it is withdrawing Agreement A because Agreement A is no longer offered to the public; and (2) submit to the Board Agreement B as amended on March 15. The issuer should not submit to the Board either Agreement A as amended on February 15 or the earlier version of Agreement B (as amended on February 15), as neither was offered to the public on March 31, the last business day of the calendar quarter.

The Board also proposes to renumber existing comment 58(c)(3)–3, regarding change-in-terms notices, as 58(c)(3)–4.

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

The Board proposes to revise § 226.58(c)(8)(i)(C)(*1*) to clarify that billing rights notices are not deemed to be part of the agreement for purposes of § 226.58 and therefore are not required to be included in agreements submitted to the Board. The Board understands that the appropriate treatment of billing rights notices under this provision has been a source of confusion for card issuers and others. The Board therefore proposes to specifically indicate in § 226.58(c)(8)(i)(C)(*1*) that billing rights notices are disclosures required by state or federal law that, like affiliate marketing notices, privacy policies, and E-Sign Act disclosures, are not considered to be part of the agreement for purposes of § 226.58.

It is important to note that § 226.58(c)(8)(i)(C)(*1*) is not intended to provide an exhaustive list of the state and federal law disclosures that are not deemed to be part of an agreement under § 226.58. As indicated by the use of the phrase "such as," the listed disclosures are merely examples of "disclosures required by state or federal law." The Board does not believe it is feasible to include in § 226.58(c)(8)(i)(C)(*1*) a comprehensive list of all such disclosures, as such a list would be extensive and would change as state and federal laws and regulations are amended. However, because billing rights notices appear to be a specific source of confusion, the Board is proposing to address their treatment by amending § 226.58(c)(8)(i)(C)(*1*).

58(e) Agreements for All Open Accounts

58(e)(2) Special Rule for Issuers Without Interactive Web Sites

The Board proposes to revise comment 58(e)–3 to clarify the application of the special rule provided in § 226.58(e)(2) to issuers that provide online access to individual account information through third-party interactive Web sites. Section 226.58(e)(2) provides that an issuer that does not maintain an interactive Web site (i.e., a Web site from which a cardholder can access specific information about his or her individual account) may provide cardholders with the ability to request a copy of their agreements by calling a readily available telephone line, the number for which is: (1) Displayed on the issuer's Web site and clearly identified as to purpose; or (2) included on each periodic statement sent to the cardholder and clearly identified as to purpose.

The Board understands that some issuers provide cardholders with access to specific information about their individual accounts, such as balance information or copies of statements, through a third-party interactive Web site. As revised, comment 58(e)–3 would clarify that such an issuer is considered to maintain an interactive Web site for purposes of the § 226.58(e)(2) special rule. Such a Web site is deemed to be maintained by the issuer for purposes of § 226.58(e)(2) even where, for example, an unaffiliated entity designs the Web site and owns and maintains the information technology infrastructure that supports the Web site, cardholders with credit cards from multiple issuers can access individual account information through the same Web site, and the Web site is not labeled, branded, or otherwise held out to the public as belonging to the issuer. An issuer that provides cardholders with access to specific information about their individual accounts through such a Web site is not permitted to use the procedures described in the § 226.58(e)(2) special rule. Instead, such an issuer must comply with § 226.58(e)(1).

The special rule in § 226.58(e)(2) provides cardholders with a convenient means to request copies of their credit card agreements without requiring issuers that do not have interactive Web sites to build such Web sites for the sole purpose of facilitating cardholder requests for agreements. Building an interactive Web site and complying with privacy and data security requirements would represent a significant compliance burden, especially for smaller issuers. In adopting the § 226.58(e)(2) final rule, the Board noted its belief that the added convenience to cardholders of being able to request a copy of their agreement through a Web site, rather than by alternative means, does not outweigh the burden on issuers that do not otherwise maintain interactive Web sites of creating such Web sites solely to facilitate cardholder requests for agreements. This rationale does not apply, however, to an issuer that already provides cardholders with access to individual account information through a Web site, whether through the issuer's own Web site or through an arrangement with a third party.

Section 226.59 Reevaluation of Rate Increases

59(a) General Rule

Section 226.59 implements TILA Section 148, which was added by the Credit Card Act. TILA Section 148, as implemented in § 226.59(a), generally requires card issuers that increase an annual percentage rate applicable to a credit card account under an open-end (not home-secured) consumer credit plan, based on the credit risk of the consumer, market conditions, or other factors, to evaluate factors described in the rule no less frequently than once every six months and, as appropriate based upon that review, reduce the annual percentage rate applicable to the consumer's account. Consistent with TILA Section 148, § 226.59 generally applies to rate increases made on or after January 1, 2009.

Since publication of the June 2010 Final Rule, several issuers have requested additional clarification regarding what constitutes a rate increase for purposes of § 226.59. In particular, the Board understands that there is a need for additional guidance regarding the circumstances in which a change in the type of rate—for example, from a non-variable rate to a variable rate—is considered to be a rate increase triggering review obligations under § 226.59. The Board notes that in several other contexts, Regulation Z treats a change in a type of rate as equivalent to a rate increase. For example, comments 9(c)(2)(iv)–3 and 9(c)(2)(iv)–4 clarify that 45 days' advance notice is generally required under § 226.9(c)(2) when the annual percentage rate on an open-end (not home-secured) consumer credit plan is changed from a variable to a non-variable rate or from a non-variable to a variable rate. In addition, comment 55(b)(2)–4 treats changing a non-variable rate to a variable rate as equivalent to a rate increase for purposes of § 226.55.

The Board is proposing to adopt new comment 59(a)(1)–3 to clarify the applicability of the rate reevaluation requirements when a card issuer changes the type of rate applicable to a credit card account under an open-end (not home-secured) consumer credit plan. Existing comments 59(a)(1)–3 and 59(a)(1)–4 would be renumbered accordingly. Comment 59(a)(1)–3.i would provide that a change from a variable rate to a non-variable rate or from a non-variable rate to a variable rate generally is not a rate increase for purposes of § 226.59, if the rate in effect immediately prior to the change in the type of rate is equal to or greater than to the rate in effect immediately after the change. The proposed comment states that, for example, a change from a variable rate of 15.99% to a non-variable rate of 15.99% is not a rate increase for purposes of § 226.59 at the time of the change. Proposed comment 59(a)(1)–3.i also cross-references § 226.55 for limitations on the permissibility of changing from a non-variable rate to a variable rate.

Proposed comment 59(a)(1)–3.ii would set forth special guidance regarding a change from a non-variable to a variable rate. Proposed comment 59(a)(1)–3.ii states that a change from a non-variable to a variable rate constitutes a rate increase for purposes of § 226.59 if the variable rate exceeds the non-variable rate that would have applied if the change in type of rate had not occurred. The proposed comment illustrates the applicability of § 226.59 to a change from a non-variable to a variable rate with the following example: Assume a new credit card account under an open-end (not home-secured) consumer credit plan is opened on January 1 of year 1 and that a non-variable annual percentage rate of 12% applies to all transactions on the account. On January 1 of year 2, upon 45 days' advance notice pursuant to § 226.9(c)(2), the rate on all new transactions is changed to a variable rate that is currently 12% and is determined by adding a margin of 10 percentage points to a publicly-available index not under the card issuer's control. The change from the 12% non-variable rate to the 12% variable rate is not a rate increase for purposes of § 226.59(a). On April 1 of year 2, the value of the variable rate increases to 12.5%. The increase in the variable rate from 12% to 12.5% is a rate increase for purposes of § 226.59, and the card issuer must begin periodically conducting reviews of the account pursuant to § 226.59.

Similarly, proposed comment 59(a)(1)–3.iii states that a change from a variable to a non-variable rate constitutes a rate increase for purposes of § 226.59 if the non-variable rate exceeds the variable rate that would have applied if the change in the type of rate had not occurred. The proposed comment sets forth the following illustrative example: assume a new credit card account under an open-end (not home-secured) consumer credit plan is opened on January 1 of year 1 and that a variable annual percentage rate that is currently 15% and is determined by adding a margin of 10 percentage points to a publicly-available index not under the card issuer's control applies to all transactions on the account. On January 1 of year 2, upon 45 days' advance notice pursuant to § 226.9(c)(2), the rate on all existing balances and new transactions is changed to a non-variable rate that is currently 15%. The change from the 15% variable rate to the 15% non-variable rate on January 1 of year 2 is not a rate increase for purposes of § 226.59(a). On April 1 of year 2, the value of the variable rate that would have applied to the account decreases to 12.5%. Accordingly, on April 1 of year 2, the non-variable rate of 15% exceeds the 12.5% variable rate that would have applied but for the change in type of rate. At this time, the change to the non-variable rate of 15% constitutes a rate increase for purposes of § 226.59, and the card issuer must begin periodically conducting reviews of the account pursuant to § 226.59.

The Board believes that this clarification regarding changes in types of rates is appropriate to effectuate the purposes of TILA Section 148. As discussed in the supplementary information to its final rule published on January 29, 2009, the Board recognizes that a change from one type of rate to another (e.g., variable or non-variable) may, over time, result in the new rate being higher than the rate that would have applied but for the change, even if at the time of the change the prior rate exceeded the new rate. *See* 74 FR 5345. For this reason, as discussed above, comments 9(c)(2)(iv)–3 and 9(c)(2)(iv)–4 clarify that 45 days' advance notice is generally required under § 226.9(c)(2) when the annual percentage rate on an open-end (not home-secured) consumer credit plan is changed from a variable to a non-variable rate or from a non-variable to a variable rate. The Board believes that consistent treatment is generally appropriate under § 226.59, because a change in type of rate may, over time, result in a rate increase on a consumer's account; however, the Board proposes to apply the review requirement under § 226.59 only if and when the new rate exceeds the rate that would have applied if the change in type of rate had not occurred. For example, a consumer who has an existing account with a non-variable rate has an expectation that the rate generally will not change. However, if the issuer changes the non-variable rate to a variable rate, an increase in the index value may result in the rate applicable to the consumer's account increasing, and exceeding the non-variable rate that previously applied. Accordingly, the Board believes that in such circumstances a rate increase has occurred and must be reviewed under § 226.59.

The Board solicits comment on whether there are other types of changes to rates for which clarification of the applicability of § 226.59 would be appropriate.

59(d) Factors

Section 226.59(d) sets forth guidance regarding the factors that an issuer must consider when conducting reviews of a rate increase pursuant to § 226.59. Section 226.59(d)(1) sets forth the general rule and states that, except as provided in § 226.59(d)(2) (which is discussed below), a card issuer must review either: (1) The factors on which the increase in an annual percentage rate was originally based; or (2) the factors that the card issuer currently considers when determining the annual percentage rates applicable to similar new credit card accounts. Section 226.59(d)(2) sets forth a special rule for certain rate increases imposed between January 1, 2009 and February 21, 2010. Section 226.59(d)(2) provides that, when conducting the first two reviews required under § 226.59(a) for rate increases imposed between January 1, 2009 and February 21, 2010, an issuer must consider the factors that it currently considers when determining the annual percentage rates applicable to similar new credit card accounts, unless the rate increase was based solely upon factors specific to the consumer, such as a decline in the consumer's credit risk, the consumer's delinquency or default, or a violation of the terms of the account.

As discussed in the supplementary information to the June 2010 Final Rule, § 226.59(d)(2) was adopted to address the Board's concerns regarding portfolio-wide rate increases made following the enactment of the Credit Card Act but prior to the effective date of many of the substantive protections contained in the statute. Some rate increases that occurred prior to February 22, 2010 resulted from adjustments in issuers' pricing practices to take into account the limitations that the Credit Card Act imposed on rate increases on existing balances. The Board was concerned that permitting card issuers to review the factors on which the rate increase was based may not result in a meaningful review in these circumstances, because the legal restrictions imposed by the Credit Card Act have continuing application. In other words, if a card issuer were to consider the factors on which the rate increase was based—*i.e.,* the enactment of the Credit Card Act's legal restrictions regarding rate increases—it might determine that a rate decrease is not required.

Accordingly, the Board adopted § 226.59(d)(2) to require card issuers to consider, for a brief transition period, the factors that they use when setting the rates applicable to similar new accounts for rate increases imposed prior to February 22, 2010, if the rate increase was not based on consumer-specific factors. For the reasons discussed in the supplementary information to the June 2010 Final Rule, the requirement to consider the factors that an issuer evaluates when setting the rates applicable to similar new accounts applies only during the first two review periods following the effective date of § 226.59 and only for rate increases imposed between January 1, 2009 and February 21, 2010.

For rate increases based solely on consumer behavior or other consumer-specific factors, § 226.59(d) does not distinguish between rate increases imposed prior to or after February 22, 2010. Accordingly, for such rate increases an issuer may consider either the factors on which the increase in an annual percentage rate was originally based or the factors that the card issuer currently considers when determining the annual percentage rates applicable to similar new credit card accounts. Consumer-specific factors, such as a consumer's credit score or payment history on the account, can and do change over time. Accordingly, the Board noted in the supplementary information to the June 2010 Final Rule that it believes consideration of the consumer-specific factors that an issuer considered when imposing the rate increase would result in a meaningful review and, where appropriate, rate decreases, for rate increases imposed between January 1, 2009 and February 21, 2010.

The Board understands that some confusion has arisen regarding compliance with the special rule set forth in § 226.59(d)(2) in the case where two rate increases occurred between January 1, 2009 and February 21, 2010, one of which was based on conditions that are not specific to the consumer and one of which was based on consumer-specific behavior. The Board understands that there is particular concern regarding the application of the rule if the issuer made a market-based rate increase and subsequently increased the rate to a penalty rate, due to a late payment or other consumer behavior that violates the terms of the account. The Board is proposing a new comment 59(d)–6 to clarify the application of the rule in these circumstances. Proposed comment 59(d)–6 notes that § 226.59(d)(2) applies if an issuer increased the rate applicable to a credit card account under an open-end (not home-secured) consumer credit plan between January 1, 2009 and February 21, 2010, and the increase was not based solely upon factors specific to the consumer. The proposed comment further notes that in some cases, a credit card account may have been subject to multiple rate increases during the period from January 1, 2009 to February 21, 2010. Some such rate increases may have been based solely upon factors specific to the consumer, while others may have been based on factors not specific to the consumer, such as the issuer's cost of funds or market conditions. The comment would clarify that in such circumstances, when conducting the first two reviews required under § 226.59, the card issuer may separately review: (A) Rate increases imposed based on factors not specific to the consumer, using the factors described in § 226.59(d)(1)(ii) (as required by § 226.59(d)(2)); and (B) rate increases imposed based on consumer-specific factors, using the factors described in § 226.59(d)(1)(i). If the review of factors described in § 226.59(d)(1)(i) indicates that it is appropriate to continue to apply a penalty rate to the account as a result of the consumer's payment history or other behavior on the account, proposed comment 59(d)–6 clarifies that § 226.59 permits the card issuer to continue to impose the penalty rate, even if the review of the factors described in § 226.59(d)(1)(ii) would otherwise require a rate decrease.

Proposed comment 59(d)–6.ii would set forth the following example: Assume a credit card account was subject to a rate of 15% on all transactions as of January 1, 2009. On May 1, 2009, the issuer increased the rate on existing balances and new transactions to 18%, based upon market conditions or other factors not specific to the consumer or the consumer's account. Subsequently, on September 1, 2009, based on a payment that was received five days after the due date, the issuer increased the applicable rate on existing balances and new transactions from 18% to a penalty rate of 25%. When conducting the first review required under § 226.59, the card issuer reviews the rate increase from 15% to 18% using the factors described in § 226.59(d)(1)(ii) (as required by § 226.59(d)(2)), and separately but concurrently reviews the rate increase from 18% to 25% using the factors described in paragraph § 226.59(d)(1)(i). The review of the rate increase from 15% to 18% based upon the factors described in § 226.59(d)(1)(ii) indicates that a similarly situated new consumer would receive a rate of 17%. The review of the rate increase from 18% to 25% based upon the factors described in § 226.59(d)(1)(i) indicates that it is appropriate to continue to apply the 25% penalty rate based upon the consumer's late payment. Section 226.59 permits the rate on the account to remain at 25%.

The Board notes that the intent of the special rule in § 226.59(d)(2) was not to require card issuers to reduce penalty rates, if the consumer's credit risk or behavior on the account justifies the maintenance of a penalty rate in order to account for the additional risk of nonpayment posed by the consumer. The Board believes that the clarification in proposed comment 59(d)–6 is appropriate in order to ensure that § 226.59(d)(2) does not lead to unintended consequences in cases where a market-based rate increase and a rate increase due to the imposition of a penalty rate both occurred between January 1, 2009 and February 21, 2010.

59(f) Termination of Obligation To Review Factors

Section 226.59(f) generally provides that the obligation to conduct periodic reevaluations of a rate increase ceases to apply if the issuer reduces the annual percentage rate applicable to the account to a rate equal to or lower than the rate that was in effect immediately prior to the increase. The Board understands that some confusion has arisen regarding the relationship between the general rule in § 226.59(a) and the termination provision in § 226.59(f). For example, a card issuer may periodically review a consumer's account on which the rate has been increased, consistent with § 226.59(d)(1)(ii), by evaluating the factors that it currently considers when determining the annual percentage rates applicable to similar new credit card accounts. In the course of conducting such a review, the card issuer may determine that it would offer a lower rate on a new account than the rate that applied, prior to the rate increase, to the existing account being reviewed. In these circumstances, issuers have asked the Board for guidance regarding the amount of the rate reduction required under § 226.59.

The Board proposes to clarify that in these circumstances, § 226.59 requires that the rate on the existing account be reduced to the rate that was in effect prior to the rate increase, not to the lower rate that would be offered to a comparable new consumer. The Board notes that the review requirements of TILA Section 148 are triggered only if an annual percentage rate applicable to a credit card account is increased. The Board believes that if Congress had intended for all annual percentage rates on all credit card accounts to be reviewed indefinitely, regardless of whether the account is subject to a rate increase, it would have so provided in the Credit Card Act. Accordingly, the Board believes that it would be inappropriate to require card issuers to reduce a rate on a credit card account to a rate that is lower than the rate that applied to the account prior to the increase.

To clarify the relationship between § 226.59(a) and (f), the Board is proposing to adopt a new comment 59(f)–2, which would set forth the following illustrative example: Assume that on January 1, 2011, a consumer opens a new credit card account under an open-end (not home-secured) consumer credit plan. The annual percentage rate applicable to purchases is 15%. Upon providing 45 days' advance notice and to the extent permitted under § 226.55, the card issuer increases the rate applicable to new purchases to 18%, effective on September 1, 2012. The card issuer conducts reviews of the increased rate in accordance with § 226.59 on January 1, 2013 and July 1, 2013, based on the factors described in § 226.59(d)(1)(ii). Based on the January 1, 2013 review, the rate applicable to purchases remains at 18%. In the review conducted on July 1, 2013, the card issuer determines that, based on the relevant factors, the rate it would offer on a comparable new account would be 14%. Consistent with § 226.59(f), § 226.59(a) requires that the card issuer reduce the rate on the existing account to the 15% rate that was in effect prior to the September 1, 2012 rate increase.

Appendix M1—Repayment Disclosures

As discussed in the section-by-section analysis to § 226.7(b)(12), Appendix M1 contains guidance for how to calculate the repayment disclosures required to be disclosed under § 226.7(b)(12). Specifically, § 226.7(b)(12)(i) generally requires card issuers to disclose the following repayment 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 length of time it would take to repay the outstanding balance if the consumer pays only the required minimum monthly payments and no further advances are made; (3) the total cost to the consumer of paying the balance in full if the consumer pays only the required minimum monthly payments and no further advances are made; (4) the minimum payment amount that would be required for the consumer to pay off the outstanding balance in 36 months, if no further advances are made; (5) the total cost to the consumer of paying the balance in full if the consumer pays the balance over 36 months; (6) the total savings of paying the balance in 36 months (rather than making only minimum payments); and (7) a toll-free telephone number at which the consumer may receive information about accessing consumer credit counseling.

Section 226.7(b)(12)(i) and (ii) provides that card issuers must round the following disclosures to the nearest whole dollar when disclosing them on the periodic statement: (1) The minimum payment total cost estimate, (2) the estimated minimum payment for repayment in 36 months, (3) the total cost estimate for repayment in 36 months, and (4) the savings estimate for repayment in 36 months. *See* 226.7(b)(12)(i)(C), (b)(12)(i)(F)(*1*)(*i*), (b)(12)(i)(F)(*1*)(*iii*), (b)(12)(i)(F)(*1*)(*iv*) and (b)(12)(ii)(C). For the reasons discussed in the section-by-section analysis to § 226.7(b)(12), the Board proposes to revise § 226.7(b)(12)(i) and (ii) to allow card issuers to round these disclosures to either the nearest whole dollar or to the nearest cent when disclosing them on the periodic statement. Currently, paragraph (f) of Appendix M1 references rounding disclosures to the nearest whole dollar when calculating the total saving estimate for repayment in 36 months. Specifically, paragraph (f) of Appendix M1 states that when calculating the savings estimate for repayment in 36 months, a card issuer must subtract the total cost estimate for repayment in 36 months calculated under paragraph (e) of Appendix M1 (rounded to the nearest whole dollar as set forth in § 226.7(b)(12)(i)(F)(*1*)(*iii*)) from the minimum payment total cost estimate calculated under paragraph (c) of Appendix M1 (rounded to the nearest whole dollar as set forth in § 226.7(b)(12)(i)(C)).

Consistent with the proposed changes to § 226.7(b)(12), paragraph (f) of Appendix M1 would be revised to indicate that a card issuer, at its option, may round the disclosures either to the nearest whole dollar or to the nearest cent in calculating the savings estimate for repayment in 36 months. If a card issuer chooses under § 226.7(b)(12) to round the disclosures to the nearest whole dollar, the card issuer must calculate the savings estimate for repayment in 36 months by subtracting the total cost estimate for repayment in 36 months calculated under paragraph (e) of Appendix M1 (rounded to the nearest whole dollar) from the minimum payment total cost estimate calculated under paragraph (c) of Appendix M1 (rounded to the nearest whole dollar). If a card issuer chooses, however, to round the disclosures to the nearest cent, the card issuer must calculate the savings estimate for repayment in 36 months by subtracting the total cost estimate for repayment in 36 months calculated under paragraph (e) of Appendix M1 (rounded to the nearest cent) from the minimum payment total cost estimate calculated under paragraph (c) of Appendix M1 (rounded to the nearest cent). This ensures that the savings estimate for repayment in 36 months is calculated consistent with how the other disclosures will be shown on the periodic statement.

IV. Regulatory Analysis

This proposed rule would clarify aspects of the Board's February and June 2010 Final Rules implementing the Credit Card Act. Section VI of the **SUPPLEMENTARY INFORMATION** to the February 2010 Final Rule and section VII of the **SUPPLEMENTARY INFORMATION** to the June 2010 Final Rule set forth the Board's analyses and determinations under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) with respect to those rules. *See* 75 FR 7789–7791, 75 FR 37565–37567. In addition, section VII of the **SUPPLEMENTARY INFORMATION** to the February 2010 Final Rule and section VIII of the **SUPPLEMENTARY INFORMATION** to the June 2010 Final Rule set forth the Board's analyses and determinations under the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3506; 5 CFR Part 1320 Appendix A.1) with respect to those rules. *See* 75 FR 7791, 75 FR 37567–37568. Because the proposed amendments are clarifications and would not, if adopted, alter the substance of these analyses and determinations, the Board continues to rely on those analyses and determinations for purposes of this rulemaking.[8]

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 Cynthia Ayouch, Acting Federal Reserve Board Clearance Officer, Division of Research and Statistics, Mail Stop 95–A, Board of Governors of the Federal Reserve System, Washington, DC 20551, with copies of such comments sent to the Office of Management and Budget, Paperwork Reduction Project (7100–0199), Washington, DC 20503.

List of Subjects in 12 CFR Part 226

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

Text of Final Revisions

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

[8] The Board notes that the proposed amendments to § 226.9(c)(2)(v)(B) would permit a card issuer to provide the consumer in advance with certain written disclosures of a fee increase upon expiration of a specified period of time, without providing 45 days' advance notice pursuant to § 226.9(c)(2). The Board anticipates that the proposed rule would impose no additional burden on card issuers because the proposed clarification would provide an alternative means of complying with disclosures that are otherwise required by § 226.9(c)(2).

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. 111–24 § 2, 123 Stat. 1734.

Subpart A—General

* * * * *

Subpart B—Open-End Credit

2. Section 226.2(a)(15)(ii) is revised to read as follows:

§ 226.2 Definitions and rules of construction.

(a) * * *

(15) * * *

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

(A) A 【credit card that accesses a】 home-equity plan subject to the requirements of § 226.5b ►that is accessed by a credit card◄; or

(B) An overdraft line of credit ►that is◄ accessed by a debit card ►or an account number◄.

* * * * *

3. Section 226.5 is amended by revising the heading to paragraph (b)(2)(ii)(A) and by revising paragraph (b)(2)(ii)(B) to read as follows:

§ 226.5 General disclosure requirements.

* * * * *

(b) * * *

(2) * * *

(ii) *Timing requirements.*

(A) ►*Credit card accounts under an open-end (not home-secured) consumer credit plan.*◄ 【*Payment due date.*】 * * *

(B) ►*Open-end consumer credit plans.*◄ 【*Grace period expiration date.*】 For ►accounts under an◄ open-end consumer credit plan【s】, a creditor must adopt reasonable procedures designed to ensure that:

(*1*) ►If a grace period applies to the account:

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

►(*ii*)◄ 【(*2*)】 The creditor does not impose finance charges as a result of the loss of ►the◄ 【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.

►(*2*) If a grace period does not apply to the account:

(*i*) Periodic statements are mailed or delivered at least 14 days prior to the date on which the required minimum periodic payment must be received in order to avoid being treated as late for any purpose; and

(*ii*) The creditor does not treat as late for any purpose a required minimum periodic payment received by the creditor within 14 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]

* * * * *

4. Section 226.5a is amended by revising paragraphs (a)(2)(iii), (b)(1)(i), and (b)(1)(iv) to read as follows:

§ 226.5a Credit and charge card applications and solicitations.

(a) * * *

(2) * * *

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

* * * * *

(b) * * *

(1) * * *

(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.

* * * * *

(iv) *Penalty rates.* (A) *In general.* Except as provided in paragraph (b)(1)(iv)(B) ►and (b)(1)(iv)(C)◄ 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.

►(C) *Employee preferential rates.* If a card issuer discloses in the table a preferential annual percentage rate for which only employees of the creditor or employees of a third party are eligible, the card issuer must briefly disclose directly beneath the table the circumstances under which such preferential rate may be revoked, and the rate that will apply after such preferential rate is revoked.◄

* * * * *

5. Section 226.6 is amended by revising paragraphs (b)(1)(ii), (b)(2)(i)(B), and (b)(2)(i)(D) to read as follows:

§ 226.6 Account-opening disclosures.

* * * * *

(b) * * *

(1) * * *

(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)(i)(D)(*3*), ◄(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.

* * * * *

(2) * * *

(i) * * *

(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】►creditor◄ must disclose a rate based on the applicable index or formula in accordance with the

[10] [Reserved]

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.

* * * * *

(D) *Penalty rates.* (*1*) *In general.* Except as provided in paragraph (b)(2)(i)(D)(*2*) ►and (b)(2)(i)(D)(*3*)◄ 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.

►(*3*) *Employee preferential rates.* If a creditor discloses in the table a preferential annual percentage rate for which only employees of the creditor or employees of a third party are eligible, the creditor must briefly disclose directly beneath the table the circumstances under which such preferential rate may be revoked, and the rate that will apply after such preferential rate is revoked.◄

* * * * *

6. Section 226.7 is amended by revising paragraphs (b)(12) and (b)(14) to read as follows:

§ 226.7 Periodic statement.

* * * * *

(b) * * *

(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 ►either◄ to the nearest whole dollar ►or to the nearest cent, at the card issuer's option◄;

(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 ►either◄ to the nearest whole dollar ►or to the nearest cent, at the card issuer's option◄;

(*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 ►either◄ to the nearest whole dollar ►or to the nearest cent, at the card issuer's option◄; 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 ►either◄ to the nearest whole dollar ►or to the nearest cent, at the card issuer's option◄.

(*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, ►after rounding as set forth in paragraph (b)(12)(f)(*1*)(*i*) of this section◄ [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 ►either◄ to the nearest whole dollar ►or to the nearest cent, at the issuer's option◄;

(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.

* * * * *

(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 ►any page 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.

7. Section 226.9 is amended by adding paragraph (b)(3)(iii) and by revising paragraphs (c)(2)(i)(A), (c)(2)(ii), (iii), (c)(2)(iv) (A)(*1*), (c)(2)(iv)(B), (c)(2)(iv)(D), (c)(2)(v)(B), and (c)(2)(v)(C) to read as follows:

§ 226.9 Subsequent disclosure requirements.

* * * * *

(b) * * *

(3) * * *

►(iii) *Variable rates.* If any annual percentage rate required to be disclosed pursuant to paragraph (b)(3)(i) 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 shall not be included in the table.◄

(c) * * *

(2) * * * (i) * * *

(A) *General.* For plans other than home-equity plans subject to the requirements of § 226.5b, except as provided in paragraphs (c)(2)(i)(B), (c)(2)(iii) and (c)(2)(v) of this section, when a significant change in account terms as described in paragraph (c)(2)(ii) of this section is made [to a term required to be disclosed under § 226.6(b)(3), (b)(4) or (b)(5) or the required minimum periodic payment is increased], a creditor must provide a written notice of the change at least 45 days prior to the effective date of the change to each consumer who may be affected. The 45-day timing requirement does not apply if the consumer has agreed to a particular change; the notice shall be given, however, before the effective date of the change. Increases in the rate applicable to a consumer's account due to delinquency, default or as a penalty described in paragraph (g) of this section that are not due to a change in the contractual terms of the consumer's account must be disclosed pursuant to paragraph (g) of this section instead of paragraph (c)(2) of this section.

* * * * *

(ii) *Significant changes in account terms.* For purposes of this section, a "significant change in account terms" means a change to a term required to be disclosed under § 226.6(b)(1) and (b)(2), an increase in the required minimum periodic payment, ►a change to a term required to be disclosed under § 226.6(b)(4),◄ or the acquisition of a security interest.

(iii) *Charges not covered by § 226.6(b)(1) and (b)(2).* Except as provided in paragraph (c)(2)(vi) of this section, if a creditor increases any component of a charge, or introduces a new charge, required to be disclosed under § 226.6(b)(3) that is not a significant change in account terms as described in paragraph (c)(2)(ii) of this section, a creditor [may]►must◄ either, at its option:

(A) Comply with the requirements of paragraph (c)(2)(i) of this section; or

(B) Provide notice of the amount of the charge before the consumer agrees to or becomes obligated to pay the charge, at a time and in a manner that a consumer would be likely to notice the disclosure of the charge. The notice may be provided orally or in writing.

(iv) * * *

(A) * * *

(*1*) A summary of the changes made to terms required by § 226.6(b)(1) and (b)(2) ►or § 226.6(b)(4)◄, a description of any increase in the required minimum periodic payment, and a description of any security interest being acquired by the creditor;

* * * * *

(B) *Right to reject for credit card accounts under an open-end (not home-secured) consumer credit plan.* In addition to the disclosures in paragraph (c)(2)(iv)(A) of this section, if a card issuer makes a significant change in account terms on a credit card account under an open-end (not home-secured) consumer credit plan, the creditor must generally provide the following information on the notice provided pursuant to paragraph (c)(2)(i) of this section. This information is not required to be provided in the case of an increase in the required minimum periodic payment, an increase in a fee as a result of a reevaluation of a determination made under § 226.52(b)(1)(i) or an adjustment to the safe harbors in § 226.52(b)(1)(ii) to reflect changes in the Consumer Price Index, a change in an annual percentage rate applicable to a consumer's account, ►an increase in a fee previously reduced consistent with 50 U.S.C. app. 527 or a similar federal or state statute or regulation if the amount of the increased fee does not exceed the amount of that fee prior to the reduction◄ [a change in the balance computation method applicable to consumer's account necessary to comply with § 226.54], or when the change results from the creditor not receiving the consumer's required minimum periodic payment within 60 days after the due date for that payment:

* * * * *

(D) *Format requirements*—(*1*) *Tabular format.* The summary of changes described in paragraph (c)(2)(iv)(A)(*1*) of this section must be in a tabular format (except for a summary of any increase in the required minimum periodic payment ►, a summary of a term required to be disclosed under § 226.6(b)(4) that is not required to be disclosed under § 226.6(b)(1) and (b)(2), or a description of any security interest being acquired by the creditor◄), with headings and format substantially similar to any of the account-opening tables found in G–17 in appendix G to this part. The table must disclose the changed term and information relevant to the change, if that relevant information is required by § 226.6(b)(1) and (b)(2). The new terms shall be described in the same level of detail as required when disclosing the terms under § 226.6(b)(2).

* * * * *

(v) * * *

(B) When the change is an increase in an annual percentage rate ►or fee◄ upon the expiration of a specified period of time, provided that:

(*1*) Prior to commencement of that period, the creditor disclosed in writing to the consumer, in a clear and conspicuous manner, the length of the period and the annual percentage rate ►or fee◄ that would apply after expiration of the period;

(*2*) The disclosure of the length of the period and the annual percentage rate ►or fee◄ that would apply after expiration of the period are set forth in close proximity and in equal prominence to the first listing of the disclosure of the rate ►or fee◄ that applies during the specified period of time; and

(*3*) The annual percentage rate ►or fee◄ that applies after that period does not exceed the rate ►or fee◄ disclosed pursuant to paragraph (c)(2)(v)(B)(*1*) of this paragraph or, if the rate disclosed pursuant to paragraph (c)(2)(v)(B)(*1*) of this section was a variable rate, the rate following any such increase is a variable rate determined by the same formula (index and margin) that was used to calculate the variable rate disclosed pursuant to paragraph (c)(2)(v)(B)(*1*);

(C) When the change is an increase in a variable annual percentage rate in accordance with a credit card ►or other account◄ agreement that provides for changes in the rate according to operation of an index that is not under the control of the creditor and is available to the general public; or

* * * * *

8. Section 226.10(b)(4) is revised to read as follows:

§ 226.10 Payments.

* * * * *

(b) * * *

(4) *Nonconforming payments.* If a creditor specifies, on or with the periodic statement, requirements for the consumer to follow in making payments as permitted under this § 226.10, but accepts a payment that does not conform to the requirements ►via a payment method that the creditor does not otherwise promote◄, the creditor shall credit the payment within five days of receipt.

* * * * *

9. Section 226.16(g) is revised to read as follows:

§ 226.16 Advertising.

* * * * *

(g) *Promotional rates ►and fees◄.* (1) *Scope.* The requirements of this paragraph apply to any advertisement of an open-end (not home-secured) plan, including promotional materials accompanying applications or solicitations subject to § 226.5a(c) or accompanying applications or solicitations subject to § 226.5a(e).

(2) *Definitions.* (i) *Promotional rate* means any annual percentage rate applicable to one or more balances or transactions on an open-end (not home-secured) plan for a specified period of time that is lower than the annual percentage rate that will be in effect at the end of that period on such balances or transactions.

(ii) *Introductory rate* means a promotional rate offered in connection with the opening of an account.

(iii) *Promotional period* means the maximum time period for which [the] ►a ◄ promotional rate ► or promotional fee◄ may be applicable.

►(iv) *Promotional fee* means a fee required to be disclosed under § 226.6(b)(1) and (b)(2) applicable to an open-end (not home-secured) plan for a specified period of time that is lower than the fee that will be in effect at the end of that period.

(v) *Introductory fee* means a promotional fee offered in connection with the opening of an account.◄

(3) *Stating the term "introductory".* If any annual percentage rate ►or fee◄ that may be applied to the account is an introductory rate ►or introductory fee◄, the term *introductory* or *intro* must be in immediate proximity to each listing of the introductory rate ►or introductory fee◄ in a written or electronic advertisement.

(4) *Stating the promotional period and post-promotional rate ►or fee◄.* If any annual percentage rate that may be applied to the account is a promotional rate under paragraph (g)(2)(i) of this section ►or any fee that may be applied to the account is a promotional fee under paragraph (g)(2)(iv) of this section◄, the information in paragraphs (g)(4)(i) and►, as applicable,◄ (g)(4)(ii) ►or (g)(4)(iii)◄ of this section must be stated in a clear and conspicuous manner in the advertisement. If the rate ►or fee◄ is stated in a written or electronic advertisement, the information in paragraphs (g)(4)(i) and ►, as applicable,◄ (g)(4)(ii) ►or (g)(4)(iii)◄ of this section must also be stated in a prominent location closely proximate to the first listing of the promotional rate ►or promotional fee◄.

(i) When the promotional rate ►or promotional fee◄ will end; [and]

(ii) The annual percentage rate that will apply after the end of the promotional period. If such rate is variable, the annual percentage rate must comply with the accuracy standards in §§ 226.5a(c)(2), 226.5a(d)(3), 226.5a(e)(4), or 226.16(b)(1)(ii), as applicable. If such rate cannot be determined at the time disclosures are given because the rate depends at least in part on a later determination of the consumer's creditworthiness, the advertisement must disclose the specific rates or the range of rates that might apply[.]►; and

(iii) The fee that will apply after the end of the promotional period.◄

(5) *Envelope excluded.* The requirements in paragraph (g)(4) of this section do not apply to an envelope or other enclosure in which an application or solicitation is mailed, or to a banner advertisement or pop-up advertisement, linked to an application or solicitation provided electronically.

* * * * *

10. Section 226.51 is amended by revising paragraphs (a)(1), and (b)(1)(ii)(B) to read as follows:

§ 226.51 Ability to pay.

(a) * * *

(1)(i) *Consideration of ability to pay.* A card issuer must not open a credit card account for a consumer under an open-end (not home-secured) consumer credit plan, or increase any credit limit applicable to such account, unless the card issuer considers the ►the consumer's independent◄ ability [of the consumer] to make the required minimum periodic payments under the terms of the account based on the consumer's income or assets and current obligations.

(ii) *Reasonable policies and procedures.* Card issuers must establish and maintain reasonable written policies and procedures to consider a consumer's ►independent◄ income or assets and current obligations. Reasonable policies and procedures to consider a consumer's ►independent◄ ability to make the required payments include a consideration of at least one of the following: The ratio of debt obligations to income; the ratio of debt obligations to assets; or the income the consumer will have after paying debt obligations. It would be unreasonable for a card issuer to not review any information about a consumer's income, assets, or current obligations, or to issue a credit card to a consumer who does not have any ►independent◄ income or assets.

* * * * *

(b) * * *

(1) * * *

(ii) * * *

(B) Financial information indicating such cosigner, guarantor, or joint applicant has the ►independent◄ ability to make the required minimum periodic payments on such debts, consistent with paragraph (a) of this section.

* * * * *

11. Section 226.52 is amended by revising the heading to paragraph (a) and by revising paragraphs (a)(1), (a)(3), and (b)(1)(ii) to read as follows:

§ 226.52 Limitations on fees.

(a) *Limitations ►prior to account opening and◄ during first year after account opening.* (1) *General rule.* ►Except as provided in paragraph (a)(2) of this section, the total amount of fees a consumer is required to pay with respect to a credit card account under an open-end (not home-secured) consumer credit plan prior to account opening or during the first year after account opening must not exceed 25 percent of the credit limit in effect when the account is opened.◄ 【Except as provided in paragraph (a)(2) of this section, if a card issuer charges any fees to a credit card account under an open-end (not home-secured) consumer credit plan during the first year after the account is opened, the total amount of fees the consumer is required to pay with respect to the account during that year must not exceed 25 percent of the credit limit in effect when the account is opened.】 ►For purposes of this paragraph, an account is considered open no earlier than the date on which the account may first be used by the consumer to engage in transactions.◄

* * * * *

(3) *Rule of construction.* 【This paragraph (a)】►Paragraph (a) of this section◄ does not authorize the imposition or payment of fees or charges otherwise prohibited by law.

* * * * *

(b) * * *

(1) * * *

(ii) *Safe harbors.* A card issuer may impose a fee for violating the terms or other requirements of an account if the dollar amount of the fee does not exceed ►, as applicable◄:

(A) ►$25.00;◄ 【For the first violation of a particular type, $25.00, adjusted annually by the Board to reflect changes in the Consumer Price Index;】

(B) ►$35.00 if the card issuer previously imposed a fee pursuant to paragraph (b)(1)(ii)(A) of this section for a violation of the same type that occurred during the same billing cycle or one of the next six billing cycles;◄ 【For an additional violation of the same type during the next six billing cycles, $35.00, adjusted annually by the Board to reflect changes in the Consumer Price Index;】 or

(C) ►Three percent of the delinquent balance on a charge card account that requires payment of outstanding balances in full at the end of each billing cycle if the card issuer has not received the required payment for two or more consecutive billing cycles.◄ 【When a card issuer has not received the required payment for two or more consecutive billing cycles for a charge card account that requires payment of outstanding balances in full at the end of each billing cycle, three percent of the delinquent balance.】

►(D) The amounts in paragraphs (b)(1)(ii)(A) and (b)(1)(ii)(B) of this section will be adjusted annually by the Board to reflect changes in the Consumer Price Index.◄

* * * * *

12. Section 226.53(b) is revised to read as follows:

§ 226.53 Allocation of payments.

* * * * *

(b) *Special rule*►*s*◄ 【*for accounts with balances subject to deferred interest or similar programs*】. ►(1) *Accounts with balances subject to deferred interest or similar program.*◄ When a balance on a credit card account under an open-end (not home-secured) consumer credit plan is subject to a deferred interest or similar program that provides that a consumer will not be obligated to pay interest that accrues on the balance if the balance is paid in full prior to the expiration of a specified period of time:

►(i)◄ 【(1)】 *Last two billing cycles.* The card issuer must allocate any amount paid by the consumer in excess of the required minimum periodic payment consistent with paragraph (a) of this section, except that, during the two billing cycles immediately preceding expiration of the specified period, the excess amount must be allocated first to the balance subject to the deferred interest or similar program and any remaining portion allocated to any other balances consistent with paragraph (a) of this section; or

►(ii)◄ 【(2)】 *Consumer request.* The card issuer may at its option allocate any amount paid by the consumer in excess of the required minimum periodic payment among the balances on the account in the manner requested by the consumer.

►(2) *Accounts with secured balances.* When a balance on a credit card account under an open-end (not home-secured) consumer credit plan is secured, the card issuer may at its option allocate any amount paid by the consumer in excess of the required minimum periodic payment to that balance if requested by the consumer.◄

13. Section 226.55 is amended by revising paragraphs (b)(1), (b)(3)(iii), and (b)(6), and by adding paragraph (e) to read as follows:

§ 226.55 Limitations on increasing annual percentage rates, fees, and charges.

* * * * *

(b) * * *

(1) *Temporary rate ►, fee, or charge◄ exception.* A card issuer may increase an annual percentage rate ►or a fee or charge required to be disclosed under § 226.6(b)(2)(ii), (b)(2)(iii), or (b)(2)(xii)◄ upon the expiration of a specified period of six months or longer, provided that:

(i) Prior to the commencement of that period, the card issuer disclosed in writing to the consumer, in a clear and conspicuous manner, the length of the period and the annual percentage rate ►, fee, or charge◄ that would apply after expiration of the period; and

(ii) Upon expiration of the specified period:

(A) The card issuer must not apply an annual percentage rate ►, fee, or charge◄ to transactions that occurred prior to the period that exceeds the annual percentage rate ►, fee, or charge◄ that applied to those transactions prior to the period;

(B) If the disclosures required by paragraph (b)(1)(i) of this section are provided pursuant to § 226.9(c), the card issuer must not apply an annual percentage rate ►, fee, or charge◄ to transactions that occurred within 14 days after provision of the notice that exceeds the annual percentage rate ►, fee, or charge◄ that applied to that category of transactions prior to provision of the notice; and

(C) The card issuer must not apply an annual percentage rate ►, fee, or charge◄ to transactions that occurred during the period that exceeds the increased annual percentage rate ►, fee, or charge◄ disclosed pursuant to paragraph (b)(1)(i) of this section.

* * * * *

(3) * * *

(iii) This exception does not permit a card issuer to increase an annual percentage rate or a fee or charge required to be disclosed under § 226.6(b)(2)(ii), (b)(2)(iii), or (b)(2)(xii) during the first year after the account is opened ►, while the account is closed, or while the card issuer does not permit the consumer to use the account for new transactions. For purposes of this paragraph, an account is considered open no earlier than the date on which the account may first be used by the consumer to engage in transactions◄.

* * * * *

(6) *Servicemembers Civil Relief Act exception.* If an annual percentage rate ►or a fee or charge required to be disclosed under § 226.6(b)(2)(ii), (b)(2)(iii), or (b)(2)(xii)◄ has been decreased pursuant to 50 U.S.C. app. 527 ►or a similar federal or state statute or regulation◄, a card issuer may increase that annual percentage rate►, fee, or charge◄ once 50 U.S.C. app. 527 ►or the similar statute or regulation◄ no longer applies, provided that the card issuer must not apply to any transactions that occurred prior to the decrease an annual percentage rate►, fee, or charge◄ that exceeds the annual percentage rate►, fee, or charge◄ that

applied to those transactions prior to the decrease.

* * * * *

►(e) *Promotional waivers or rebates of interest, fees, and other charges.* If a card issuer promotes the waiver or rebate of finance charges due to a periodic interest rate or fees or charges required to be disclosed under § 226.6(b)(2)(ii), (b)(2)(iii), or (b)(2)(xii) and applies the waiver or rebate to a credit card account under an open-end (not home-secured) consumer credit plan, any cessation of the waiver or rebate constitutes an increase in an annual percentage rate, fee, or charge for purposes of this section.◄

14. Section 226.58 is amended by:

A. Redesignating paragraphs (b)(4) through (b)(7) as (b)(5) through (b)(8) respectively;

B. Adding a new paragraph (b)(4);

C. Revising paragraphs (b)(1), (b)(2), newly redesignated paragraph (b)(7); and

D. Revising paragraphs (c)(1), (c)(2), (c)(3), and (c)(8)(i)(C)(*1*) to read as follows:

§ 226.58 Internet posting of credit card agreements.

* * * * *

(b) *Definitions*—(1) *Agreement.* For purposes of this section, "agreement" or "credit card agreement" means the written document or documents evidencing the terms of the legal obligation, or the prospective legal obligation, between a card issuer and a consumer for a credit card account under an open-end (not home-secured) consumer credit plan. "Agreement" or "credit card agreement" also includes the pricing information, as defined in ⟦§ 226.58(b)(6)⟧►§ 226.58(b)(7)◄.

(2) *Amends.* For purposes of this section, an issuer "amends" an agreement if it makes a substantive change (an "amendment") to the agreement. A change is substantive if it alters the rights or obligations of the card issuer or the consumer under the agreement. Any change in the pricing information, as defined in ⟦§ 226.58(b)(6)⟧►§ 226.58(b)(7)◄, is deemed to be substantive.

* * * * *

►(4) *Card issuer.* For purposes of this section, "card issuer" or "issuer" means the entity to which a consumer is legally obligated, or would be legally obligated, under the terms of a credit card agreement.◄

⟦(4)⟧►(5)◄ * * *

⟦(5)⟧►(6)◄ * * *

⟦(6)⟧►(7)◄ *Pricing information.* For purposes of this section, "pricing information" means the information listed in § 226.6(b)(2)(i) through (b)(2)(xii) [and (b)(4)]. Pricing information does not include temporary or promotional rates and terms or rates and terms that apply only to protected balances.

⟦(7)⟧►(8)◄ * * *

(c) * * *

(1) *Quarterly submissions.* A card issuer must make quarterly submissions to the Board, in the form and manner specified by the Board►. Quarterly submissions must be sent 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. Each submission must contain:◄⟦, that contain:⟧

(i) Identifying information about the card issuer and the agreements submitted, including the issuer's name, address, and identifying number (such as an RSSD ID number or tax identification number);

(ii) The credit card agreements that the card issuer offered to the public as of the last business day of the preceding calendar quarter that the card issuer has not previously submitted to the Board;

(iii) Any credit card agreement previously submitted to the Board that was amended during the preceding calendar quarter ►and that the card issuer offered to the public as of the last business day of the preceding calendar quarter◄, as described in § 226.58(c)(3); and

(iv) Notification regarding any credit card agreement previously submitted to the Board that the issuer is withdrawing, as described in ►§ 226.58(c)(4), (c)(5), (c)(6), and (c)(7)◄⟦§ 226.58(c)(4) and (c)(5)⟧.

(2) ►*Reserved.*◄⟦*Timing of first two submissions.* The first submission following the effective date of this section must be sent to the Board no later than February 22, 2010, and must contain the credit card agreements that the card issuer offered to the public as of December 31, 2009. The next submission must be sent to the Board no later than August 2, 2010, and must contain:

(i) Any credit card agreement that the card issuer offered to the public as of June 30, 2010, that the card issuer has not previously submitted to the Board;

(ii) Any credit card agreement previously submitted to the Board that was amended after December 31, 2009, and on or before June 30, 2010, as described in § 226.58(c)(3); and

(iii) Notification regarding any credit card agreement previously submitted to the Board that the issuer is withdrawing as of June 30, 2010, as described in § 226.58(c)(4) and (c)(5).⟧

(3) *Amended agreements.* If a credit card agreement has been submitted to the Board, the agreement has not been amended and the card issuer continues to offer the agreement to the public, no additional submission regarding that agreement is required. If a credit card agreement that previously has been submitted to the Board is amended ►and the card issuer offered the amended agreement to the public as of the last business day of the calendar quarter in which the change became effective◄, the card issuer must submit the entire amended agreement to the Board, in the form and manner specified by the Board, by the first quarterly submission deadline after the last day of the calendar quarter in which the change became effective.

* * * * *

(8) * * *

(i) * * *

(C) * * *

(*1*) disclosures required by state or federal law, such as affiliate marketing notices, privacy policies, ►billing rights notices,◄ or disclosures under the E–Sign Act;

* * * * *

15. Appendix M1 to part 226 is amended by revising paragraph (f) to read as follows:

Appendix M1 to Part 226—Repayment Disclosures

* *

(f) *Calculating the savings estimate for repayment in 36 months.* ►When calculating the savings estimate for repayment in 36 months, if a card issuer chooses under § 226.7(b)(12)(i) to round the disclosures to the nearest whole dollar when disclosing them on the periodic statement, the card issuer must calculate the savings estimate for repayment in 36 months by subtracting the total cost estimate for repayment in 36 months calculated under paragraph (e) of this appendix (rounded to the nearest whole dollar) from the minimum payment total cost estimate calculated under paragraph (c) of this appendix (rounded to the nearest whole dollar). If a card issuer chooses under § 227.7(b)(12)(i), however, to round the disclosures to the nearest cent when disclosing them on the periodic statement, the card issuer must calculate the savings estimate for repayment in 36 months by subtracting the total cost estimate for repayment in 36 months calculated under paragraph (e) of this appendix (rounded to the nearest cent) from the minimum payment total cost estimate calculated under paragraph (c) of this appendix (rounded to the nearest cent).◄ ⟦When calculating the saving estimate for repayment in 36 months, a card issuer must subtract the total cost estimate for repayment in 36 months calculated under paragraph (e) of this appendix (rounded to the nearest whole dollar as set forth in § 226.7(b)(12)(i)(F)(*1*)(*iii*)) from the minimum payment total cost estimate calculated under paragraph (c) of this appendix (rounded to the nearest whole dollar as set forth in § 226.7(b)(12)(i)(C)).] The savings estimate for repayment in 36 months shall be considered accurate if it is based on the total cost estimate for repayment in 36 months that is calculated in accordance with paragraph (e) of this appendix and the minimum payment total cost estimate calculated under paragraph (c) of this appendix.

* * * * *

16. In Supplement I to Part 226:

A. Under *Section 226.2—Definitions and Rules of Construction,* subheading *2(a)(15) Credit card,* paragraphs 2. and 3. are revised and paragraph 4. is added.

B. Under *Section 226.5—General Disclosure Requirements,* subheading *5(b)(2) Periodic statements:*

i. Under *Paragraph 5(b)(2)(ii),* paragraphs 1. through 4. are revised; and

ii. The heading *Paragraph 5(b)(2)(iii)* and paragraph 1. under that heading are deleted.

C. Under *Section 226.5a—Credit and Charge Card Applications and Solicitations,* subheading *5a(b) Required disclosures:*

i. Under *5a(b)(1) Annual percentage rate,* paragraph 5. is revised;

ii. Under *5a(b)(2) Fees for issuance or availability,* paragraph 4. is revised; and

iii. Under *5a(b)(5) Grace period,* paragraph 1. is revised and paragraph 4. is deleted; and

iv. Under *5a(b)(6) Balance computation method,* paragraph 1. is revised.

D. Under *Section 226.6—Account-Opening Disclosures:*

i. Under *6(b)(2)(v) Grace period,* paragraphs 1. and 3. are revised and paragraph 4. is deleted; and

ii. Under *6(b)(2)(vi) Balance computation method,* paragraph 1. is revised and paragraph 2. is added.

E. Under *Section 226.7—Periodic Statement,* under *7(b) Rules affecting open-end (not home-secured) plans:*

i. Paragraph 1. is revised;

ii. Under *7(b)(5) Balance on which finance charge computed,* paragraphs 7. and 8. are revised;

iii. Under *7(b)(6) Charges imposed,* paragraph 3. is revised; and

iv. Under *7(b)(12) Repayment disclosures,* paragraph 1. is added.

F. Under *Section 226.9—Subsequent Disclosure Requirements:*

i. Under *9(b) Disclosures for supplemental credit access devices and additional features,* under *9(b)(3) Checks that access a credit card account,* under *9(b)(3)(i) Disclosures,* paragraph 2. is added;

ii. Under *9(c) Change in terms,* under *9(c)(2) Rules affecting open-end (not home-secured) plans:*

1. Paragraph 1. is revised;

2. Under *9(c)(2)(iii) Charges not covered by § 226.6(b)(1) and (b)(2),* paragraph 1. is revised;

3. Under *9(c)(2)(iv) Disclosure requirements,* paragraphs 3. and 4. are revised; and

4. Under *9(c)(2)(v) Notice not required,* paragraphs 2., 3., 4., 5., 6., 7., 10., 11., and 12. are revised and paragraph 13. is added.

G. Under *Section 226.10—Payments:*

i. Under *10(b) Specific requirements for payments,* paragraph 2. is revised;

ii Under *10(e) Limitations on fees related to method of payment,* paragraph 4. is added; and

iii. Under *10(f) Changes by card issuer,* paragraph 3. is revised.

H. Under *Section 226.12—Special Credit Card Provisions,* under *12(c) Right of cardholder to assert claims or defenses against card issuer,* paragraph 4. is revised.

I. Under *Section 226.13—Billing Error Resolution,* under *13(c) Time for resolution; general procedures,* under *Paragraph 13(c)(2),* paragraph 2. is revised.

J. Under *Section 226.14—Determination of Annual Percentage Rate,* under *14(a) General rule,* paragraph 6. is added.

K. Under *Section 226.16—Advertising:*

i. Paragraphs 1. and 2. are revised; and

ii. Under *16(g) Promotional rates,* paragraphs 2., 3., and 4. are revised.

L. Under *Section 226.30—Limitation on Rates,* paragraph 8. is revised.

M. Under *Section 226.51—Ability to Pay:*

i. Under *51(a) General rule,* paragraphs 1., 2. and 4. are revised; and

ii. Under *51(a)(2) Minimum periodic payments,* paragraph 3. is revised.

N. Under *Section 226.52—Limitations on Fees:*

i. Under *52(a) Limitations during first year after account opening:*

1. The heading *52(a) Limitations during first year after account opening* is revised to read *52(a) Limitations prior to account opening and during first year after account opening;*

2. Under *52(a)(1) General rule,* paragraphs 1., 2., and 3. are revised; and

3 Under *52(a)(2) Fees not subject to limitations,* paragraph 1. is revised;

ii. Under *52(b) Limitations on penalty fees:*

1. Under *52(b)(1)(ii) Safe harbors,* paragraph 1. is revised; and

2. Under *52(b)(2) Prohibited fees:*

A. Under *52(b)(2)(i) Fees that exceed dollar amount associated with violation,* paragraph 5. is revised; and

B. Under *52(b)(2)(ii) Multiple fees based on single event or transaction,* paragraph 1. is revised.

O. Under *Section 226.53— Allocation of Payments:*

i. Paragraphs 4. and 5. are revised; and

ii. Under *53(b) Special rule for accounts with balances subject to deferred interest or similar programs:*

1. The heading is revised to read *53(b) Special rules;* and

2. Paragraphs 1., 2., and 3. are revised.

P. Under *Section 226.55—Limitations on Increasing Annual Percentage Rates, Fees, and Charges:*

i. Under *55(a) General rule,* paragraph 1. is revised;

ii. Under *55(b) Exceptions,* paragraphs 1. and 3. are revised;

iii. Under *55(b)(1) Temporary rate exception:*

1. The heading is revised to read *55(b)(1) Temporary rate, fee, or charge exception;* and

2. Paragraphs 2. and 4. are revised and paragraph 5. is added;

iv. Under *55(b)(6) Servicemembers Civil Relief Act exception,* paragraphs 1. and 2. are revised and paragraph 3. is added;

v. Under *55(c) Treatment of protected balances,* under *55(c)(1) Definition of protected balance,* paragraph 3. is revised and paragraph 4. is added; and

vi. The heading *55(e) Promotional waivers or rebates of interest, fees, and other charges* is added and paragraphs 1., 2., and 3. are added under that heading.

Q. Under *Section 226.58—Internet Posting of Credit Card Agreements:*

i. Under *58(b) Definitions:*

1. Under *58(b)(1) Agreement,* paragraph 1. is revised;

2 Under *58(b)(2) Amends,* paragraph 1. is revised;

3. The heading *58(b)(4) Card issuer* is added and paragraph 1. is added under that heading;

4. The heading *58(b)(4) Offers* is revised to read *58(b)(5) Offers;*

5. The heading *58(b)(5) Open account* is revised to read *58(b)(6) Open account;* and

6. The heading *58(b)(7) Private label credit card account and private label credit card plan* is revised to read *58(b)(8) Private label credit card account and private label credit card plan* and under that heading paragraphs 2. and 4. are revised;

ii. Under *58(c) Submission of agreements to Board,* under *58(c)(3) Amended agreements,* paragraph 2. is revised, paragraph 3. is renumbered as paragraph 4., and a new paragraph 3. is added; and

iii. Under *58(e) Agreements for all open accounts,* paragraph 3. is revised.

R. Under *Section 226.59—Reevaluation of Rate Increases:*

i. Under *59(a) General rule,* under *59(a)(1) Evaluation of increased rate,* paragraphs 3., 4., and 5. are renumbered and a new paragraph 3. is added;

ii. Under *59(d) Factors,* paragraph 6. is added; and

iii. Under *59(f) Termination of obligation to review factors,* paragraph 2. is added.

Supplement I to Part 226—Official Staff Interpretations

* * * * *

Subpart A—General

* * * * *

Section 226.2—Definitions and Rules of Construction

* * * * *

2(a)(15) Credit card.

* * * * *

2. *Examples.*

* * * * *

ii. In contrast, credit card does not include, for example:

* * * * *

►C. An account number that accesses a credit account, unless the account number can access an open-end line of credit to purchase goods or services. For example, if a creditor provides a consumer with an open-end line of credit that can be accessed by an account number in order to transfer funds into another account (such as an asset account with the same creditor), the account number is not a credit card for purposes of § 226.2(a)(15)(i). However, if the account number can also access the line of credit to purchase goods or services (such as an account number that can be used to purchase goods or services on the Internet), the account number is a credit card for purposes of § 226.2(a)(15)(i). Furthermore, if the line of credit can also be accessed by a card (such as a debit card or prepaid card), that card is a credit card for purposes of § 226.2(a)(15)(i).◄

3. *Charge card.* Generally, charge cards are cards used in connection with an account on which outstanding balances cannot be carried from one billing cycle to another and are payable when a periodic statement is received. Under the regulation, a reference to credit cards generally includes charge cards. ►In particular, references to credit card accounts under an open-end (not home-secured) consumer credit plan in Subparts B and G generally include charge cards.◄ The term *charge card* is, however, distinguished from *credit card* ►or *credit card account under an open-end (not home-secured) consumer credit plan*◄ in §§ 226.5a, ►226.6(b)(2)(xiv),◄ 226.7(b)(11), 226.7(b)(12), 226.9(e), 226.9(f)►,◄ 【and】 226.28(d), ►226.52(b)(1)(ii)(C),◄ and appendices G–10 through G–13. 【When the term *credit card* is used in those provisions, it refers to credit cards other than charge cards.】

►4. *Credit card account under an open-end (not home-secured) consumer credit plan.* An open-end consumer credit account is a credit card account under an open-end (not home-secured) consumer credit plan for purposes of § 226.2(a)(15)(ii) if:

i. The account is accessed by a credit card, as defined in § 226.2(a)(15)(i); and

ii. The account is not excluded under § 226.2(a)(15)(ii)(A) or (a)(15)(ii)(B).◄

* * * * *

Subpart B—Open-End Credit

Section 226.5—General Disclosure Requirements

* * * * *

5(b) Time of disclosures.

* * * * *

5(b)(2) Periodic statements.

* * * * *

Paragraph 5(b)(2)(ii).

1. *Mailing or delivery of periodic statements.* A creditor is not required to determine the specific date on which a periodic statement is mailed or delivered to an individual consumer for purposes of § 226.5(b)(2)(ii). A creditor complies with § 226.5(b)(2)(ii) if it has adopted reasonable procedures designed to ensure that periodic statements are mailed or delivered to consumers no later than a certain number of days after the closing date of the billing cycle and adds that number of days to the 21-day ►or 14-day◄ period required by § 226.5(b)(2)(ii) when determining►, as applicable,◄ the payment due date ► for purposes of § 226.5(b)(2)(ii)(A),◄ 【and】 the date on which any grace period expires for purposes of ►§ 226.5(b)(2)(ii)(B)(*1*), or the date after which the payment will be treated as late for purposes of § 226.5(b)(2)(ii)(B)(*2*).◄ 【§ 226.5(b)(2)(ii)(A)(*1*) and (b)(2)(ii)(B)(*1*).】 For example►:◄ 【,】

►A. If◄ 【if】 a creditor has adopted reasonable procedures designed to ensure that periodic statements ►for a credit card account under an open-end (not home-secured) consumer credit plan or an account under an open-end consumer credit plan that provides a grace period◄ are mailed or delivered to consumers no later than three days after the closing date of the billing cycle, the payment due date ►for purposes of § 226.5(b)(2)(ii)(A)◄ and the date on which any grace period expires ►for purposes of § 226.5(b)(2)(ii)(B)(*1*)◄ must be no less than 24 days after the closing date of the billing cycle. Similarly, in these circumstances, the limitations in § 226.5(b)(2)(ii)(A)【(*2*)】 and (b)(2)(ii)(B)►(*1*)◄【(*2*)】 on treating a payment as late and imposing finance charges apply for 24 days after the closing date of the billing cycle.

►B. If a creditor has adopted reasonable procedures designed to ensure that periodic statements for an account under an open-end consumer credit plan that does not provide a grace period are mailed or delivered to consumers no later than five days after the closing date of the billing cycle, the date on which a payment must be received in order to avoid being treated as late for purposes of § 226.5(b)(2)(ii)(B)(*2*) must be no less than 19 days after the closing date of the billing cycle. Similarly, in these circumstances, the limitation in § 226.5(b)(2)(ii)(B)(*2*) on treating a payment as late for any purpose applies for 19 days after the closing date of the billing cycle.◄

2. *Treating a payment as late for any purpose.* Treating a payment as late for any purpose includes increasing the annual percentage rate as a penalty, reporting the consumer as delinquent to a credit reporting agency, assessing a late fee or any other fee, initiating collection activities, or terminating benefits (such as rewards on purchases) based on the consumer's failure to make a payment within a specified amount of time or by a specified date. The prohibition►s◄ in § 226.5(b)(2)(ii)(A)(*2*) ►and (b)(2)(B)(*2*)(*ii*)◄ on treating a payment as late for any purpose ►apply ◄ 【applies】 only during the 21-day ►or 14-day◄ period ►(as applicable)◄ following mailing or delivery of the periodic statement stating the due date for that payment and only if the required minimum periodic payment is received within that period. For example:

i. Assume that►, for a credit card account under an open-end (not home-secured) consumer credit plan,◄ a periodic statement mailed on April 4 states that a required minimum periodic payment of $50 is due on April 25. If the card issuer does not receive any payment on or before April 25, § 226.5(b)(2)(ii)(A)(*2*) does not prohibit the card issuer from treating the required minimum periodic payment as late.

* * * * *

►iv. Assume that, for an account under an open-end consumer credit plan that does not provide a grace period, a periodic statement mailed on September 10 states that a required minimum periodic payment of $100 is due on September 24. If the creditor does not receive any payment on or before September 24, § 226.5(b)(2)(ii)(B)(*2*)(*ii*) does not prohibit the creditor from treating the required minimum periodic payment as late.◄

3. *Grace periods.*

* * * * *

ii. *Applicability of § 226.5(b)(2)(ii)(B)►(1)◄.* Section 226.5(b)(2)(ii)(B)►(*1*)◄ applies if an account is eligible for a grace period when the periodic statement is mailed or delivered. Section 226.5(b)(2)(ii)(B)►(*1*)◄ does not require the creditor to provide a grace period or prohibit the creditor from placing limitations and conditions on a grace period to the extent consistent with § 226.5(b)(2)(ii)(B) and § 226.54. See comment 54(a)(1)–1. Furthermore, the prohibition in § 226.5(b)(2)(ii)(B)►(*1*)(*ii*)◄ 【(*2*)】 applies only during the 21-day period following mailing or delivery of the periodic statement and applies only when the creditor receives a payment within that 21-day period that satisfies the terms of the grace period.

iii. *Example.*

Assume that the billing cycles for an account begin on the first day of the month and end on the last day of the month and that the payment due date for the account is the twenty-fifth of the month. Assume also that, under the terms of the account, the balance at the end of a billing cycle must be paid in full by the following payment due date in order for the account to remain eligible for the grace period. At the end of the April billing cycle, the balance on the account is $500. The grace period applies to the $500 balance because the balance for the March billing cycle was paid in full on April 25. Accordingly, § 226.5(b)(2)(ii)(B)(*1*)►(*i*)◄ requires the creditor to have reasonable procedures designed to ensure that the periodic statement reflecting the $500 balance is mailed or delivered on or before May 4. Furthermore, § 226.5(b)(2)(ii)(B) ►(*1*)(*ii*)◄ [(*2*)] requires the creditor to have reasonable procedures designed to ensure that the creditor does not impose finance charges as a result of the loss of the grace period if a $500 payment is received on or before May 25. However, if the creditor receives a payment of $300 on April 25, § 226.5(b)(2)(ii)(B) ►(*1*)(*ii*)◄ [(*2*)] would not prohibit the creditor from imposing finance charges as a result of the loss of the grace period (to the extent permitted by § 226.54).

4. *Application of § 226.5(b)(2)(ii) to charge card and charged-off accounts.*

i. *Charge card accounts.* For purposes of § 226.5(b)(2)(ii)(A)(*1*), the payment due date ►for a credit card account under an open-end (not home-secured) consumer credit plan◄ is the date the card issuer is required to disclose on the periodic statement pursuant to § 226.7(b)(11)(i)(A). Because § 226.7(b)(11)(ii) provides that § 226.7(b)(11)(i) does not apply to periodic statements provided solely for charge card accounts, § 226.5(b)(2)(ii)(A)(*1*) also does not apply to the mailing or delivery of periodic statements provided solely for such accounts. However, in these circumstances, § 226.5(b)(2)(ii)(A)(*2*) requires the card issuer to have reasonable procedures designed to ensure that a payment is not treated as late for any purpose during the 21-day period following mailing or delivery of the statement. Section 226.5(b)(2)(ii)(B)►(*1*)◄ does not apply to charge card accounts because, for purposes of § 226.5(b)(2)(ii)(B), a grace period is a period within which any credit extended may be repaid without incurring a finance charge due to a periodic interest rate and, consistent with § 226.2(a)(15)(iii), charge card accounts do not impose a finance charge based on a periodic rate. ►Similarly, § 226.5(b)(2)(ii)(B)(*2*) does not apply to charge card accounts.◄

ii. *Charged-off accounts.* For purposes of § 226.5(b)(2)(ii)(A)(*1*), the payment due date ►for a credit card account under an open-end (not home-secured) consumer credit plan◄ is the date the card issuer is required to disclose on the periodic statement pursuant to § 226.7(b)(11)(i)(A). Because § 226.7(b)(11)(ii) provides that § 226.7(b)(11)(i) does not apply to periodic statements provided for charged-off accounts where full payment of the entire account balance is due immediately, § 226.5(b)(2)(ii)(A)(*1*) also does not apply to the mailing or delivery of periodic statements provided solely for such accounts. Furthermore, although § 226.5(b)(2)(ii)(A)(*2*) requires the card issuer to have reasonable procedures designed to ensure that a payment is not treated as late for any purpose during the 21-day period following mailing or delivery of the statement, § 226.5(b)(2)(ii)(A)(*2*) does not prohibit a card issuer from continuing to treat prior payments as late during that period. See comment 5(b)(2)(ii)–2. ►Similarly, although § 226.5(b)(2)(ii)(B)(*2*) applies to open-end consumer credit accounts in these circumstances, § 226.5(b)(2)(ii)(B)(*2*)(*ii*) does not prohibit a creditor from continuing treating prior payments as late during the 14-day period following mailing or delivery of a periodic statement.◄ Section 226.5(b)(2)(ii)(B)►(*1*)◄ does not apply to charged-off accounts where full payment of the entire account balance is due immediately because such accounts do not provide a grace period.

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[*Paragraph 5(b)(2)(iii).*

1. *Computer malfunction.* The exceptions identified in § 226.5(b)(2)(iii) of this section do not extend to the failure to provide a periodic statement because of computer malfunction.]

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Section 226.5a—Credit and Charge Card Applications and Solicitations

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5a(b) Required disclosures.

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5a(b)(1) Annual percentage rate.

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5. *Increased penalty rates.* i. *In general.* For rates that are not introductory rates ►or employee preferential rates◄, if a rate may increase as a penalty for one or more events specified in the account agreement, such as a late payment or an extension of credit that exceeds the credit limit, the card issuer must disclose the increased rate that would apply, a brief description of the event or events that may result in the increased rate, and a brief description of how long the increased rate will remain in effect. The description of the specific event or events that may result in an increased rate should be brief. For example, if an issuer may increase a rate to the penalty rate because the consumer does not make the minimum payment by 5 p.m., Eastern Time, on its payment due date, the issuer should describe this circumstance in the table as "make a late payment." Similarly, if an issuer may increase a rate that applies to a particular balance because the account is more than 60 days late, the issuer should describe this circumstance in the table as "make a late payment." An issuer may not distinguish between the events that may result in an increased rate for existing balances and the events that may result in an increased rate for new transactions. (*See* Samples G–10(B) and G–10(C) (in the row labeled "Penalty APR and When it Applies") for additional guidance on the level of detail in which the specific event or events should be described.) The description of how long the increased rate will remain in effect also should be brief. If a card issuer reserves the right to apply the increased rate ►to any balances◄ indefinitely, ►to the extent permitted by §§ 226.55(b)(4) and 226.59, the issuer should disclose that the penalty rate may apply indefinitely◄ [that fact should be stated]. ►The card issuer may not disclose in the table any limitations imposed by §§ 226.55(b)(4) and 226.59 on the duration of increased rates. For example, if the issuer generally provides that the increased rate will apply until the consumer makes twelve timely consecutive required minimum periodic payments, except to the extent that §§ 226.54(b)(4) and 226.59 apply, the issuer should disclose that the penalty rate will apply until the consumer makes twelve consecutive timely minimum payments.◄ (*See* Samples G–10(B) and G–10(C) (in the row labeled "Penalty APR and When it Applies") for additional guidance on the level of detail which the issuer should use to describe how long the increased rate will remain in effect.) A card issuer will be deemed to meet the standard to clearly and conspicuously disclose the information required by § 226.5a(b)(1)(iv)(A) if the issuer uses the format shown in Samples G–10(B) and G–10(C) (in the row labeled "Penalty APR and When it Applies") to disclose this information.

ii. *Introductory rates—general.* An issuer is required to disclose directly beneath the table the circumstances under which an introductory rate, as that term is defined in § 226.16(g)(2)(ii), may be revoked, and the rate that will apply after the revocation. This information about revocation of an introductory rate and the rate that will apply after revocation must be provided even if the rate that will apply after the introductory rate is revoked is the rate that would have applied at the end of the promotional period. In a variable-rate account, the rate that would have applied at the end of the promotional period is a rate based on the applicable index or formula in accordance with the accuracy requirements set forth in § 226.5a(c)(2) or (e)(4). In describing the rate that will apply after revocation of the introductory rate, if the rate that will apply after revocation of the introductory rate is already disclosed in the table, the issuer is not required to repeat the rate, but may refer to that rate in a clear and conspicuous manner. For example, if the rate that will apply after revocation of an introductory rate is the standard rate that applies to that type of transaction (such as a purchase or balance transfer transaction), and the standard rates are labeled in the table as "standard APRs," the issuer may refer to the "standard APR" when describing the rate that will apply after revocation of an introductory rate. (*See* Sample G–10(C) in the disclosure labeled "Loss of Introductory APR" directly beneath the table.) The description of the circumstances in which an introductory rate could be revoked should be brief. For example, if an issuer may increase an introductory rate because the account is more than 60 days late, the issuer should describe this circumstance ►directly beneath◄[in] the table as "make a late payment." In addition, if the circumstances in which an introductory rate could be revoked are already listed elsewhere in the table, the issuer is not required to repeat the circumstances again, but may refer to those circumstances in a clear and conspicuous manner. For example, if the circumstances in which an introductory rate could be revoked are the same as the event or events that may trigger a "penalty rate" as described in § 226.5a(b)(1)(iv)(A), the issuer may refer to the actions listed in the Penalty APR row, in describing the circumstances in which the introductory rate could be revoked. (See Sample G–10(C) in the disclosure labeled "Loss of Introductory APR" directly beneath the table for additional guidance on the level of detail in which to describe the circumstances in which an introductory rate could be revoked.) A card issuer will be deemed to meet the standard to clearly and conspicuously disclose the information required by § 226.5a(b)(1)(iv)(B) if the issuer uses the format shown in Sample G–10(C) to disclose this information.

iii. *Introductory rates—limitations on revocation.* Issuers that are disclosing an introductory rate are prohibited by § 226.55 from increasing or revoking the introductory rate before it expires unless the consumer fails to make a required minimum periodic payment within 60 days after the due date for the payment. In making the required disclosure pursuant to § 226.5a(b)(1)(iv)(B), issuers should describe this circumstance directly beneath the table as "make a late payment."

►iv. *Employee preferential rates.* An issuer is required to disclose directly beneath the table the circumstances under which an employee preferential rate may be revoked, and the rate that will apply after the revocation. In describing the rate that will apply after revocation of the employee preferential rate, if the rate that will apply after revocation of the employee preferential rate is already disclosed in the table, the issuer is not required to repeat the rate, but may refer to that rate in a clear and conspicuous manner. For example, if the rate that will apply after revocation of an employee preferential rate is the standard rate that applies to that type of transaction (such as a purchase or balance transfer transaction), and the standard rates are labeled in the table as "standard APRs," the issuer may refer to the "standard APR" when describing the rate that will apply after revocation of an employee preferential rate. The description of the circumstances in which an employee preferential rate could be revoked should be brief. For example, if an issuer may increase an employee preferential rate based upon termination of the employee's employment relationship with the issuer or a third party, issuers may describe this circumstance as "if your employment with [issuer or third party] ends."◄

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5a(b)(2) Fees for issuance or availability.

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4. *Waived or reduced fees.* If fees required to be disclosed are waived or reduced for a limited time, the introductory fees or the fact of fee waivers may be ►disclosed◄ [provided] in the table in addition to the required fees if the card issuer also discloses how long the reduced fees or waivers will remain in effect ►in accordance with the requirements of §§ 226.9(c)(2)(v)(B) and 226.55(b)(1)◄.

* * * * *

5a(b)(5) Grace period.

1. *How grace period disclosure is made.* The card issuer must state any conditions on the applicability of the grace period. ►An issuer, however, may not disclose under § 226.5a(b)(5) the limitations on the imposition of finance charges as a result of a loss of a grace period in § 226.54, or the impact of payment allocation on whether interest is charged on purchases as a result of a loss of a grace period. Some issuers may offer a grace period on all purchases under which interest will not be charged on purchases if the consumer pays the outstanding balance shown on a periodic statement in full by the due date shown on that statement for one or more billing cycles. In these circumstances, § 226.5a(b)(5) requires that the issuer disclose the grace period and the conditions for its applicability using the following language, or substantially similar language, as applicable: "Your due date is [at least] __ days after the close of each billing cycle. We will not charge you any interest on purchases if you pay your entire balance by the due date each month."◄ [An issuer that offers a grace period on all purchases and conditions the grace period on the consumer paying his or her outstanding balance in full by the due date each billing cycle, or on the consumer paying the outstanding balance in full by the due date in the previous and/or the current billing cycle(s) will be deemed to meet these requirements by providing the following disclosure, as applicable: "Your due date is [at least] __ days after the close of each billing cycle. We will not charge you any interest on purchases if you pay your entire balance by the due date each month."]

►However, other issuers may offer a grace period on all purchases under which interest may be charged on purchases even if the consumer pays the outstanding balance shown on a periodic statement in full by the due date shown on that statement each billing cycle. For example, an issuer may charge interest on purchases if the consumer uses the account for a cash advance, regardless of whether the outstanding balance shown on the periodic statement is paid in full by the due date shown on that statement. In these circumstances, § 226.5a(b)(5) requires the issuer to amend the above disclosure language to describe accurately the conditions on the applicability of the grace period.◄

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[4. *Limitations on the imposition of finance charges in § 226.54.* Section 226.5a(b)(5) does not require a card issuer to disclose the limitations on the imposition of finance charges in § 226.54.]

* * * * *

5a(b)(6) Balance computation method.

1. *Form of disclosure.* In cases where the card issuer uses a balance computation method that is identified by name in the regulation, the card issuer must disclose below the table only the name of the method. In cases where the card issuer uses a balance computation method that is not identified by name in the regulation, the disclosure below the table must clearly explain the method in as much detail as set forth in the descriptions of balance methods in § 226.5a(g). The explanation need not be as detailed as that required for the disclosures under § 226.6(b)(4)(i)(D). [(See the commentary to § 226.5a(g) for guidance on particular methods.)]

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Section 226.6—Account-Opening Disclosures

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6(b)(2)(v) Grace period.

1. *Grace period.* Creditors must state any conditions on the applicability of the grace period. ►A creditor, however, may not disclose under § 226.6(b)(2)(v) the limitations on the imposition of finance charges as a result of a loss of a grace period in § 226.54, or the impact of payment allocation on whether interest is charged on transactions as a result of a loss of a grace period. Some creditors may offer a grace period on all types of transactions under which interest will not be charged on transactions if the consumer pays the outstanding balance shown on a periodic statement in full by the due date shown on that statement for one or more billing cycles. In these circumstances, § 226.6(b)(2)(v) requires that the creditor disclose the grace period and the conditions for its applicability using the following language, or substantially similar language, as applicable: "Your due date is [at least] _ days after the close of each billing cycle. We will not charge you any interest on your account if you pay your entire balance by the due date each month."◄ [A creditor that offers a grace period on all types of transactions for the account and conditions the grace period on the consumer paying his or her outstanding balance in full by the due date each billing cycle, or on the consumer paying the outstanding balance in full by the due date in the previous and/or the current billing cycle(s) will be deemed to meet these requirements by providing the following disclosure, as applicable: "Your due date is [at least] _ days after the close of each billing cycle. We will not charge you any interest on your account if you pay your entire balance by the due date each month."]► However, other creditors may offer a grace period on all types of transactions under which interest may be charged on transactions even if the consumer pays the outstanding balance shown on a periodic statement in full by the due date shown on that statement each billing cycle. In these circumstances, § 226.6(b)(2)(v) requires the creditor to amend the above disclosure language to describe accurately the conditions on the applicability of the grace period.◄

* * * * *

3. *Grace period on some features.* [*See* Samples G–17(B) and G–17(C) for guidance on complying with § 226.6(b)(2)(v) when a creditor offers a grace period for purchases but no grace period on balance transfers and cash advances.] ►Some creditors do not offer a grace period on cash advances and balance transfers, but offers a grace period for all purchases under which interest will not be charged on purchases if the consumer pays the outstanding balance shown on a periodic statement in full by the due date shown on that statement for one or more billing cycles. In these circumstances, § 226.6(b)(2)(v) requires that the creditor disclose the grace period for purchases and the conditions for its applicability, and the lack of a grace period for cash advances and

balance transfers using the following language, or substantially similar language, as applicable: "Your due date is [at least] _ days after the close of each billing cycle. We will not charge you any interest on purchases if you pay your entire balance by the due date each month. We will begin charging interest on cash advances and balance transfers on the transaction date." However, other creditors may offer a grace period on all purchases under which interest may be charged on purchases even if the consumer pays the outstanding balance shown on a periodic statement in full by the due date shown on that statement each billing cycle. For example, a creditor may charge interest on purchases if the consumer uses the account for a cash advance, regardless of whether the outstanding balance shown on the periodic statement is paid in full by the due date shown on that statement. In these circumstances, § 226.6(a)(2)(v) requires the creditor to amend the above disclosure language to accurately describe the conditions on the applicability of the grace period. Also, some creditors may not offer a grace period on cash advances and balance transfers, and will begin charging interest on these transactions from a date other than the transaction date, such as the posting date. In these circumstances, § 226.6(a)(2)(v) requires the creditor to amend the above disclosure language to be accurate. ◀

【4. *Limitations on the imposition of finance charges in § 226.54.* Section 226.6(b)(2)(v) does not require a card issuer to disclose the limitations on the imposition of finance charges in § 226.54.】

6(b)(2)(vi) Balance computation method.

【1. *Content.*】▶1. *Use of same balance computation method for all features.* In cases where the balance for each feature is computed using the same balance computation method, a single identification of the name of the balance computation method is sufficient. In this case, a creditor may use an appropriate name listed in § 226.5a(g) (e.g., "*average daily balance (including new purchases)*") to satisfy the requirement to disclose the name of the method for all features on the account, even though the name only refers to purchases. For example, if a creditor uses the average daily balance method including new transactions for all features, a creditor may use the name "*average daily balance (including new purchases)*" listed in § 226.5a(g)(i) to satisfy the requirement to disclose the name of the balance computation method for all features. As an alternative, in this situation, a creditor may revise the balance computation names listed in § 226.5a(g) to refer more broadly to all new credit transactions, such as using the language "new transactions" or "current transactions" (*e.g.,* "*average daily balance (including new transactions)*"), rather than simply referring to new purchases when the same method is used to calculate the balances for all features of the account.◀ *See* Samples G–17(B) and G–17(C) for guidance on how to disclose the balance computation method where the same method is used for all features on the account.

▶2. *Use of balance computation names in § 226.5a(g) for balances other than purchases.* The names of the balance computation methods listed in § 226.5a(g) describe balance computation methods for purchases. When a creditor is disclosing the name of the balance computation methods separately for each feature, in using the names listed in § 226.5a(g) to satisfy the requirements of § 226.6(b)(2)(vi) for features other than purchases, a creditor must revise the names listed in § 226.5a(g) to refer to the other features. For example, when disclosing the name of the balance computation method applicable to cash advances, a creditor must revise the name listed in § 226.5a(g)(i) to disclose it as "*average daily balance (including new cash advances)*" when the balance for cash advances is figured by adding the outstanding balance (including new cash advances and deducting payments and credits) for each day in the billing cycle, and then dividing by the number of days in the billing cycle. Similarly, a creditor must revise the name listed in § 226.5a(g)(ii) to disclose it as "*average daily balance (excluding new cash advances)*" when the balance for cash advances is figured by adding the outstanding balance (excluding new cash advances and deducting payments and credits) for each day in the billing cycle, and then dividing by the number of days in the billing cycle. See comment 6(b)(2)(vi)–1 for guidance on the use of one balance computation name when the same balance computation method is used for all features on the account.◀

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Section 226.7—Periodic Statement

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7(b) Rules affecting open-end (not home-secured) plans.

1. *Deferred interest or similar transactions.* * * *

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iv. *Due date to avoid obligation for finance charges under a deferred interest or similar program.* Section 226.7(b)(14) requires disclosure on periodic statements of the date by which any outstanding balance subject to a deferred interest or similar program must be paid in full in order to avoid the obligation for finance charges on such balance. This disclosure must appear on the front of ▶any page 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.

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7(b)(5) Balance on which finance charge computed.

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7. *Use of one balance computation method explanation when multiple balances disclosed.* Sometimes the creditor will disclose more than one balance to which a periodic rate was applied, even though each balance was computed using the same balance computation method. For example, if a plan involves purchases and cash advances that are subject to different rates, more than one balance must be disclosed, even though the same computation method is used for determining the balance for each feature. In these cases, one explanation or a single identification of the name of the balance computation method is sufficient. Sometimes the creditor separately discloses the portions of the balance that are subject to different rates because different portions of the balance fall within two or more balance ranges, even when a combined balance disclosure would be permitted under comment 7(b)(5)–1. In these cases, one explanation or a single identification of the name of the balance computation method is also sufficient (assuming, of course, that all portions of the balance were computed using the same method). ▶In these cases, a creditor may use an appropriate name listed in § 226.5a(g) (*e.g.,* "*average daily balance (including new purchases)*") as the single identification of the name of the balance computation method applicable to all features, even though the name only refers to purchases. For example, if a creditor uses the average daily balance method including new transactions for all features, a creditor may use the name "*average daily balance (including new purchases)*" listed in § 226.5a(g)(i) to satisfy the requirement to disclose the name of the balance computation method for all features. As an alternative, in this situation, a creditor may revise the balance computation names listed in § 226.5a(g) to refer more broadly to all new credit transactions, such as using the language "new transactions" or "current transactions" (*e.g.,* "*average daily balance (including new transactions)*"), rather than simply referring to new purchases, when the same method is used to calculate the balances for all features of the account.

8. *Use of balance computation names in § 226.5a(g) for balances other than purchases.* The names of the balance computation methods listed in § 226.5a(g) describe balance computation methods for purchases. When a creditor is disclosing the name of the balance computation methods separately for each feature, in using the names listed in § 226.5a(g) to satisfy the requirements of § 226.7(b)(5) for features other than purchases, a creditor must revise the names listed in § 226.5a(g) to refer to the other features. For example, when disclosing the name of the balance computation method applicable to cash advances, a creditor must revise the name listed in § 226.5a(g)(i) to disclose it as "*average daily balance (including new cash advances)*" when the balance for cash advances is figured by adding the outstanding balance (including new cash advances and deducting payments and credits) for each day in the billing cycle, and then dividing by the number of days in the billing cycle. Similarly, a creditor must revise the name listed in § 226.5a(g)(ii) to disclose it as "*average daily balance (excluding new cash advances)*" when the balance for cash advances is figured by adding the outstanding balance (excluding new cash advances and deducting payments and credits) for each day in the billing cycle, and then dividing by the number of days in the billing cycle. See comment 7(b)(5)–7 for guidance on the use of one balance computation method explanation or name when multiple balances are disclosed.◀

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7(b)(6) Charges imposed.

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3. *Total fees ►and interest charged◄ for calendar year to date.*

i. *Monthly statements.* Some creditors send monthly statements but the statement periods do not coincide with the calendar month. For creditors sending monthly statements, the following comply with the requirement to provide calendar year-to-date totals.

A. A creditor may disclose 【a】 calendar-year-to-date total►s◄ at the end of the calendar year by aggregating ►finance charges attributable to periodic interest rates and◄ fees for 12 monthly cycles, starting with the period that begins during January and finishing with the period that begins during December. For example, if statement periods begin on the 10th day of each month, the statement covering December 10, 2011 through January 9, 2012, may disclose the year-to-date total►s◄ for ►interest charged and◄ fees imposed from January 10, 2011, through January 9, 2012. Alternatively, the creditor could provide a statement for the cycle ending January 9, 2012, showing the year-to-date total►s◄ for ►interest charged and◄ fees imposed January 1, 2011, through December 31, 2011.

B. A creditor may disclose a calendar-year-to-date total►s◄ at the end of the calendar year by aggregating ►finance charges attributable to periodic interest rates and◄ fees for 12 monthly cycles, starting with the period that begins during December and finishing with the period that begins during November. For example, if statement periods begin on the 10th day of each month, the statement covering November 10, 2011 through December 9, 2011, may disclose the year-to-date total►s◄ for ►interest charged and◄ fees imposed from December 10, 2010, through December 9, 2011.

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7(b)(12) Repayment disclosures.

►1. *Rounding.* In disclosing on the periodic statement the minimum payment total cost estimate, the estimated monthly payment for repayment in 36 months, the total cost estimate for repayment in 36 months, and the savings estimate for repayment in 36 months under § 226.7(b)(12)(i) or (b)(12)(ii) as applicable, a card issuer, at its option, must either round these disclosures to the nearest whole dollar or to the nearest cent. Nonetheless, an issuer's rounding for all of these disclosures must be consistent. An issuer may round all of these disclosures to the nearest whole dollar when disclosing them on the periodic statement, or may round all of these disclosures to the nearest cent. An issuer may not, however, round some of the disclosures to the nearest whole dollar, while rounding other disclosures to the nearest cent.◄

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Section 226.9—Subsequent Disclosure Requirements

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9(b) Disclosures for supplemental credit access devices and additional features.

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9(b)(3) Checks that access a credit card account.

9(b)(3)(i) Disclosures.

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►2. *Combined disclosures for checks and other transactions subject to the same terms.* A card issuer may include in the tabular disclosure provided pursuant to § 226.9(b)(3) disclosures regarding the terms offered on non-check transactions, provided that such transactions are subject to the same terms that are required to be disclosed pursuant to § 226.9(b)(3)(i) for the checks that access a credit card account. However, a card issuer may not include in the table information regarding additional terms that are not required disclosures for checks that access a credit card account pursuant to § 226.9(b)(3).◄

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9(c) Change in terms.

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9(c)(2) Rules affecting open-end (not home-secured) plans.

1. *Changes initially disclosed.* Except as provided in § 226.9(g)(1), no notice of a change in terms need be given if the specific change is set forth initially ►consistent with any applicable requirements◄, such as ►rate or fee increases upon expiration of a specific period of time that were disclosed in accordance with § 226.9(c)(2)(v)(B) or◄ rate increases under a properly disclosed variable-rate plan in accordance with § 226.9(c)(2)(v)(C). In contrast, notice must be given if the contract allows the creditor to increase the rate at its discretion.

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9(c)(2)(iii) Charges not covered by § 226.6(b)(1) and (b)(2).

1. *Applicability.* Generally, if a creditor increases any component of a charge, or introduces a new charge, that is imposed as part of the plan under § 226.6(b)(3) but is not required to be disclosed as part of the account-opening summary table under § 226.6(b)(1) and (b)(2), the creditor 【may】►must◄ either, at its option (i) provide at least 45 days' written advance notice before the change becomes effective to comply with the requirements of § 226.9(c)(2)(i), or (ii) provide notice orally or in writing, or electronically if the consumer requests the service electronically, of the amount of the charge to an affected consumer before the consumer agrees to or becomes obligated to pay the charge, at a time and in a manner that a consumer would be likely to notice the disclosure. (*See* the commentary under § 226.5(a)(1)(iii) regarding disclosure of such changes in electronic form.) For example, a fee for expedited delivery of a credit card is a charge imposed as part of the plan under § 226.6(b)(3) but is not required to be disclosed in the account-opening summary table under § 226.6(b)(1) and (b)(2). If a creditor changes the amount of that expedited delivery fee, the creditor may provide written advance notice of the change to affected consumers at least 45 days before the change becomes effective. Alternatively, the creditor may provide oral or written notice, or electronic notice if the consumer requests the service electronically, of the amount of the charge to an affected consumer before the consumer agrees to or becomes obligated to pay the charge, at a time and in a manner that the consumer would be likely to notice the disclosure. (*See* comment 5(b)(1)(ii)–1 for examples of disclosures given at a time and in a manner that the consumer would be likely to notice them.)

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9(c)(2)(iv) Disclosure requirements.

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3. *Changing from a variable rate to a non-variable rate.* If a creditor is changing a rate applicable to a consumer's account from a variable rate to a non-variable rate, the creditor ►generally◄ must provide a notice as otherwise required under § 226.9(c) even if the variable rate at the time of the change is higher than the non-variable rate. ►However, a creditor is not required to provide a notice under § 226.9(c) if the creditor provides the disclosures required by § 226.9(c)(2)(v)(B) or (c)(2)(v)(D) in connection with changing a variable rate to a lower non-variable rate. Similarly, a creditor is not required to provide a notice under § 226.9(c) when changing a variable rate to a lower non-variable rate in order to comply with 50 U.S.C. app. 527 or a similar federal or state statute or regulation.◄

4. *Changing from a non-variable rate to a variable rate.* If a creditor is changing a rate applicable to a consumer's account from a non-variable rate to a variable rate, the creditor ►generally◄ must provide a notice as otherwise required under § 226.9(c) even if the non-variable rate is higher than the variable rate at the time of the change. ►However, a creditor is not required to provide a notice under § 226.9(c) if the creditor provides the disclosures required by § 226.9(c)(2)(v)(B) or (c)(2)(v)(D) in connection with changing a non-variable rate to a lower variable rate. Similarly, a creditor is not required to provide a notice under § 226.9(c) when changing a non-variable rate to a lower variable rate in order to comply with 50 U.S.C. app. 527 or a similar federal or state statute or regulation.◄

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9(c)(2)(v) Notice not required.

* * * * *

2. *Skip features.* i. 【*General*】►*Skipped or reduced payments*◄. If a credit program allows consumers to skip or reduce one or more payments during the year【, or involves temporary reductions in finance charges other than reductions in an interest rate (except if § 226.9(c)(2)(v)(B) or (c)(2)(v)(D) applies)】, no notice of the change in terms is required either prior to the reduction ►in payments◄ or upon resumption of the higher [finance charges or] payments if these features are explained on the account-opening disclosure statement (including an explanation of the terms upon resumption). For example, a merchant may allow consumers to skip the December payment to encourage holiday shopping, or a teacher's credit union may not require payments during summer vacation. Otherwise, the creditor must give notice prior to resuming the original ►payment◄ schedule 【or finance charge】, even though no notice is required prior to the reduction. The change-in-terms notice may be combined with the notice offering the reduction. For example, the periodic statement reflecting the

[reduction or] skip feature may also be used to notify the consumer of the resumption of the original ►payment◄ schedule [or finance charge], either by stating explicitly when the higher payment [or charges] resume►s◄ or by indicating the duration of the skip option. Language such as "You may skip your October payment" may serve as the change-in-terms notice.

ii. *Temporary reductions in interest rates ►or fees◄.* If a credit program involves temporary reductions in an interest rate ►or fee◄, no notice of the change in terms is required either prior to the reduction or upon resumption of the original rate ►or fee◄ if these features are disclosed in advance in accordance with the requirements of § 226.9(c)(2)(v)(B). Otherwise, the creditor must give notice prior to resuming the original rate ►or fee◄, even though no notice is required prior to the reduction. The notice provided prior to resuming the original rate ►or fee◄ must comply with the timing requirements of § 226.9(c)(2)(i) and the content and format requirements of § 226.9(c)(2)(iv)(A), (B) (if applicable), (C) (if applicable), and (D). See comment 55(b)–3 for guidance regarding the application of § 226.55 in these circumstances.

3. *Changing from a variable rate to a non-variable rate.* ►See comment 9(c)(2)(iv)–3.◄ [If a creditor is changing a rate applicable to a consumer's account from a variable rate to a non-variable rate, the creditor must provide a notice as otherwise required under § 226.9(c) even if the variable rate at the time of the change is higher than the non-variable rate. (See comment 9(c)(2)(iv)(A)–3.)]

4. *Changing from a non-variable rate to a variable rate.* ►See comment 9(c)(2)(iv)–4.◄ [If a creditor is changing a rate applicable to a consumer's account from a non-variable rate to a variable rate, the creditor must provide a notice as otherwise required under § 226.9(c) even if the non-variable rate is higher than the variable rate at the time of the change. (See comment 9(c)(2)(iv)(A)–4.)]

5. *Temporary rate ►or fee◄ reductions offered by telephone.* The timing requirements of § 226.9(c)(2)(v)(B) are deemed to have been met, and written disclosures required by § 226.9(c)(2)(v)(B) may be provided as soon as reasonably practicable after the first transaction subject to a rate that will be in effect for a specified period of time (a temporary rate) ►or the imposition of a fee that will be in effect for a specified period of time (a temporary fee)◄ if:

i. The consumer accepts the offer of the temporary rate ►or temporary fee◄ by telephone;

ii. The creditor permits the consumer to reject the temporary rate ►or temporary fee◄ offer and have the rate or rates ►or fee◄ that previously applied to the consumer's balances reinstated for 45 days after the creditor mails or delivers the written disclosures required by § 226.9(c)(2)(v)(B)►, except that the creditor need not permit the consumer to reject a temporary rate or temporary fee offer if the rate or rates or fee that will apply following expiration of the temporary rate do not exceed the rate or rates or fee that applied immediately prior to commencement of the temporary rate or temporary fee◄; and

iii. The disclosures required by § 226.9(c)(2)(v)(B) and the consumer's right to reject the temporary rate ►or temporary fee◄ offer and have the rate or rates ►or fee◄ that previously applied to the consumer's account reinstated►, if applicable,◄ are disclosed to the consumer as part of the temporary rate ►or temporary fee◄ offer.

6. *First listing.* The disclosures required by § 226.9(c)(2)(v)(B)(*1*) are only required to be provided in close proximity and in equal prominence to the first listing of the temporary rate ►or fee◄ in the disclosure provided to the consumer. For purposes of § 226.9(c)(2)(v)(B), the first statement of the temporary rate ►or fee◄ is the most prominent listing on the front side of the first page of the disclosure. If the temporary rate ►or fee◄ does not appear on the front side of the first page of the disclosure, then the first listing of the temporary rate ►or fee◄ is the most prominent listing of the temporary rate on the subsequent pages of the disclosure. For advertising requirements for promotional rates, *see* § 226.16(g).

7. *Close proximity—point of sale.* Creditors providing the disclosures required by § 226.9(c)(2)(v)(B) of this section in person in connection with financing the purchase of goods or services may, at the creditor's option, disclose the annual percentage rate ►or fee◄ that would apply after expiration of the period on a separate page or document from the temporary rate ►or fee◄ and the length of the period, provided that the disclosure of the annual percentage rate ►or fee◄ that would apply after the expiration of the period is equally prominent to, and is provided at the same time as, the disclosure of the temporary rate ►or fee◄ and length of the period.

* * * * *

►10. *Relationship between §§ 226.9(c)(2)(v)(B) and 226.6(b).* A disclosure of the information described in § 226.9(c)(2)(v)(B)(*1*) provided in the account-opening table in accordance with § 226.6(b) complies with the requirements of § 226.9(c)(2)(v)(B)(*2*), if the listing of the introductory rate in such tabular disclosure also is the first listing as described in comment 9(c)(2)(v)–6.◄

[10]►11◄. *Disclosure of the terms of a workout or temporary hardship arrangement.* In order for the exception in § 226.9(c)(2)(v)(D) to apply, the disclosure provided to the consumer pursuant to § 226.9(c)(2)(v)(D)(*2*) must set forth:

i. The annual percentage rate that will apply to balances subject to the workout or temporary hardship arrangement;

ii. The annual percentage rate that will apply to such balances if the consumer completes or fails to comply with the terms of, the workout or temporary hardship arrangement;

iii. Any reduced fee or charge of a type required to be disclosed under § 226.6(b)(2)(ii), (b)(2)(iii), or (b)(2)(xii) that will apply to balances subject to the workout or temporary hardship arrangement, as well as the fee or charge that will apply if the consumer completes or fails to comply with the terms of the workout or temporary hardship arrangement;

iv. Any reduced minimum periodic payment that will apply to balances subject to the workout or temporary hardship arrangement, as well as the minimum periodic payment that will apply if the consumer completes or fails to comply with the terms of the workout or temporary hardship arrangement; and

v. If applicable, that the consumer must make timely minimum payments in order to remain eligible for the workout or temporary hardship arrangement.

[11]►12◄. *Index not under creditor's control.* See comment 55(b)(2)–2 for guidance on when an index is deemed to be under [the card issuer's] ►a creditor's◄ control.

[12]►13◄. *Temporary rates—relationship to § 226.59.* i. *General.* Section 226.59 requires a card issuer to review rate increases imposed due to the revocation of a temporary rate. In some circumstances, § 226.59 may require an issuer to reinstate a reduced temporary rate based on that review. If, based on a review required by § 226.59, a creditor reinstates a temporary rate that had been revoked, the card issuer is not required to provide an additional notice to the consumer when the reinstated temporary rate expires, if the card issuer provided the disclosures required by § 226.9(c)(2)(v)(B) prior to the original commencement of the temporary rate. *See* § 226.55 and the associated commentary for guidance on the permissibility and applicability of rate increases.

ii. *Example.* A consumer opens a new credit card account under an open-end (not home-secured) consumer credit plan on January 1, 2011. The annual percentage rate applicable to purchases is 18%. The card issuer offers the consumer a 15% rate on purchases made between January 1, 2012 and January 1, 2014. Prior to January 1, 2012, the card issuer discloses, in accordance with § 226.9(c)(2)(v)(B), that the rate on purchases made during that period will increase to the standard 18% rate on January 1, 2014. In March 2012, the consumer makes a payment that is ten days late. The card issuer, upon providing 45 days' advance notice of the change under § 226.9(g), increases the rate on new purchases to 18% effective as of June 1, 2012. On December 1, 2012, the issuer performs a review of the consumer's account in accordance with § 226.59. Based on that review, the card issuer is required to reduce the rate to the original 15% temporary rate as of January 15, 2013. On January 1, 2014, the card issuer may increase the rate on purchases to 18%, as previously disclosed prior to January 1, 2012, without providing an additional notice to the consumer.

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Section 226.10—Payments

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10(b) Specific requirements for payments.

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2. *Payment ►methods promoted by creditor◄[via creditor's Web site].* ►If a creditor promotes a specific payment method, any payments made via that method (prior to any cut-off time specified by the creditor, to the extent permitted by § 226.10(b)(2)) are generally conforming

payments for purposes of § 226.10(b). For example:◄

►i.◄ If a creditor promotes electronic payment via its Web site (such as by disclosing on the Web site itself that payments may be made via the Web site), any payments made via the creditor's Web site prior to the creditor's specified cut-off time, if any, would generally be conforming payments for purposes of § 226.10(b).

►ii. If a creditor promotes payment by telephone (for example, by including the option to pay by telephone in a menu of options provided to consumers at a toll-free number disclosed on its periodic statement), payments made by telephone would generally be conforming payments for purposes of § 226.10(b).

iii. If a creditor promotes in-person payments, for example by stating in an advertisement that payments may be made in person at its branch locations, such in-person payments made at a branch or office of the creditor generally would be conforming payments for purposes of § 226.10(b).◄

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10(e) Limitations on fees related to method of payment.

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►4. *Third parties.* For purposes of § 226.10(e), the term "creditor" includes third-party service providers or other third parties who collect, receive, or process payments on behalf of the creditor.◄

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10(f) Changes by card issuer.

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3. *Safe harbor.*

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(ii) *Retail location.* For a material change in the address of a retail location or procedures for handling cardholder payments at a retail location, a card issuer may impose a late fee or finance charge on a consumer's account for a late payment during the 60-day period following the date on which the change took effect. However, if a [consumer]►card issuer◄ is notified by a consumer no later than 60 days after the card issuer transmitted the first periodic statement that reflects the late fee or finance charge for a late payment that the late payment was caused by such change, the card issuer must waive or remove any late fee or finance charge, or credit an amount equal to any late fee or finance charge, imposed on the account during the 60-day period following the date on which the change took effect.

* * * * *

Section 226.12—Special Credit Card Provisions

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12(c) Right of cardholder to assert claims or defenses against card issuer.

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4. *Method of calculating the amount of credit outstanding.* The amount of the claim or defense that the cardholder may assert shall not exceed the amount of credit outstanding for the disputed transaction at the time the cardholder first notifies the card issuer or the person honoring the credit card of the existence of the claim or defense. ►However, when a consumer has asserted a claim or defense against a creditor pursuant to § 226.12(c), the creditor must apply any payment or other credit in a manner that avoids or minimizes any reduction in the amount subject to that claim or defense. Accordingly, to determine the amount of credit outstanding for purposes of this section, payments and other credits must be applied first to amounts other than the disputed transaction. For examples of how to comply with §§ 226.12 and 226.53 for credit card accounts under an open-end (not home-secured) consumer credit plan, see comment 53–3. For other types of credit card accounts◄ [To determine the amount of credit outstanding for purposes of this section], payments and other credits ►may◄ [shall] be applied to: (i) Late charges in the order of entry to the account; then to (ii) finance charges in the order of entry to the account; and then to (iii) any [other] debits ►other than the transaction subject to the claim or defense◄ in the order of entry to the account. In these circumstances, if◄ [If] more than one item is included in a single extension of credit, credits are to be distributed pro rata according to prices and applicable taxes.

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Section 226.13—Billing Error Resolution

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13(c) Time for resolution; general procedures.

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Paragraph 13(c)(2).

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2. *Finality of error resolution procedure.* A creditor must comply with the error resolution procedures and complete its investigation to determine whether an error occurred within two complete billing cycles as set forth in § 226.13(c)(2). Thus, for example, ►§ 226.13(c)(2) prohibits a◄ [the] creditor [would be prohibited] from reversing amounts previously credited for an alleged billing error even if the creditor obtains evidence after the error resolution time period has passed indicating that the billing error did not occur as asserted by the consumer. Similarly, if a creditor fails to mail or deliver a written explanation setting forth the reason why the billing error did not occur as asserted, or otherwise fails to comply with the error resolution procedures set forth in § 226.13(f), the creditor generally must credit the disputed amount and related finance or other charges, as applicable, to the consumer's account. ►However, if a consumer receives more than one credit to correct the same billing error, this section does not prevent a creditor from reversing amounts it has previously credited to correct that error, provided that the total amount of the remaining credits is equal to or more than the amount of the error and that the consumer does not incur any fees or other charges as a result of the timing of the creditor's reversal. For example, assume that a consumer asserts a billing error with respect to a $100 transaction and that the creditor posts a $100 credit to the consumer's account to correct that error during the time period set forth in § 226.13(c)(2). However, following that time period, a merchant or other person honoring the credit card issues a $100 credit to the consumer to correct the same error. In these circumstances, § 226.13(c)(2) does not prohibit the creditor from reversing its $100 credit once the $100 credit from the merchant or other person has posted to the consumer's account.◄

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Section 226.14—Determination of Annual Percentage Rate

14(a) General rule.

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►6. *Effect of leap year.* Any variance in the annual percentage rate that occurs solely by reason of the addition of February 29 in a leap year, may be disregarded, and such a rate may be disclosed without regard to such variance.◄

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Section 226.16—Advertising

1. *Clear and conspicuous standard—general.* Section 226.16 is subject to the general "clear and conspicuous" standard for subpart B (see § 226.5(a)(1)) but prescribes no specific rules for the format of the necessary disclosures, other than the format requirements related to the disclosure of a promotional rate or payment under § 226.16(d)(6), a promotional rate ►or promotional fee◄ under § 226.16(g), or a deferred interest or similar offer under § 226.16(h). Other than the disclosure of certain terms described in §§ 226.16(d)(6), (g), or (h), the credit terms need not be printed in a certain type size nor need they appear in any particular place in the advertisement.

* * * * *

2. *Clear and conspicuous standard—promotional rates►, fees,◄ or payments; deferred interest or similar offers.*

* * * * *

ii. For purposes of § 226.16(g)(4) as it applies to written or electronic advertisements only, a clear and conspicuous disclosure means the required information in § 226.16(g)(4)(i) and►, as applicable,◄ (g)(4)(ii) ►and (g)(4)(iii)◄ must be equally prominent to the promotional rate ►or promotional fee◄ to which it applies. If the information in § 226.16(g)(4)(i) and►, as applicable,◄ (g)(4)(ii) ►and (g)(4)(iii)◄ is the same type size as the promotional rate ►or promotional fee◄ to which it applies, the disclosures would be deemed to be equally prominent. For purposes of § 226.16(h)(3) as it applies to written or electronic advertisements only, a clear and conspicuous disclosure means the required information in § 226.16(h)(3) must be equally prominent to each statement of "no interest," "no payments," "deferred interest," "same as cash," or similar term regarding interest or payments during the deferred interest period. If the information required to be disclosed under § 226.16(h)(3) is the same type size as the statement of "no interest," "no payments," "deferred interest," "same as cash," or similar term regarding interest or payments during the deferred interest period, the disclosure would be deemed to be equally prominent.

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16(g) Promotional rates.

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2. *Immediate proximity.* For written or electronic advertisements, including the term "introductory" or "intro" in the same phrase as the listing of the introductory rate ►or introductory fee◄ is deemed to be in immediate proximity of the listing.

3. *Prominent location closely proximate.* For written or electronic advertisements, information required to be disclosed in § 226.16(g)(4)(i) and►, as applicable,◄ (g)(4)(ii) ►and (g)(4)(iii)◄ that is in the same paragraph as the first listing of the promotional rate ►or promotional fee◄ is deemed to be in a prominent location closely proximate to the listing. Information disclosed in a footnote will not be considered in a prominent location closely proximate to the listing.

4. *First listing.* For purposes of § 226.16(g)(4) as it applies to written or electronic advertisements, the first listing of the promotional rate ►or promotional fee◄ is the most prominent listing of the rate ►or fee◄ on the front side of the first page of the principal promotional document. The principal promotional document is the document designed to be seen first by the consumer in a mailing, such as a cover letter or solicitation letter. If the promotional rate ►or promotional fee◄ does not appear on the front side of the first page of the principal promotional document, then the first listing of the promotional rate ►or promotional fee◄ is the most prominent listing of the rate ►or fee◄ on the subsequent pages of the principal promotional document. If the promotional rate ►or promotional fee◄ is not listed on the principal promotional document or there is no principal promotional document, the first listing is the most prominent listing of the rate ►or fee◄ on the front side of the first page of each document listing the promotional rate ►or promotional fee◄. If the promotional rate ►or promotional fee◄ does not appear on the front side of the first page of a document, then the first listing of the promotional rate ►or promotional fee◄ is the most prominent listing of the rate ►or fee◄ on the subsequent pages of the document. If the listing of the promotional rate ►or promotional fee◄ with the largest type size on the front side of the first page (or subsequent pages if the promotional rate ►or promotional fee◄ is not listed on the front side of the first page) of the principal promotional document (or each document listing the promotional rate ►or promotional fee◄ if the promotional rate ►or promotional fee◄ is not listed on the principal promotional document or there is no principal promotional document) is used as the most prominent listing, it will be deemed to be the first listing. Consistent with comment 16(c)–1, a catalog or multiple-page advertisement is considered one document for purposes of § 226.16(g)(4).

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Section 226.30—Limitation on Rates

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8. *Manner of stating the maximum interest rate.* The maximum interest rate must be stated in the credit contract either as a specific amount or in any other manner that would allow the consumer to easily ascertain, at the time of entering into the obligation, what the rate ceiling will be over the term of the obligation.

i. For example, the following statements would be sufficiently specific:

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C. The interest rate will not exceed X%, or X percentage points 【about】►above◄ [a rate to be determined at some future point in time], whichever is less.

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Subpart G—Special Rules Applicable to Credit Card Accounts and Open-End Credit Offered to College Students

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Section 226.51—Ability To Pay

51(a) General rule.

51(a)(1) Consideration of ability to pay.

1. *Consideration of additional factors.* Section 226.51(a) requires a card issuer to consider a consumer's ►independent◄ ability to make the required minimum periodic payments under the terms of an account based on the consumer's ►independent◄ income or assets and current obligations. The card issuer may also consider consumer reports, credit scores, and other factors, consistent with Regulation B (12 CFR part 202).

2. *Ability to pay as of application or consideration of increase.* A card issuer complies with § 226.51(a) if it bases its determination regarding a consumer's ►independent◄ ability to make the required minimum periodic payments on the facts and circumstances known to the card issuer at the time the consumer applies to open the credit card account or when the card issuer considers increasing the credit line on an existing account.

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4. ►*Information regarding income,*◄ 【*Income,*】 *assets, and employment.*

►i. *Types of information.* ►For purposes of § 226.51(a), a card issuer may consider any current or reasonably expected income or assets of the consumer or consumers who are applying for a new account or, when the card issuer is considering whether to increase the credit limit on an existing account, the consumer or consumers who are accountholders.◄ 【Any current or reasonably expected assets or income may be considered by the card issuer.】 For example, a card issuer may use information about current or expected salary, wages, bonus pay, tips and commissions. Employment may be full-time, part-time, seasonal, irregular, military, or self-employment. Other sources of income could include interest or dividends, retirement benefits, public assistance, alimony, child support, or separate maintenance payments. A card issuer may also take into account assets such as savings accounts or investments 【that the consumer can or will be able to use】. ►In addition, when a consumer's spouse is not a joint applicant or joint accountholder, a card issuer may consider the spouse's income or assets to the extent that a federal or state statute or regulation grants the consumer an ownership interest in the spouse's income or asserts.◄

►ii. *Sources of information.*◄ A card issuer may consider the consumer's income or assets based on information provided by the consumer, in connection with this credit card account or any other financial relationship the card issuer or its affiliates has with the consumer, subject to any applicable information-sharing rules, and information obtained through third parties, subject to any applicable information-sharing rules. A card issuer may also consider information obtained through any empirically derived, demonstrably and statistically sound model that reasonably estimates a consumer's income or assets.

►iii. *Information regarding household income or assets.* Consideration of information regarding a consumer's household income or assets does not by itself satisfy the requirement in § 226.51(a) to consider the consumer's independent ability to pay. For example, if a card issuer requests on its application form that applicants provide their household income, the card issuer may not rely solely on the information provided to satisfy the requirements of § 226.51(a). Instead, the card issuer would need to obtain additional information about an applicant's independent income (such as by contacting the applicant). However, if a card issuer requests on its application form that applicants provide their income (without reference to household income), the card issuer may rely on the information provided to satisfy the requirements of § 226.51(a).◄

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51*(a)(2) Minimum periodic payments.*

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3. *Mandatory fees.* For purposes of estimating required minimum periodic payments under the safe harbor set forth in § 226.51(a)(2)(ii), mandatory fees that must be assumed to be charged include those fees the card issuer knows the consumer will be required to pay under the terms of the account if the account is opened, such as an annual fee. ►If a mandatory fee is a promotional fee (as defined in § 226.16(g)), the issuer must use the post-promotional fee amount for purposes of § 226.51(a)(2)(ii).◄

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Section 226.52—Limitations on Fees

52(a) Limitations ►prior to account opening and◄ during first year after account opening.

52(a)(1) General rule.

1. *Application.* 【Section 226.52(a)(1) applies if a card issuer charges any fees to the account during the first year after the account is opened (unless the fees are specifically exempted by § 226.52(a)(2)). Thus, if a card issuer charges a non-exempt fee to the account during the first year after account opening, § 226.52(a)(1) provides that the total amount of non-exempt fees the consumer is required to pay with respect to the account during the first year cannot exceed 25 percent of the credit limit in effect when the account is opened.】 ►The◄ 【This】 25

percent limit ►in § 226.52(a)(1)◄ applies to fees that the card issuer charges to the account as well as to fees that the card issuer requires the consumer to pay with respect to the account through other means (such as through a payment from the consumer►'s asset account◄ to the card issuer or from another credit account provided by the card issuer). For example:

* * * * *

ii. Assume that, under the terms of a credit card account, a consumer is required to pay $125 in fees for the issuance or availability of credit during the first year after account opening. At account opening on January 1 of year one, the credit limit for the account is $500. Section 226.52(a)(1) permits the card issuer to charge the $125 in fees to the account. However, § 226.52(a)(1) prohibits the card issuer from requiring the consumer to make payments to the card issuer for additional non-exempt fees with respect to the account ►prior to account opening or◄ during the first year after account opening►.◄[or] ►Section 226.52(a)(1) also prohibits the card issuer from◄ requiring the consumer to open a separate credit account with the card issuer to fund the payment of additional non-exempt fees ►prior to the opening of the credit card account or ◄ during the first year ►after the credit card account is opened◄.

►iii. Assume that, on January 1 of year one, a consumer is required to pay a $100 fee in order to apply for a credit card account. On January 5, the card issuer approves the consumer's application, assigns the account a credit limit of $1,000, and provides the consumer with account-opening disclosures consistent with § 226.6. The card issuer also permits the consumer to begin using the account for transactions on January 5. The consumer is required to pay $150 in fees for the issuance or availability of credit, which § 226.52(a)(1) permits the card issuer to charge to the account on January 5. However, because the $100 application fee is subject to the 25 percent limit in § 226.52(a)(1), the card issuer is prohibited from requiring the consumer to pay any additional non-exempt fees with respect to the account until January 5 of year two.◄

2. *Fees that exceed 25 percent limit.* A card issuer that charges a fee to a credit card account that exceeds the 25 percent limit complies with § 226.52(a)(1) if the card issuer waives or removes the fee and any associated interest charges or credits the account for an amount equal to the fee and any associated interest charges within a reasonable amount of time but no later than the end of the billing cycle following the billing cycle during which the fee was charged. For example, assuming the facts in ►the example in◄ comment 52(a)(1)–1►.i.◄ above, the card issuer complies with § 226.52(a)(1) if the card issuer charged the $2.50 cash advance fee to the account on July 15 of year one but waived or removed the fee or credited the account for $2.50 (plus any interest charges on that $2.50) at the end of the billing cycle.

3. *Changes in credit limit during first year.*

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ii. *Decreases in credit limit.* If a card issuer decreases the credit limit during the first year after the account is opened, § 226.52(a)(1) requires the card issuer to waive or remove any fees charged to the account that exceed 25 percent of the reduced credit limit or to credit the account for an amount equal to any fees the consumer was required to pay with respect to the account that exceed 25 percent of the reduced credit limit within a reasonable amount of time but no later than the end of the billing cycle following the billing cycle during which ►the credit limit was reduced◄[the fee was charged]. For example►:◄[,]

►A. Assume◄[assume] that, at account opening on January 1, the credit limit for a credit card account is $1,000 and the consumer is required to pay $250 in fees for the issuance or availability of credit. The billing cycles for the account begin on the first day of the month and end on the last day of the month. On July 30, the card issuer decreases the credit limit for the account to $500. Section 226.52(a)(1) requires the card issuer to waive or remove $175 in fees from the account or to credit the account for an amount equal to $175 within a reasonable amount of time but no later than August 31.

►B. Assume that, on June 25 of year one, a consumer is required to pay a $75 fee in order to apply for a credit card account. At account opening on July 1 of year one, the credit limit for the account is $500 and the consumer is required to pay $50 in fees for the issuance or availability of credit. The billing cycles for the account begin on the first day of the month and end on the last day of the month. On February 15 of year two, the card issuer decreases the credit limit for the account to $250. Section 226.52(a)(1) requires the card issuer to waive or remove fees from the account or to credit the account for an amount equal to $62.50 within a reasonable amount of time but no later than March 31 of year two.◄

52(a)(2) Fees not subject to limitations.

1. *Covered fees.* Except as provided in § 226.52(a)(2), § 226.52(a) applies to any fees ►or other charges◄ that a card issuer will or may require the consumer to pay with respect to a credit card account ►prior to account opening and◄ during the first year after account opening►, other than charges attributable to periodic interest rates◄. For example, § 226.52(a) applies to:

* * * * *

iii. Fees that the consumer is required to pay in order to engage in transactions using the account (such as cash advance fees, balance transfer fees, foreign transaction fees, and fees for using the account for purchases); [and]

iv. Fees that the consumer is required to pay for violating the terms of the account (except to the extent specifically excluded by § 226.52(a)(2)(i))►;◄[.]

►v. Fixed finance charges; and

vi. Minimum charges imposed if a charge would otherwise have been determined by applying a periodic interest rate to a balance except for the fact that such charge is smaller than the minimum.◄

* * * * *

52(b) *Limitations on penalty fees.*

* * * * *

52(b)(1)(ii) Safe harbors.

1. *Multiple violations of same type.* [Section 226.52(b)(1)(ii)(A) permits a card issuer to impose a fee that does not exceed $25 for the first violation of a particular type. For a subsequent violation of the same type during the next six billing cycles, § 226.52(b)(1)(ii)(B) permits the card issuer to impose a fee that does not exceed $35.]

i. ►*Same billing cycle or next six billing cycles.*◄ [*Next six billing cycles.*] ►A card issuer cannot impose a fee for a violation pursuant to § 226.52(b)(1)(ii)(B) unless a fee has previously been imposed for the same type of violation pursuant to § 226.52(b)(1)(ii)(A). Once a fee has been imposed for a violation pursuant to § 226.52(b)(1)(ii)(A), the card issuer may impose a fee pursuant to § 226.52(b)(1)(ii)(B) for any subsequent violation of the same type until that type of violation has not occurred for a period of six consecutive complete billing cycles.◄ [A fee may be imposed pursuant to § 226.52(b)(1)(ii)(B) if, during the six billing cycles following the billing cycle in which a violation occurred, another violation of the same type occurs.]

* * * * *

ii. *Relationship to §§ 226.52(b)(2)(ii) and 226.56(j)(1)[(i)]*. If multiple violations are based on the same event or transaction such that § 226.52(b)(2)(ii) prohibits the card issuer from imposing more than one fee, the event or transaction constitutes a single violation for purposes of § 226.52(b)(1)(ii). Furthermore, consistent with § 226.56(j)(1)(i), no more than one violation for exceeding an account's credit limit can occur during a single billing cycle for purposes of § 226.52(b)(1)(ii). ►However, § 226.52(b)(2)(ii) does not prohibit a card issuer from imposing fees for exceeding the credit limit in consecutive billing cycles based on the same over-the-limit transaction to the extent permitted by § 226.56(j)(1). In these circumstances, the second and third over-the-limit fees permitted by § 226.56(j)(1) may be imposed pursuant to § 226.52(b)(1)(ii)(B). See comment 52(b)(2)(ii)-1.◄

iii. *Examples*►.◄ [:] * * * * *

* * * * *

52(b)(2) Prohibited fees.

* * * * *

52(b)(2)(i) Fees that exceed dollar amount associated with violation.

* * * * *

5. *Inactivity fees.* Section 226.52(b)(2)(i)(B)(*2*) prohibits a card issuer from imposing a fee ►with respect to a credit card account under an open-end (not home-secured) consumer credit plan◄ based on [account] inactivity ►on that account◄ (including the consumer's failure to use the account for a particular number or dollar amount of transactions or a particular type of transaction). For example, § 226.52(b)(2)(i)(B)(*2*) prohibits a card issuer from imposing a $50 fee ►when a credit card account under an open-end (not home-secured) consumer credit plan is not used◄ [when a consumer fails to use the account] for ►at least◄ $2,000 in purchases over the course of a year. Similarly, ►if the card issuer promotes the waiver or rebate of an annual fee for purposes of § 226.55(e) with respect to a particular type of account,◄ § 226.52(b)(2)(i)(B)(*2*) prohibits a card issuer

from imposing a $50 annual fee on all ►such◄ accounts but waiving the fee ►on any account that is used◄ [if the consumer uses the account] for ►at least◄ $2,000 in purchases over the course of a year. ►However, if the card issuer does not promote the waiver or rebate of an annual fee for purposes of § 226.55(e), § 226.52(b)(2)(i)(B)(*2*) does not prohibit a card issuer from considering account activity along with other factors when deciding whether to waive or rebate annual fees on individual accounts (such as in response to a consumer's request).◄

* * * * *

52(b)(2)(ii) Multiple fees based on single event or transaction.

1. *Single event or transaction.* Section 226.52(b)(2)(ii) prohibits a card issuer from imposing more than one fee for violating the terms or other requirements of an account based on a single event or transaction. ►If § 226.56(j)(1) permits a card issuer to impose fees for exceeding the credit limit in consecutive billing cycles based on the same over-the-limit transaction, those fees are not based on a single event or transaction for purposes of § 226.52(b)(2)(ii).◄ The following examples illustrate the application of § 226.52(b)(2)(ii). Assume for purposes of these examples that the billing cycles for a credit card account begin on the first day of the month and end on the last day of the month and that the payment due date for the account is the twenty-fifth day of the month.

i. Assume that the required minimum periodic payment due on March 25 is $20. On March 26, the card issuer has not received any payment and imposes a late payment fee. ►Consistent with §§ 226.52(b)(1)(ii)(A) and (b)(2)(i), the card issuer may impose a $20 late payment fee on March 26. However, §◄ [Section] 226.52(b)(2)(ii) prohibits the card issuer from imposing an additional late payment fee if the $20 minimum payment has not been received by a subsequent date (such as March 31). [However, § 226.52(b)(2)(ii) does not prohibit the card issuer from imposing an additional late payment fee if the required minimum periodic payment due on April 25 (which may include the $20 due on March 25) is not received on or before that date.]

►A. On April 3, the card issuer provides a periodic statement disclosing that a $70 required minimum periodic payment is due on April 25. This minimum payment includes the $20 minimum payment due on March 25 and the $20 late payment fee imposed on March 26. On April 20, the card issuer receives a $20 payment. No additional payments are received during the April billing cycle. Section 226.52(b)(2)(ii) does not prohibit the card issuer from imposing a late payment fee based on the consumer's failure to make the $70 required minimum periodic payment on or before April 25. Accordingly, consistent with § 226.52(b)(1)(ii)(B) and (b)(2)(i), the card issuer may impose a $35 late payment fee on April 26.

B. On April 3, the card issuer provides a periodic statement disclosing that a $20 required minimum periodic payment is due on April 25. This minimum payment does not include the $20 minimum payment due on March 25 or the $20 late payment fee imposed on March 26. On April 20, the card issuer receives a $20 payment. No additional payments are received during the April billing cycle. Because the card issuer has received the required minimum periodic payment due on April 25 and because § 226.52(b)(2)(ii) prohibits the card issuer from imposing a second late payment fee based on the consumer's failure to make the $20 minimum payment due on March 25, the card issuer cannot impose a late payment fee in these circumstances.◄

* * * * *

iv. Assume that the credit limit for an account is $1,000 and that, consistent with § 226.56, the consumer has affirmatively consented to the payment of transactions that exceed the credit limit. On March 31, the balance on the account is $970 and the card issuer has not received the $35 required minimum periodic payment due on March 25. On that same date (March 31), a $70 transaction is charged to the account, which increases the balance to $1,040. Consistent with § 226.52(b)(1)(ii)(A) and (b)(2)(i)(A), the card issuer may impose a late payment fee of $25 and an over-the-limit fee of $25. Section 226.52(b)(2)(ii) does not prohibit the imposition of both fees because those fees are based on different events or transactions. ►No additional transactions are charged to the account during the March, April, or May billing cycles. If the account balance remains more than $35 above the credit limit on April 26, the card issuer may impose an over-the-limit fee of $35 pursuant to § 226.52(b)(1)(ii)(B), consistent with § 226.56(j)(1). Furthermore, if the account balance remains more than $35 above the credit limit on May 26, the card issuer may again impose an over-the-limit fee of $35 pursuant to § 226.52(b)(1)(ii)(B), to the extent consistent with § 226.56(j)(1). Thereafter, § 226.56(j)(1) does not permit the card issuer to impose additional over-the-limit fees unless another over-the-limit transaction occurs. However, if an over-the-limit transaction occurs during the six billing cycles following the May billing cycle, the card issuer may impose an over-the-limit fee of $35 pursuant to § 226.52(b)(1)(ii)(B).◄

►v. Assume that the credit limit for the account is $5,000 and that, consistent with § 226.56, the consumer has affirmatively consented to the payment of transactions that exceed the credit limit. On July 23, the balance on the account is $4,950. On July 24, the card issuer receives the $100 required minimum periodic payment due on July 25, reducing the balance to $4,850. On July 26, a $75 transaction is charged to the account, which increases the balance to $4,925. On July 27, the $100 payment is returned for insufficient funds, increasing the balance to $5,025. Consistent with §§ 226.52(b)(1)(ii)(A) and (b)(2)(i)(A), the card issuer may impose a returned payment fee of $25 or an over-the-limit fee of $25. However, § 226.52(b)(2)(ii) prohibits the card issuer from imposing both fees because those fees would be based on a single event or transaction.

vi. Assume that the required minimum periodic payment due on March 25 is $50. On March 20, the card issuer receives a check for $50, but the check is returned for insufficient funds on March 22. Consistent with §§ 226.52(b)(1)(ii)(A) and (b)(2)(i)(A), the card issuer may impose a returned payment fee of $25. On March 25, the card issuer receives a second check for $50, but the check is returned for insufficient funds on March 27. Consistent with §§ 226.52(b)(1)(ii)(A), (b)(1)(ii)(B), and (b)(2)(i)(A), the card issuer may impose a late payment fee of $25 or a returned payment fee of $35. However, § 226.52(b)(2)(ii) prohibits the card issuer from imposing both fees because those fees would be based on a single event or transaction.

vii. Assume that the required minimum periodic payment due on February 25 is $100. On February 25, the card issuer receives a check for $100. On March 3, the card issuer provides a periodic statement disclosing that a $120 required minimum periodic payment is due on March 25. On March 4, the $100 check is returned to the card issuer for insufficient funds. Consistent with §§ 226.52(b)(1)(ii)(A) and (b)(2)(i)(A), the card issuer may impose a late payment fee of $25 or a returned payment fee of $25 with respect to the $100 payment. However, § 226.52(b)(2)(ii) prohibits the card issuer from imposing both fees because those fees would be based on a single event or transaction. On March 20, the card issuer receives a $120 check, which is not returned. No additional payments are received during the March billing cycle. Because the card issuer has received the required minimum periodic payment due on March 25 and because § 226.52(b)(2)(ii) prohibits the card issuer from imposing a second fee based on the $100 payment that was returned for insufficient funds, the card issuer cannot impose a late payment fee in these circumstances.◄

* * * * *

Section 226.53—Allocation of Payments

* * * * *

4. *Balances with the same rate.* When the same annual percentage rate applies to more than one balance on an account and a different annual percentage rate applies to at least one other balance on that account, § 226.53 generally does not require that any particular method be used when allocating among the balances with the same annual percentage rate. Under these circumstances, a card issuer may treat the balances with the same rate as a single balance or separate balances. See example in comment 53–5.iv. However, when a balance on a credit card account is subject to a deferred interest or similar program that provides that a consumer will not be obligated to pay interest that accrues on the balance if the balance is paid in full prior to the expiration of a specified period of time, that balance must be treated as a balance with an annual percentage rate of zero for purposes of § 226.53 during that period of time. For example, if an account has a $1,000 purchase balance and a $2,000 balance that is subject to a deferred interest program that expires on July 1 and a 15% annual percentage rate applies to both, the balances must be treated as balances with different rates for purposes of § 226.53 until July 1. In addition, unless the card issuer allocates amounts paid by the consumer in excess of the required minimum

periodic payment in the manner requested by the consumer pursuant to § 226.53(b)►(1)(ii)◄ [(2)], § 226.53(b)(1)►(i)◄ requires the card issuer to apply any excess payments first to the $1,000 purchase balance except during the last two billing cycles of the deferred interest period (when it must be applied first to any remaining portion of the $2,000 balance). *See* example in comment 53–5.v.

5. * * * * *

v. * * * * *

A. Each month from February through June, the consumer pays $400 in excess of the required minimum periodic payment on the payment due date, which is the twenty-fifth of the month. Any interest that accrues on the purchases not subject to the deferred interest program is paid by the required minimum periodic payment. The card issuer does not accept requests from consumers regarding the allocation of excess payments pursuant to § 226.53(b)►(1)(ii)◄ [(2)]. Thus, § 226.53(b)(1)►(i)◄ requires the card issuer to allocate the $400 excess payments received on February 25, March 25, and April 25 consistent with § 226.53(a). In other words, the card issuer must allocate those payments as follows: $200 to pay off the balance not subject to the deferred interest program (which is subject to the 15% rate) and the remaining $200 to the deferred interest balance (which is treated as a balance with a rate of zero). However, § 226.53(b)(1)►(i)◄ requires the card issuer to allocate the entire $400 excess payment received on May 25 to the deferred interest balance. Similarly, § 226.53(b)(1)►(i)◄ requires the card issuer to allocate the $400 excess payment received on June 25 as follows: $200 to the deferred interest balance (which pays that balance in full) and the remaining $200 to the balance not subject to the deferred interest program.

B. Same facts as above, except that the card issuer does accept requests from consumers regarding the allocation of excess payments pursuant to § 226.53(b)►(1)(ii)◄ [(2)]. In addition, on April 25, the card issuer receives an excess payment of $800, which the consumer requests be allocated to pay off the $800 balance subject to the deferred interest program. Section 226.53(b)►(1)(ii)◄ [(2)] permits the card issuer to allocate the $800 excess payment in the manner requested by the consumer.

53(b) Special rule►s◄ [for accounts with balances subject to deferred interest or similar programs].

1. *Deferred interest and similar programs.* Section 226.53(b)►(1)◄ applies to deferred interest or similar programs under which the consumer is not obligated to pay interest that accrues on a balance if that balance is paid in full prior to the expiration of a specified period of time. For purposes of § 226.53(b)►(1)◄, “deferred interest” has the same meaning as in § 226.16(h)(2) and associated commentary. Section 226.53(b)►(1)◄ applies regardless of whether the consumer is required to make payments with respect to that balance during the specified period. However, a grace period during which any credit extended may be repaid without incurring a finance charge due to a periodic interest rate is not a deferred interest or similar program for purposes of § 226.53(b)►(1)◄. Similarly, a temporary annual percentage rate of zero percent that applies for a specified period of time consistent with § 226.55(b)(1) is not a deferred interest or similar program for purposes of § 226.53(b)►(1)◄ unless the consumer may be obligated to pay interest that accrues during the period if a balance is not paid in full prior to expiration of the period.

2. *Expiration of ►deferred interest or similar◄ program during billing cycle.* For purposes of § 226.53(b)(1)►(i)◄, a billing cycle does not constitute one of the two billing cycles immediately preceding expiration of a deferred interest or similar program if the expiration date for the program precedes the payment due date in that billing cycle. For example, assume that a credit card account has a balance subject to a deferred interest program that expires on June 15. Assume also that the billing cycles for the account begin on the first day of the month and end on the last day of the month and that the required minimum periodic payment is due on the twenty-fifth day of the month. The card issuer does not accept requests from consumers regarding the allocation of excess payments pursuant to § 226.53(b)►(1)(ii)◄ [(2)]. Because the expiration date for the deferred interest program (June 15) precedes the due date in the June billing cycle (June 25), § 226.53(b)(1)►(i)◄ requires the card issuer to allocate first to the deferred interest balance any amount paid by the consumer in excess of the required minimum periodic payment during the April and May billing cycles (as well as any amount paid by the consumer before June 15). However, if the deferred interest program expired on June 25 or on June 30 (or on any day in between), § 226.53(b)(1)►(i)◄ would apply only to the May and June billing cycles.

3. *Consumer requests.*

i. *Generally.* Section 226.53(b) does not require a card issuer to allocate amounts paid by the consumer in excess of the required minimum periodic payment in the manner requested by the consumer, provided that the card issuer instead allocates such amounts consistent with § 226.53►(a)◄ or (b)(1)►(i), as applicable◄. For example, a card issuer may decline consumer requests regarding payment allocation as a general matter or may decline such requests when a consumer does not comply with requirements set by the card issuer (such as submitting the request in writing or submitting the request prior to or contemporaneously with submission of the payment), provided that amounts paid by the consumer in excess of the required minimum periodic payment are allocated consistent with § 226.53►(a)◄ or (b)(1)►(i), as applicable◄. Similarly, a card issuer that accepts requests pursuant to § 226.53(b)►(1)(ii) or (b)◄(2) must allocate amounts paid by a consumer in excess of the required minimum periodic payment consistent with § 226.53►(a)◄ or (b)(1)►(i), as applicable,◄ if the consumer does not submit a request. Furthermore, [in these circumstances,] a card issuer ►that accepts requests pursuant to § 226.53(b)(1)(ii) or (b)(2)◄ must allocate consistent with § 226.53►(a)◄ or (b)(1)►(i), as applicable,◄ if the consumer submits a request with which the card issuer cannot comply (such as a request that contains a mathematical error), unless the consumer submits an additional request with which the card issuer can comply.

ii. *Examples of consumer requests that satisfy § 226.53►(b)(1)(ii) or◄ (b)(2).* A consumer has made a request for purposes of § 226.53►(b)(1)(ii) or◄ (b)(2) if:

A. The consumer contacts the card issuer orally, electronically, or in writing and specifically requests that a payment or payments be allocated in a particular manner during the period of time that the deferred interest or similar program applies to a balance on the account ►or the period of time that a balance on the account is secured◄.

B. The consumer completes ►and submits to the card issuer◄ a form or payment coupon provided by the card issuer for the purpose of requesting that a payment or payments be allocated in a particular manner during the period of time that the deferred interest or similar program applies to a balance on the account ►or the period of time that a balance on the account is secured◄ [and submits that form or coupon to the card issuer].

C. The consumer contacts the card issuer orally, electronically, or in writing and specifically requests that a payment that the card issuer has previously allocated consistent with § 226.53►(a) or◄ (b)(1)►(i), as applicable,◄ instead be allocated in a different manner.

iii. *Examples of consumer requests that do not satisfy § 226.53►(b)(1)(ii) or◄ (b)(2).* A consumer has not made a request for purposes of § 226.53►(b)(1)(ii) or◄ (b)(2) if:

A. The terms and conditions of the account agreement contain preprinted language stating that by applying to open an account►,◄ [or] by using that account for transactions subject to a deferred interest or similar program►, or by using the account to purchase property in which the card issuer holds a security interest◄ the consumer requests that payments be allocated in a particular manner.

* * * * *

D. The card issuer requires a consumer to accept a particular payment allocation method as a condition of using a deferred interest or similar program, ►purchasing property in which the card issuer holds a security interest,◄ making a payment, or receiving account services or features.

* * * * *

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

55(a) General rule.

1. ►*Increase in rate, fee, or charge*◄ [*Examples*]. Section 226.55(a) prohibits card issuers from increasing an annual percentage rate or any fee or charge required to be disclosed under § 226.6(b)(2)(ii), (b)(2)(iii), or (b)(2)(xii) on a credit card account unless specifically permitted by one of the exceptions in § 226.55(b). ►Except as specifically provided in § 226.55(b), this prohibition applies even if the circumstances under which an increase will occur are

disclosed in advance.◄ The following examples illustrate the general application of § 226.55(a) and (b). Additional examples illustrating specific aspects of the exceptions in § 226.55(b) are provided in the commentary to those exceptions.

* * * * *

55(b) Exceptions.

1. *Exceptions not mutually exclusive.* A card issuer may increase an annual percentage rate or a fee or charge required to be disclosed under § 226.6(b)(2)(ii), (b)(2)(iii), or (b)(2)(xii) pursuant to an exception set forth in § 226.55(b) even if that increase would not be permitted under a different exception. For example, although a card issuer cannot increase an annual percentage rate pursuant to § 226.55(b)(1) unless that rate is provided for a specified period of at least six months, the card issuer may increase an annual percentage rate during a specified period due to an increase in an index consistent with § 226.55(b)(2). Similarly, although § 226.55(b)(3) does not permit a card issuer to increase an annual percentage rate during the first year after account opening, the card issuer may increase the rate during the first year after account opening pursuant to § 226.55(b)(4) if the required minimum periodic payment is not received within 60 days after the due date. ►However, if § 226.55(b)(4)(ii) requires a card issuer to decrease the rate, fee, or charge that applies to a balance while the account is subject to a workout or temporary hardship arrangement or subject to 50 U.S.C. app. 527 or a similar federal or state statute or regulation, the card issuer may not impose a higher rate, fee, or charge on that balance pursuant to § 226.55(b)(5) or (b)(6) upon completion or failure of the arrangement or once 50 U.S.C. app. 527 or the similar federal or state statute or regulation no longer applies. For example, assume that, on January 1, the annual percentage rate that applies to a $1,000 balance is increased from 12% to 30% pursuant to § 226.55(b)(4). On February 1, the rate on that balance is decreased from 30% to 15% consistent with § 226.55(b)(5) as a part of a workout or temporary hardship arrangement. On July 1, § 226.55(b)(4)(ii) requires the card issuer to reduce the rate that applies to any remaining portion of the $1,000 balance from 15% to 12%. If the consumer subsequently completes or fails to comply with the terms of the workout or temporary hardship arrangement, the card issuer may not increase the 12% rate that applies to any remaining portion of the $1,000 balance pursuant to § 226.55(b)(5).◄

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3. * * *

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iii. * * *

►C. *Application of lower temporary rate during specified period.* Same facts as in paragraph iii. above. On June 30 of year two, the account has a purchase balance of $1,000 at the 15% non-variable rate. On July 1, the card issuer provides a notice pursuant to § 226.9(c) informing the consumer that the rate for the $1,000 balance and new purchases will decrease to a non-variable rate of 12% for six months (from July 1 through December 31 of year two) and that, beginning on January 1 of year three, the rate for purchases will increase to a variable rate that is currently 20% and is determined by adding a margin of 10 percentage points to a publicly-available index not under the card issuer's control. On August 15 of year two, the consumer makes a $500 purchase. On October 1, the card issuer provides another notice pursuant to § 226.9(c) informing the consumer that the rate for the $1,000 balance, the $500 purchase, and new purchases will decrease to a non-variable rate of 5% for six months (from October 1 of year two through March 31 of year three) and that, beginning on April 1 of year three, the rate for purchases will increase to a variable rate that is currently 23% and is determined by adding a margin of 13 percentage points to the previously-disclosed index. On November 15 of year two, the consumer makes a $300 purchase. On April 1 of year three, § 226.55 permits the card issuer to begin accruing interest using the following rates for any remaining portion of the following balances: the 15% non-variable rate for the $1,000 balance; the variable rate determined using the 10-point margin for the $500 purchase; and the variable rate determined using the 13-point margin for the $300 purchase.◄

55(b)(1) Temporary rate ►, fee, or charge◄ exception.

* * * * *

2. *Period of six months or longer.* A temporary annual percentage rate ►, fee, or charge◄ must apply 【to transactions】 for a specified period of six months or longer before a card issuer can increase that rate ►, fee, or charge◄ pursuant to § 226.55(b)(1). The specified period must expire no less than six months after the date on which the ►card issuer◄ 【creditor】 provides the consumer with the disclosures required by § 226.55(b)(1)(i) or, if later, the date on which the account can be used for transactions to which the temporary rate ►, fee, or charge◄ applies. Section 226.55(b)(1) does not prohibit a card issuer from limiting the application of a temporary annual percentage rate ►, fee, or charge◄ to a particular category of transactions (such as balance transfers or purchases over $100). However, in circumstances where the card issuer limits application of the temporary rate►, fee, or charge◄ to a ►single◄ 【particular】 transaction, the specified period must expire no less than six months after the date on which that transaction occurred. The following examples illustrate the application of § 226.55(b)(1):

* * * * *

►vii. Assume that a card issuer discloses at account opening on January 1 of year one that the annual fee for the account is $0 until January 1 of year two, when the fee will increase to $50. On January 1 of year two, the card issuer may impose the $50 annual fee. However, the issuer must also comply with the notice requirements in § 226.9(e).

viii. Assume that a card issuer discloses at account opening on January 1 of year one that the monthly maintenance fee for the account is $0 until July 1 of year one, when the fee will increase to $10. Beginning on July 1 of year one, the card issuer may impose the $10 monthly maintenance fee (to the extent consistent with § 226.52(a)).◄

* * * * *

4. *Contingent or discretionary* 【*rate*】 *increases.* Section § 226.55(b)(1) permits a card issuer to increase a temporary annual percentage rate ►, fee, or charge◄ upon the expiration of a specified period of time. However, § 226.55(b)(1) does not permit a card issuer to apply an increased rate ►, fee, or charge◄ that is contingent on a particular event or occurrence or that may be applied at the card issuer's discretion. The following examples illustrate rate increases that are not permitted by § 226.55:

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►iii. Assume that a card issuer discloses at account opening on January 1 of year one that the annual fee for the account is $10 but may be increased to $50 if a consumer's required minimum periodic payment is received after the payment due date, which is the fifteenth of the month. The payment due on July 15 is not received until July 23. Section 226.55 does not permit the card issuer to impose the $50 annual fee at this time. Furthermore, § 226.55(b)(3) does not permit the card issuer to increase the $10 annual fee during the first year after account opening. However, § 226.55(b)(3) does permit the card issuer to impose the $50 fee (or a different fee) on January 1 of year two if, on or before November 16 of year one, the issuer informs the consumer of the increased fee consistent with § 226.9(c) and the consumer does not reject that increase pursuant to § 226.9(h).

iv. Assume that a card issuer discloses at account opening on January 1 of year one that the annual fee for a credit card account under an open-end (not home-secured) consumer credit plan is $0 but may be increased to $100 if the consumer's balance in a deposit account provided by the card issuer or its affiliate or subsidiary falls below $5,000. On June 1 of year one, the balance on the deposit account is $4,500. Section 226.55 does not permit the card issuer to impose the $100 annual fee at this time. Furthermore, § 226.55(b)(3) does not permit the card issuer to increase the $0 annual fee during the first year after account opening. However, § 226.55(b)(3) does permit the card issuer to impose the $100 fee (or a different fee) on January 1 of year two if, on or before November 16 of year one, the issuer informs the consumer of the increased fee consistent with § 226.9(c) and the consumer does not reject that increase pursuant to § 226.9(h).◄

►5. *Application of increased fees and charges.* Section 226.55(b)(1)(ii) limits the ability of a card issuer to apply an increased fee or charge to certain transactions. However, to the extent consistent with § 226.55(b)(3)(c), and (d), a card issuer generally is not prohibited from increasing a fee or charge that applies to the account as a whole. *See* comments 55(c)(1)–3 and 55(d)–1.◄

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55(b)(6) Servicemembers Civil Relief Act exception.

1. *Rate►, fee, or charge◄ that does not exceed rate that applied before decrease.* ►When a rate or a fee or charge subject to

§ 226.55 has been decreased pursuant to 50 U.S.C. app. 527 or a similar federal or state statute or regulation, § 226.55(b)(6) permits the card issuer to increase the rate, fee, or charge once 50 U.S.C. app. 527 or the similar statute or regulation no longer applies. However, § 226.55(b)(6) prohibits the card issuer from applying to any transactions that occurred prior to the decrease a rate, fee, or charge that exceeds the rate, fee, or charge that applied to those transactions prior to the decrease (except to the extent permitted by one of the other exceptions in § 226.55(b)).◄ [Once 50 U.S.C. app. 527 no longer applies, § 226.55(b)(6) prohibits a card issuer from applying an annual percentage rate to any transactions that occurred prior to a decrease in rate pursuant to 50 U.S.C. app. 527 that exceeds the rate that applied to those transactions prior to the decrease. However, this provision does not prohibit the card issuer from applying an increased annual percentage rate once 50 U.S.C. app. 527 no longer applies, to the extent consistent with any of the other exceptions in § 226.55(b).] For example, if a temporary rate applied prior to ►a decrease in rate pursuant to 50 U.S.C. app. 527◄ [the decrease] and ►the temporary rate◄ [that rate] expired during the period that 50 U.S.C. app. 527 applied to the account, the card issuer may apply an increased rate once 50 U.S.C. app. 527 no longer applies to the extent consistent with § 226.55(b)(1). Similarly, if a variable rate applied prior to ►a decrease in rate pursuant to 50 U.S.C. app. 527◄ [the decrease], the card issuer may apply any increase in that variable rate once 50 U.S.C. app. 527 no longer applies to the extent consistent with § 226.55(b)(2).

►2. *Decreases in rates, fees, and charges to amounts consistent with 50 U.S.C. app. 527 or similar statute or regulation.* If a card issuer deceases all annual percentage rates and all fees and charges subject to § 226.55 to amounts that are consistent with 50 U.S.C. app. 527 or a similar federal or state statute or regulation (including rates, fees, and charges that apply to new transactions), the card issuer may increase those rates, fees, and charges consistent with § 226.55(b)(6).◄

►3.◄ [2.] *Example.* Assume that on December 31 of year one the annual percentage rate that applies to a $5,000 balance on a credit card account is a variable rate that is determined by adding a margin of 10 percentage points to a publicly-available index that is not under the card issuer's control. ►The account is also subject to a monthly maintenance fee of $10.◄ On January 1 of year two, the card issuer reduces the rate that applies to the $5,000 balance to a non-variable rate of 6% ►and ceases to impose the $10 monthly maintenance fee and other fees (including late payment fees)◄ pursuant to 50 U.S.C. app. 527. ►The card issuer also decreases the rate that applies to new transactions to 6%. During year two, the consumer uses the account for $1,000 in new transactions.◄ On January 1 of year three, 50 U.S.C. app. 527 ceases to apply and the card issuer provides a notice pursuant to § 226.9(c) informing the consumer that on February 15 of year three the variable rate determined using the 10-point margin will apply to any remaining portion of the $5,000 balance ►and to any remaining portion of the $1,000 balance. The notice also states that the $10 monthly maintenance fee and other fees (including late payment fees) will resume on February 15 of year three. Consistent with § 226.9(c)(2)(iv)(B), the card issuer is not required to provide a right to reject in these circumstances◄. On February 15 of year three, § 226.55(b)(6) permits the card issuer to begin accruing interest on any remaining portion of the $5,000 ►and $1,000◄ balance►s◄ at the variable rate determined using the 10-point margin ►and to resume imposing the $10 monthly maintenance fee and other fees (including late payment fees)◄.

55(c) Treatment of protected balances.

55(c)(1) Definition of protected balance.

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3. *Increased fees and charges.* ►Except as provided in § 226.55(b)(3)(iii)◄ [Once an account has been open for more than one year], § 226.55(b)(3) permits a card issuer to increase a fee or charge required to be disclosed under § 226.6(b)(2)(ii), (b)(2)(iii), or (b)(2)(xii) after complying with the applicable notice requirements in § 226.9(b) or (c), provided that the increased fee or charge is not applied to a protected balance. ►To the extent consistent with § 226.55(b)(3)(iii), a◄ [A] card issuer is not prohibited from increasing a fee or charge that applies to the account as a whole or to balances other than the protected balance. For example, after the first year following account opening, a card issuer may add ►or increase an◄ [a new] annual or a monthly maintenance fee ►for an active account after complying with the notice requirements in § 226.9(c), including notifying the consumer of the right to reject the new or increased fee under § 226.9(h)◄ [to an account or increase such a fee so long as the fee is not based solely on the protected balance]. ►However, except as otherwise provided in § 226.55(b), an increased fee or charge cannot be applied to an account while the account is closed or while the card issuer does not permit the consumer to use the account for new transactions. *See* § 226.55(b)(3)(iii); see also §§ 226.52(b)(2)(i)(B)(*3*) and 226.55(d)(1). Furthermore◄ [However], if the consumer rejects an increase in a fee or charge pursuant to § 226.9(h), the card issuer is prohibited from applying the increased fee or charge to the account and from imposing any other fee or charge solely as a result of the rejection. See § 226.9(h)(2)(i) and (ii); comment 9(h)(2)(ii)–2.

►4. *Changing balance computation method.* Nothing in § 226.55 prohibits a card issuer from changing the balance computation method that applies to new transactions as well as protected balances.◄

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►*55(e) Promotional waivers or rebates of interest, fees, and other charges.*

1. *Generally.* Nothing in § 226.55 prohibits a card issuer from waiving or rebating finance charges due to a periodic interest rate or a fee or charge required to be disclosed under § 226.6(b)(2)(ii), (b)(2)(iii), or (b)(2)(xii). However, if a card issuer promotes and applies the waiver or rebate to an account, the card issuer cannot cease or terminate the waiver or rebate unless permitted by one of the exceptions in § 226.55(b). For example:

i. A card issuer applies an annual percentage rate of 15% to balance transfers but promotes a program under which all of the interest accrued on transferred balances will be waived or rebated for one year. If, prior to the commencement of the one-year period, the card issuer discloses the length of the period and the annual percentage rate that will apply to transferred balances after expiration of that period consistent with § 226.55(b)(1)(i), § 226.55(b)(1) permits the card issuer to begin imposing interest charges on transferred balances after one year. Furthermore, if, during the one-year period, a required minimum periodic payment is not received within 60 days of the payment due date, § 226.55(b)(4) permits the card issuer to begin imposing interest charges on transferred balances (after providing a notice consistent with § 226.9(g) and § 226.55(b)(4)(i)). However, if a required minimum periodic payment is not more than 60 days delinquent or if the consumer otherwise violates the terms or other requirements of the account, § 226.55 does not permit the card issuer to begin imposing interest charges on transferred balances until the expiration of the one-year period.

ii. A card issuer imposes a monthly maintenance fee of $10 but promotes a program under which the fee will be waived or rebated for the six months following account opening. If, prior to account opening, the card issuer discloses the length of the period and the monthly maintenance fee that will be imposed after expiration of that period consistent with § 226.55(b)(1)(i), § 226.55(b)(1) permits the card issuer to begin imposing the monthly maintenance fee six months after account opening. Furthermore, if, during the six-month period, a required minimum periodic payment is not received within 60 days of the payment due date, § 226.55(b)(4) permits the card issuer to begin imposing the monthly maintenance fee (after providing a notice consistent with § 226.9(c) and § 226.55(b)(4)(i)). However, if a required minimum periodic payment is not more than 60 days delinquent or if the consumer otherwise violates the terms or other requirements of the account, § 226.55 does not permit the card issuer to begin imposing the monthly maintenance fee until the expiration of the six-month period.

2. *Promotion of waiver or rebate.* For purposes of § 226.55(e), a card issuer promotes a waiver or rebate if the card issuer discloses the waiver or rebate in an advertisement (as defined in § 226.2(a)(2)). See comment 2(a)(2)–1. In addition, a card issuer promotes a waiver or rebate for purposes of § 226.55(e) if the card issuer discloses the waiver or rebate in communications regarding existing accounts (such as communications regarding a promotion that encourages additional or different uses of an existing account), unless the communication relates to an inquiry or dispute about a specific charge or occurs after the card issuer has waived or rebated the interest, fees, or other charges.

i. The following are examples of circumstances in which a card issuer is promoting a waiver or rebate for purposes of § 226.55(e):

A. A card issuer discloses the waiver or rebate in a newspaper, magazine, leaflet, promotional flyer, catalog, sign, or point-of-sale display.

B. A card issuer discloses the waiver or rebate on radio or television or through electronic advertisements (such as on the Internet).

C. A card issuer discloses a waiver or rebate to individual consumers, such as by telephone, letter, or electronic communication, through direct mail literature, or on or with account statements. To the extent that a card issuer provides such disclosures to its current accountholders, the issuer is promoting a waiver or rebate for purposes of § 226.55(e) if the disclosure is provided before the issuer has waived or rebated the interest, fees, or other charges subject to § 226.55 (unless the disclosure relates to an inquiry or dispute about a specific charge).

ii. The following are examples of circumstances in which a card issuer is not promoting a waiver or rebate for purposes of § 226.55(e):

A. After a card issuer has waived or rebated interest, fees, or other charges subject to § 226.55 with respect to an account, the issuer discloses the waiver or rebate to the accountholder on the periodic statement or by telephone, letter, or electronic communication. However, if the card issuer also discloses prospective waivers or rebates in the same communication, the issuer is promoting a waiver or rebate for purposes of § 226.55(e).

B. A card issuer communicates with a consumer about a waiver or rebate of interest, fees, or other charges subject to § 226.55 in relation to an inquiry or dispute about a specific charge, including a dispute under § 226.12 or § 226.13.

C. A card issuer waives or rebates interest, fees, or other charges subject to § 226.55 in order to comply with a legal requirement (such as the limitations in § 226.52(a)).

D. A card issuer discloses a grace period consistent with § 226.5a, § 226.6, or § 226.7.

E. A card issuer provides an undisclosed period after the payment due date during which interest, fees, or other charges subject to § 226.55 are waived or rebated even if a payment has not been received.

F. A card issuer provides benefits (such as rewards points or cash back on purchases or finance charges) that can be applied to the account as credits, provided that the benefits are not promoted as reducing interest, fees, or other charges subject to § 226.55.

3. *Relationship of § 226.55(e) to grace period.* Section 226.55(e) does not apply to the waiver of finance charges due to a periodic rate consistent with a grace period, as defined in § 226.5(b)(2)(ii)(*3*).◀

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Section 226.58—Internet Posting of Credit Card Agreements

58(b) Definitions.

58(b)(1) Agreement.

1. *Inclusion of pricing information.* For purposes of this section, a credit card agreement is deemed to include certain information, such as annual percentage rates and fees, even if the issuer does not otherwise include this information in the basic credit contract. This information is listed under the defined term "pricing information" in 【§ 226.58(b)(6)】▶§ 226.58(b)(7)◀. For example, the basic credit contract may not specify rates, fees and other information that constitutes pricing information as defined in 【§ 226.58(b)(6)】▶§ 226.58(b)(7)◀; instead, such information may be provided to the cardholder in a separate document sent along with the card. However, this information nevertheless constitutes part of the agreement for purposes of § 226.58.

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58(b)(2) Amends.

1. *Substantive changes.* A change to an agreement is substantive, and therefore is deemed an amendment of the agreement, if it alters the rights or obligations of the parties. Section 226.58(b)(2) provides that any change in the pricing information, as defined in 【§ 226.58(b)(6)】▶§ 226.58(b)(7)◀, is deemed to be substantive. Examples of other changes that generally would be considered substantive include: (i) Addition or deletion of a provision giving the issuer or consumer a right under the agreement, such as a clause that allows an issuer to unilaterally change the terms of an agreement; (ii) addition or deletion of a provision giving the issuer or consumer an obligation under the agreement, such as a clause requiring the consumer to pay an additional fee; (iii) changes that may affect the cost of credit to the consumer, such as changes in a provision describing how the minimum payment will be calculated; (iv) changes that may affect how the terms of the agreement are construed or applied, such as changes in a choice-of-law provision; and (v) changes that may affect the parties to whom the agreement may apply, such as provisions regarding authorized users or assignment of the agreement.

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▶*58(b)(4) Card issuer.*

1. *Card issuer clarified.* Section 226.58(b)(4) provides that, for purposes of § 226.58, card issuer or issuer means the entity to which a consumer is legally obligated, or would be legally obligated, under the terms of a credit card agreement. For example, Bank X and Bank Y work together to issue credit cards. A consumer that obtains a credit card issued pursuant to this arrangement between Bank X and Bank Y is subject to an agreement that states "This is an agreement between you, the consumer, and Bank X that governs the terms of your Bank Y Credit Card." The card issuer in this example is Bank X, because the agreement creates a legally enforceable obligation between the consumer and Bank X. Bank X is the issuer even if the consumer applied for the card through a link on Bank Y's Web site and the cards prominently feature the Bank Y logo on the front of the card. ◀

【*58(b)(4)*】▶*58(b)(5)*◀ *Offers.*

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【*58(b)(5)*】▶*58(b)(6)*◀ *Open account.*

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【58(b)(7)】▶58(b)(8)◀ Private label credit card account and private label credit card plan.

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2. *Co-branded credit cards.* The term private label credit card account does not include accounts with so-called co-branded credit cards. Credit cards that display the name, mark, or logo of a merchant or affiliated group of merchants as well as the mark, logo, or brand of payment network are generally referred to as co-branded cards. While these credit cards may display the brand of the merchant or affiliated group of merchants as the dominant brand on the card, such credit cards are usable at any merchant that participates in the payment network. Because these credit cards can be used at multiple unaffiliated merchants, accounts with such credit cards are not considered private label credit card accounts under 【§ 226.58(b)(7)】▶§ 226.58(b)(8)◀.

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4. *Private label credit card plan.* Which credit card accounts issued by a particular issuer constitute a private label credit card plan is determined by where the credit cards can be used. All of the private label credit card accounts issued by a particular card issuer with credit cards usable at the same merchant or affiliated group of merchants constitute a single private label credit card plan, regardless of whether the rates, fees, or other terms applicable to the individual credit card accounts differ. For example, a card issuer has 3,000 open private label credit card accounts with credit cards usable only at Merchant A and 5,000 open private label credit card accounts with credit cards usable only at Merchant B and its affiliates. The card issuer has two separate private label credit card plans, as defined by 【§ 226.58(b)(7)】▶§ 226.58(b)(8)◀—one plan consisting of 3,000 open accounts with credit cards usable only at Merchant A and another plan consisting of 5,000 open accounts with credit cards usable only at Merchant B and its affiliates.

The example above remains the same regardless of whether (or the extent to which) the terms applicable to the individual open accounts differ. For example, assume that, with respect to the card issuer's 3,000 open accounts with credit cards usable only at Merchant A in the example above, 1,000 of the open accounts have a purchase APR of 12 percent, 1,000 of the open accounts have a purchase APR of 15 percent, and 1,000 of the open accounts have a purchase APR of 18 percent. All of the 5,000 open accounts with credit cards usable only at Merchant B and Merchant B's affiliates have the same 15 percent purchase APR. The card issuer still has only two separate private label credit card plans, as defined by 【§ 226.58(b)(7)】▶§ 226.58(b)(8)◀. 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)】▶§ 226.58(b)(8)◀, even though the accounts are subject to different terms.

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58(c) Submission of agreements to Board.

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58(c)(3) Amended agreements.

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2. *Submission of amended agreements.* ►If a card issuer amends a credit card agreement previously submitted to the Board, § 226.58(c)(3) requires the card issuer to submit the entire amended agreement to the Board. The issuer must submit the 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. However, the issuer is required to submit the amended agreement to the Board only if the issuer offered the amended agreement to the public as of the last business day of the calendar quarter in which the change became effective. For example, a card issuer submits an agreement to the Board on October 31. On November 15, the issuer changes the balance computation method used under the agreement. Because an element of the pricing information has changed, the agreement has been amended for purposes of § 226.58(c)(3). On December 31, the last business day of the calendar quarter in which the change in the balance computation method became effective, the issuer still offers the agreement to the public as amended on November 15. The issuer must submit the entire amended agreement to the Board no later than January 31.◄ [If a card issuer amends a credit card agreement previously submitted to the Board, § 226.58(c)(3) requires the card issuer to submit the entire amended agreement to the Board by the first quarterly submission deadline after the last day of the calendar quarter in which the change became effective. For example, a card issuer submits an agreement to the Board on October 31. On November 15, the issuer changes the balance computation method used under the agreement. Because an element of the pricing information has changed, the agreement has been amended and the card issuer must submit the entire amended agreement to the Board no later than January 31.]

►3. *Agreements amended but no longer offered to the public.* A card issuer should submit an amended agreement to the Board under § 226.58(c)(3) only if the issuer offered the amended agreement to the public as of the last business day of the calendar quarter in which the amendment became effective. Agreements that are not offered to the public as of the last day of the calendar quarter should not be submitted to the Board. For example, on December 31 a card issuer offers two agreements, Agreement A and Agreement B. The issuer submits these agreements to the Board by January 31 as required by § 226.58. On February 15, the issuer amends both Agreement A and Agreement B. On February 28, the issuer stops offering Agreement A to the public. On March 15, the issuer amends Agreement B a second time. As a result, on March 31, the last business day of the calendar quarter, the issuer offers to the public one agreement—Agreement B as amended on March 15. By the April 30 quarterly submission deadline, the issuer must: (1) Notify the Board that it is withdrawing Agreement A because Agreement A is no longer offered to the public; and (2) submit to the Board Agreement B as amended on March 15. The issuer should not submit to the Board either Agreement A as amended on February 15 or the earlier version of Agreement B (as amended on February 15), as neither was offered to the public on March 31, the last business day of the calendar quarter.◄

[3.]►4.◄ *Change-in-terms notices not permissible.* * * *

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58(e) Agreements for all open accounts.

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3. *Issuers without interactive Web sites.* Section 226.58(e)(2) provides that a card issuer that does not maintain a Web site from which cardholders can access specific information about their individual accounts is not required to provide a cardholder with the ability to request a copy of the agreement by using the card issuer's Web site. A card issuer without a Web site of any kind could comply by disclosing the telephone number on each periodic statement; a card issuer with a non-interactive Web site could comply in the same way, or alternatively could comply by displaying the telephone number on the card issuer's Web site. ►An issuer is considered to maintain an interactive Web site for purposes of the § 226.58(e)(2) special rule if the issuer provide cardholders with access to specific information about their individual accounts, such as balance information or copies of statements, through a third-party interactive Web site. Such a Web site is deemed to be maintained by the issuer for purposes of § 226.58(e)(2) even where, for example, an unaffiliated entity designs the Web site and owns and maintains the information technology infrastructure that supports the Web site, cardholders with credit cards from multiple issuers can access individual account information through the same Web site, and the Web site is not labeled, branded, or otherwise held out to the public as belonging to the issuer. An issuer that provides cardholders with access to specific information about their individual accounts through such a Web site is not permitted to comply with the special rule in § 226.58(e)(2). Instead, such an issuer must comply with § 226.58(e)(1).◄

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Section 226.59—Reevaluation of Rate Increases

59(a) General rule.

59(a)(1) Evaluation of increased rate.

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►3. *Change in type of rate.* i. *Generally.* A change from a variable rate to a non-variable rate or from a non-variable rate to a variable rate is not a rate increase for purposes of § 226.59, if the rate in effect immediately prior to the change in type of rate is equal to or greater than the rate in effect immediately after the change. For example, a change from a variable rate of 15.99% to a non-variable rate of 15.99% is not a rate increase for purposes of § 226.59 at the time of the change. See § 226.55 for limitations on the permissibility of changing from a non-variable rate to a variable rate.

ii. *Change from non-variable rate to variable rate.* A change from a non-variable to a variable rate constitutes a rate increase for purposes of § 226.59 if the variable rate exceeds the non-variable rate that would have applied if the change in type of rate had not occurred. For example, assume a new credit card account under an open-end (not home-secured) consumer credit plan is opened on January 1 of year 1 and that a non-variable annual percentage rate of 12% applies to all transactions on the account. On January 1 of year 2, upon 45 days' advance notice pursuant to § 226.9(c)(2), the rate on all new transactions is changed to a variable rate that is currently 12% and is determined by adding a margin of 10 percentage points to a publicly-available index not under the card issuer's control. The change from the 12% non-variable rate to the 12% variable rate on January 1 of year 2 is not a rate increase for purposes of § 226.59(a). On April 1 of year 2, the value of the variable rate increases to 12.5%. The increase in the variable rate from 12% to 12.5% is a rate increase for purposes of § 226.59, and the card issuer must begin periodically conducting reviews of the account pursuant to § 226.59.

iii. *Change from variable rate to non-variable rate.* A change from a variable to a non-variable rate constitutes a rate increase for purposes of § 226.59 if the non-variable rate exceeds the variable rate that would have applied if the change in type of rate had not occurred. For example, assume a new credit card account under an open-end (not home-secured) consumer credit plan is opened on January 1 of year 1 and that a variable annual percentage rate that is currently 15% and is determined by adding a margin of 10 percentage points to a publicly-available index not under the card issuer's control applies to all transactions on the account. On January 1 of year 2, upon 45 days' advance notice pursuant to § 226.9(c)(2), the rate on all existing balances and new transactions is changed to a non-variable rate that is currently 15%. The change from the 15% variable rate to the 15% non-variable rate on January 1 of year 2 is not a rate increase for purposes of § 226.59(a). On April 1 of year 2, the value of the variable rate that would have applied to the account decreases to 12.5%. Accordingly, on April 1 of year 2, the non-variable rate of 15% exceeds the 12.5% variable rate that would have applied but for the change in type of rate. At this time, the change to the non-variable rate of 15% constitutes a rate increase for purposes of § 226.59, and the card issuer must begin periodically conducting reviews of the account pursuant to § 226.59.◄

[3.] ►4.◄ *Rate increases prior to effective date of rule.* For increases in annual percentage rates made on or after January 1, 2009 and prior to August 22, 2010, § 226.59(a) requires the card issuer to review the factors described in § 226.59(d) and reduce the rate, as appropriate, if the rate increase is of a type for which 45 days' advance notice would currently be required under § 226.9(c)(2) or (g). For example, 45 days' notice is not required under § 226.9(c)(2) if the rate increase results from the increase in the index by which a properly-disclosed variable rate is determined in accordance with § 226.9(c)(2)(v)(C) or if the increase occurs upon expiration of a specified period of time and disclosures complying with § 226.9(c)(2)(v)(B) have been provided. The requirements of § 226.59 do not apply to such rate increases.

[4.] ►5.◄ *Amount of rate decrease.* Even in circumstances where a rate reduction is required, § 226.59 does not require that a card issuer decrease the rate that applies to a credit card account to the rate that was in effect prior to the rate increase subject to § 226.59(a). The amount of the rate decrease that is required must be determined based upon the card issuer's reasonable policies and procedures under § 226.59(b) for consideration of factors described in § 226.59(a) and (d). For example, assume a consumer's rate on new purchases is increased from a variable rate of 15.99% to a variable rate of 23.99% based on the consumer's making a required minimum periodic payment five days late. The consumer makes all of the payments required on the account on time for the six months following the rate increase. Assume that the card issuer evaluates the account by reviewing the factors on which the increase in an annual percentage rate was originally based, in accordance with § 226.59(d)(1)(i). The card issuer is not required to decrease the consumer's rate to the 15.99% that applied prior to the rate increase. However, the card issuer's policies and procedures for performing the review required by § 226.59(a) must be reasonable, as required by § 226.59(b), and must take into account any reduction in the consumer's credit risk based upon the consumer's timely payments.

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59(d) Factors.

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►6. *Multiple rate increases between January 1, 2009 and February 21, 2010.* i. *General.* Section 226.59(d)(2) applies if an issuer increased the rate applicable to a credit card account under an open-end (not home-secured) consumer credit plan between January 1, 2009 and February 21, 2010, and the increase was not based solely upon factors specific to the consumer. In some cases, a credit card account may have been subject to multiple rate increases during the period from January 1, 2009 to February 21, 2010. Some such rate increases may have been based solely upon factors specific to the consumer, while others may have been based on factors not specific to the consumer, such as the issuer's cost of funds or market conditions. In such circumstances, when conducting the first two reviews required under § 226.59, the card issuer may separately review: (A) Rate increases imposed based on factors not specific to the consumer, using the factors described in § 226.59(d)(1)(ii) (as required by § 226.59(d)(2)); and (B) rate increases imposed based on consumer-specific factors, using the factors described in § 226.59(d)(1)(i). If the review of factors described in § 226.59(d)(1)(i) indicates that it is appropriate to continue to apply a penalty rate to the account as a result of the consumer's payment history or other behavior on the account, § 226.59 permits the card issuer to continue to impose the penalty rate, even if the review of the factors described in § 226.59(d)(1)(ii) would otherwise require a rate decrease.

ii. *Example.* Assume a credit card account was subject to a rate of 15% on all transactions as of January 1, 2009. On May 1, 2009, the issuer increased the rate on existing balances and new transactions to 18%, based upon market conditions or other factors not specific to the consumer or the consumer's account. Subsequently, on September 1, 2009, based on a payment that was received five days after the due date, the issuer increased the applicable rate on existing balances and new transactions from 18% to a penalty rate of 25%. When conducting the first review required under § 226.59, the card issuer reviews the rate increase from 15% to 18% using the factors described in § 226.59(d)(1)(ii) (as required by § 226.59(d)(2)), and separately but concurrently reviews the rate increase from 18% to 25% using the factors described in paragraph § 226.59(d)(1)(i). The review of the rate increase from 15% to 18% based upon the factors described in § 226.59(d)(1)(ii) indicates that a similarly situated new consumer would receive a rate of 17%. The review of the rate increase from 18% to 25% based upon the factors described in § 226.59(d)(1)(i) indicates that it is appropriate to continue to apply the 25% penalty rate based upon the consumer's late payment. Section 226.59 permits the rate on the account to remain at 25%.◄

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59(f) Termination of obligation to review factors.

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►2. *Example—relationship to § 226.59(a).* Assume that on January 1, 2011, a consumer opens a new credit card account under an open-end (not home-secured) consumer credit plan. The annual percentage rate applicable to purchases is 15%. Upon providing 45 days' advance notice and to the extent permitted under § 226.55, the card issuer increases the rate applicable to new purchases to 18%, effective on September 1, 2012. The card issuer conducts reviews of the increased rate in accordance with § 226.59 on January 1, 2013 and July 1, 2013, based on the factors described in § 226.59(d)(1)(ii). Based on the January 1, 2013 review, the rate applicable to purchases remains at 18%. In the review conducted on July 1, 2013, the card issuer determines that, based on the relevant factors, the rate it would offer on a comparable new account would be 14%. Consistent with § 226.59(f), § 226.59(a) requires that the card issuer reduce the rate on the existing account to the 15% rate that was in effect prior to the September 1, 2012 rate increase.◄

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By order of the Board of Governors of the Federal Reserve System, October 18, 2010.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 2010–26515 Filed 11–1–10; 8:45 am]

BILLING CODE 6210–01–P